



Written Evidence to the Public Accounts Committee: Asylum Accommodation and UK-Rwanda Partnership

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Executive Summary

1. It is difficult to accurately forecast the costs of offshore processing. The Committee should be mindful of the real possibility that the actual costs of the UK-Rwanda Partnership will be much higher than currently predicted.
2. The UK is legally responsible for protecting asylum seekers from ill-treatment and preventing their *refoulement*. Because of this responsibility, the UK may incur a range of unexpected costs under the Partnership.
3. There are a number of areas where there is potential for future costs to arise. It is not clear whether the Home Office has considered these potential future costs.
4. Even if these potential future costs do not eventuate, the Partnership is not good value for money. It is our expert opinion that the Partnership is likely to have limited, if any, deterrent effect.

About the Authors

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The Difficulties in Accurately Forecasting Offshore Processing Costs

7. The National Audit Office has recently released its report, *Investigation into the costs of the UK-Rwanda Partnership*.¹ While this report no doubt contains the current best

¹ National Audit Office, *Investigation into the costs of the UK-Rwanda Partnership* (1 March 2024) <<https://www.nao.org.uk/wp-content/uploads/2024/02/investigation-costs-ukrwnda-partnership.pdf>>.

estimates of the cost of the UK-Rwanda Partnership, under Australia’s offshore processing policy, forecasted costs consistently exceeded expectations. The Australian experience suggests that it is extremely difficult to precisely forecast offshore processing costs. As such, the true costs of the Partnership may be significantly higher than what is currently estimated.

8. The Kaldor Centre for International Refugee Law is one of the world’s leading refugee law centres, hosted at the University of New South Wales, Australia.² In their report, *Cruel, Costly and Ineffective: The Failure of Offshore Processing*, the Kaldor Centre argued that there is ‘difficulty in accurately forecasting the cost of offshore processing.’³ In particular, the Kaldor Centre noted that the cost of Australia’s offshore processing policy ‘consistently exceeded government projections, reflecting ongoing challenges in budgeting for such a policy.’⁴
9. Using data provided by the Department of Home Affairs to Parliamentary estimates hearings, the Kaldor Centre compiled the following table showing the estimated and actual costs for six years of Australia’s offshore processing policy:⁵

Financial year	Forward estimate cost (\$AUD)				Actual cost (\$AUD)
	4 years prior	3 years prior	2 years prior	1 year prior	
2015-16				810,786,000	1,128,573,000
2016-17				880,509,000	1,083,957,000
2017-18			357,044,000	713,641,000	1,492,174,000
2018-19		380,573,000	438,755,000	759,853,000	1,061,290,000
2019-20	370,352,000	426,799,000	378,359,000	525,646,000	961,680,000
2020-21	435,321,000	386,174,000	404,975,000	1,186,445,000	818,779,000

10. In five out of six years, the actual cost of Australia’s offshore processing policy exceeded its estimated cost. In some years, the difference between estimated and actual costs were significant. For example, in 2017–18, Australia’s offshore processing policy cost more than double the previous year’s estimate; what was estimated to cost \$713 million actually cost more than \$1.492 billion.
11. The inaccuracies of Australia’s initial forecasts are likely due, at least in part, to unexpected costs that arose throughout the duration of the policy. The Kaldor Centre suggest that such expenses included ‘the escalating costs of healthcare... and of defending and settling legal challenges to the policy.’⁶

² See *Kaldor Centre for International Refugee Law* (webpage) <<https://www.unsw.edu.au/kaldor-centre>>.

³ Madeline Gleeson and Natasha Yacoub, *Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia* (August 2021) 10 <https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_11_Offshore_Processing.pdf>.

⁴ Ibid.

⁵ Ibid 11.

⁶ Ibid.

12. Australia's experience should serve as a cautionary tale for the UK. Offshore processing is a financially risky policy. It is difficult to accurately predict the potential costs of offshore processing. A range of unexpected costs may arise throughout the policy's operation. The UK may need to meet these costs for the policy to remain lawful. As such, the true costs of the UK-Rwanda Partnership may end up being significantly higher than what is currently predicted.

