

## **REDRESS – WRITTEN EVIDENCE (URA0008)**

### **EVIDENCE SUBMITTED BY REDRESS TO THE INTERNATIONAL AGREEMENTS LORDS SELECT COMMITTEE INQUIRY INTO THE UK-RWANDA ASYLUM AGREEMENT**

#### **About Redress**

1. REDRESS is an NGO that pursues legal claims on behalf of survivors of torture in the UK and around the world to obtain justice and reparation for the violation of their human rights. REDRESS has been working in Sub-Saharan Africa for decades, and frequently supports asylum seekers from Sub-Saharan Africa in the UK.
2. REDRESS has been closely tracking the UK government's plans to commence "off-shore" processing of asylum seekers in Rwanda, and is deeply concerned that the UK has not adequately considered the risk of torture. REDRESS first raised this concern in evidence submitted to the UK Parliament in April 2023.<sup>1</sup> In December 2023, REDRESS published an additional briefing highlighting the risk of torture despite the proposed changes in the new Agreement.<sup>2</sup>

#### **Summary and Recommendations**

3. This submission offers evidence in response to the first question of the International Agreement Committee's call for evidence in relation to their inquiry into the Government's Agreement with Rwanda on the provision of an asylum partnership: **What is your overall assessment of whether the changes to the asylum partnership arrangements made by the new Agreement, including its legal form, are likely to meet the concerns raised by the Supreme Court?**
4. REDRESS is concerned as to the impact of the new package of measures, primarily relating to (a) appropriate respect in UK law for the absolute prohibition of torture, and (b) the risk of torture in Rwanda. We remain unconvinced that the changes to

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<sup>1</sup> Written Evidence by REDRESS, [Legislative Scrutiny: Illegal Migration Bill- Response to Questions 16, 17, and 19](#), 06 April 2023.

<sup>2</sup> REDRESS, [Torture in Rwanda](#), December 2023.

the asylum partnership agreement adequately meet the Supreme Court's concern that Rwanda is an unsafe country.

- a) A. The UK Government must adhere to its international legal obligations including the absolute prohibition on torture; the Bill, if enacted, will cause these obligations to be breached.
  - b) B. The Bill seeks to assert that Rwanda is free of torture and ill-treatment when the evidence does not support this. There have been consistent reports of torture being used in Rwanda by both the military and the police. The United Nations has concluded that Rwanda does not have the necessary safeguards against torture in place or the structures to respond to it.
5. More broadly, the Bill threatens the UK's role as a global leader in championing the rule of law, democracy and human rights. It sends out a dangerous signal that the UK is willing to circumvent the rule of law, and so undermines the international rules-based order. The UK has historically led the way in establishing the rule of law, and should not now threaten it.

### **The Proposed Bill**

6. The Bill relies on an assertion that international law (including the prohibition on torture) is irrelevant to decisions on these issues, by stating "**...the validity of an Act is unaffected by international law**".<sup>3</sup>
7. The bill also asserts that torture and ill-treatment does not exist in Rwanda, despite the existence of evidence to the contrary (see below), when it states "**...every decision-maker must conclusively treat the Republic of Rwanda as a safe country**".<sup>4</sup>
8. The Bill and accompanying Policy Paper do propose a number of oversight measures to ensure that asylum seekers will receive due process and will not be removed to a third country.<sup>5</sup> However, they fail to introduce safeguards to prevent against human rights abuses, including torture, and also fail to address evidence of torture in the country. Instead, as evidence that Rwanda is safe, the Policy Paper simply notes that Rwanda has ratified a number of human rights conventions and treaties, as if all countries who ratify human rights treaties adhere to them.<sup>6</sup>

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<sup>3</sup> [Safety of Rwanda \(Asylum and Immigration\) Bill](#), clause 1(4)(b).

<sup>4</sup> [Safety of Rwanda \(Asylum and Immigration\) Bill](#), clause 2(1).

