Is the asylum partnership between the UK and Rwanda compliant with international refugee and human rights law, specifically the principle of non-refoulement, the principle of non-penalization of irregular entry by refugees, and other refugee and human rights?

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CHAPTER ONE

1. Introduction

1.1 Background

In April 2022, the United Kingdom (UK) and Rwanda signed the "Memorandum of Understanding Between The Government of the United Kingdom of Great Britain and Northern Ireland And The Government of the Republic of Rwanda For the Provision of an Asylum Partnership Arrangement"[1] which I will refer to as the asylum partnership or MoU interchangeably. This asylum partnership allows the UK to forcibly send asylum seekers to Rwanda to apply for asylum there without any possibility of returning to the UK. In return, the UK provides development funding to Rwanda and pays for each relocated person's processing and integration costs. The MoU will last five years but may be renewed for a year after its expiration.[2] The MoU came into effect upon the signature of both parties in April 2022.[3] However, if any court decisions within the UK or Rwanda prevents the implementation of the transfer arrangements, this period will not count towards the five-year period.[4]

The MoU aims to enhance international cooperation and responsibility-sharing as well as promote better protection for refugees.[5] Furthermore, it strives to prevent and fight illegal migration.[6] The UK, thus, mainly plans on relocating 'inadmissible'[7] asylum seekers to Rwanda to deter them from making dangerous journeys to the UK.[8] The British Nationality and Border Act allows for asylum

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[1] Home Office 'Memorandum of Understanding Between The Government of the United Kingdom of Great Britain and Northern Ireland And The Government of the Republic of Rwanda For the Provision of an Asylum Partnership Arrangement', *UK Government*, updated 6 April 2023, available at: *https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-government-of-the-republic-of-r*, accessed 26 May 2023.
[2] 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 (MoU), 2022, Art 23.1.
[3] Cf Art 24 MoU.
[4] Art 23.2 MoU.
[5] Preamble MoU.
[6] Preamble MoU.
[7] I will use the term 'inadmissible' asylum seeker(s) and 'irregular' asylum seeker(s) interchangeably in this thesis.
[8] Home Office 'Inadmissibility: safe third country cases (accessible)', *UK Government*, version 7.0, updated 28 June 2022, available at: *https://www.gov.uk/government/publications/inadmissibility-third-country-cases/inadmissibility-safe-third-country-cases-accessible*, accessed 26 May 2023; Home Affairs Committee 'Oral evidence: Asylum and migration, HC 197', House of Commons, 11 May

seekers to be declared 'inadmissible' if they were previously present in or have another form of connection with a safe third country. The Secretary of State can remove an asylum seeker who was declared inadmissible to any other safe third country without having to review their asylum claim.[9] The Secretary of State exercised this authority by signing the MoU.

The United Nations, civil society associations, politicians, and advocates have heavily criticized the deal between the UK and Rwanda.[10]

In June 2022, the first asylum seekers were supposed to be transferred to Rwanda. However, the European Court of Justice (ECtHR) issued an injunction for several of the asylum seekers due to be transferred. It ordered for the UK Government to await the transfers until three weeks after a final domestic court decision.[11] The ECtHR only awards interim measures if the applicants would fear for their lives pursuant to Art 2 ECHR, or face ill-treatment according to Art 3 ECHR, in the country to which they are supposed to be transferred.[12]

Thereafter, the British High Court ruled that the asylum partnership is legal in December 2022[13], whereas the Court of Appeal judged in a split two-to-one ruling that Rwanda cannot be considered a safe third country.[14] The UK Government appealed this decision.[15] On 15 November 2023, the British Supreme Court

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2022, available at: *https://committees.parliament.uk/oralevidence/10195/html/*, accessed 26 May 2023, Q 53-54.

[9] Nationality, Immigration and Asylum Act 2022 s80B (inserted by Nationality and Borders Act 2022 s16))

[10] Cf eg, UN 'UNHCR 'firmly' opposing UK-Rwanda offshore migration processing deal', *UN News*, 14. April 2022, available at: *https://news.un.org/en/story/2022/04/*1116342, accessed 26 May 2023; Amnesty 'Rwanda: Commonwealth leaders must oppose UK's racist asylum seeker deal', *Amnesty International*, 17. June 2022, available at: *https://www.amnesty.org/en/latest/news/2022/06/rwanda-commonwealth-leaders-must-oppose-uks-racist-asylum-seeker-deal/*, accessed 26 May 2023; Lewis Mudge 'UK's Rights Assessment of Rwanda Not Based on Facts', *Human Rights Watch*, 12 May 2022, available at: *https://www.hrw.org/news/2022/05/12/uks-rights-assessment-rwanda-not-based-facts*, accessed 26 May 2023; Statement by EU Commissioner for Home Affairs Ylva Johansson on Twitter, available at: *https://twitter.com/YlvaJohansson/status/1514606626258374657*, accessed 26 May 2023.

[11] European Court of Human Rights press release, ECHR 197 (2022), 14 June 2022. On the other injunctions issued on 14 June 2022, see press release ECHR 199 (2022), 15 June 2022.

[12] ECtHR 'Fact Sheet – Interim Measures', *European Court of Human Rights*, February 2023, available at: *https://www.echr.coe.int/documents/fs_interim_measures_eng.pdf*, accessed 26 May 2023.

[13] *AAA and others v Secretary of State for the Home Department* [2022] EWHC 3230 (Admin), 19 December 2022.

[14] *R (AAA) v SSHD* [2023] EWCA Civ 745, UK: Court of Appeal, 29 June 2023.

[15] Brian Melley, 'UK Supreme Court weighs if it's lawful for Britain to send asylum-seekers to Rwanda' *AP News*, 9 October 2023, available at: *https://apnews.com/article/uk-rwanda-migration-asylum-supreme-court-84399fdab701cbca1ca5347dfdc8ad72*, accessed 16 November 2023.

unanimously agreed with the Court of Appeal's conclusion. It held that there was a real risk of ill-treatment by reason of refoulement for asylum seekers to be transferred to Rwanda.[16] The principle of non-refoulement ensures that no one should be relocated to a country where they would face cruel, inhumane or degrading treatment and other irreparable harm.[17]

The UK Government has not transferred any asylum seekers to Rwanda yet because it placed a hold on the removal of asylum seekers to Rwanda until the legal battle over the MoU's legality ended.[18]

1.2 Statement of the Problem

The processing of asylum seekers' applications should ordinarily take place in the territory of the state where they first arrived or lodged an application or which has otherwise jurisdiction over them.[19] This standard is supported by state practice.[20] However, the UN Refugee Convention acknowledged the need for international cooperation in asylum matters.[21] Otherwise, certain countries would bear the brunt of granting asylum.[22] The Global Compact on Refugees also states as its guiding principles the fundamental principle of international solidarity and the principle of

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[16] *R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)* [2023] UKSC 42, UK: Supreme Court, 15 November 2023, para 73-105, 149.

[17] Fatima Khan 'Chapter 1 – The principle of non-refoulement' in Fatima Khan and Tal Schreier (eds) *Refugee Law in South Africa* (2014) 19-20.

[18] Hansard 'Migration and Economic Development – Volume 725', *UK Parliament*, 19 December 2022, available at: *https://hansard.parliament.uk/commons/2022-12-19/debates/B5009C67-E69A-4248-8F16-77439DE48472/MigrationAndEconomicDevelopment*, accessed 02 June 2023, Column 42; Hansard 'Illegal Immigration – Volume 724', *UK Parliament*, December 2022, available at: *https://hansard.parliament.uk/Commons/2022-12-13/debates/DB61C374-16B5-411C-9A29-CC3DCA119EB3/IllegalImmigration#contribution-0956F9E3-33B1-435A-B085-6B124DAD75AD*, accessed 02 June 2023, Column 887.

[19] UNHCR 'UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda Arrangement', *UNHCR*, 08 June 2022, available at: *https://www.unhcr.org/uk/media/unhcr-analysis-legality-and-appropriateness-transfer-asylum-seekers-under-uk-rwanda*, accessed 25 May 2023, No 4.-5.; UNHCR, 'Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers' May 2013, available at: *https://www.refworld.org/docid/51af82794.html*, accessed 26 May 2023, No 1.

[20] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 4.-5.; UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers* opt (n19) No 1.

[21] Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137 and Protocol Relating to the Status of Refugees, 31 January 1967, 606 UNTS 267 (together hereinafter: UN Refugee Convention).

[22] Preamble UN Refugee Convention.

burden- and responsibility-sharing.[23] Even though this compact is not legally binding, the basis of its key principles and objectives are international law obligations.[24] Moreover, the General Assembly and the UNHCR have referred to burden-sharing and international cooperation as core principles of refugee law multiple times.[25]

In recent years, countries in the Global North[26] have struck agreements with countries in the Global South to forcibly transfer refugees and/or asylum seekers to developing countries under the guise of responsibility-sharing.[27]

Various agreements of this nature can be found, such as agreements between the US and Guatemala[28], Australia and Cambodia,[29] as well as Israel and Rwanda[30]. These agreements differ in application and modalities depending on various factors, such as laws by which the state is bound, the geographical location of the state, and its proximity to countries that most asylum seekers come from.[31] However, all of these have one element in common in that they outsource the obligations of developed countries towards asylum seekers and refugees to developing countries.[32]

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[23] UNHCR, 'Global Compact on Refugees' 2018, available at: *https://www.refworld.org/docid/63b43eaa4.html*, accessed 11 May 2023, 2.

[24] Maja Grundler and Elspeth Guild 'The UK-Rwanda deal and its incompatibility with International Law', *EU Immigration and Asylum Law and Policy*, 29. April 2022, available at *https://eumigrationlawblog.eu/the-uk-rwanda-deal-and-its-incompatibility-with-international-law/*, accessed on 02. May 2023.

[25] Cf eg, UNHCR, 'UNHCR Note on the "Externalization" of International Protection' 28 May 2021, available at: *https://www.refworld.org/docid/60b115604.html*, accessed 30 May 2023, No 9. e; UN General Assembly, *Declaration on Territorial Asylum*, 14 December 1967, A/RES/2312(XXII), Art 2.2; *Office of the United Nations High Commissioner for Refugees*, 15 December 2022, A/RES/77/198, paras 28, 31.

[26] This thesis will use countries in the Global North and developed countries as well as countries in the Global South and developing countries interchangeably. Countries in the Global South compromise low- and middle-income countries which they will also refer to in this thesis. The author does not intend to offend anybody with this wording.

[27] Grundler and Guild opt (n24).

[28] Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, 26 July 2019, T.I.A.S. No. 19-1115.

[29] Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of Australia, Relating to the Settlement of Refugees in Cambodia, 54 *ILM* 350 (2015).

[30] Unfortunately, Israel kept its agreement with Rwanda confidential, Cf Shani Bar-Tuvia 'Australian and Israeli Agreements for the Permanent Transfer of Refugees: Stretching Further the (Il)legality and (Im)morality of Western Externalization Policies' 30 *International Journal of Refugee Law* 474 (2018), 481.

[31] Lena Riemer 'The Costs of Outsourcing: How the UK's policy of outsourcing their asylum obligations violates human rights, perpetuates the country's ECHR scepticism, and expands dangerous precedence', *Verfassungsblog*, 05. July 2022, available at *https://verfassungsblog.de/the-costs-of-outsourcing/*, accessed on 02. May 2023.

[32] Michelle Foster 'Responsibility Sharing or Shifting? "Safe" Third Countries and International Law' 25 *Refuge* 64 (2008), 64.

They include the relatively new policy of permanently transferring asylum seekers to developing countries less capable of providing protection to them in exchange for some kind of payment.[33]

These agreements are distinct from the well-known 'resettlement' policies, where the UNHCR permanently resettles vulnerable refugees to countries with better protection standards.[34] And they are also different from the 'traditional safe third country' policies, where countries designate certain transit countries as 'safe' and return asylum seekers to them because asylum seekers are transferred without having transited through the receiving countries in the Global South.[35]

The MoU is, therefore, part of a larger trend worldwide where developed states attempt to externalize their obligations towards refugees and asylum seekers. This 'externalization' has drawn criticism from scholars and practitioners across many parts of the world.[36] Although the term 'externalization' has not always been used in one way, it is an umbrella term for efforts by some states (specifically in the Global North) to outsource particular functions in the area of border control and asylum to the territory of another state (usually states in the Global South).[37]

All of these transfer agreements name responsibility-sharing and the strengthening of refugee protection as their primary goals.[38] Nonetheless, low- and middle-income countries already host around 74 per cent of the worldwide refugee population.[39] Furthermore, one must bear in mind that these countries have limited resources, struggle to meet the basic needs of their own population, and, due to their disproportionate share of hosting refugees, experience compassion fatigue. Thus,

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[33] Bar-Tuvia opt (n30) 475.
[34] Bar-Tuvia opt (n30) 485.
[35] Bar-Tuvia opt (n30) 485-486.
[36] Nikolas Feith Tan, Elizabeth Mavropoulou, David Cantor and Mariana Glikati 'Offshore Asylum Processing: The Future of Asylum in the UK or Dead Letter', *Refugee Law Initiative*, 6. April 2022, available at *https://rli.blogs.sas.ac.uk/2022/04/06/offshore-asylum-processing-the-future-of-asylum-in-the-uk-or-dead-letter/*, accessed on 04. May 2023.
[37] Nikolas Feith Tan 'Conceptualising externalisation: still fit for purpose?', *Forced Migration Review*, November 2021, available at *https://www.fmreview.org/externalisation/tan*, accessed on 04. May 2023.
[38] Preamble MoU; Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, 26 July 2019, T.I.A.S. No 19-1115; Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of Australia, Relating to the Settlement of Refugees in Cambodia, 54 *ILM* 350 (2015).
[39] UNHCR 'Refugee Statistics', UNHCR, October 2022, available at: *https://www.unhcr.org/refugee-statistics/*, accessed 30 May 2023.

they have less capability to provide protection to refugees than most countries in the Global North.[40]

Staving illegal migration off by deterring asylum seekers from coming to the Global North by relocating them to other countries has also often been cited as a reason for these types of transfer agreements.[41] Past experiences with the externalizing of refugee protection show that the number of asylum seekers does not insignificantly decrease. Asylum seekers and smugglers find even more dangerous ways to reach their desired country of asylum.[42]

Such transfer agreements are not, *per se*, illegal.[43] The legality and appropriateness of transfer agreements must be analysed on a case-by-case basis with due regard to their modalities and legal regulations.[44] It is generally agreed that the transferring state cannot free itself from obligations under international refugee and human rights law by a transfer agreement or the conduct of a transfer. However, the exact rights and their scope applying to asylum seekers post-transfer is highly contentious.

The UNHCR considers the UK-Rwanda MoU to be an unlawful externalization of international protection obligations.[45] As the main reasons, the UNHCR has put forward the partnership's deficit of safeguards regarding the principle of non-refoulement and the general treatment of asylum seekers in Rwanda as well as its effect of responsibility-shifting and, therefore, its discord with the letter and spirit of the UN Refugee Convention.[46] The British High and Supreme Court

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[40] Stephen H Legomsky 'Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection' (2003) 15 *International Journal of Refugee Law* 567 (615).

[41] Preamble MoU; Guy S. Goodwin-Gill 'Introductory Note To Memorandum of Understanding Between The Government of The United Kingdom of Great Britain And Northern Ireland and The Government Of The Republic of Rwanda' 62 *ILM* 166 (2023), 166.

[42] Riemer opt (n31).

[43] Tally Kritzman-Amir 'Asylum-Seekers Are Not Bananas Either: Limitations On Transferring Asylum-Seekers To Third Countries' 43 *Michigan Journal of International Law* 699 (2022), 705; *The Queen v. Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe*, 2008 FCA 229, 27 June 2008, para 114; UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers* opt (n19); Foster *Responsibility Sharing or Shifting?* opt (n32) 66.

[44] UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, opt (n19) No 3.

[45] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 23-27.

[46] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 27.

agreed insofar that they did not consider Rwanda a safe third country, especially because of a lack of procedural safeguards in the asylum process.[47]

On the other hand, the governments of the UK and Rwanda strongly believe in the legality of the asylum partnership The UK's Government assessed that Rwanda is generally a safe country and that reported human rights violations do not include serious harm or persecution, relying heavily on assurances from Rwanda.[48] The British High Court shares this view as it judged that Rwanda could be considered a 'safe third country' based on the information available.[49] Additionally, the government of the UK has countered some criticism by referring to policies implemented by Australia over the past decade as support for its plan. Additionally, it has cited schemes to remove asylum seekers to Rwanda, which the EU and UNHCR putatively have supported to rebuff their critical opinions.[50]

1.3 Research Hypothesis

The assumption at the outset of this research is that the asylum partnership between the UK and Rwanda is not compatible with international human rights and refugee law. It is assumed that the asylum partnership is yet another attempt by a developed country to outsource its obligations toward refugees to a developing country by paying this country off, contrary to the principle of international cooperation and responsibility-sharing.

It is further understood that the MoU runs contrary to the rights of the refugees that the UK must guarantee to asylum seekers and refugees, specifically the right of non-refoulement[51], the right of non-penalization of irregular entry by

[47] *R (AAA) v SSHD* supra (n14); *R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)* supra (n16).
[48] Home Office 'Country policy and information note: Rwanda, assessment', UK Government, May 2022, available at: *https://www.gov.uk/government/publications/rwanda-country-policy-and-information-notes/country-policy-and-information-note-rwanda-assessment-may-2022-accessible#assessment*, accessed 30 May 2023.
[49] *AAA and others v Secretary of State for the Home Department* supra (n13) at 59, 62 – 65.
[50] Melanie Gower, Partick Butchard, CJ McKinney 'UK-Rwanda Migration and Economic Development Partnership', *House of Commons Library*, 20 December 2022, available at: *https://commonslibrary.parliament.uk/research-briefings/cbp-9568/*, accessed 25 May 2023.
[51] Art 33 (1) UN Refugee Convention.

refugees,[52] and other human rights of refugees, especially rights according to the UN Refugee Convention and the European Convention of Human Rights[53].