The UK's Legal and Financial Responsibility under the Partnership

13. In order to understand the scope of the UK's financial liability under the Partnership, it is necessary to consider the extent of the UK's legal responsibility.
14. In December 2023, the UK signed the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants (the UK-Rwanda treaty). The treaty makes the UK responsible for the initial screening of individuals and the safe transfer of individuals to Rwanda.⁷ Once a person arrives in Rwanda, Rwanda is responsible for ensuring that a person's claim for protection is processed and provide support and accommodation on arrival and post-decision.⁸
15. At first glance, the UK-Rwanda treaty might appear to limit the scope of the UK's legal and financial responsibility to ensuring the safe transfer of people to Rwanda. However, the Office of the United Nations High Commissioner for Refugees (UNHCR) has consistently maintained that a transferring state retains some responsibility for asylum seekers post-transfer.⁹ At a minimum, the transferring state remains responsible for protecting asylum seekers from *refoulement*.¹⁰ The transferring state may also retain responsibility for other obligations arising under international refugee law or human rights law.¹¹ UNHCR has clearly stated,

States cannot avoid their obligations under international refugee and human rights law by employing transfer or extraterritorial processing modalities. Both the State to which an asylum claim has been, or is intended to be, made and the State on whose territory the

⁷ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, signed 5 December 2023, Art 5 <<https://www.gov.uk/government/publications/uk-rwanda-treaty-provision-of-an-asylum-partnership/uk-rwanda-treaty-provision-of-an-asylum-partnership-accessible>> (UK-Rwanda Treaty).

⁸ Ibid Arts 8(1), 10(1).

⁹ UNHCR, 'Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers' (May 2013) para 4 <<https://www.refworld.org/policy/legalguidance/unhcr/2013/en/16943>>.

¹⁰ Ibid; UNHCR, 'Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda Arrangement: An Update' (15 January 2024) para 5 <<https://www.refworld.org/legal/natlegcomments/unhcr/2024/en/147086>>.

¹¹ UNHCR (n 10) para 5; UNHCR, 'UNHCR Note on the "Externalisation" of International Protection' (28 May 2021) para 9(c) <<https://www.refworld.org/policy/legalguidance/unhcr/2021/en/121534>>.

determination takes place *retain joint responsibility* for processing and reception, and speedy and appropriate outcomes, consistently with their international obligations.¹²

16. In the *Hirsi Jamaa and Others* case, the European Court of Human Rights (ECtHR) ruled that a state

cannot evade its own responsibility by relying on its obligations arising out of bilateral agreements with [a third country]. ... the Contracting States' responsibility continues even after their having entered into treaty commitments subsequent to the entry into force of the Convention or its Protocols in respect of these States.¹³

17. According to the ECtHR, asylum seekers can only be removed to a third country when no 'substantial grounds have been shown for believing that such action would expose them, directly (i.e., in that third country) or indirectly (for example, in the country of origin or another country), to treatment contrary to, in particular, Article 3' of the European Convention of Human Rights.¹⁴ The 'safety' of a third country must be established on two levels: first, the individual cannot be at risk of being subjected to ill-treatment in that country, and, secondly, he or she cannot be at risk of being *refouled* from the third country to his or her country of origin or another country.

18. As such, the UK's legal responsibility extends beyond ensuring the safe transfer of people to Rwanda. In particular, the UK is likely to bear some legal responsibility for ensuring the adequacy of the Rwandan legal system, the appropriateness and safety of the conditions in which asylum seekers are accommodated in Rwanda, and the availability of necessary facilities and support for asylum seekers.

19. The ECtHR has held that 'the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment'.¹⁵ A transferring state 'cannot merely assume that the asylum seeker will be treated in the receiving third country in conformity with the Convention standards, but, on the contrary, must first verify how the authorities of that country apply their legislation on asylum in practice'.¹⁶ As such, the UK will not be able to depend on the existence of its treaty with Rwanda to avoid legal liability for substandard conditions that arise in Rwanda.