<sup>5</sup> For example, clause 3(a)-(f) list a number of obligations Rwanda has agreed to uphold, but does not elaborate on how the UK plans to ensure that Rwanda does so. [Safety of Rwanda \(Asylum and Immigration\) Bill](#), clause 3(a)-(f).

<sup>6</sup> [Safety of Rwanda \(Asylum and Immigration\) Bill](#), Policy Statement, paras. 33-

## **The Absolute Prohibition on Torture**

9. The prohibition of torture and ill-treatment is guaranteed by the United Kingdom by virtue of customary international law and the ratification of various international and regional human rights instruments, including the Refugee Convention, the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).
10. The prohibition is absolute and non-derogable, meaning that it cannot be suspended or restricted under any circumstances. The absolute prohibition is a rare *jus cogens* norm of international law, accepted by all nations. These obligations apply at all stages of the asylum-seeking process regardless of a person's citizenship status.<sup>7</sup>
11. Put simply, Clause 1(4)(b) seeks to disapply the absolute prohibition of torture. It essentially states that the validity of an act is unaffected by the absolute prohibition of torture protected in customary international law.
12. The prohibition incorporates a ban on sending someone to a country where he or she is at risk of torture (*refoulement*), or where there is a possibility that they will be sent on to another third country where such a risk may exist.<sup>8</sup> The absolute prohibition of refoulement to torture is even stronger in UNCAT than in the Refugee Convention, as it means that individuals cannot be returned or expelled to the risk of torture even when they might not otherwise qualify for refugee status under the Refugee Convention.<sup>9</sup>

## **Torture in Rwanda**

13. Consistent reports for at least the last six years confirm that torture persists in Rwanda, along with continued risks of refoulement to third countries.<sup>10</sup> It is clear that Rwanda does

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<sup>7</sup> International Law Commission, "[Draft Articles on Prevention and Punishment of Crimes Against Humanity, with Commentaries](#)", Yearbook of the International Law Commission 2019, Vol. II, Part Two, p. 30. Also see Yudan Tan, "[Crimes against Humanity](#)", in "The Rome Statute as Evidence of Customary International Law" (Brill, 2021), Chapter 4.

<sup>8</sup> United Nations, Office of the High Commissioner for Human Rights, [The principle of non-refoulement under international human rights law](#).

<sup>9</sup> See Committee against Torture, [General Comment No. 1 \(2017\) on the implementation of article 3 of the Convention in the context of article 22, part III](#), 2 February 2017.

<sup>10</sup> Although the proposed Bill does suggest Rwanda has agreed not to engage in refoulement to third countries, the Bill does not explain how the UK will ensure this promise is upheld.

not have in place safeguards against torture, or an effective process for responding to allegations of torture. The following *non-exhaustive* list illustrates the ongoing use of torture by Rwandan authorities.

- a) In November 2023, the Supreme Court pointed out that
  - i) evidence of human rights violations “raises serious questions as to its compliance with [Rwanda’s] international obligations”, since this has occurred despite the country having ratified many international human rights conventions;<sup>11</sup>
  - ii) Rwanda’s previous transfer scheme with Israel in 2015/16 showed clear risks of refoulement<sup>12</sup> and that there was evidence of “past and continuing practice of refoulement”<sup>13</sup> requiring changes of approach and attitudes in asylum procedures.<sup>14</sup>
- b) Human Rights Watch reports on Rwanda (part of their World Reports series) published in 2023, 2022 and 2021 all include examples of torture.<sup>15</sup>
- c) The United States Department of State’s *Country Report on Human Rights Practice* includes reports of torture or cruel, inhuman, or degrading treatment or punishment by government officials.<sup>16</sup>
- d) The United States Department of State’s *2022 Trafficking in Persons Report* includes concerns that Rwanda continued

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<sup>11</sup> *R (AAA & others) v Secretary of State for the Home Department* [2023] UKSC 42, para 76.