1.4 Research Question

Due to the limited length of this thesis, the compatibility of the MoU with international law cannot be analysed comprehensively but only regarding certain legal obligations of the UK. This research aims to answer the following question:

Is the asylum partnership between the UK and Rwanda to transfer 'inadmissible' asylum seekers from the UK to Rwanda compatible with the UK's obligation of non-penalization of irregular arrival of refugees according to Art 31 UN Refugee Convention, the principle of non-refoulement pursuant to Art 33 (1) as well as other rights granted under the UN Refugee Convention and other human right treaties to asylum seekers by the UK?

In order to answer this question, answers will be given to the following questions in the respective subsection:

1. Is the asylum partnership consistent with the principle of non-refoulement?
2. Is the transfer of 'inadmissible' asylum seekers from the UK to Rwanda compatible with the non-penalization of irregular arrivals by refugees in accordance with Art 31 (1) UN Refugee Convention?
3. Has the UK to guarantee other rights found in the UN Refugee Convention and other human rights treaties, to which the UK is a party, to transferred asylum seekers? If so, does the UK comply with these obligations by forcibly removing asylum seekers to Rwanda?

1.5 Literature review

Legal assessments have only sparsely been published on the MoU by legal scholars up until now. Some blog posts, a short introductory note in a law journal,

[52] Art 31 (1) UN Refugee Convention.
[53] European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5 (hereinafter: ECHR).

and a research briefing by the House of Commons Library to support the work of Members of Parliament can be found.[54]

Furthermore, the UNHCR released an 'Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement'.[55] The UN Refugee Convention confers supervisory function upon the UNHCR[56], however, its publications are not legally binding.[57] Nevertheless, its analysis of the MoU weighs great significance because of its specific nature as well as the UNHCR's long and intense involvement in refugee issues in the UK and Rwanda.[58]

These publications raise concerns about the consistency of the MoU with the principle of non-refoulement, the non-penalization of irregular arrival by refugees as well as the treatment of asylum seekers and refugees in accordance with international standards pursuant to the UN Refugee Convention and other human rights treaties. However, they do not examine these concerns comprehensively. Therefore, a deficiency in the current literature concerning the legality of the asylum partnership between the UK and Rwanda justifies the research question of this thesis. This thesis will, thus, provide a necessary in-depth analysis of certain aspects of its compliance with international refugee and human rights law.

Scholars have analysed the compatibility of other transfer agreements which are part of the externalization trend with international refugee and human rights law, though. One must bear in mind in this context that the modalities of the respective transfer agreements differ, and, therefore, the conclusions of the analysis of other transfer agreements are not one-to-one transferable to the MoU between the UK and

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[54] Goodwin-Gill *Introductory Note To Memorandum of Understanding* opt (n41); Riemer opt (n31); Grundler and Guild opt (n24); Tan et al. opt (n36); Melanie Gower et al. opt (n50).
[55] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19); see for an updated version: UNHCR, 'Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement – an update' *UNHCR*, 15 January 2024, available at: *https://www.refworld.org/pdfid/65a55d994.pdf*, accessed 19 January 2024.
[56] Art 35 (1) UN Refugee Convention.
[57] Volker Türk 'The UNHCR's role in supervising international protection standards in the context of its mandate' in James C. Simeon (ed) *The UNHCR and the Supervision of International Refugee Law* (2013) 52; Isaac A. Binkovitz 'State Practice with Respect to the Safe Third Country Concept: Criteria for Determining that a State Offers Effective Protection for Asylum Seekers and Refugees' 50 *George Washington International Law Review* 581 (2018), 581.
[58] Goodwin-Gill *Introductory Note To Memorandum of Understanding* opt (n41)168; *R (AAA) v SSHD* supra (n14) at 87.

Rwanda. Nevertheless, they are a good starting point for the research questions of this thesis.

Shani Bar-Tuvia wrote an article about the Australian and Israeli Agreements for the permanent transfer of asylum seekers/refugees in which she criticizes both agreements strongly.[59] She argues that Israel and Australia took advantage of their disproportionate bargaining power towards the respective developing countries and only had the deterrence of asylum seekers rather than their protection in mind when concluding these agreements. Even though she identifies no violation of direct refoulement through the transfers under these agreements, she points out that constructive refoulement could be assumed because most asylum seekers left the respective developing countries to which they had been transferred. However, she also states that the threshold of constructive refoulement is not clear yet, and generally finds that the international law applicable to these transfer agreements is not sufficient to deal with their legal issues.

Monique Failla examines the consistency of Australia's refugee resettlement agreement with Cambodia with the rights of refugees according to the UN Refugee Convention tagging it as part of the trend of burden-shifting from developed countries to developing countries.[60] The legal analysis of this Australian transfer agreement cannot be passed on directly to the asylum partnership between the UK and Rwanda as the people transferred to Cambodia were recognized refugees who underwent the refugee status determination (RSD) in offshore centres in Nauru. Thus, different legal issues arise in the application of the UN Refugee Convention.

Interesting to this thesis, though, is the broad scope of the principle of non-refoulement applied including direct, indirect as well as constructive refoulement and the analysis of conditions on the ground by drawing on reports by the UN, regional organizations, and NGOs of mistreatment of asylum seekers and/or refugees in the past. Furthermore, the supposition of a continuum of the jurisdiction of Australia once refugees are in Cambodia because of joint responsibility with Cambodia and because of assistance by Australia in the commission of an internationally wrongful

[59] Bar-Tuvia opt (n30).
[60] Monique Failla 'Outsourcing Obligations to Developing Nations: Australia's Refugee Resettlement Agreement with Cambodia' 42 *Monash University Law Review* 638 (2016).

act in the sense of Art 16 ILC Draft Articles on State Responsibility[61] can provide an argument for the obligations of the UK toward asylum seekers post-transfer.

Michelle Foster and Sasha Lowes wrote about the 'Malaysian Solution' and the Judgement of the Australian High Court on it.[62] The 'Malaysian Solution' allows Australia to relocate asylum seekers to Malaysia without prior RSD. The issue here begins with that Malaysia is not a party to the UN Refugee Convention. This is irrelevant to the present thesis. Nevertheless, the focus of the Court on the procedural aspect of the principle of non-refoulement and the continuation of this argument by the authors shows the broad concept of non-refoulement and the limits it sets for transfer agreements. Moreover, the Court and the authors acknowledge that transferred asylum seekers must be guaranteed rights beyond non-refoulement, placing more restrictions on such transfer agreements. Foster further elaborates on the issue of pre-transfer assessments of asylum seekers arguing that these are important to protect vulnerable asylum seekers such as unaccompanied minors, and sick people. Thus, these two articles show the high threshold for transfer agreements to be legal.

Ayşe Bala Akal and Madeline Gleeson opine that the bilateral agreements between Australia and the Republic of Nauru as well as with Papua New Guinea (PNG) to transfer asylum seekers for offshore RSD are not compatible with international refugee law.[63] Akal contends that the principle of non-refoulement is breached by the human rights violations in the offshore detention centres, such as the right to access to justice. Additionally, Gleeson asserts a violation of the principle of non-refoulement by the insufficient RSD processes in Nauru and PNG. Gleeson further maintains that Australia was prohibited from transferring asylum seekers to

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[61] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (hereinafter: ILC Draft Articles on State Responsibility), November 2001, Supplement No 10 (A/56/10), chpIV.E.1.

[62] Michelle Foster 'The Implications of the Failed 'Malaysian Solution': The Australian High Court and Refugee Responsibility Sharing at International Law' 395 *Melbourne Journal of International Law* 13 (2012); Sasha Lowes 'The Legality of Extraterritorial Processing of Asylum Claims: The Judgement of the High Court of Australia in the 'Malaysian Solution' Case' 12 *Human Rights Law Review* 168 (2012).

[63] Ayşe Bala Akal 'Third Country Processing Regimes and the Violation of the Principle of Non-Refoulement: a Case Study of Australia's Pacific Solution' 24 *Journal of International Migration and Integration* 231 (2023); Madeline Gleeson 'Protection Deficit: The Failure Australia's Offshore Processing Arrangements to Guarantee 'Protection Elsewhere' in the Pacific' 31 *International Journal of Refugee Law* 415 (2019).

Nauru and PNG due to its knowledge of breaches of their rights according to the UN Refugee Convention.

Tally Kritzman-Amir describes in her article multiple transfer agreements. She points out that arrangements between economically strong countries and low- and middle-income countries tend to be one-sided because of a mismatch in bargaining power. She supports a legal obligation to individually assess the connection of an asylum seeker with the destination state such as family ties, networks, employment, or language knowledge.[64] She argues that this is not only in the interest of asylum seekers but also the states as an expeditious and successful integration and self-reliance of asylum seekers are in states' interests as well.

Moreover, literature on the topics of the legality of protection elsewhere, safe third country, or country of first asylum schemes is relevant to the lawfulness of the MoU between the UK and Rwanda. This is because all these schemes deal with the concept that an asylum claim is not processed in the territory where an asylum seeker arrived but somewhere else. Therefore, for all these concepts the legal question arises if a state can divert its obligations under international law by transferring an asylum seeker to another state.[65]

A consensus exists insofar that the principle of non-refoulement is applicable even though the applied scope of the principle of non-refoulement differs. This means that the UK must comply with this principle with regard to the MoU. The scholarly views vary concerning the question of which other rights in the UN Refugee Convention and other human rights treaties must be guaranteed to the transferred asylum seekers by the transferring state.

David Cantor et al. set out general rules for externalization practices and the applicable rights of asylum seekers.[66] As general rules, they point out that the rights must be extraterritorially applicable which they affirm for the UN Refugee Convention as well as other human rights treaties under the condition of 'effective

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[64] Kritzman-Amir opt (n43).
[65] Foster *Responsibility Sharing or Shifting?* opt (n32) 64; Legomsky opt (n40) 616-618.
[66] David Cantor, Nikolas Feith Tan, Mariana Gkliati, Elizabeth Mavropoulou, Kathryn Allinson, Sreetapa Chakrabarty, Maja Grundler, Lynn Hillary, Emilie McDonnell, Riona Moodley, Stephen Phillips, Annick Pijnenberg, Adel-Naim Reyhani, Sophia Soares and Nathasha Yacoub 'Externalisation, Access to Territorial Asylum, and International Law' 34 *International Journal of Refugee Law* 34 (2022).

control' by the transferring state or the event of 'direct and foreseeable effects'. Additionally, the violation of these rights must be attributable to the state.

Michelle Foster supports the rules of the 'Michigan Guidelines on Protection Elsewhere'[67] in which development she and eight other scholars from different parts of the world including the pioneer James C. Hathaway in refugee law participated.[68] These Guidelines support the idea that transferring state must carry out a good faith empirical assessment of whether refugees can exercise their rights laid down in Arts 2 – 34 UN Refugee Convention according to their degree of connection with the state. Furthermore, the transferring state cannot evade its human rights obligations by the relocation but must give effect to them.

Stephen H. Legomsky developed the "complicity-principle" for evaluating if a state has violated its obligations under the UN Refugee Convention and other human rights treaties.[69] The complicity principle says that a transferring state is prohibited from relocating asylum seekers to a country knowing that they will be treated contrary to the obligations of the transferring state meaning in a manner that would be prohibited for the transferring state. The requirements for the 'knowledge' of these conditions are all the lower when a very important right is at stake.

Isaac A. Binkovitz compares the criteria set out by the UNHCR and scholars for the determination if a state can be considered safe with current state practice.[70] He finds that scholarly defined criteria is more extensive than state practice shows. For example, the UNHCR and scholars demand the treatment of asylum seekers in accordance with human rights standards, whereas state practice is inconsistent about which human rights are applicable to transferred asylum seekers. Scholars also require for instance state-supplied representation of asylum seekers for the entire process, while state practice does not support this.

The articles do not specifically mention the prohibition of non-penalisation of irregular entry according to Art 31 (1) UN Refugee. The outlawing of penalisation for irregular entry is of particular importance for the analysis of the MoU between

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[67] James C. Hathaway 'The Michigan Guidelines on Protection Elsewhere, Adopted January 3, 2007' 28 *Michigan Journal of International Law* 207 (2007).
[68] Foster *Responsibility Sharing or Shifting?* opt (n32); Michelle Foster 'Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in another State' 28 *Michigan Journal of International Law* 223 (2007).
[69] Legomsky opt (n40).
[70] Binkovitz opt (n57).

the UK and Rwanda as the UK plans to transfer only people who entered the UK 'irregular'. Furthermore, a violation of Art 31 (1) UN Refugee Convention is easier to examine as it does not depend on circumstances in Rwanda but can be affirmed just by the fact of the planned transfers.

Interpretations of Art 31 (1) UN Refugee Convention by scholars can be found in commentaries on the UN Refugee Convention by Hathaway[71], Gregor Noll,[72] and Guy S. Goodwin-Gill[73]. They interpret the provision rather broadly to include administrative measures having adverse consequences for the asylum seeker.

In conclusion, there is rich academic scholarship on the concept of protection elsewhere as well as transfer agreements following the trend of externalization of refugee protection obligations by states in the Global North to the Global South. Concrete scholarly literature on the MoU, however, has been scarce until now. Therefore, this thesis finds its justification in the lack of literature and application of general principles for transferring asylum seekers on the asylum partnership between the UK and Rwanda.

1.6 Conceptual Approach

To address the research question adequately, a human rights approach will be taken. International refugee law is part of the international human rights framework.[74] The importance of human rights to refugee matters has also already been acknowledged by the UN Refugee Convention.[75]

Furthermore, the right to seek and enjoy asylum is a human right that was first mentioned in the Universal Declaration of Human Rights and has been mentioned in international and regional treaties ever since.[76] The right to asylum is

[71] James C. Hathaway *The Rights of Refugees under International Law* 2ed (2021) 464-550.
[72] Gregor Noll 'Article 31 (Refugees Unlawfully in the Country of Refuge)' in Andreas Zimmermann (ed), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (2011) 1264.
[73] Guy S. Goodwin-Gill 'Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection' in Erika Feller, Volker Türk and Frances Nicholson (eds) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (2003).
[74] Hathaway *The Rights of Refugees under International Law* opt (n71) 3-4, 127.
[75] Preamble UN Refugee Convention.
[76] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217A(III), Art 14; Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, Art 18.

strongly interconnected with every other human right as can be derived from the principle of interdependence and indivisibility of human rights.[77]

Lastly, asylum seekers and refugees left their country of origin due to hardship suffered and are in desperate need of humane treatment. Therefore, they deserve a human rights-centred treatment which is the core rationales of the refugees' rights.[78]

1.7 Research Method

This paper will apply the desktop-based research methodology. It will draw on material from the library and internet sources.

The found sources will be analysed to comprehend the existing legal framework, its application to the MoU between the UK and Rwanda, and possible violations of international human rights and refugee law by the MoU.

An overview of the legal framework will be deduced from the UN Refugee Convention and other human rights treaties, by which the UK is bound, especially the ECHR. It will examine the legal meaning of these rules, their underlying principles and legislative history, decision-making under the rule, as well as commentary by scholars and international organizations on the rule.

Besides case law and literature concerning the MoU between the UK and Rwanda, the thesis will gather cases and literature on comparable externalizations of refugee obligations by other developed countries to critically deal with their interpretation of the legal framework and problematic issues.

Furthermore, the focus will be on reports by UN agencies and committees, especially the UNHCR, and by NGOs such as Human Rights Watch and Amnesty International for an assessment of the circumstances refugees face in Rwanda.

1.8 Chapter Synopsis

This thesis will consist of six chapters.

Chapter 2 will provide an overview of the applicable legal framework. After laying out the specific provisions of the MoU between the UK and Rwanda, it will

[77] Lanse Minkler & Shawna Sweeney 'On the Indivisibility and Interdependence of Basic Rights in Developing Countries' 33 *Human Rights Quarterly* 351 (2011), 352.
[78] Legomsky opt (n40) 614.

turn to the international and European treaties and the obligations that the UK is bound by.

Chapter 3 will turn to the question of the compatibility of the asylum partnership with the principle of non-refoulement.

Chapter 4 will examine the compliance of the MoU with the non-penalisation of illegal entry of refugees. It will further discuss if the UK must guarantee other refugee and human rights to transferred asylum seekers post-transfer and, if so, if the UK complies with these obligations.

CHAPTER TWO

Chapter 2 of this thesis will outline the key terms of the MoU and the legal framework by which its compliance with the principle of non-refoulement, the non-penalization of irregular arrival by refugees as well as other rights granted to asylum seekers and refugees by the UK will be judged.

2. The MoU between UK and Rwanda and the International Legal Framework

2.1 The Key Terms of the MoU

The MoU consists of twenty-four "substantive" articles and an annexure concerning data management and protection.