20. If conditions in Rwanda fall below minimum standards and Rwanda does not address the situation, the UK may need to consider making unanticipated, additional payments to remedy the conditions. These payments will be necessary to maintain

¹² UNHCR (n 11) para 9(c).

¹³ ECtHR (GC), *Hirsi Jamaa and Others v. Italy*, no. 27765/09 (2012), para 129. See also ECtHR, *Abdulkhakov v. Russia*, no. 14743/11 (2012), paras 152–157.

¹⁴ ECtHR (GC), *Ilias and Ahmed v. Hungary*, no. 47287/15 (2019), para 129.

¹⁵ ECtHR (GC), *M.S.S. v. Belgium and Greece*, no. 30696/09 (2011), para 353; ECtHR, *T.I. v. the United Kingdom*, no. 43844/98, dec. (2000), para 1.

¹⁶ ECtHR (GC), *Ilias and Ahmed v. Hungary*, no. 47287/15 (2019), para 141. See also ECtHR, *W.A. and Others v. Hungary*, no. 64050/16, 64558/16 and 66064/16 (2022), generally; ECtHR (GC), *Tarakhel v. Switzerland*, no. 29217/12 (2014), paras 120, 122, on the need for individual assurances.

the legality of the policy and avoid any potential legal liability arising from the substandard conditions. As such, there is a risk that the UK might be legally and financially responsible for remedying issues that arise with the policy once it is implemented.

Potential Future Costs

21. There are a number of areas under the Partnership where probable or possible future costs may arise. It is unclear whether these are fully appreciated by the Home Office.

Probable Further Cost – Training Rwandan Officials

22. The legality of the Partnership depends on asylum seekers being protected from *refoulement*.¹⁷ This is both an initial and a continuing consideration; Rwanda's refugee status determination system needs to remain adequate to protect people from *refoulement* for the duration of the Partnership. It is unclear whether the Home Office has budgeted sufficiently for these initial and continuing expenses.
23. A core reason why the Supreme Court ruled that it was not safe to send people to Rwanda involved deficiencies in Rwanda's domestic refugee status determination process. In particular, the Supreme Court identified the 'apparent inadequacy of the Rwandan government's understanding of the requirements of refugee law.'¹⁸ It appears that the UK has been seeking to address this issue by providing training to relevant people in Rwanda.¹⁹ The Home Office indicates that training has been given on international and regional mechanisms for protection, Rwandan refugee status determination processes, applying refugee law in asylum interviews and decision-making, and best practice in assessing credibility and utilising country of origin information.²⁰
24. However, as acknowledged in the Supreme Court's judgment:

The matters which we have discussed are evidence of a culture within Rwanda of, at best, inadequate understanding of Rwanda's obligations under the Refugee Convention... The necessary changes may not be straightforward, as they require an appreciation that the current approach is inadequate, a change of attitudes, and effective training and monitoring.²¹

¹⁷ See *R (on the Application of AAA and others) v Secretary of State for the Home Department* [2023] UKSC 42.

¹⁸ *Ibid* para 91.

¹⁹ Home Office, *Safety of Rwanda (Asylum and Immigration) Bill Policy Statement* (12 December 2023) paras 117–120 <https://assets.publishing.service.gov.uk/media/65a16e2b7eb42e000dceb78a/Safety_of_Rwanda__Asylum_and_Immigration__Bill_-_Policy_Statement-main.pdf>.

²⁰ *Ibid* para 118.

²¹ *R (on the Application of AAA and others) v Secretary of State for the Home Department* [2023] UKSC 42, para 104.