<sup>12</sup> *R (AAA & others) v Secretary of State for the Home Department* [2023] UKSC 42, para. 96, see also: Haaretz, [Asylum seekers Deported From Israel to Rwanda Warn Those Remaining: ‘Don’t Come Here’](#), 2 February 2018.

<sup>13</sup> *R (AAA & others) v Secretary of State for the Home Department* [2023] UKSC 42, para. 102.

<sup>14</sup> *R (AAA & others) v Secretary of State for the Home Department* [2023] UKSC 42, para. 102.

<sup>15</sup> Human Rights Watch, Rwanda, [Events of 2022](#), states: “The ruling Rwandan Patriotic Front (RPF) party continued to wage a [campaign](#) against real and perceived opponents of the government. Critics, including internet bloggers and journalists, were [arrested, threatened](#), and put on trial. Some said they [were tortured](#) in detention. The authorities rarely investigated enforced disappearances or suspicious deaths. Arbitrary detention and ill-treatment in unofficial detention facilities were common, especially around high-profile visits or large international events such as the June [Commonwealth Heads of Government Meeting](#) held in Kigali.” See also, Human Rights Watch, [Rwanda, Events of 2021](#); Human Rights Watch, [Rwanda, Events of 2020](#).

<sup>16</sup> United States Department of State, [2022 Country Reports on Human Rights Practices: Rwanda](#).

operating transit centres detaining vulnerable persons and potential trafficking victims.<sup>17</sup>

- e) Human Rights Watch's 2022 report, *Rwanda, Jailed Critic Denounces Torture in Prison*, documents the allegations of a prominent commentator that prison authorities tortured him and other jailed critics.<sup>18</sup>
- f) The UNHCR's, *Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement*, Outlines shortcomings in the Rwandan asylum system, running the risk of refoulement.<sup>19</sup>
- g) The Home Office's own *Equality Impact Assessment on the Migration and Economic Development Partnership with Rwanda* states that homosexuality was only decriminalized in 2010, and that there is evidence of ongoing "victimisation" and "ill-treatment" of LGBTIQ+ people<sup>20</sup> and those who have undergone gender reassignment (p7).<sup>21</sup>
- h) At the UN Human Rights Council's Universal Periodic Review of Rwanda in January 2021, the United Kingdom government criticised Rwanda for "extrajudicial killings, deaths in custody, enforced disappearances and torture".<sup>22</sup>
- i) Human Rights Watch's, *Rwanda, A Year On, No Justice for Refugee Killings*, reports on the Rwandan military shooting dead at least 12 refugees as they protested in front of a UNHCR Office in February 2018.<sup>23</sup> In its Policy Statement, the UK dismisses this tragedy as an "isolated case," and does not address the failure of the Rwandan government to uphold its legal obligations to investigate and prosecute the perpetrators of the 2018 shooting.<sup>24</sup>

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<sup>17</sup> United States Department of State, [2022 Trafficking in Persons Report](#).

<sup>18</sup> Human Rights Watch, [Rwanda, Jailed Critic Denounces Torture in Prison](#), 13 June 2022.

<sup>19</sup> UNHCR, [Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement](#), 8 June 2022.

<sup>20</sup> Home, Office, [Equality Impact Assessment on the Migration and Economic Development Partnership with Rwanda](#), p. 10.

<sup>21</sup> Home, Office, [Equality Impact Assessment on the Migration and Economic Development Partnership with Rwanda](#), p. 7. In its Policy Statement that accompanies the new bill, the UK government dismisses concerns regarding safety for LGBTIQ people, by noting that Rwandan treatment of LGBTIQ individuals is better than that of neighboring states. [Safety of Rwanda \(Asylum and Immigration\) Bill](#), Policy Statement, para. 43(c).

<sup>22</sup> UN Human Rights Council, [Universal Periodic Review – Rwanda, Third Cycle](#), 25 January 2021, para. 135.33.