2.1.1 Legal Nature of the MoU

The MoU is not legally binding.[79] It explicitly states that the asylum partnership does not create any right for any individual and is not justiciable in any court of law by third parties or individuals.[80]

The UNHCR purports that transfer agreements should be legally binding to enable asylum seekers to challenge and enforce them in a court of law and that they should transparently stipulate the rights and duties of each state and of asylum seekers.[81] The asylum partnership between the UK and Rwanda clearly does not meet these requirements. However, the High Court, Appeal Court, and Supreme Court of the UK already considered the asylum partnership in their judgments concerning claims by several asylum seekers and organizations challenging the decisions of the Home Secretary to relocate the asylum seekers being parties to the court case to Rwanda.[82] This shows that the MoU, even though not legally binding, can be indirectly challenged in the courts of law. However, it would be more

[79] Art 1.6 MoU.
[80] Art 2.2 MoU.
[81] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 12.; UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers* opt (n19) No 3. v).
[82] *AAA and others v Secretary of State for the Home Department* supra (n13); *R (AAA) v SSHD* supra (n14); *R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)* supra (n16).

advantageous for legal certainty for asylum seekers to be able to challenge the MoU directly in court and have a system for redress in place.[83]

2.1.2 Aims and Objectives of Transfer Agreement

The stated intention of the MoU is 'to create a mechanism for the relocation of asylum seekers whose claims are not considered by the UK, to Rwanda, which will process their claims and settle or remove (as appropriate) individuals after their claim is decided'.[84] The modalities of this relocation mechanism will be laid down in the following paragraphs. The UK plans on relocating 'inadmissible' asylum seekers whose meaning will be discussed in the subsection on who is chosen for transfer.

However, the broader aims of the MoU to fight illegal migration, improve protection for asylum seekers and enhance international cooperation and responsibility-sharing[85] seems far-fetched.

First, it is unclear if the asylum partnership will have a deterrence effect on asylum seekers. The Home Office of the UK conceded in its own impact assessment that there is academic consensus that there is little to no evidence of a deterrence effect if a country changes its policy towards asylum seekers.[86]

Second, Rwanda is a developing country with limited resources, and its asylum system is still in development and cannot even appropriately serve the already present asylum seekers, let alone new arrivals from the UK, whereas the UK has a highly developed asylum system and the capacity to process such claims.[87] The MoU claims that "the mass movement of irregular migrants organised by people smugglers is overwhelming the existing international asylum system".[88] Concerning the UK, its response to people fleeing the war in Ukraine shows there is capacity if there is political will.[89]

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[83] Cf Home Affairs Committee 'Oral evidence: Asylum and migration oral evidence, HC 197' opt (n8) at Q 80 – 93.
[84] Art 2.1 MoU.
[85] Preamble MoU.
[86] Home Office 'Impact Assessment: Illegal Migration Bill' *UK Government*, 26 June 2023, available at: *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1165397/Illegal_Migration_Bill_IA_-_LM_Signed-final.pdf*, accessed 08 July 2023, No 31.
[87] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 11.
[88] Preamble MoU.
[89] Global Detention Project 'The Ukraine Crisis – Double Standards: Has Europe's Response to Refugees Changed?' *Global Detention Project*, 2 March 2022, available at:

Lastly, the asylum partnership only contributes to burden-shifting rather than -sharing.[90] Because of the limited capacity of the asylum system in Rwanda, the same amount of refugees poses a greater burden for it than for the UK with its highly developed asylum system.[91] A burden-sharing effect can also not be derived from the commitment of the UK to resettle a portion of Rwanda's most vulnerable refugees to its territory[92] because the Home Office estimates to resettle only 'tens' of cases under this provision.[93] Furthermore, burden-sharing implies that it reduces the "burden" of asylum seekers on the UK. However, processing an asylum claim in Rwanda rather than the UK costs the UK £63,000 more per asylum seeker.[94] The Government of the UK justifies this increase in costs with the alleged deterrence effect of the MoU which ultimately would lead to a decrease in costs if lesser asylum seekers come to the UK.[95]

Additionally, the UK paid £120 Million towards the economic development and growth in Rwanda which is part of a new Development Fund for Rwanda.[96] On top of that, while the legal dispute about the MoU makes its way through the national and European court systems, the legal cost has also started to pile up for the UK Government.[97] Hence, the agreement can logically not lead to burden-sharing because it strains the UK's budget and, thereby, UK taxpayers.

Given the aforementioned circumstances, it can be surmised that the UK is trying to buy itself out of its obligations toward asylum seekers and has taken advantage of its bargaining power.[98] Finally, migrants often travel further from the

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https://www.globaldetentionproject.org/the-ukraine-crisis-double-standards-has-europes-response-to-refugees-changed, accessed 08 July 2023.

[90] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 10.

[91] Cf As pointed out by Shani Bar-Tuvia for the deal between Australia and Cambodia and PNG in: Bar-Tuvia opt (n30) 506.

[92] Art 16.1 MoU.

[93] Home Affairs Committee 'Oral evidence: Asylum and migration oral evidence, HC 197' opt (n8) at Q 25.

[94] Home Office 'Impact Assessment: Illegal Migration Bill' opt (n86) at Nos. 124, 126.

[95] *Ibid*, No 127-130.

[96] UK Parliament 'Asylum: Rwanda – Question for Home Office – UIN 74711' *UK Parliament*, 31 October 2022, available at: *https://questions-statements.parliament.uk/written-questions/detail/2022-10-31/74711*, accessed 08 July 2023.

[97] The Conversation 'Why UK court ruled Rwanda isn't a safe place to send refugees – and what this means for the government's immigration plans' *The Conversation*, 30 June 2023, available at: *https://theconversation.com/why-uk-court-ruled-rwanda-isnt-a-safe-place-to-send-refugees-and-what-this-means-for-the-governments-immigration-plans-208768*, accessed 08 July 2023.

[98] Cf See for this argumentation about other externalization policies: Kritzman-Amir opt (n43) 742; Bar-Tuvia opt (n30) 476.

country they have been transferred to and, thereby, burden the asylum system of neighbouring countries.[99]

Consequently, the asylum partnership misses its broader objectives.

2.1.3 Obligations of the UK

The UK is responsible for an initial screening of asylum seekers once the person has come to the attention of the British authorities.[100] After that, the UK must submit a transfer request to Rwanda on a case-by-case basis including the asylum seeker's basic biographical details and possible special needs or issues such as health or security concerns.[101] The MoU does not contain regulations on the number of transfer requests to be made.

The UK is additionally in charge of arranging and carrying out the safe transport of the relocated asylum seeker to Rwanda and obtaining all necessary authorizations from the relevant authorities.[102]

2.1.4 Who is Chosen for Transfer to Rwanda?

The Home Office gives guidance on the selection of asylum seekers for relocation to Rwanda in its 'inadmissibility' policy paper:

"An asylum claimant may be eligible for removal to Rwanda if their claim is inadmissible under this policy and (a) that claimant's journey to the UK can be described as having been dangerous and (b) was made on or after 1 January 2022. A dangerous journey is one able or likely to cause harm or injury. For example, this would include those that travel via small boat, or clandestinely in lorries. […] Priority will be given to those who arrived in the UK after 9 May 2022."[103]

Asylum seekers are declared 'inadmissible' if they were previously present in or have another form of connection with a safe third country.[104] A connection with a safe third country means for instance that the claimant has been previously present and able to make an asylum claim in a safe third country but failed to do so even

[99] Kritzman-Amir opt (n43) 712.
[100] Art 5.1 MoU.
[101] Art 5.2 MoU.
[102] Art 6.1, 6.2 MoU.
[103] Home Office 'Inadmissibility: safe third country cases (accessible)' opt (n8).
[104] Nationality, Immigration and Asylum Act 2022 s80B (inserted by Nationality and Borders Act 2022 s16).

though this could have been reasonably expected of them.[105] Exceptions to the inadmissible declaration are possible if the asylum seeker can prove exceptional circumstances[106] or if removal to a safe third country within a reasonable period of time is unlikely.[107]

To remove an asylum seeker to another country because of their presence in another country before and their dangerous journey seems to conflict with Art 31 (1) UN Refugee Convention. This thesis will debate this topic further in Chapter 4.

People whose claims are considered inadmissible and for relocation to Rwanda are informed by a 'note of intent'.[108] The asylum seeker has to respond to the notice intent within seven days if they are in a detention centre, or fourteen days if the person is not detained.[109] These prescribed periods are very short, and it seems doubtable that applicants can access legal advice, challenge age assessments, gather supporting evidence, and make representations to the Home Office within this period.[110] Hence, it seems questionable if asylum seekers whose transfer to Rwanda might violate the principle of non-refoulement will be identified.

The Home Office guarantees to make a case-by-case assessment for the appropriateness of a transfer to Rwanda and to comply with Art 3 ECHR by considering individual vulnerabilities despite Rwanda's classification as a safe third country.[111]

If the assessment leads to the decision that Rwanda is a safe third country for the applicant, they will receive a decision letter stating that their asylum application

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[105] Nationality, Immigration and Asylum Act 2022 s80C (inserted by Nationality and Borders Act 2022 s16).
[106] Nationality, Immigration and Asylum Act 2022 s80B (7) (inserted by Nationality and Borders Act 2022 s16).
[107] Home Office 'Immigration Rules part 11: asylum' *UK Government*, 29 June 2023, available at: *https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum*, accessed 06 July 2023, para 345D.
[108] Home Office 'Inadmissibility: safe third country cases (accessible)' opt (n8).
[109] *Ibid*.
[110] Home Affairs Committee 'Oral evidence: Asylum and migration oral evidence, HC 197' opt (n8) at Q 35 – 37.
[111] Home Office 'Equality Impact Assessment – Migration and Economic Development Partnership with Rwanda' *Publishing Service Government UK*, 04 July 2022, available at: *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1094019/Equalities_Impact_Assessment_MEDP_Rwanda_July_2022.pdf*, accessed 08 July 2023, p 4; Home Office 'Country policy and information note: Rwanda, assessment' opt (n48).

is inadmissible and that they will be transferred to Rwanda.[112] However, applicants have the opportunity to challenge the aforementioned decisions in court.[113]

At present, there are some groups of people excluded from relocation to Rwanda. These are:

- Unaccompanied minors[114],
- Families with children under the age of 18[115],
- EU citizens[116] and
- Rwandan asylum seekers.[117]

2.1.5 Responsibilities of Rwanda

Rwanda guarantees to give every arriving asylum seeker accommodation and adequate support to ensure the health, security, and well-being of each individual.[118] Transferred asylum seekers can leave and enter the provided accommodation in accordance with Rwanda's domestic laws and regulations as applicable to all residing in Rwanda.[119] A 'note verbale' gives more details on these assurances.[120]

Rwanda promises to treat every relocated asylum seeker and process their asylum claims pursuant to its legal obligations under international and national law including protecting them from inhuman and degrading treatment.[121] Moreover, the MoU contains procedural safeguards for the asylum application process such as access to an interpreter and procedural or legal assistance, at every stage of the asylum claim.[122] These guarantees go beyond Rwanda's existing system for deciding

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[112] Home Office 'Inadmissibility: safe third country cases (accessible)' opt (n8).
[113] Melanie Gower et al. opt (n50) 15.
[114] Home Office 'Inadmissibility: safe third country cases (accessible)' opt (n8).
[115] Home Office 'Inadmissibility: safe third country cases (accessible)' opt (n8).
[116] Home Office 'Inadmissibility: safe third country cases (accessible)' opt (n8).
[117] Home Affairs Committee 'Oral evidence: Asylum and migration oral evidence, HC 197' opt (n8) at Q 24, Q 26.
[118] Art 8.1 MoU.
[119] Art 8.2 MoU.
[120] Home Office 'Note Verbale on assurances in paragraphs 8 and 10 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership arrangement' *UK Government*, 28 November 2022, available at: *https://www.gov.uk/government/publications/migration-and-economic-development-partnership-reception-and-accommodation/note-verbale-on-assurances-in-paragraphs-8-and-10-of-the-mou-between-the-united-kingdom-and-rwanda-for-the-provision-of-an-asylum-partnership-arrangem*, accessed 3 July 2023.
[121] Art 2.1, Art 9.1.1 MoU.
[122] Art 9.1.2 MoU.

individual asylum claims. For example, under the previous system, free legal support was only provided at the High Court.[123]

The initial decision of the asylum determination process is made by the Refugee Status Determination Committee. After that, there is a two-level appeal system. Firstly, the asylum seeker can appeal the decision to a government minister, who can summon a committee to review the initial decision. The second level is an appeal to the High Court.[124]

If a relocated person does not apply for asylum, Rwanda will examine their residence status on other grounds under Rwandan immigration laws.[125]

A second 'note verbale' lays out the details of the asylum process to be implemented in Rwanda.[126]

2.1.6 Possible Outcomes of Asylum Application and Post-Decision Entitlements

In general, a relocated asylum seeker cannot return to the UK under the MoU, even if his asylum claim is rejected. The only exception is if the UK is legally obligated to facilitate that person's return.[127]

Persons who are found eligible for refugee status or another humanitarian protection will be provided the same level of support and accommodation as relocated asylum seekers as well as integration into society and freedom of movement in accordance with the UN Refugee Convention.[128]

Asylum seekers whose asylum claims are rejected will have the opportunity to apply for permission to remain in Rwanda on any other ground under Rwandan

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[123] Home Office 'Review of asylum processing – Rwanda: assessment' *UK Government*, available at: *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073958/RWA_CPIN_Review_of_asylum_processing_-_assessment.pdf*, accessed 3 July 2023.
[124] *Ibid*.
[125] Art 9.1.4 MoU.
[126] Home Office 'Note Verbale on assurance in paragraph 9 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership' UK Government, 28 November 2022, available at: *https://www.gov.uk/government/publications/migration-and-economic-development-partnership-asylum-process/note-verbale-on-assurances-in-paragraph-9-of-the-mou-between-the-united-kingdom-and-rwanda-for-the-provision-of-an-asylum-partnership-arrangement-acc*, accessed 03 July 2023.
[127] Art 11.1 MoU.
[128] Art 10.1, 10.2 MoU.

law. Rwanda commits to giving these persons the necessary information for such application.[129]

People who do not obtain any permission to remain in Rwanda will be removed to a country where they have a right to reside. If such a removal is not possible for any reason Rwanda will regularise that person's immigration status in Rwanda.[130]

The parties to the asylum partnership have specified the assurances for post-decision treatment of relocated people in a 'note verbale' as well.[131]

2.1.7 Monitoring and Surveillance

As the MoU is not legally binding, the contracting parties cannot enforce compliance with it in a court of law[132] but implemented a surveillance system by committees.

A 'Joint Committee' consisting of representatives of the Governments of the UK and Rwanda has been established.[133] It is tasked with monitoring and reviewing the implementation of the MoU and making non-binding recommendations. Moreover, it offers a forum to exchange information, debate best practices, and provide solutions to technical and administrative issues.[134]

The MoU also requires the UK and Rwanda to form a Monitoring Committee comprising persons independent of their respective Governments.[135] The Monitoring Committee will "provide an independent quality control assessment" of pursuance to the asylum partnership from the beginning to the end of the relocation process.[136]

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[129] Art 10.3.1 MoU.
[130] Art 10.4 MoU.
[131] Home Office 'Note Verbale on assurances in paragraphs 8 and 10 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership arrangement' opt (n120).
[132] Cf Home Affairs Committee 'Oral evidence: Asylum and migration, HC 197' opt (n8) at Q 83 – 90.
[133] Art 13.1 MoU.
[134] Home Office 'Joint Committee: terms of reference (TOR)', *UK Government*, 2 September 2022, available at: *https://www.gov.uk/government/publications/joint-committee-migration-and-economic-development-partnership/joint-committee-terms-of-reference-tor*, accessed 03 July 2023.
[135] Art 15.1, 15. 2 MoU.
[136] Home Office 'Monitoring Committee: terms of reference (TOR)' *UK Government*, 2 September 2022, available at: *https://www.gov.uk/government/publications/monitoring-committee-migration-and-economic-development-partnership/monitoring-committee-terms-of-reference-tor*, accessed 3 July 2023.

The MoU provides for unfettered access of the Monitoring Committee to relevant locations, people, and records.[137]

2.2 The International Legal Framework

Every state has the sovereign power to pass and implement rules for the admission and sojourn of non-nationals.[138] However, this sovereign power must be exercised in line with other rules of international law, specifically provisions for the protection of asylum seekers and refugees.[139]

Rwanda and the UK are parties to UN Refugee Convention. The UK has not filed any relevant reservations, whereas Rwanda reserves the right to limit the freedom of movement of asylum seekers and determine their place of residence.[140] Moreover, Rwanda and the UK are inter alia parties to the ICESCR, ICCPR, and CAT.[141] Due to the ECHR being a regional instrument, only the UK is a party.[142] Thus, Rwanda and the UK are parties to relevant refugee and human rights instruments.[143] Nevertheless, this only indicates whether they comply with the obligations arising from these instruments; assessing the actual situation is a crucial part of the legality assessment of a transfer agreement.[144] The mutual assurances in the MoU[145] can also not replace a forensic analysis of compliance with international law.[146]

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[137] Art 13.1 MoU.
[138] James A. R. Nafziger, The General Admission of Aliens under International Law, 77 *American Journal of International Law* 804 (1983).
[139] Legomsky opt (n40) 614.
[140] UN Treaty Collection 'Convention Relating to the Status of Refugees' *UN Treaty Collection*, available at: *https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en*, accessed 8 July 2023.
[141] See for Rwanda and UK respectively: UN Human Rights Treaty Bodies 'UN Treaty Body Database' *OHCHR*, available at: *https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?Lang=en*, accessed 08 July 2023.
[142] Ministry of Justice 'Human Rights: The UK's international human rights obligations' *UK Government*, 30 March 2022, available at: *https://www.gov.uk/government/collections/human-rights-the-uks-international-human-rights-obligations*, accessed 8 July 2023.
[143] Foster *The Implications of the Failed 'Malaysian Solution'* opt (n62) 405 ff; UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers* opt (n19) No 3. iii).
[144] UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, opt (n19) No 3. iii); Legomsky opt (n40) 658.
[145] Preamble, Arts 2.1, 9.1.1, 10.1 MoU.
[146] Riemer opt (n31); Goodwin-Gill *Introductory Note To Memorandum of Understanding* opt (n41)169; *R (AAA) v SSHD* supra (n14) at 108.