25. It is not clear whether the training that has been provided to date and is planned for the future is sufficient to override the systemic attitudes that permeate the Rwandan legal system. As noted by the House of Lords International Agreements Committee, training ‘may well improve the capacity of Rwanda to comply with its obligations under the Refugee Convention but will take time.’²² Multiple rounds of further training may be necessary before Rwanda is considered to be a safe country. It is unclear how much further initial training is included in the Home Office’s cost projections.
26. Beyond the initial training needed to remedy issues with Rwanda’s domestic system, it would be sensible for the Home Office to develop a suite of continuing professional development training for Rwandan decision-makers, to ensure that the Rwandan legal system remains adequate and ‘safe’ throughout the duration of the Partnership. It is unclear whether this has been factored into the Home Office’s cost projections.
27. Further, as the demographic characteristics of people seeking asylum in the UK change, it may be necessary to offer *ad hoc* training sessions. These sessions may address, for example, the issues experienced by people fleeing a particular country. It is unclear whether this has been factored into the Home Office’s cost projections.

Probable and Possible Further Costs – Costs Associated with Litigation

28. The Home Office’s estimate of direct future costs includes ‘costs resulting from out of country court/tribunal proceedings’, for example, where a person is relocated to Rwanda but might still have ongoing legal proceedings in the UK.²³ However, the Partnership is likely to result in a much broader range of legal costs. It is unclear whether all possible legal costs have been considered by the Home Office.
29. First, the Partnership itself is likely to be subject to a further range of legal challenges. It is unclear whether the Home Office has included in its estimate of future costs the cost of defending legal challenges against the policy.
30. Second, it is highly likely that a large number of people will challenge the decision to remove them to Rwanda. Even if these people are located in Rwanda while these proceedings are on foot, the Home Office will incur substantial costs in responding to these cases. It is unclear whether the Home Office has given consideration to these potential future legal costs.
31. Third, it is possible that human rights claims will be brought against the Government in the ECtHR. The ECtHR has consistently ordered responsible states to pay compensation to asylum seekers in respect of non-pecuniary damages, costs and expenses, any additional chargeable tax, interest, and, in some cases, just

²² House of Lords International Agreements Committee, *Scrutiny of International Agreements: UK–Rwanda Agreement on an Asylum Partnership* (17 January 2024) para 24 <<https://committees.parliament.uk/publications/42927/documents/213461/default/>>.

²³ National Audit Office (n 1) para 2.12.

satisfaction. It is unclear whether the Home Office has given consideration to these potential future legal costs.

32. Fourth, it is possible that civil cases will be brought against the Government claiming damages for harms incurred by a person during and after their transfer to Rwanda. For example, in Australia, a class action was brought against the Government on behalf of refugees who had been detained on Manus Island, alleging negligence and false imprisonment.²⁴ The claim was settled prior to trial for AUD \$70 million plus legal costs, the largest human rights class action settlement in Australia's history. Proceeding with the Rwanda plan involves a risk of future civil claims being brought against the UK Government, which may significantly increase the overall cost of the scheme. It is unlikely that the Home Office has included potential damages payments in its estimate of future costs arising from the Partnership.

Possible Further Costs – Healthcare Costs

33. As survivors of torture and trauma, asylum seekers and refugees are likely to have a range of complex physical and psychological healthcare needs. While Rwanda's healthcare system has improved in recent years,²⁵ as of 18 March 2024, the UK's Foreign Travel Advice stated that 'only limited medical facilities are available in Rwanda. If you have a serious accident or illness, you may need to be evacuated by air ambulance to Kenya or South Africa.'²⁶
34. The UK-Rwanda Treaty states that Rwanda bears responsibility for providing refugees with 'accommodation and support that is adequate to ensure the health, security and wellbeing of the Relocated Individual'.²⁷ However, if a situation were to arise where Rwanda was unable to provide adequate healthcare for a particular individual and unwilling to make arrangements for a person to be transferred to a country with appropriate medical facilities, the UK would need to consider its legal responsibility in relation to that person and their healthcare needs.
35. As such, while the UK-Rwanda Treaty makes Rwanda responsible for the healthcare needs of asylum seekers and refugees, if Rwanda is unable or unwilling to fulfil its obligations, legal and financial responsibility for ensuring adequate healthcare may fall to the UK. This responsibility may entail organising a medical evacuation to the UK or to another appropriate country. There appears to be no budgeting in relation to this possibility.