<sup>23</sup> Human Rights Watch, [Rwanda: A Year On, No Justice for Refugee Killings](#), 23 February 2019.

<sup>24</sup> [Safety of Rwanda \(Asylum and Immigration\) Bill](#), Policy Statement, para.

- j) The UN Committee against Torture, in its *Concluding Observations on the Second Periodic Report of Rwanda* concludes that Rwanda does not have in place an adequate framework against torture. Their concerns focus on (a) the inadequacy of the criminal definition of torture in Rwanda; (b) the continued use of unofficial detention; (c) the continued failure to investigate cases of torture in military camps between 2010-2016; (d) the very limited number of convictions in relation to torture (only six in the period 2012-2017); (e) the delegation's approach which was that the onus to prove torture should be on the victim (rather than on the State to investigate and prosecute). They also cite reports of forcible expulsion of asylum seekers.<sup>25</sup>
- k) In an unprecedented decision, in 2017, the UN Subcommittee for the Prevention of Torture chose to terminate their visit to Rwanda due to a series of obstructions imposed by authorities, such as accessing some places of detention, confidentiality of certain interviews, and over concerns that some interviewees could face reprisals.<sup>26</sup>
- l) Human Rights Watch's 2017 report, *We Will Force You to Confess*, concludes that Rwanda's military has routinely tortured detainees, and that torture by the military is widespread and systematic.<sup>27</sup>

### **The Implications of the Bill for Refoulement**

- 14. Non-refoulement requires a proper assessment of someone's individual circumstances and the situation in their destination country. The combination of the impact of this Bill alongside the Illegal Immigration Act will mean that:
  - a) The UK is unlikely to be able to assess the risks of transferring someone to Rwanda, running the risk of refoulement on the part of the UK government. The new UK-Rwanda Treaty does not require the UK to undertake such a comprehensive assessment before relocation to Rwanda. The Illegal Migration Act detains asylum-seekers, and requires them to challenge removal decisions within eight days, during which time the vast majority will be unable to access a lawyer or obtain evidence about their own

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43(b).

<sup>25</sup> UN Committee Against Torture (CAT), [Concluding observations on the second periodic report of Rwanda](#), 4 December 2017.

<sup>26</sup> United Nations OHCHR, Prevention of Torture, [UN human rights body suspends Rwanda visit citing obstructions](#), 20 October 2017.

<sup>27</sup> Human Rights Watch, [We Will Force You to Confess](#), 10 October 2017.

vulnerabilities or the likely impact on them of transfer to Rwanda; and

- b) refoulement from Rwanda to a third country is very likely if Rwanda's asylum system is not working properly, since the system is unlikely to be able to undertake the required assessment or respect its outcome.
15. The recently signed bi-lateral treaty between the UK and Rwanda expresses Rwanda's intention to comply with international obligations, but effectively admits that there is no adequate system at present. For example:
- a) Rwanda commits to future cooperation with the UK "to agree an effective system" to avoid refoulement (Article 10(3))<sup>28</sup>;
  - b) Rwanda commits to establishing an Appeal Body for rejected cases (Annex B, 4.2).<sup>29</sup>
16. In the absence of an *existing* system in Rwanda to avoid refoulement, there is no basis upon which the Government can have confidence that the Treaty will adhere to international legal obligations, including the absolute prohibition of torture.

### **Conclusion**

17. Recent examples of torture and ill-treatment in Rwanda cannot be overcome by a simple assertion that the country is safe. Neither can the deficiencies in the present Rwandan asylum system immediately be overcome by the bi-lateral treaty, which effectively acknowledges that the present system is inadequate.

22 December 2023

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<sup>28</sup> [Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership to Strengthen Shared International Commitments on the Protection of Refugees](#), Article 10(3).

<sup>29</sup> [Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership to Strengthen Shared International Commitments on the Protection of Refugees](#), Annex B, 4.2.