2.2.1 The Principle of Non-refoulement

A comprehensive legal basis can be found in international law for the principle of non-refoulement.

First and foremost, Art 33 (1) UN Refugee Convention states that 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 on account of his race, religion, nationality, membership of a particular social group or political opinion.

Furthermore, the bodies of various human rights treaties have also read the principle of non-refoulement into the respective human rights treaty such as the ECtHR into the ECHR[147] and the Human Rights Committee into the ICCPR[148].[149] Both bodies base their argumentation especially on the right to life and prohibition of inhumane and degrading treatment.[150]

CAT explicitly prohibits states from returning a person to another state where there are substantial grounds to believe that the person will be tortured.[151]

As the UN Refugee Convention only applies directly to 'refugees', the other legal bases in human rights treaties underpin the universal application of this principle including also to asylum seekers.

The text of Art 33 (1) UN Refugee Convention states that states must abstain from 'refouling' a person "in any manner whatsoever". This implies a broad application of the principle of non-refoulement.[152]

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[147] ECtHR 'Guide on the case law of the European Court of Human Rights – Immigration' European Court of Human Rights, 31 August 2022, available at: *https://www.echr.coe.int/documents/d/echr/Guide_Immigration_ENG*, accessed 06 July 2023, paras 40-72.

[148] International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (hereinafter: ICCPR).

[149] UN Human Rights Committee (HRC), *General comment No. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para 12.

[150] Arts 2, 3 ECHR; Arts 6, 7 ICCPR.

[151] Art 3.1 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 UNTS 85 (hereinafter: CAT).

[152] Cf Art 31 (1) Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331 (hereinafter: VCLT) "ordinary meaning".

First, it entails any active removal of a person by a state from its territory.[153] Therefore, the principle of non-refoulment applies to the relocation of asylum seekers from the UK to Rwanda.

Second, the principle of non-refoulements is applicable irrespective of whether the risk of persecution originates from non-state actors or whether the persecution is an intended or indirect result of (in-)action.[154]

Third, the principle of non-refoulement can not only be violated by removing a person to a country where there is a real risk of persecution (direct refoulement) but also if the person may subsequently be moved to such a country (indirect refoulement).[155] Additionally, there is constructive refoulement where asylum seekers might voluntarily return to their country of origin or pay smugglers to be transferred to another country because the conditions in their host country are sufficiently bad to drive them out, e. g. by denying them economic and social rights.[156]

For adherence to the principle of non-refoulement, procedural safeguards must be observed.[157] Chapter 3 will expound on this further.

2.2.2 Other Rights of Refugees according to the UN Refugee Convention

The UN Refugee Convention, furthermore, accords a broad range of rights to refugees.

The applicability of a specific right depends on the connection of a refugee to his host state.[158]

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[153] UN HRC, *General comment No 31* opt (n149) para 12.
[154] UN Committee on the Rights of the Child (CRC), *General comment No 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, para 27.
[155] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 6; UN HRC, *General comment No 31* opt (n149) para 12.
R. v. Sec. of State for the Home Dept, exparte Adam and Aitseguer [2001] 2 W.L.R. 143, 19 December 2000, 152-53; *Bugdaycay v. Sec. of State for the Home Dept.* [1987] A.C. 514, 19. February 1987 (H.L.), 532.
[156] Kritzman-Amir opt (n43) 712; Bar-Tuvia opt (n30) 493 f; Foster *Responsibility Sharing or Shifting?* opt (n32) 69.
[157] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 14; UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, opt (n19) No 3 vi).
[158] Hathaway *The Michigan Guidelines* opt (n67) No 9.

The first category is the rights granted to a refugee physically present in the host state.[159] Besides the principle of non-refoulement[160], these are inter alia freedom from discrimination, freedom of religion, and immunity from penalties for illegal entry.[161]

The second degree of connection with the host state is the 'lawful' presence of a refugee.[162] Lawful presence in this context means a person who has applied for refugee status and submitted the information necessary to review their case.[163] Among these are the freedom of movement, and the right not to be expelled other than on national security grounds.[164]

Third, there are rights given to refugees staying 'lawfully' in the territory of the host state.[165] This group of refugees is entitled to rights such as wage-earning employment, housing, and social security.[166]

Lastly, refugees who have their 'habitual residence' in the host state acquire further rights.[167]

The standard by which the right is governed varies as well. Refugees are awarded the benefit of a right only like some other group.[168] Some rights award treatment like other aliens to refugees, while others include the right to the most favourable treatment of aliens, e.g. the right to non-elementary education,[169] or even nationals, for instance, the freedom of religion[170].[171] Only some rights are in non-relative terms such as the right to non-refoulement and non-discrimination.[172]

Both the attachment of the refugee to the host state and the standard of rights must be examined to figure out what rights are owed to a particular refugee.[173] Whereas the standard of a specific right is relevant for its extent, the connection

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[159] Hathaway *The Rights of Refugees under International Law* opt (n71) 7, 312.
[160] Art 33 (1) UN Refugee Convention.
[161] Arts 3, 4, 31 UN Refugee Convention.
[162] Hathaway *The Michigan Guidelines* opt (n67) No 9.
[163] Hathaway *The Rights of Refugees under International Law* opt (n71) 7, 810.
[164] Art 26, 32 UN Refugee Convention.
[165] Hathaway *The Michigan Guidelines* opt (n67) No 9.
[166] Arts 17, 21, 24 UN Refugee Convention.
[167] Art 14 UN Refugee Convention.
[168] James C. Hathaway 'What's in a Label' 5 *European Journal of Migration & Law* 1 (2003), 3.
[169] Art 22 (2) UN Refugee Convention.
[170] Art 4 UN Refugee Convention.
[171] Hathaway '*What's in a Label'* opt (n168) 3.
[172] Legomsky opt (n40) 639.
[173] Hathaway '*What's in a Label'* opt (n168) 3.

between the UK and relocated asylum seekers might be relevant for the question of which rights the UK has to guarantee. Because the relocated person's asylum claim is not processed in the UK, one could argue that only the rights which apply to refugees physically and lawfully present are applicable.[174] This would limit the rights under the UN Refugee Convention for transferred refugees dramatically in connection with the UK. This problem will be discussed further in Chapter 4.

2.2.3 Other Rights of Refugees according to General Human Rights Treaties

Art 5 UN Refugee Convention clarifies that nothing in the convention impairs any rights and benefits granted by a Contracting State to refugees apart from this convention. Thus, the UK might be obligated to guarantee the rights of other human rights treaties to the relocated asylum seekers such as rights according to the ECHR, ICCPR, and ICESCR[175].

These three human right treaties all include a non-discrimination clause.[176] These forbid discrimination based on nationality. Therefore, refugees have the same rights as nationals under these treaties.[177]

These provisions do, however, not outlaw every discrimination.[178] In the words of the ECtHR, a divergence in treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not strive for a "legitimate aim" or if it does not strike a proportional balance between the means used and the aim pursued to be realized.[179] The ECtHR has regularly found it hard to justify

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[174] Cf eg, Legomsky opt (n40) 645 arguing that a state does not have to speculate if the receiving state grants refugee status or not to transferred asylum seeker.
[175] International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3 (hereinafter: ICESCR).
[176] Art 2 (1) ICCPR; Art 2 (1) ICESCR; Art 14 ECHR.
[177] UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: *https://www.refworld.org/docid/453883fa8.html*, accessed 5 July 2023, paras 1, 12; UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (Art 2, para 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, para 30.
[178] UN HRC, *CCPR General Comment No 18* opt (n177) para 13; UN CESCR *General comment No 20* opt (n177) para 13.
[179] Cf eg, *Molla Sali v. Greece* [GC] – Appl. No 20452/14, ECtHR, 19 December 2018, para 135; *Fábián v. Hungary* [GC] – Appl. No 78117/13, ECtHR, 5 September 2017, para 113.

discriminatory measures only based on nationality and demands weighty reasons from states for such.[180]

Contracting states like the UK must guarantee these rights to everyone within their jurisdiction.[181] Before the relocation of asylum seekers under the asylum partnership, the UK has territorial jurisdiction over them.[182] However, the question arises if the UK ceases to have jurisdiction over or any human rights obligations towards asylum seekers once they have been transferred to Rwanda. This thesis will discuss these questions in depth in Chapter 4.

[180] *Koua Poirrez v France* [Merits] – Appl. No 40892/98, ECtHR, 30 September 2003, para 46; *Andrejeva v Latvia* [GC] – Appl. No 55707/00, ECtHR, 18 February 2009, para 87.
[181] Arts 2 (1) ICCPR, 2 (1) ICESCR, 1 ECHR.
[182] Cf for a definition of territorial jurisdiction: *M.N. and others v Belgium* [GC] – Appl. No 3599/18, 5 May 2020, ECtHR, para 99-100.

CHAPTER THREE

Chapter 3 of this thesis will examine if the MoU is in accordance with the principle of non-refoulement pursuant to Art 33 (1) UNRC, Art 3 ECHR as well as Arts 6, 7 ICCPR and Art 3.1 CAT. The principle of non-refoulement can be described as the core pillar of international refugee law stressing the importance of compliance with it by the MoU.[183]

3. The Principle of Non-Refoulement

The principle of non-refoulement is unanimously extraterritorially applicable comprising direct, indirect, and constructive non-refoulement.[184]

The UK has listed Rwanda as a safe third country as allowed for by the Nationality and Borders Act.[185] Therefore, it is presumed that transferring an asylum seeker to Rwanda does not pose a risk of refoulement. Lists of safe third countries are not forbidden in international law if there is an individualized assessment included giving the asylum seeker an opportunity to rebut the assumption of safety in the third country.[186] To ensure an individualized assessment, the UK is obliged to establish an initial screening according to the MoU.[187] This Chapter will show that it is not adequate to classify Rwanda as a safe country due to the risk of refoulement posed by relocating asylum seekers there and that the initial screening does not protect them from being 'refouled'.

A predictive evaluation is required for this analysis. The prognosis will give weight to the assurances by Rwanda; however, the keeping of those promises will be

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[183] Penelope Mathew 'Chapter 50: Non-refoulement' in Cathryn Costello, Michelle Foster and Jane McAdam (eds) *The Oxford Handbook of International Refugee Law* (2021) 899.
[184] Foster *Protection Elsewhere* opt (n68) 250-261; UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, opt (n19) No 5; Nationality, Immigration and Asylum Act 2002, s80B (4) (inserted by Nationality and Borders Act 2022, s16)
[185] Nationality, Immigration and Asylum Act 2002, s80B (inserted by Nationality and Borders Act 2022, s16); Home Office 'Country policy and information note: Rwanda, assessment' opt (n48).
[186] UNHCR 'UNHCR Updated Observations on the Nationality and Borders Bill, as amended' *UNHCR*, January 2022, available at: *https://www.unhcr.org/uk/media/unhcr-updated-observations-nationality-and-borders-bill-amended*, accessed 14 July 2023, para 141; UN Human Rights Council, *Human rights violations at international borders: trends, prevention and accountability*, 26 April 2022, A/HRC/50/31, paras 70, 81; *NAEN v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCAFC 6, Federal Court of Australia, 13 February 2004; *Ilias and Ahmed v Hungary* [GC] – Appl. No 47287/15, ECtHR, 21 November 2019, paras 139 – 141, 148.
[187] Art 5.1 MoU.

judged in the light of past experiences as well as the current capability and capacity of Rwanda.[188]

Due to the limited length of this thesis, it will focus on the main aspects of why the asylum partnership violates the principle of non-refoulement.

3.1 Direct Refoulement

Direct refoulement prohibits the UK from transferring asylum seekers to Rwanda if there are "substantial grounds" for believing there is a real risk of inhumane or degrading treatment in Rwanda.[189] The primary reason for the violation of direct violation by the UK is the treatment of members of the LGBTQI+ community in Rwanda.

3.1.1 Rwanda is not safe for LGBTQI+ people.

The Nationality and Border Act states in line with the UN Refugee Convention,[190] that a state can be considered "safe" in relation to an asylum seeker if the claimant's life and liberty are not threatened in that state by reason of inter alia their membership of a particular social group[191]

Membership of a particular social group compromises immutable characteristics that a person is either not able to change or which are so fundamental to a person's identity or conscience that it cannot be demanded from the person to change it.[192] This includes the gender or sexual identity of a person.[193]

Many NGOs and commentators have raised concerns about the dire situation of the LGBTQI+ community in Rwanda.[194]

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[188] *R (AAA) v SSHD* supra (n14) at 91.
[189] *Soering v The United Kingdom* – Appl. No 14038/88, ECtHR, 7 July 1989, para 88.
[190] Art 1A, 33 (1).
[191] Nationality, Immigration and Asylum Act 2022 s80B (inserted by Nationality and Borders Act 2022 s16).
[192] *Matter of Acosta In Deportation Proceedings A-24159781*, United States Board of Immigration Appeals, 1 March 1985, paras 37 – 39; James C. Hathaway and Michelle Foster *The Law of Refugee Status* 2ed (2014) 429.
[193] Cf eg, Verwaltungsgerichthof Hessen (German Administrative Court of the Province of Hessen), 21 August 1986, Ref. 10 OE 69/83, reported as IJRL/004 in (1989), 1 *International Journal of Refugee Law* 110; *Refugee Appeal No 1312/93, Re GJ*, No 1312/93, New Zealand: Refugee Status Appeals Authority, 30 August 1995; *Faustina Annan v. Minister of Citizenship and Immigration of Canada*, IMM-215-95, Canada: Federal Court, 6 July 1995; UNHCR, *Guidelines on International Protection No 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity*, 23 October 2012, HCR/GIP/12/09.
[194] Grundler and Guild opt (n24); Melanie Gower et al. opt (n50) 18; Khatondi Soita Wepukhulu and Nandini Archer 'Rwandan LGBTIQ people warn: It's unsafe to send queer asylum seekers here' *Open*

The British Government concludes that Rwanda is safe for members of the LGBTQI+ community because the discrimination and intolerance experienced by community members are not serious nor systematic enough to be considered an inhumane and degrading treatment in the sense of Art 3 ECHR.[195] It further relies on the absence of laws criminalizing sexual orientation or consensual same-sex acts between adults.[196]

The available information about Rwanda and its asylum system as well as publications by the British Government itself point to a different result, though.[197]

No explicit constitutional rights or specific non-discrimination laws for the protection of LGBTQI+ persons are to be found in Rwanda, as the Government of the UK admits in its own travel advice on Rwanda for British citizens.[198] Members of the LGBTQI+ that do not confirm to the 'cis-gendered' categories of gender, are somewhat precluded from protective norms as the definition of gender-based violence in Rwanda only includes violence against female or male persons.[199] Furthermore, they face significant discrimination and abuse, not only by society and their community but also at the hands of Rwandan authorities,[200] as the British Government warns its own citizens showing the double standard applied to its own citizens and asylum seekers.[201] For example, there have been reports of arbitrary

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Democracy, 16 April 2022, available at: *https://www.opendemocracy.net/en/5050/rwanda-lgbtiq-asylum-seekers-refugees-priti-patel/* [available at 15 July 2023.

[195] Home Office 'Country policy and information note: Rwanda, assessment' opt (n48) at No 2.11; Home Office 'Review of asylum processing – Rwanda: country information on general human rights' *UK Government*, May 2022, available at: *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073960/RWA_CPIN_Review_of_asylum_processing_-_human_rights_information.pdf*, accessed 15 July 2023, p 62-73.

[196] Home Office 'Country policy and information note: Rwanda, assessment' opt (n48) at No 2.11.2.

[197] Cf for the standard of review: *Ilias and Ahmed v Hungary* supra (n186) at 139–141, 148.

[198] UK Government 'Foreign Travel Advice – Rwanda' *UK Government*, available at: *https://www.gov.uk/foreign-travel-advice/rwanda/local-laws-and-customs*, accessed 13 July 2023.

[199] UN General Assembly, *Summary of Stakeholders' Submission on Rwanda*, 16 November 2020, A/HRC/WG.6/37/RWA/3, para 26.

[200] Immigration and Refugee Board of Canada (IRB) 'Rwanda: Situation of persons of diverse sexual orientation and gender identity and expression (SOGIE), including their treatment by society and state authorities; state protection and support services (2019–August 2021) [RWA200730.E]' *IRB*, 23 August 2021, available at: *https://www.ecoi.net/en/document/2061342.html*, accessed 15 July 2023; U.S. Department of State '2022 Country Reports on Human Rights Practices: Rwanda' *State Government*, available at: *https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/rwanda/*, accessed 26 July 2023.

[201] Joint Committee on Human Rights 'Oral Evidence: The UK-Rwanda Migration and Economic Development Partnership and Human Rights, HC 293' *Committees Parliament UK*, 08 June 2022, available at: *https://committees.parliament.uk/oralevidence/10366/html/*, accessed 13 July 2023, Q8; UK Government 'Foreign Travel Advice – Rwanda' opt (n198).

arrests, detention, as well as violence imposed by state authorities.[202] Additionally, members of the LGBTQI+ community experience exclusion from socio-economic infrastructure such as healthcare services.[203] Many members of the LGBTQI+ community keep their sexual identity a secret because of the scare of these repercussions.[204] The inability of a person to safely show their sexual orientation or gender identity publicly because of a lack of state protection poses already an ill-treatment detrimental to Art 3 ECHR.[205]

Hence, Rwanda cannot be considered safe for members of the LGBTQI+ community. They should at least be barred from transfers from the UK to Rwanda without having to prove in the initial screening that they are at risk of persecution because of their circumstances.