²⁴ See Ebony Birchall and Andrew Paull, 'The Manus Island Class Action: *Kamasae v Commonwealth of Australia & Ors*, S CI 2014 6770' (2018) 147 *Precedent* 30, <<https://classic.austlii.edu.au/au/journals/PrecedentAULA/2018/45.html>>.

²⁵ World Health Organisation, 'Rwanda's Primary Health Care Strategy Improves Access to Essential and Life-saving Health Services (17 February 2022)' <<https://www.who.int/news-room/feature-stories/detail/rwanda-s-primary-health-care-strategy-improves-access-to-essential-and-life-saving-health-services>>.

²⁶ UK Government, *Foreign Travel Advice: Rwanda* <<https://www.gov.uk/foreign-travel-advice/rwanda/health>>.

²⁷ UK-Rwanda Treaty (n 7) Art 8(1).

Probable Further Costs – Costs Associated with Accepting Refugees from Rwanda

36. Under Article 19 of the UK-Rwanda treaty, the UK has agreed to accept some refugees from Rwanda for resettlement in the UK. While the Home Office has indicated that these costs will be covered from existing UK Resettlement Scheme budgets,²⁸ it is nonetheless worthwhile noting that such an arrangement has a wide range of immediate and long-term costs.
37. Initially, there are expenses related to flying refugees from Rwanda to the UK and providing initial support, including accommodation, food, shelter, and medical care. In particular, as Article 19 concerns ‘Rwanda’s most vulnerable refugees’, the costs associated with physical and psychological healthcare may be higher than average.
38. Over time, there may be ongoing expenses related to supporting refugees’ socio-economic integration, including integration programs, language training, job placement, cultural orientation, welfare benefits and education subsidies. Depending on the reasons why people have been classed as ‘vulnerable’, they may require a greater degree of support than is standard to begin their lives in the UK.
39. While these costs are not easily quantifiable and will depend on the number of refugees actually relocated to the UK, these costs should be considered when assessing the overall estimated financial burden of the scheme.

Possible Further Costs – Article 11 Returns

40. Under Article 11(2) of the UK-Rwanda treaty, the UK bears the cost of returning certain individuals to the UK. It is not clear whether these costs have been factored into the Home Office’s estimates.
41. In particular, under the UK-Rwanda Treaty, the UK ‘shall not seek to relocate unaccompanied individuals who are deemed to be under the age of 18’.²⁹ Any person who is sent to Rwanda and subsequently found to be a child under the age of 18 will be returned to the UK.³⁰
42. There are well-documented issues with the UK’s current methods for age assessment. The Refugee Council calculates that, over the 18 month period from January 2022 to June 2023, more than 1,300 children were wrongly assessed to be adults by the Home Office.³¹
43. As such, it is possible that a not insignificant number of people will need to be returned to the UK from Rwanda, at the UK’s expense.

²⁸ National Audit Office (n 1) para 2.12.

²⁹ UK–Rwanda Treaty (n 7) Art 3(4).

³⁰ Ibid.

³¹ Refugee Council, *Forced Adulthood* (January 2024) 3 <<https://www.refugeecouncil.org.uk/wp-content/uploads/2024/01/Forced-Adulthood-joint-report-on-age-disputes-January-2024.pdf>>.