3.2 Indirect Refoulement

The UK must also ensure that Rwanda does not send a relocated asylum seeker to another state where the asylum seeker would be persecuted.[206]

This includes first and foremost access to a fair and efficient procedure for the determination of refugee status (RSD) or other forms of international protection of the transferred asylum seekers in Rwanda.[207] There is no explicit requirement of a fair RSD in the UN Refugee Convention, but a good faith implementation of the treaty obligations as well as the purpose of the UN Refugee Convention demand such. A state can only live up to its obligation and the aim of the convention to protect an asylum seeker from refoulement to another state by appropriately

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[202] Ibid.; Human Rights Watch 'Rwanda: Round Ups-Linked to Commonwealth Meeting' *Human Rights Watch*, 27 September 2021, available at: *https://www.hrw.org/news/2021/09/27/rwanda-round-ups-linked-commonwealth-meeting*, accessed 15 July 2023.
[203] UN General Assembly *Summary of Stakeholders' Submission on Rwanda* opt (n196) para 80.
[204] Rainbow Migration 'Rwanda is not safe for LGBTQI+ people' *Rainbow Migration*, 13 April 2022, available at: *https://www.rainbowmigration.org.uk/news/rwanda-is-not-safe-for-lgbtqi-people/*, accessed 15 July 2023.
[205] *I.K. v. Switzerland* – Appl. No 21417/17, ECtHR, 18 January 2018, para 24; *B and C v Switzerland* – Appls. Nos. 43987/16 and 889/19, ECtHR, 17 November 2020, paras 60-62.
[206] *Yogathas* [2002] UKHL 36, United Kingdom: House of Lords (Judicial Committee), 17 October 2002, para 61.
[207] UNHCR, 'Protection Policy Paper: Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing' *Refworld*, November 2010, available at: *https://www.refworld.org/docid/4cd12d3a2.html*, accessed 8 September 2023, para 42; UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 14, 17; UNHCR 'Procedural Standards for Refugee Status Determination Under UNHCR's Mandate' UNHCR, 26 August 2020, available at: *https://www.refworld.org/docid/5e870b254.html*, accessed 26 July 2023, p 14; Legomsky opt (n40) 654; Gleeson opt (n63) 431; *Ilias and Ahmed v Hungary* supra (n186) at 130 – 138;

examining the claim of an asylum seeker to have a well-founded fear of persecution.[208] The ECtHR also clarified that the relocating state must ensure that the receiving state provides an adequate asylum procedure for the relocated asylum seeker to avoid breaching Art 3 ECHR.[209]

To start off, a relocation agreement must include assurances by the receiving state to afford the transferred asylum seeker a meaningful opportunity to apply for asylum.[210] The MoU as well as a 'note verbale' contain comprehensive assurances on the topic of access to a fair RSD for transferred asylum seekers.

Nevertheless, the UNHCR's dark assessment is that "Rwanda's asylum process is [still] 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".[211]

The British Supreme Court as well as the Court of Appeal in its 2-1 decision also concluded that Rwanda is not able to offer a fair and efficient RSD to relocated asylum seekers, a finding with which the British Supreme Court of Appeal unanimously agreed.[212] The dissenting judge of the British Court of Appeal did not reject the argument that there is "evidence of poor practice" in Rwanda but put forward arguments why Rwanda's asylum system was about to change in the light of the MoU.[213] He relied heavily on the strong political will of Rwanda to make the deal a success because of the incentive of future financial aid as well as its interest in good bilateral relationship with the UK.[214] However, human rights such as the right not to be 'refouled' should not be dependent on political consideration but generally

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[208] 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' *UNHCR*, 26 January 2007, available at: *https://www.refworld.org/pdfid/45f17a1a4.pdf*, accessed 27 July 2023, para 8.
[209] *Ilias and Ahmed v Hungary* supra (n186) at 130 – 138.
[210] Hathaway *The Michigan Guidelines* opt (n67) No 4.
[211] Jonathan Metzer 'Court of Appeal upholds challenge to Rwanda removals policy – an extended look' *UK Human Rights Blog*, 19 July 2023, available at: *https://ukhumanrightsblog.com/2023/07/19/court-of-appeal-upholds-challenge-to-rwanda-removals-policy-an-extended-look/*, accessed 26 July 2023; Cf also UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 11, 17; *R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)* supra (n16) paras 93, 102-104.
[212] *R (AAA) v SSHD* supra (n14); *R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)* supra (n16) para 73.
[213] *R (AAA) v SSHD* supra (n14) at 502.
[214] *R (AAA) v SSHD* supra (n14) at 511, 515, 517.

be granted.[215] Besides that, the dissenting judges argued that informal monitoring by individuals and organizations like the UNHCR in addition to the monitoring by the committees under the MoU will help to ensure the compliance of Rwanda with the principle of non-refoulement.[216] The monitoring of the MoU is not their responsibility, though, and cannot be used by the UK as an argument to justify the deal with Rwanda.

The following paragraphs will lay out the gravest flaws in Rwanda's RSD. As the same, unreformed institutions are still entrusted with the RSD of transferred asylum seekers under the MoU, the asylum system of Rwanda cannot offer a fair RSD to transferred asylum seekers.[217] Moreover, past experiences of continuous refoulement show the unwillingness of Rwanda to live up to its obligation, specifically under the deal between Rwanda and Israel.[218]

3.2.1 Systemic deficits in the Rwandan asylum procedure.

Lack of Understanding of Obligations under the Principle of Non-Refoulement.

Rwanda shows a deep misinterpretation of its obligation under the Principle of Non-Refoulement. For instance, Rwanda regarded it as acceptable to deport asylum seekers based on them using forged documents to enter Rwanda or having no entry visa without considering their need for protection.[219]

Lack of Procedural Safeguards

The process at all administrative levels also shows a lack of representation, interpretation, and adequate written reasons.[220] The responsible staff also lacks knowledge of how to conduct interviews and adequately evaluate evidence,[221] and identify victims of torture or human trafficking.[222] Up until now, Rwanda has mainly

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[215] M. P Ferreira-Snyman 'The Evolution of State Sovereignty: A Historical Overview' 12 *Fundamina: A Journal of Legal History* 1 (2006), 26.
[216] *R (AAA) v SSHD* supra (n14) at 501, 503 – 505.
[217] *R (AAA) v SSHD* supra (n14) at 104, 246 – 248, 259; UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 18h.
[218] *R (AAA) v SSHD* supra (n14) at 96, 101-102, 200.
[219] *R (AAA) v SSHD* supra (n14) at 97.
[220] *R (AAA) v SSHD* supra (n14) at 95, 99, 158 – 223, 245 ff, 263 f; UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 18a, 18d.
[221] Metzer opt (n211).
[222] UN Committee Against Torture (CAT), *Concluding observations on the second periodic report of Rwanda*, 4 December 2017, CAT/C/RWA/CO/2, paras 48–49.

granted protection to asylum seekers from neighbouring countries on a *prima facie* basis.[223]

To address these deficiencies, comprehensive and efficacious training of the responsible officers and personnel is necessary.[224]

In addition, Rwanda must acknowledge and comply with its commitment to supply every transferred asylum seeker with a legal representative.[225] In the British court proceedings, the Rwandan Government did not challenge the claim that asylum seekers were not entitled to legal representation at the administrative stages.[226] Such representation by lawyers is decisive for a fair RSDC, especially when the migration officers lack relevant training to appropriately deal with asylum claims as is the case in Rwanda. Asylum seekers are not able to pay for legal assistance or represent themselves due to a lack of legal knowledge and traumatizing experiences in the past. Lastly, the UNHCR and NGOs in Rwanda also lack the capacity to represent asylum seekers at the administrative stages of the asylum process.[227]

Moreover, Rwanda must show how it realistically can implement its promises regarding the provision of interpreters for every transferred asylum seeker,[228] as it is not clear due to Rwanda's inexperience with refugees from around the world where interpreters in languages such as Farsi, Arabic, Dari, Pashtu, Albanian, or Vietnamese will come from.[229]

Lack of Equal Access to RSD

Furthermore, experience shows prejudice against certain groups of asylum seekers. First, asylum seekers from the Middle East and Afghanistan have been experiencing discrimination with a 100 per cent rejection rate in the past implying also poor decision-making by the responsible authorities as some of these countries

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[223] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 11, 17; *R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)* supra (n16) para 77.
[224] Metzer opt (n211); *R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)* supra (n16) para 92.
[225] Art 9.1.2 MoU.
[226] *R (AAA) v SSHD* supra (n14) at 189.
[227] *R (AAA) v SSHD* supra (n14) at 189, 234, 238, 263-264.
[228] Art 9.1.2 MoU.
[229] Goodwin-Gill *Introductory Note To Memorandum of Understanding* opt (n41) 167.

are known conflict areas.[230] Second, asylum seekers being part of the LGBTQI+ community, have been denied access to the RSD completely.[231] This has led to asylum seekers being undocumented, at the risk of detention and deportation and, thereby, of chain refoulement.[232]

Lack of Objective and Independent Decisions

The UNHCR also raised doubts about the objectivity of decision-making at the administrative levels as appeals against rejections of the RSD are lodged with a minister who already participated in the first instance decision.[233]

Appeals to the High Court have never been submitted. [234] However, past experiences point to a reluctance of the Rwandan judiciary to decide against the Government, raising concerns about the independence of the judiciary.[235] Decisions on asylum cases at the High Court would concern the decisions of a government minister and a committee consisting of senior representatives of government bodies and agencies.[236]

3.2.1 The Initial Screening of Asylum Seekers in the UK is Flawed

The British Secretary of State promises to identify vulnerable asylum seekers at risk of inhumane and degrading treatment in Rwanda within the initial screening.[237] However, the British Independent Chief Inspector of Borders and Immigration found in his report that there are many deficits in the current initial

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[230] *R (AAA) v SSHD* supra (n14) at 96, 156, 199-200.
[231] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 18b.
[232] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 18a.
[233] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 18e, 18f; *R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)* supra (n16) para 82.
[234] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 18-19.
[235] *Government of Rwanda v Nteziryayo* [2017] EWHC 1912 (Admin), UK: Administrative Court, 28 July 2017, paras 234 – 240, 372 – 374; Metzer opt (n211); Goodwin-Gill *Introductory Note To Memorandum of Understanding* opt (n41) 167; *R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)* supra (n16) para 83.
[236] *R (AAA) v SSHD* supra (n14) paras 95, 158 – 223, 199 – 200, 220 – 223.
[237] Home Office 'Equality Impact Assessment – Migration and Economic Development Partnership with Rwanda' opt (n108) at p 4; Home Office 'Country policy and information note: Rwanda, assessment' opt (n48).

screening process.[238] The shortcomings of 'initial screening' processes have also been emphasized by courts in the UK multiple times.[239]

The questioning at the initial screening is inadequate and counterproductive as complex issues such as why an asylum seeker did not apply for asylum in a transit country as required in the Nationality and Border Act or if a person is a victim of trafficking are only investigated very briefly.[240]

Caseworkers also often lack training in identifying such vulnerabilities and safeguarding them[241] despite this being an obligation to ensure that Art 3 ECHR is not breached.[242] Asylum seekers reported that they did not feel comfortable sharing intimate information about themselves and their experiences, as many experienced a hostile environment during their initial screening.[243] This feeling was further reinforced by the interviewing officers being uniformed in spite of a deep mistrust of asylum seekers towards uniformed officers due to their past experiences.[244]

On top of that, the deadlines for asylum seekers of seven or fourteen days are very short to respond to a notice of intent concerning their inadmissibility and relocation to Rwanda.[245] Applicants will not be able to access legal advice, challenge age assessments, gather supporting evidence, and make representations to the Home Office within this period.[246] Furthermore, the concerned asylum seekers probably do

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[238] Independent Chief Inspector of Borders and Immigration 'An inspection of asylum casework (August 2020 – May 2021)' *UK Government*, November 2021, available: *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*, accessed 14 July 2023.
[239] *Detention Action (applicant) v Secretary of State for the Home Department (defendant) and Equality Human Rights Commission (intervener)* [2014] EWHC 2245, UK: High Court, 09 July 2014, para 122; *MT, R (on the application of) v Secretary of State for the Home Department & Ors* [2008] EWHC 1788, UK: High Court, 25 July 2008, paras 38-39; *YL (Rely on SEF)* [2004] UKIAT 00145, UK: Immigration Appeal Tribunal, 15 April 2004, para 19.
[240] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 15; Independent Chief Inspector of Borders and Immigration 'An inspection of asylum casework (August 2020 – May 2021)' opt (n238) at No 9.5 – 9.11.
[241] Ibid., No 3.15, 3.16.
[242] *M.S.S. v Belgium and Greece* [GC] – Appl. No 30696/09, ECtHR, 21 January 2011, para 301.
[243] Independent Chief Inspector of Borders and Immigration 'An inspection of asylum casework (August 2020 – May 2021)' opt (n238) at No 9.14.
[244] *Ibid*.
[245] See above Chapter 2 2.1.4.
[246] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 14; UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, opt (n19) No 16.

not know anything about Rwanda or its asylum system, impeding an adequate presentation of their case to the British Home Office further.[247]

It is understandable that states want to accelerate procedures and make them more efficient. Nonetheless, they still must respect the human rights of the applicant.[248] The initial screening process is an important tool to ensure compliance with the core principle of non-refoulement.[249] Efficiency cannot be used as an argument against comprehensive scrutiny within the initial screening.

Thus, the initial screening process does not adequately protect applicants from non-refoulement.

3.2.2 The Modalities of the Opportunity to Challenge Transfer Decisions are not Sufficient.

An asylum seeker must be able to challenge the transfer decision, especially when the initial screening was undertaken by a government official to guarantee that the decision can be reviewed by an unbiased and independent court put in place by law.[250] Asylum seekers can challenge an inadmissibility and relocation decision in the British courts.[251]

However, a suspensive effect of the appeal is required to ensure compliance with the principle of non-refoulement.[252] This is especially crucial under the asylum partnership as it is unclear if an asylum seeker would have a satisfactory opportunity to appeal their transfer decision at a British court once they have been transferred to Rwanda.[253] Although the Government of the UK pledged not to transfer any asylum seeker to Rwanda before a final decision by a domestic court is made,[254] the suspension effect is not a result of a legal rule enabling the British Government to

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[247] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 14; UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, opt (n19) No 16.
[248] Foster *Protection Elsewhere* opt (n68) 280 f; *Yogathas* supra (n206) at 74.
[249] Legomsky opt (n40) 669-670.
[250] Foster *Protection Elsewhere* opt (n68) 282 f; Tan et al. opt (n36); *M.S.S. v Belgium and Greece* supra (n242) at 286-322.
[251] See above Chapter 2 2.1.4.
[252] Legomsky opt (n40) 672; Foster *Protection Elsewhere* opt (n68) 283; ECtHR *Guide on the case law of the European Court of Human Rights – Immigration* opt (n147) para 57; UNHCR, *Global Consultations on International Protection/Regional Meetings: Conclusions (Regional Meeting in Budapest, 6-7 June 2001)*, 15 June 2001, EC/GC/01/14, para 15.
[253] Cf concerns raised in the context of the safe third concept in the Czech Republic: Refworld 'Section 12: The safe third country concept' *Refworld*, available at: *https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4bab55e22*, accessed 15 July 2023, p 34.
[254] See above Chapter 1 1.1.

retract its promise. This is particularly alarming because international law does not oblige the UK to take back asylum seekers once they have been transferred, even though this should be considered best practice.[255]

Consequently, the modalities of the opportunity to challenge relocation decisions are not in line with the principle of non-refoulement.

3.2.2 Inadequate Monitoring of Asylum Process in Rwanda

The monitoring of the asylum process in general as well as under the MoU is not sufficient to secure compliance of Rwanda with the principle of non-refoulement.

Rwanda refuses to let the UNHCR monitor its asylum procedures.[256] Other control systems have not been put in place either.[257]

The asylum partnership stipulates monitoring by committees that can only issue non-binding recommendations.[258] However, the suppression of criticism by the Rwandan government hinders effective monitoring.[259] Furthermore, neither individuals nor the parties can enforce that the rights of those affected are fully protected.[260]

The UK must also monitor compliance with the principle of non-refoulement and the assurances given in the MoU and the 'note verbale' post-transfer of an asylum seeker in Rwanda.[261] However, international law does not obligate the UK to take back asylum seekers if Rwanda does not treat asylum seekers in accordance with the principle of non-refoulement, even though this should be considered best practice,[262] proving the monitoring of Rwanda by the UK even more crucial. The

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[255] Foster *Protection Elsewhere* opt (n68) 285.
[256] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 18i, 18j.
[257] *R (AAA) v SSHD* supra (n14) at 92.
[258] See above Chapter 2 2.1.7.
[259] *R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)* supra (n16) para 93.
[260] International Agreement Committee of the House of Lords 'Memorandum of Understanding between the UK and Rwanda for the provision of an asylum partnership' *Committees Parliament UK*, 18 October 2022, available at: *https://committees.parliament.uk/publications/30322/documents/175339/default/*, accessed 26 July 2023, para 33.
[261] Tan et al. opt (n36); UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, opt (n19) No 3. vii), 5; Ja Hathaway *The Michigan Guidelines* opt (n67) No 4.
[262] Foster *Protection Elsewhere* opt (n68) 285.

UK's Government avoided parliament scrutiny of the asylum partnership by choosing to conclude it as an MoU rather than a treaty.[263]

Consequently, the Rwandan asylum procedure is not monitored sufficiently to secure its compliance with the principle of non-refoulement.

3.3 Constructive Refoulement

To affirm constructive refoulement, asylum seekers must voluntarily return to their country of origin or travel onwards from Rwanda because their conditions in Rwanda are sufficiently bad to drive them out. However, not every human rights violation leads to constructive refoulement.[264]

The UNHCR and other organizations have raised concerns regarding the implementation of many human rights such as the right to work, privacy as well as sexual and reproductive rights for asylum seekers in Rwanda.[265] However, these violations do not seem to be grave enough to justify constructive refoulement and will be debated in chapter 4 of this thesis.

Two recently reported human rights violations, however, are severe enough to presume conditions of constructive refoulement in Rwanda.

To begin with, the UN Committee against Torture reported that Rwandan authorities did not protect but facilitated or tolerated the recruitment of refugees into armed forces and their transport into human trafficking.[266]

Apart from that, the Rwandan police used excessive force when Congolese refugees peacefully protested a cut in food ratios in Rwandan refugee camps in 2018. Over 10 refugees were killed by the police forces, but no justice or investigation has

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[263] International Agreement Committee of the House of Lords 'Memorandum of Understanding between the UK and Rwanda for the provision of an asylum partnership' *Committees Parliament UK*, 18 October 2022, available at: *https://committees.parliament.uk/publications/30322/documents/175339/default/*, accessed 26 July 2023, para 45.

[264] Cf Kritzman-Amir opt (n43) 712; Bar-Tuvia opt (n32) 493 f; Foster *Responsibility Sharing or Shifting?* opt (n32) 69.

[265] UNHCR 'Rwanda: UNHCR Submission for the Universal Periodic Review - Rwanda - UPR 37th Session (2021)' *UNHCR* July 2020, available at: *https://www.refworld.org/docid/607763c64.html*, accessed 6 April 2023, pp 1, 6; Amnesty International 'Amnesty International Report 2022/23 – The State of the World's Human Rights' *Amnesty International*, 2023, available at: *https://www.amnesty.org/en/documents/pol10/5670/2023/en/*, accessed 26 July 2023, p 313.

[266] UN CAT opt (n222) paras 48–49.

been delivered for these killings up to this date.[267] Moreover, many were injured or arrested on doubtable charges in connection with the protests.[268] Even the documents of the British Government concerning the country information on Rwanda express the view that asylum seekers are at risk if they do not fully accept and succumb to the top-down rules and opinions of the Rwandan Government.[269] Such action by the Rwandan Government could even be considered persecution based on political opinion, thus, at least amounting to constructive refoulement.

[267] Human Rights Watch 'Rwanda: A Year On, No Justice for Refugee Killings' *Human Rights Watch*, 23 February 2019, available at: *https://www.hrw.org/news/2019/02/23/rwanda-year-no-justice-refugee-killings*, accessed 26 July 2023.
[268] *R (AAA) v SSHD* supra (n14) at 103.
[269] *R (AAA) v SSHD* supra (n14) at 291; Grundler and Guild opt (n24).

CHAPTER FOUR

Chapter 4 will firstly elaborate on the compatibility of the asylum partnership with the non-penalty provision of Art 31 (1) of the UN Refugee Convention.

Thereafter, it will turn to the problem of the treatment of asylum seekers after they have been transferred to Rwanda in accordance with the UN Refugee Convention and other human rights instruments.

4.1 The Non-Penalization of Irregular Entry and Arrival by Refugees

Art 31 (1) UN Refugee Convention provides that the "contracting states" shall not impose penalties, on account of their illegal entry or presence, on refugees who come directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

For Art 31 (1) to be effective, it must be applicable to every person claiming to need international protection, and its application can only end once a final decision has been made on their refugee claim. Thus, it also applies to 'inadmissible' asylum seekers, as the UK did not decide on the merits of their refugee claims.[270]

The UK must guarantee the non-penalization of illegal entry to every asylum seeker physically present in the UK, justifying its examination before other rights of the UN Refugee Convention are considered in the second part of this chapter.[271]

The preamble of the MoU reaffirms the commitment of the UK and Rwanda to the non-penalization of illegal entry or presence of refugees. However, the UK intends to only send asylum seekers to Rwanda who entered the UK irregularly.[272] Commentators, therefore, found that the relocation of asylum seekers under the MoU

[270] UNHCR 'Summary Conclusions on Non-Penalization for Illegal Entry or Presence: Interpreting and Applying Article 31 of the 1951 Refugee Convention' *UNHCR Roundtable*, 15 March 2017, available at: *https://www.refworld.org/docid/5b18f6740.html*, accessed 7 August 2023, para 7; Goodwin-Gill in: Erika Feller, Volker Türk and Frances Nicholson (ed.) opt (n73) 193.
[271] Art 31 (1) UN Refugee Convention.
[272] See above Chapter 2 2.1.4.

violates Art 31 (1) UN Refugee Convention.[273] The following subsections will show why they are correct.

4.1.1 The Removal of Asylum Seekers to Rwanda is a "Penalty on Account of Illegal Entry or Stay" in the Sense of Art 31 (1) UN Refugee Convention

Many scholars and domestic courts, as well as the UNHCR, have put out definitions of the word 'penalty' according to Art 31 (1) UN Refugee Convention. The different stakeholders agree insofar as that 'penalty' in the sense of Art 31 (1) UN Refugee Convention must be interpreted broadly because of the humanitarian character of the UN Refugee Convention.[274] Nonetheless, the meaning of 'penalties' cannot be interpreted broader than intended by the state parties.[275]

The UNHCR purports the interpretation of penalties as "any criminal or administrative measure taken by the State that has a detrimental effect on the refugee or asylum seeker". [276] This includes in the view of the UNHCR the relocation of inadmissible asylum to Rwanda.[277]

Goodwin-Gill determines a penalty similarly to the UNHCR. For him, a penalty is "every sanction that has not only a preventative but also a retributive and/or deterrent character".[278] The British Government wants to relocate asylum seekers to deter others from making irregular journeys to the UK.[279] Thus, according to Goodwin-Gill's definition, the relocation has a deterrent character and is a penalty.

The Supreme Court of Canada stated in its *B010 v Canada* judgment that "[t]he generally accepted view is that denying a person access to the refugee claim process on account of his illegal entry […] is a 'penalty'".[280] At first glance, the

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[273] Grundler and Guild opt (n24).
[274] *R (AAA) v SSHD* supra (n14) at 325; *Regina v Immigration Officer at Prague Airport and Another, Ex parte European Roma Rights Centre and Others*, [2004] UKHL 55, United Kingdom: House of Lords (Judicial Committee), para 18; UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 21.
[275] *Regina v Immigration Officer at Prague Airport and Another, Ex parte European Roma Rights Centre and Others* supra (n274) at 18.
[276] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 21.
[277] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 21.
[278] Goodwin-Gill in: Erika Feller, Volker Türk and Frances Nicholson (ed.) opt (n73) 195.
[279] See above Chapter 2 2.1.2.
[280] *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58, Canada: Supreme Court, 27 November 2015, para 63.

transfer of inadmissible asylum seekers to Rwanda would fall under this definition as they are denied access to the British asylum claim process. However, the British Court of Appeal pointed out that the Canadian case did not concern the transfer of an asylum seeker to a safe third country and, thereby, an expulsion.[281] The Canadian Supreme Court does not state where the person must be granted access to an asylum claim process. Thus, it could be argued that the removal under the MoU is not a penalty because asylum seekers are provided access to an RSD in Rwanda.

Generally, the British Court of Appeal stated that the state parties to the UN Refugee Convention did not intend to restrict the right of state parties to expel unauthorized asylum seekers to other countries where they would be admitted and which are safe for them.[282]

It follows from the *travaux préparatoires* that Art 31 (1) UN Refugee Convention did not aim at limiting such a right of state parties.[283]

Additionally, the system with Art 31 (2) UN Refugee Convention argues for exclusion of expulsion in the context of this article as this paragraph presumes that states may want to remove an asylum seeker.[284]

Moreover, the system of the entire UN Refugee Convention must be considered when interpreting Art 31 (1) UN Refugee Convention.[285] The expulsion of asylum seekers is only governed by the Arts 32, 33 UN Refugee Convention.[286]

This conclusion is further supported by the fact that it is generally accepted that 'first country of arrival schemes' do not breach Art 31 (1) UN Refugee

[281] *R (AAA) v SSHD* supra (n14) at 118, 327, 525.
[282] *R (AAA) v SSHD* supra (n14) at 118, 327, 525.
[283] UNHCR 'The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis' *UNHCR*, 1990, available at: *https://www.refworld.org/docid/53e1dd114.html*, accessed 4 August 2023, p 219; Hathaway *The Rights of Refugees under International Law* opt (n71) 519; Gregor Noll in: Andreas Zimmermann (ed) opt (n72) para 75; Art 32 VCLT.
[284] Gregor Noll in: Andreas Zimmermann (ed) opt (n72) para 75; Art 31 (1) VCLT.
[285] Cf Art 31 (1) VCLT.
[286] Hathaway *The Rights of Refugees under International Law* opt (n69) 520.

Convention.[287] Even the UNHCR approved of such practices,[288] eg, the Dublin Regulation of the EU.[289]

Thus, removing an asylum seeker to a safe third country without processing their asylum claim is not a penalty according to Art 31 (1) UN Refugee Convention.[290]

Nevertheless, Rwanda cannot be considered a safe third country.[291] Transferring a person to a safe third country might not be a penalty according to Art 31 (1) UN Refugee Convention, a removal contrary to Art 33 UN Refugee Convention is a penalty.[292] Hence, the relocation to Rwanda is a penalty in the sense of Art 31 (1) UN Refugee Convention.

The forced removal of asylum seekers to Rwanda is a result of their irregular entry into the UK and, hence, is a penalty imposed on account of their illegal entry and presence.

Therefore, Art 31 (1) UN Refugee Convention prohibits the relocation of asylum seekers if they fulfil the other requirements of this provision, which are coming directly from a country where they are being persecuted (1), presenting themselves to the authorities without delay (2), and showing good cause for the illegal entry or presence (3). If an asylum seeker does not fulfil one of these requirements, Art 31 (1) UN Refugee Convention does not intervene with penalties. However, a state is still not allowed to effectively deprive asylum seekers of accessing a fair and efficient asylum determination and treatment in accordance with

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[287] Hathaway *The Rights of Refugees under International Law* opt (n71) 520; Legomsky opt (n40) 666-667.

[288] UNHCR, 'Background Note on the Safe Country Concept and Refugee Status' 26 July 1991, EC/SCP/68, available at: *https://www.refworld.org/docid/3ae68ccec.html*, accessed 9 August 2023, para 14; Legomsky opt (n40) 667, 580 with further evidence.

[289] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), (EU)No 604/2013, 29 June 2013.

[290] *AAA and others v Secretary of State for the Home Department* supra (n13) at 125 - 126 with Court of Appeal agreeing at: *R (AAA) v SSHD* supra (n14) at 323, 328-329; Legomsky opt (n40) 666-667.

[291] Cf. Chapter Three 3.1, 3.2, 3.3 and Chapter Four 4.2.1.

[292] *AAA and others v Secretary of State for the Home Department* supra (n13) at 125; Cf Also, indication of this conclusion by Lord Justice Underhill: *R (AAA) v SSHD* supra (n14) at 339.

international standards because this may lead to refoulement and other rights violations.[293]

4.1.2 The UK Cannot Justify This Penalty on the Ground that the Asylum Seekers do not come "Directly" From a Country where their Life or Freedom is Threatened

The British Government cannot rely on the permissibility of the relocation of the asylum seekers to Rwanda because the asylum seekers arriving by small boats in the UK do not come directly from the country in which their life or freedom was threatened, according to Art 31 (1) UN Refugee Convention.

The Nationality and Borders Act of the UK lays out that a refugee is not to be taken to have come to the United Kingdom directly from a country where their life or freedom was threatened if, in coming from that country, they stopped in another country outside the United Kingdom, unless they can show that they could not reasonably be expected to have sought protection under the Refugee Convention in that country.[294]

The UNHCR rejects this definition as not being compliant with Art 31 (1) UN Refugee Convention.[295]

Generally, with a few exceptions[296], the requirement of 'coming direct' is interpreted broadly. It is not understood in its literal geographical or temporary sense but to include situations in which asylum seekers transited through or shortly stopped in other countries.[297]

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[293] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 21; UNHCR *Updated Observations on the Nationality and Borders Bill* opt (n186) para 28; UNHCR 'UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom' *UNHCR*, May 2021, available at: *https://www.unhcr.org/uk/media/unhcr-observations-new-plan-immigration-uk*, accessed 08 August 2023, Annex para 1.

[294] Nationality, Immigration and Asylum Act 2022 (inserted by Nationality and Borders Act 2022 s16), s37 (1).

[295] UNHCR *Updated Observations on the Nationality and Borders Bill* opt (n186) para 31.

[296] Cathryn Costello (with Yulia Ioffe and Teresa Büchsel) 'Article 31 of the 1951 Convention Relating to the Status of Refugees' *UNHCR*, July 2017, PPLA/2017/01, available at: *https://www.refworld.org/docid/59ad55c24.html*, accessed 8 August 2023, p 22, ft. 113.

[297] UNHCR 'Summary Conclusions on Article 31 of the 1951 Convention relating to the Status of Refugees – Revised' *UNHCR*, November 2001, available at: *https://www.unhcr.org/media/summary-conclusions-article-31-revised*, accessed 08 August 2023, para 10(b). See also, UNHCR 'Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002)' *UNHCR*, February

Although there is no unfettered right to choose one's country of asylum,[298] asylum seekers are also not obliged to seek asylum at the first effective opportunity.[299] Asylum seekers can pass through other countries before applying for asylum. Another interpretation would run contrary to the principles of international cooperation and solidarity as well as of effective protection as laid down in the Global Refugee Compact of which the UK is also part It would excessively and arbitrarily burden countries in conflict region(s) and diminish their willingness and ability to offer effective protection if asylum seekers were obligated to apply for asylum in these countries.[300]

Seen in the historical context of the drafting of the UN Refugee Convention, an interpretation that excludes transit through other countries by asylum seekers would relieve the drafting states of most of their obligations under the convention and, thereby, devoid it of any meaning.[301] The analysis of the *travaux préparatoires* also underpins the interpretation that asylum seekers can transit through other countries before applying for asylum.[302] The drafters just wanted to exclude persons who had settled temporarily or permanently in another country.[303] The British jurisprudence, specifically in the *Ex Parte Adimi* Case, also points to another interpretation. For the interpretation of "coming directly", the length of stay in the intermediate country (1); the reason for the delay (2); and whether or not the refugee sought or found protection de jure or de facto in that country (3) are considered by the courts.[304]

2003, available at: *http://www.refworld.org/docid/3fe9981e4.html*, accessed 08 August 2023, para 11; Goodwin-Gill in: Erika Feller, Volker Türk and Frances Nicholson (ed.) opt (n73) 217–218.

[298] UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, opt (n19) No 3. i); Legomsky opt (n40) 665.

[299] Executive Committee of the High Commissioner's Programme 'Refugees Without an Asylum Country No 15 (XXX) – 1979' *UNHCR*, 16 October 1979, available at: *https://www.refworld.org/docid/3ae68c960.html*, accessed 8 August 2023, para (h) (iv).

[300] UNHCR *Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom* opt (n293) Annex para 19.

[301] UNHCR *Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom* opt (n293) Annex para 12.

[302] UNHCR *The Refugee Convention, 1951: The Travaux préparatoires* opt (n283) 219.

[303] UNHCR *Updated Observations on the Nationality and Borders Bill* opt (n186) para 27.

[304] *R v Uxbridge Magistrates Court and Another, Ex Parte Adimi*, [1999] EWHC Admin 765, United Kingdom: High Court (England and Wales), 29 July 1999, para 18; Cf also UNHCR *Summary Conclusions on Non-Penalization for Illegal Entry or Presence* opt (n270) para 9.

Therefore, the penalization of asylum seekers by relocating them to Rwanda is not justified by the fact that most of the asylum seekers passed through safe third countries before reaching the UK.

Lastly, the requirement of 'good cause' can also not be utilized to justify the Nationality and Borders Act requirement that an asylum seeker must show that they could not reasonably be expected to have sought protection under the Refugee Convention in their transit country. It cannot be expected of an asylum seeker to provide proof that they could have applied for asylum in another country. 'Good cause' exists if the asylum seeker could not have legally accessed another country to flee persecution.[305]

Thus, the transit through other (European) countries cannot justify the imposition of the penalty of relocation to Rwanda on asylum seekers.

4.2 Other rights of refugees

The UN Refugee Convention contains rights other than the non-penalization and non-refoulement already discussed in this thesis, especially socio-economic guarantees such as property rights, employment rights, and education rights.[306] The ECHR, ICCPR, ICESCR as well as other human rights instruments also include a variety of human rights which are applicable to the transferred asylum seekers as laid down in chapter 2 of this thesis. The ECHR and ICCPR focus on civil and political rights like freedom of speech, right to assembly, and right to personal security, some of which are also part of the UN Refugee Convention.[307] The ICESCR, on the other hand, encompasses a broad range of socio-economic rights, some of which go beyond the UN Refugee Convention such as the right to health.[308]

The MoU reaffirms the commitment of Rwanda and the UK to implement and uphold the UN Refugee Convention as well as other human rights instruments.[309] Furthermore, socio-economic assurances as to the reception arrangements and the treatment of asylum seekers once a decision has been reached are given by Rwanda

[305] UNHCR *The Refugee Convention, 1951: The Travaux préparatoires* opt (n283) 219.
[306] Arts 13-15, 17-19, 22 UN Refugee Convention.
[307] Arts 9, 19, 21 ICCPR; Arts 5, 10-11 ECHR; see eg, Arts 3-4 UN Refugee Convention.
[308] Art 12 ICESCR.
[309] Preamble MoU.

in Arts 8 and 10 of the MoU and a note verbale specifying the guarantees of these articles.[310]

As pointed out above, mere guarantees are not enough to ensure the adequate treatment of asylum seekers in Rwanda.[311] Moreover, the note verbale like the MoU is not justiciable in court and does not create any individual rights.[312] The only tool that relocated asylum seekers have to enforce their "rights" in the note verbale is lodging a complaint with the Rwandan Government, the very same Government violating their rights in the first place.[313]

However, in the context of post-transfer treatment of transferred asylum seekers, the question arises if the UK is even responsible for compliance with the rights of the UN Refugee Convention and other human rights instruments.

The following subsections will first explore whether Rwanda meets its human rights obligations towards the transferred asylum seek. Because this thesis comes to the conclusion that this is not the case, it will turn to the question of whether the UK can be held responsible for these human rights violations.

4.2.1 Conditions on the Ground in Rwanda

This section will show that Rwanda is not a suitable place to transfer asylum seekers to and that Rwanda does not meet its human rights obligations towards its own population and refugees already residing in Rwanda. These systematic issues show that Rwanda cannot adhere to its promises in the MoU and note verbale in the near future, especially since Rwanda has taken no drastic measures since entering the asylum partnership.

General Human Rights Situation in Rwanda

The general human rights situation concerning civil and political rights is dire. The Freedom House considers Rwanda as not free with regard to political

[310] Home Office 'Note Verbale on assurances in paragraphs 8 and 10 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership arrangement' opt (n120).
[311] See also: Isaa Binkovitz opt (n57) 600.
[312] Home Office 'Note Verbale on assurances in paragraphs 8 and 10 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership arrangement' opt (n120) at Art 20.
[313] Home Office 'Note Verbale on assurances in paragraphs 8 and 10 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership arrangement' opt (n120) at Art 17.

rights, civil liberties, and internet freedom.[314] Even the Government of the UK raised serious concerns about such human rights violations as recently as July 2021, less than a year before entering into the asylum partnership.[315] Specifically, the allegations of extrajudicial killings, deaths in custody, enforced disappearances and torture, the freedom of journalism, as well as the identification and protection of trafficking victims were of concern to the British Government.[316] This view changed quickly after entering the asylum partnership without apparent evidence of change in Rwanda.[317]

The socio-economic situation of many Rwandan citizens also remains alarming. Rwanda has higher poverty rates than other African countries with comparable income per capita.[318] The most recent survey of the international poverty rate from 2016 shows that 52 per cent of the population lives below the international poverty line. Projections for this year estimate the rate to be around 47 per cent.[319] The CEDAW Committee also pointed out that families living in poverty need more social support.[320]

Around 24.5 per cent of the population has no access to an improved drinking water source.[321] Additionally, 18 per cent of the population experience food

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[314] Freedom House, 'Rwanda: Country Profile' *Freedom House,* available at: *https://freedomhouse.org/country/rwanda*, accessed 09 October 2023; Julian Braithwaite, 'Speech at the 37th Session of the Universal Periodic Review: UK statement on Rwanda' *Government UK*, 25 January 2021, available at: *https://www.gov.uk/government/speeches/37th-universal-periodic-review-uk-statement-on-rwanda#:~:text=Weper cent20recommendper cent20thatper cent20Rwandaper cent3A,andper cent20bringper cent20perpetratorsper cent20toper cent20justice.*, accessed 09 October 2023; Daniel Trilling, 'Incoherence and inconsistency: the inside story of the Rwanda deportation plan' *The Guardian*, 05 October 2023, available at: *https://www.theguardian.com/world/2023/oct/05/incoherence-and-inconsistency-the-inside-story-of-the-rwanda-deportation-plan*, accessed 09 October 2023; *R (AAA) v SSHD* supra (n14) at 291.

[315] Rita French, Speech at the UN Human Rights Council: Universal Periodic Review Adoption – Rwanda' *UK Government*, 08 July 2021, available at: *https://www.gov.uk/government/speeches/un-human-rights-council-universal-periodic-review-adoption-rwanda*, accessed 09 October 2023.

[316] Ibid.

[317] Trilling opt (n314).

[318] World Bank, 'Poverty & Equity Brief – Rwanda' *World Bank*, April 2023, available at: *https://databankfiles.worldbank.org/public/ddpext_download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/current/Global_POVEQ_RWA.pdf*, accessed 09 October 2023.

[319] *Ibid*.; World Bank, 'Rwanda – Macro Poverty Outlook' *World Bank*, October 2023, available at: *https://thedocs.worldbank.org/en/doc/bae48ff2fefc5a869546775b3f010735-0500062021/related/mpo-rwa.pdf*, accessed 09 October 2023.

[320] UN General Assembly, *Compilation on Rwanda – Report of the Office of the High Commissioner for Human Rights*, 13 November 2020, A/HRC/WG.6/37/RWA/2, para 67.

[321] World Bank, 'Poverty & Equity Brief – Rwanda' opt (n318).

insecurity.[322] On the other hand, Rwanda guarantees three balanced and varied meals that meet adequate nutritional standards, each relocated individual's needs, and access to water in their accommodation.[323]

Moreover, 61.3 per cent of the urban population in Rwanda lives in informal settlements.[324] Nonetheless, Rwanda vouches adequate accommodation for transferred asylum seekers with adequate levels of hygiene, safety, privacy, and security, as well as adequate furniture and facilities for the household in a suitable place.[325]

Rwanda also experiences a low secondary school enrolment rate as many families cannot afford the hidden costs of sending their children to school. There is also a deficit of vocational training for children and adolescents.[326] Despite this, Rwanda promises free, high-quality secondary education and vocational training for relocated asylum seekers.[327]

The involuntary hospitalization and institutionalization of persons with psychosocial disabilities is also an issue in Rwanda.[328] However, Rwanda pledges to provide appropriate mental health services to transferred asylum seekers who are generally at special risk of mental health issues because of their experience and xenophobia in host countries.[329]

Besides the extensive discrimination experienced by members of the LGBTQI+ community,[330] discrimination against women and girls also remains widespread when accessing sexual and reproductive health care services, education,

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[322] National Institute of Statistics Rwanda (NISR), 'Comprehensive Food Security and Vulnerability Analysis' *NISR*, October 2021, available at: *https://www.statistics.gov.rw/publication/comprehensive-food-security-and-vulnerability-analysis2022*, accessed 09 October 2023.
[323] Home Office 'Note Verbale on assurances in paragraphs 8 and 10 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership arrangement' opt (n120) at Art 3-4.
[324] UN Habitat, 'Urbanization in Rwanda: Building inclusive & sustainable cities' *UN Habitat*, available at: *https://unhabitat.org/rwanda*, accessed 09 October 2023.
[325] Home Office 'Note Verbale on assurances in paragraphs 8 and 10 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership arrangement' opt (n120) at Art 3.
[326] UN General Assembly, *Compilation on Rwanda* opt (n320) para 77.
[327] Home Office 'Note Verbale on assurances in paragraphs 8 and 10 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership arrangement' opt (n120) at Art 10.
[328] UN General Assembly *Compilation on Rwanda* opt (n320) para 90.
[329] The Lancet, 'Offshoring the asylum process: a dangerous move for health' 399 *The Lancet (British Edition)* 1669 (2022), 1669.
[330] See above Chapter 3 3.1.1.

and the labour market.[331] Additionally, gender-based harassment and violence still pose a problem in Rwanda.[332] However, Rwanda made the promise of sexual and reproductive health care in the note verbale.[333]

All these circumstances raise the question of how Rwanda wants to adhere to its promises in the note verbale when it cannot even provide its citizens with such services. Even if one would like to argue that the money provided by the UK for each transferred asylum seeker will lead to different circumstances for those transferred individuals, the corruption and mismanagement of public funds in Rwanda does not justify this assumption.[334]

Specific hardships for asylum seekers and refugees

90 per cent of refugees in Rwanda live in camps run by UNHCR even though they are allowed to move and reside around the country freely.[335] This is because refugees can only benefit from the humanitarian support in the camps.[336]

Rwanda does not have the means to assist its current refugee population. Most of the refugees are not self-reliant but depend on humanitarian support for survival as they cannot exercise their right to work properly despite it being legally enshrined for refugees.[337] There are very limited opportunities in the labour market for refugees, with a general unemployment rate of 24.3 per cent in 2022 in Rwanda.[338] This is despite the UK and Rwanda being part of the Global Compact on Refugees, proclaiming the self-reliance of refugees as one of its main targets.[339]

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[331] Amnesty International *Amnesty International Report 2022/23* opt (n265) 313; UN General Assembly *Compilation on Rwanda* opt (n320) paras 64, 72, 78.
[332] UN General Assembly *Compilation on Rwanda* opt (n320) para 81; Amnesty International *Amnesty International Report 2022/23* opt (n265) 313.
[333] Home Office 'Note Verbale on assurances in paragraphs 8 and 10 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership arrangement' opt (n120) at Art 6, especially 6.2.7, 6.2.8.
[334] Transparency International, 'Rwanda' *Transparency*, available at: *https://www.transparency.org/en/countries/rwanda*, accessed 09 October 2023.
[335] UNHCR *Rwanda: UNHCR Submission for the Universal Periodic Review* opt (n265) 1; UNHCR, 'Annual Results Report 2022 Rwanda' *UNHCR*, 28 April 2023, available at: *https://reporting.unhcr.org/operational/operations/rwanda*, accessed 09 October 2023, 5; The Lancet opt (n329) 1669.
[336] UNHCR *Annual Results Report 2022 Rwanda* opt (n335) 5.
[337] UNHCR *Rwanda: UNHCR Submission for the Universal Periodic Review* opt (n265) 1, 6.
[338] UNHCR *Annual Results Report 2022 Rwanda* opt (n335) 8.
[339] UNHCR, *Global Compact on Refugees* opt (n23).

The refugee camps are also overcrowded, with limited space for expansion. Additionally, the existing infrastructure, e.g., sanitation and water facilities, is aging and needs extensive resources to maintain.[340]

Even though progress with the right to education can be seen,[341] this is by far not enough to keep up with the promises of the note verbale to give each transferred individual access to free quality secondary and tertiary education as well as vocational training that is at least of the same standard as accorded to Rwandan nationals and to provide them with all necessary scholastic material.[342] Especially in the camps, refugees cannot access appropriate education facilities such as classrooms and science laboratories.[343]

As described in the paragraph on constructive refoulement, the repression by the Rwandan regime on civil and political rights does not spare asylum seekers and refugees and has led to the killing of protesting asylum seekers in the past.[344]

In 2022, the UNHCR faced a lack of resources to take care of the refugees' health, protection, and energy needs in Rwanda's camps. Refugees were only able to access health care services in emergency cases.[345] However, asylum seekers often need complex health care because of post-traumatic stress disorder and depression, untreated diseases, and poorly controlled chronic conditions.[346]

The CEDAW committee also reports that the security specifically for girls and women is deficient in and around the camps and that some resort to so-called "survival sex" because of a lack of accessible shelter and food for them and their children.[347]

In this context, the interdependence and indivisibility of human rights comes into play. Access to adequate subsistence and healthcare, including psychiatric and

[340] UNHCR, *Annual Results Report 2022 Rwanda* opt (n335) 8.
[341] UNHCR *Rwanda: UNHCR Submission for the Universal Periodic Review* opt (n265).
[342] Home Office 'Note Verbale on assurances in paragraphs 8 and 10 of the MoU between the United Kingdom and Rwanda for the provision of an asylum partnership arrangement' opt (n120) at Art 10.1, 10.2.
[343] UNHCR *Annual Results Report 2022 Rwanda* opt (n335) 8.
[344] See above Chapter 3 3.3.
[345] UNHCR *Annual Results Report 2022 Rwanda* opt (n335) 8.
[346] The Lancet opt (n329) 1669.
[347] UN General Assembly *Compilation on Rwanda* opt (n320) para 137.

psychological assistance, can directly affect the fairness and effectiveness of the RSD.[348]

All these circumstances show that Rwanda is not prepared to take in more asylum seekers than it already has.

Because of these past events, a prognostic analysis must lead to the conclusion that Rwanda will not treat the asylum seekers relocated from the UK in accordance with human rights standards, especially since no notable change or reforms can be seen in Rwanda. Therefore, the question is if the UK is also responsible for these human rights violations by Rwanda post-transfer, as this thesis focuses on the human rights violations committed by the UK.

4.2.2 Continuum of Jurisdiction of the UK after Transfer of Asylum Seekers

The UNHCR, on the one hand, purports that the UK must guarantee that transferred asylum seekers are treated according to international refugee and human rights law in Rwanda.[349]

Cantor et al. point out that a continuum of jurisdiction of the UK over the transferees must be found for the UNHCR's point of view to be established.[350]

The UN Refugee Convention does not contain a jurisdiction clause. Therefore, states are bound by it extraterritorially.[351]

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[348] Foster *Responsibility Sharing or Shifting?* opt (n32) 69; UNHCR, 'UNHCR Position on the Return of Asylum-Seekers to Greece under the "Dublin Regulation"' *UNHCR* 15 April 2008, available at: *https://www.refworld.org/docid/4805bde42.html*, accessed 05 October 2023, para 18; European Council on Refugees and Exiles (ECRE), 'Sharing Responsibility for Refugee Protection on Europe: Dublin Reconsidered' *ECRE*, March 2008, available at: *https://ecre.org/wp-content/uploads/2016/07/ECRE-Sharing-Responsibility-for-Refugee-Protection-in-Europe-Dublin-Reconsidered_March-2008.pdf*, accessed 8 October 2023, 18.

[349] UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement* opt (n19) No 19; UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, opt (n19) No 3. vi).

[350] Cf Art 1 ECHR; *Sandu and Others v The Republic of Moldova and Russia* – Appl. No 21034/05, ECtHR, 17 July 2018, para 24; Art 2 (1) ICCPR; UN HRC *General comment No 31* opt (n149) para 10; UN Committee on Economic, Social and Cultural Rights (CESCR), *Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights*, 13 March 2017, E/C.12/2017/1, para 3; UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, 10 August 2017, E/C.12/GC/24, paras 26, 27; Cantor et al. opt (n66).

[351] Cantor et al. opt (n66) 124.

It has also been long established in human rights jurisprudence that human rights can be applicable extraterritorial. Human Rights bodies purport two strings of extraterritorial applicability.

The first one requires "effective control" over a territory or a person by a state.[352] Establishing effective control of the UK over transferred asylum seekers proves to be hard because of the responsibilities assumed by Rwanda post-transfer.[353]

Second, extraterritorial jurisdiction is also determined because of the "direct and foreseeable effects" of a state's action.[354] This approach does not rely on effective control of a state but rather on a state's knowledge or reasonably expected knowledge that its conduct will lead to an extraterritorial breach of protected human rights, thus rendering the breach 'foreseeable'.[355] The ECtHR also acknowledges this ground for extraterritorial application of human rights but demands a sufficiently close causal chain between a state's action and the violation of the respective human rights.[356]

The UK assessed the human rights situation in Rwanda after signing the asylum partnership and concluded that the human rights situation was adequate for asylum seekers to be transferred.[357] On the other hand, the UK warns its own citizens about low levels of health care services and safety as well as variable fire and construction safety, with incidents leading to the death of people and disruptions of water and electricity supplies in some regions of Rwanda.[358] The UK Government accepts guarantees in the note verbale and MoU from Rwanda for the improvement of conditions, about which it warns its own citizens until today, without any obvious efforts by Rwanda to change these conditions. In the words of Lord Justice Underhill of the British Court of Appeal: The British Government was "too ready to accept

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[352] UN HRC *General comment No 31* opt (n149) para 10.
[353] See above Chapter 2 2.1.5.
[354] UN Human Rights Committee (HRC), *General comment No 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, para 22; UN CESCR *General comment No 24* opt (n346) para 32; The ETO Consortium, 'Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social & Cultural Rights' *Fédération internationale pour les droits humains*, 2011, available at: *https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf*, accessed 09 October 2023, Principle 9b.
[355] Cantor et al. opt (n66) 127-128.
[356] *M.N. and others v. Belgium* supra (n182); *Abdul Wahab Khan v UK* – Appl. No 11987/11, ECtHR, 28 January 2014.
[357] Home Office 'Review of asylum processing – Rwanda: country information on general human rights' opt (n195); Home Office 'Country policy and information note: Rwanda, assessment' opt (n48).
[358] UK Government 'Foreign Travel Advice – Rwanda' supra (n198).

assurances which were unparticularised or unevidenced or the details of which were unexplored".[359] Furthermore, the information about the situation in Rwanda available for this thesis was also available to the British Government. Hence, it can reasonably be expected to know about these circumstances. Because of that, the human rights violations are a foreseeable and direct effect of the transfer of asylum seekers to Rwanda by the UK. There is also a close causal link between the transfer of asylum seekers and their human rights being violated in Rwanda as they would have never set foot and applied for asylum in Rwanda otherwise. Therefore, the UK still has jurisdiction of the transferred asylum seekers.

4.2.3 'Complicity Principle' in the sense of Art 16 ILC Draft Articles on State Responsibility

Legomsky postulates the complicity principle, which encapsulates the norm that a country may not knowingly transfer an asylum seeker to a country where they will be treated contrary to the obligations of the transferring state, meaning in a manner that would be prohibited for the transferring state.[360] Thus, the complicity principle is similar to the "direct and foreseeable effects"-test for extraterritorial jurisdiction.

He names the purpose of the UN Refugee Convention and Art 16 of the ILC Draft Articles on State Responsibility as the legal basis for this principle.[361]

Art 16 of the ILC Draft Articles on State Responsibility provides:

> *A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:*
>
> *(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and*
>
> *(b) The act would be internationally wrongful if committed by that State.*

The question arises as to what threshold the knowledge of a state in the sense of Art 16 ILC Draft Articles must meet. A state usually has no intention to meet this

[359] *R (AAA) v SSHD* supra (n14) at 268.
[360] Legomsky opt (n40) 619-620.
[361] Legomsky opt (n40) 620.

standard but is willing to relocate an asylum seeker to another state even though it knows of human rights violations in that state.[362] Legomsky suggests a sliding scale of knowledge based on the importance of a right and the gravity of the potential harm by a breach of this right.[363] Indeed, some authors purport that a lower benchmark for 'knowledge' should generally be applied on the part of the assisting state when human rights are at stake.[364]

Failla and Cantor et al. also support the responsibility of the transferring state for violations of the UN Refugee Convention by the receiving state according to Art 16 of the ILC Draft Articles on State Responsibility.[365] Akal also relies on the principle of Art 16 ILC Draft Articles on State Responsibility without mentioning it and contends that the knowledge of a state that its action will put a person in a situation where their rights are violated is sufficient for state responsibility.[366]

The same reasoning as for the continuous jurisdiction of the UK leads to a responsibility of the UK for human rights violations of the transferred asylum seekers in Rwanda under the complicity principle.

4.2.4 Michigan Guidelines

Foster and Gleeson support the rules of the Michigan Guidelines that the transferring state must carry out a good faith empirical assessment of whether refugees, according to Art 1 UN Refugee Convention, can exercise their rights laid down in Arts 2 – 34.[367] Assurances by the receiving state can be considered for this inquiry, but they do not suffice alone. The transferring state must consider all the available facts and decision relevant to answering this question.[368]

Whereas Legomsky postulates that the transferring state must only ensure that the receiving state respects the rights of the UN Refugee Convention owned at the time of transfer to the asylum seeker,[369] the Michigan Guidelines set out that the transferring state must also ensure that the transferred asylum seekers acquire such

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[362] Legomsky opt (n40) 621.
[363] Legomsky opt (n40) 623-624.
[364] Cf eg, James Hathaway and Thomas Gammeltoft-Hansen, 'Non-Refoulement in a World of Cooperative Deterrence' 53 *Columbia Journal of Transnational Law* 235 (2015), 258.
[365] Failla opt (n60) 659-660; Cantor et al. opt (n66) 131.
[366] Akal opt (n63) 238.
[367] Hathaway *The Michigan Guidelines* opt (n67) No 3; Foster *Protection Elsewhere* opt (n68) 274; Gleeson opt (n63) 462-463.
[368] *Ibid*.
[369] Legomsky opt (n40) 640 – 645.

additional rights as their level of attachment to the receiving state increases over time.[370] The approach by the Michigan Guidelines is more persuasive in this regard because the transferring state otherwise could avoid its obligations under the UN Refugee Convention by simply transferring asylum seekers to another state. Moreover, other human rights instruments, which the UK is bound by, grant most of the rights set out in the Refugee Convention immediately to asylum seekers meaning the differing approaches would have the same outcome when looking at other human rights instruments. Lastly, this thesis chooses a human rights approach for the already suffering asylum seekers and, thus, wants to give them the broadest possible human rights protection.

Therefore, if the UK has knowledge of violations of the Arts 1 – 34 UN Refugee Convention in Rwanda, the UK is disentitled from transferring any asylum seekers to Rwanda unless there is clear evidence that the violation has ceased.[371] The Michigan guidelines also point out that a state must respect its obligations under international human rights and humanitarian law.[372] Consequently, the approach proposed by the Michigan Guidelines is comparable to the jurisdictional one and complicity principle. Therefore, the Michigan Guideline also holds the UK responsible for the human rights violations in Rwanda, meaning that approaches by scholars all do.

4.2.5 Supported by State Practice?

The further question is if state practice is in line with this conclusion.

Binkovitz argues that state practice supports the view that the sending state must ensure that the receiving state complies with the UN Refugee Convention as well as international human rights instrument.[373]

The Lisbon Expert Roundtable and the UNHCR, in general, are of the view that compliance with the UN Refugee Convention and its rights granted to refugees is a critical factor in assessing the legality of a transfer agreement.[374]

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[370] Hathaway *The Michigan Guidelines* opt (n67) No 8-9.
[371] Hathaway *The Michigan Guidelines* opt (n67) No 15.
[372] Hathaway *The Michigan Guidelines* opt (n67) No 11.
[373] Binkovitz opt (n57).
[374] UNHCR *Summary Conclusions on the Concept of "Effective Protection"* opt (n297) para 15 (e); UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, opt (n19) No 3 iii).

The ECtHR has, until now, only focused on the receiving state being 'safe' with regard to Arts 2 and 3 ECHR.[375] However, the ECtHR acknowledged that a transferring state cannot circumvent its obligation under the ECHR or "contract out" of its legal obligations thereof by transferring a refugee/asylum seeker to another state.[376] This was underpinned by a resolution of the Parliamentary Assembly of the Council of Europe.[377]

Additionally, the ECtHR interprets degrading and inhumane treatment in the sense of Art 3 ECHR broader than non-refoulement. The ECtHR considers violations of Art 3 ECHR in situation of generalized violence.[378] The ECtHR also found a violation of Art 3 ECHR if the receiving state cannot cover the basic needs of the transferred asylum seeker, such as food, hygiene, and shelter, as well as to offer a prospect of improving living conditions within a reasonable timeframe.[379] In *M.S.S. v Belgium*, the ECtHR found Belgium in breach of Art 3 ECHR because Belgium had knowingly exposed asylum seekers to the dire living conditions in Greece.[380] The ECtHR also condemned a breach of Art 3 ECHR by the UK because of the transfer of an HIV-positive asylum seeker to Uganda because of the inferior health system in Uganda.[381]

The British House of Lords also accepted in *Limbuela* that Art 3 ECHR encompasses the realization of some socio-economic standards.[382]

The UK Supreme Court also assessed the living conditions of asylum seekers in Italy to determine if asylum seekers could legally be transferred to Italy.[383] A German administrative court rejected a transfer of asylum seekers to Greece because the conditions in the asylum seeker camps were not complying with human rights

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[375] ECtHR *Guide on the case law of the European Court of Human Rights – Immigration* opt (n147) pp 29 – 31.
[376] *T.I. v. The United Kingdom* - Appl. No 43844/98, ECtHR, 7 March 2000, p 15.
[377] Council of Europe: Parliamentary Assembly, *Resolution 1569 (2007) on Assessment of Transit and Processing Centres as a Response to Mixed Flows of Migrants and Asylum Seekers*, 1 October 2007, Res. 1569 (2007), para 13.6.
[378] *L.M. and Others v Russia* – Appls. Nos. 40081/14, 40088/14, and 40127/14, ECtHR, 15 October 2015, paras 119-120.
[379] *Sufi and Elmi v UK* – Appls. Nos. 8319/07 and 11449/07, ECtHR, 28 November 2011, para 283; *M.S.S. v Belgium and Greece* supra (n242) at 253-254.
[380] *M.S.S. v Belgium and Greece* supra (n242) at 367.
[381] *N. v UK* [GC] - Appl. No 26565/05, ECtHR, 27 May 2008.
[382] *R (Limbuela) v Secretary of State for the Home Department* [2006] 1 A.C. 396.
[383] *R v Secretary of State for the Home Department* [2014] UKSC 12, UK: Supreme Court, 18 June 2014, paras 1, 26.

standards.[384] The Swiss Tribunal considered Israel not to be a safe third country for an Eritrean asylum seeker because of the precarious situation regarding shelter and work, as well as the danger of being held in remote, open facility centres for unlimited time and the deficit of a temporary residence permit.[385]

Thus, there is agreement that an asylum seeker must have "access to means of subsistence sufficient to maintain an adequate standard of living" as well as to progressive achievement of self-reliance.[386]

As pointed out by Foster, there are court decisions implying that only Art 33 of the UN Refugee Convention applies to the relocation of asylum seekers.[387] Nevertheless, there are also court decisions explicitly saying the opposite.

The Australian High Court overthrew an "effective protection" doctrine as it only focused on Art 33 UN Refugee Convention. The court stressed that effective protection entails far more rights pursuant to the UN Refugee Convention.[388] In its decision concerning the "Malaysian solution", the Australian High Court reiterated that a receiving state must accord the transferred person the rights of the UN Refugee Convention for a transfer to be lawful.[389] These Australian court's decisions must be regarded as convincing because they concern this topic expressly.[390] Furthermore, the *raison d'être* of the UN Refugee Convention would be defeated, if states could absolve its responsibilities thereunder just by relocating asylum seekers.[391] On top of that, the Australian decision concerning the "Malaysian solution" is the most recent one found in this regard. The Australian court decisions are persuasive, especially with a view to the human rights perspective taken in this thesis.

Therefore, state practice supports the conclusion that the UK is responsible for human rights violations experienced by transferred asylum seekers in Rwanda.

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[384] Verwaltungsgericht Hamburg (German Administrative Court of Hamburg) - AE 368/08, 21 August 2008.
[385] Bundesverwaltungsgericht (Federal Administrative Court of Switzerland), D-1938/2014, 6 June 2014.
[386] UNHCR *Summary Conclusions on the Concept of "Effective Protection"* opt (n297) para 15 (g).
[387] Foster *Responsibility Sharing or Shifting?* opt (n32) 66-67.
[388] *NAGV and NAGW of 2002 v. Minister for Immigration and Multicultural and Indigenous Affairs*, [2005] HCA 6, Australia: High Court, 2 March 2005, para 31.
[389] *Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2011] HCA 32, Australia: High Court, 31 August 2011, para 119; Lowes opt (n62) 179.
[390] Foster *Responsibility Sharing or Shifting?* opt (n32) 67.
[391] *Ibid*.

The UK breaches its human rights obligations by relocating asylum seekers to Rwanda and is, thereby, acting illegally.

CHAPTER FIVE

5. Conclusion and Outlook

This research set out to analyse the compatibility of the asylum partnership between the UK and Rwanda with international human rights and refugee law, specifically with the principle of non-refoulement, the non-penalization of irregular entry by refugees, and other human rights owned to asylum seekers by the UK. As the chapters of this thesis show, the MoU is inconsistent with each of these obligations of international human rights and refugee law.

The asylum partnership violates the principle of non-refoulement in all its forms.

The forcible transfer of asylum seekers, who are members of the LGBTQI+ community, poses a breach of direct refoulement because Rwanda cannot be considered safe for them.

Due to the systematic deficits in the Rwandan asylum system, as well as the insufficient initial screening of asylum seekers in the UK pre-transfer and inadequate monitoring of the implementation of the MoU in Rwanda by the UK, the MoU is also not in line with the prohibition of indirect refoulement.

Lastly, the forcible removal of asylum seekers to Rwanda must even be considered constructive refoulement because of the appalling oppression of criticism voiced by refugees in Rwanda.

Concerning the non-penalization of irregular entry by asylum seekers, this research shows that the forcible removal of asylum seekers to a country violating the principle of non-refoulement must be regarded as a penalty in the sense of Art 31 (1) UN Refugee Convention. Furthermore, the UK cannot justify this penalty on the ground that asylum seekers do not come directly from a country where their life or freedom is threatened, as the House of Lords construed this requirement widely in the *Ex parte Adimi* case. Therefore, asylum seekers are protected by Art 31 (1) of the UN Refugee Convention even when they transit through safe third countries before reaching the UK.

Finally, the UK cannot discharge its human rights obligations towards asylum seekers by simply relocating them to Rwanda. The UK continues to have jurisdiction

over relocated asylum seekers as their experiences of human rights violations are direct and foreseeable effects of the relocation due to the dire human rights situation in Rwanda in general and the specific hardships endured by asylum seekers. Moreover, the Michigan Guidelines and the 'Complicity Principle', developed by scholars specializing in international refugee law, as well as state practice support the responsibility of the UK to ensure the treatment of transferred asylum seekers in line with its human rights and refugee law obligations.

Thus, the MoU is yet another dangerous precedence for further externalization schemes by countries in the Global North to the Global South in exchange for some kind of payment, which can be described as 21st Century Imperialism.[392] Hence, it must be strongly condemned.

The importance of pointing out the illegality of the MoU cannot be stressed enough as the Government of the UK strives to strike a new, slightly modified deal with Rwanda by passing the Safety of Rwanda Bill in Parliament. However, such a domestic law "cannot legislate away U.K. obligations under international law".[393] Furthermore, other European countries, such as Germany and Denmark, consider striking comparable deals, specifically with Rwanda, in the near future as well.[394] When implemented in compliance with international law, such deals produce only extra work for the transferring country as states practically have to conduct a form of refugee status determination prior to the transfer without having the pursued deterrence effect. Countries in the Global Norther should instead devote their huge resources to finding solutions that actually protect asylum seekers rather than develop externalization policies devouring these valuable resources.[395]

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[392] Parvati Nair 'How the UK's plan to send asylum seekers to Rwanda is 21st-century imperialism writ large', 22 April 2022, available at: *https://theconversation.com/how-the-uks-plan-to-send-asylum-seekers-to-rwanda-is-21st-century-imperialism-writ-large-181501*, accessed 13 November 2022].

[393] Megan Specia, 'Three Myths Around the U.K.'s Rwanda Push for Asylum Seekers' *New York* Times, 16 January 2024, available at: *https://www.nytimes.com/2024/01/16/world/europe/uk-rwanda-asylum.html*, accessed 19 January 2024; UNHCR *Analysis of the Legality and Appropriateness of the UK-Rwanda Arrangement – an update* opt (n55).

[394] See eg, BBC 'Denmark asylum: Law passed to allow offshore asylum centres', *BBC*, 3 June 2021, available at: *https://www.bbc.com/news/world-europe-57343572*, accessed 29 May 2023; Jessica Parker 'Germany agrees to consider UK-style plan on processing asylum abroad' *BBC*, 8 November 2023, available at: *https://www.bbc.com/news/world-europe-67343002*, accessed 13 November 2023; Rob Picheta, 'UK plan to send asylum-seekers to Rwanda blocked by Supreme Court' *CNN*, 15 November 2023, available at: *https://edition.cnn.com/2023/11/15/uk/uk-supreme-court-rwanda-ruling-gbr-intl/index.html*, accessed 15 November 2023.

[395] Foster *Responsibility Sharing or Shifting?* opt (n32) 73.

Besides, the asylum partnership further legitimizes a repressive, authoritarian regime that politicizes refugees' rights and does not ensure accountability for human rights abuses by Rwanda's official bodies, including against refugees.[396]

Ultimately, the MoU is part of the horrifying trend in the UK to surpass other countries in the Global North in their inhumane treatment of asylum seekers in order to deter them from coming in the first place, which includes *inter alia* accommodating asylum seekers on an austere barge anchored off the British coast found to be an immense health risk and evacuated just days after being put into use,[397] the announcement of the British Home Secretary to not grant refugee protection anymore based on persecution because of one's gender or sexual identity,[398] as well as the prospective leaving of the ECtHR because of its strong stance on the protection of human rights of asylum seekers.[399]

One can only hope that the UK will abide by its obligations in international human rights and refugee law and withdraw from any asylum partnership with Rwanda to set an example for other countries in the Global North and, generally, come to its sense that asylum seekers deserve to be treated humanely and that they are rather a chance than a burden for a country.

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[396] Evan Easton-Calabria, 'The UK's plans to send asylum seekers to Rwanda raise four red flags' *The Conversation*, 13 May 2022, available at: *https://theconversation.com/the-uks-plans-to-send-asylum-seekers-to-rwanda-raise-four-red-flags-182709*, accessed 13 November 2023; Lewis Mudge, 'Rwanda's President Politicizes Refugee Rights' *Human Rights Watch*, 11 January 2023, available at: *https://www.hrw.org/news/2023/01/11/rwandas-president-politicizes-refugee-rights*, accessed 13 November].

[397] Stephen Castle, 'UK Evacuates Asylum Seekers From Barge Over Bacteria in Water' *NY Times*, 11 August 2023, available at: *https://www.nytimes.com/2023/08/11/world/europe/uk-migrants-bibby-stockholm-bacteria.html*, accessed 13 November 2023.

[398] Jill Lawless, 'The UK's hardline immigration chief says international rules make it too easy to seek asylum' *AP News*, 26 September 2023, available at: *https://apnews.com/article/uk-gay-refugees-suella-braverman-migration-asylum-b8bd501707a81732e067b742e20052f1*, accessed 13 November 2023.

[399] Peter Walker, Matthew Weaver, and Diane Taylor, 'Suella Braverman restates wish for UK to leave European court of human rights' *The Guardian*, 28 August 2023, available at: *https://www.theguardian.com/politics/2023/aug/28/suella-braverman-restates-wish-for-uk-to-leave-european-court-of-human-rights*, accessed 13 November 2023.

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