Value for Money of the UK-Rwanda Partnership

44. The report of the NAO ‘does not conclude on value for money, given that this would rest on whether the partnership deters individuals from making illegal journeys to claim asylum in the UK.’³²
45. Based on our expert knowledge of the operation of Australia’s offshore processing policy, it is extremely unlikely that the Partnership will deter people travelling to the UK in order to seek asylum.
46. Australia’s offshore processing policy occurred in multiple stages:
 - Stage One (13 August 2012 – 18 July 2013): During this stage, offshore processing was *discretionary*. Only a small proportion of the total number of asylum seekers arriving in Australia by boat were sent offshore for processing. If a person was found to be a refugee, they were to be brought back to Australia for resettlement.
 - Stage Two (19 July 2013 – 16 December 2013): During this stage, offshore processing became *mandatory*. Every asylum seeker who arrived in Australia by boat was subject to offshore processing. People who were found to be refugees would not be resettled in Australia.
 - Stage Three (17 December 2013 onwards): During this stage, mandatory offshore processing remained in place for asylum seekers arriving in Australia by boat. In addition to this, Australian authorities were empowered to commence interdiction operations, turning back boats to Indonesia and other ports.
47. If offshore processing was an effective deterrent, we would expect to see the number of asylum seekers travelling to Australia by boat decrease in 2013, following the implementation of stage one of the policy. However, Australian statistics demonstrate that the number of people who travelled to Australia by boat seeking asylum actually increased from 17,204 in 2012 to 20,587 in 2013.³³ As such, there is no evidence that the first stage of Australia’s offshore processing policy had any deterrent effect.
48. The number of people who travelled to Australia by boat to seek asylum decreased in 2014 and remained low from 2015 onwards.³⁴ Given that from Australia was employing a combination of offshore processing and maritime interdictions from December 2013 onwards, it is not possible to conclude that Australia’s mandatory

³² National Audit Office (n 1) para 2.

³³ Janet Phillips, ‘Boat Arrivals and Boat “Turnbacks” in Australia since 1976: A Quick Guide to the Statistics’, Parliamentary Library Research Paper Series (17 January 2017) 2
<https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/4068239/upload_binary/4068239.pdf>

³⁴ Ibid.

offshore processing policy had an impact on reducing boat arrivals in isolation from other border policing strategies.

49. The UK's plan to send people to Rwanda bears significant similarities to stage one of Australia's offshore processing policy. Not everyone who travels to the UK by boat to seek asylum will be sent to Rwanda. Reports appear to indicate that Rwanda only has capacity to accept a small number of asylum seekers from the UK – approximately 200–300 people at a time.³⁵ This is less than 1% of the 35,000 people who travelled to the UK by boat to seek asylum in the year ending September 2023.³⁶ As such, applying the lessons learned from Australia, it is extremely unlikely that the prospect of being sent to Rwanda is going to have any deterrent effect on people seeking asylum.
50. The Economic Impact Assessment for the Illegal Migration Act calculated that the Rwanda Migration and Economic Development Partnership would need to have a deterrence rate of 37% to financially 'break-even'.³⁷ The Institute for Public Policy Research have used more recent costings to calculate that a deterrence rate of 45–77% is required for the policy to break-even.³⁸ The Australian experience suggests that it is highly unlikely that the Rwanda policy as currently designed would deter any asylum seekers, let alone the number of asylum seekers required for the Partnership to financially break-even.
51. Rather than spending hundreds of millions of pounds sending asylum seekers to Rwanda, a better approach would be to invest in building a fast and effective asylum system in the UK. A fast and effective asylum system would enable the UK to more quickly identify people in need of protection, reducing the costs associated with the asylum backlog. Further, an effectively functioning domestic asylum system would enable the UK to quickly and accurately identify people who are not in need of protection. Consequently, these people could be more swiftly removed and returned to their countries of origin. In this respect, it is possible that an effectively functioning domestic asylum system would be more likely to deter people who are not genuine refugees from travelling to the UK than the threat of being sent to Rwanda.

³⁵ Matt Dathan, 'Rwanda wants two-month pause after first migrant flight arrivals', *The Times* (17 March 2024) <<https://www.thetimes.co.uk/article/rwanda-flights-pause-bill-migrants-9zxsjqpw0>>.

³⁶ Home Office, 'Irregular Migration to the UK, Year Ending September 2023' (23 November 2023) <<https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-september-2023/irregular-migration-to-the-uk-year-ending-september-2023>>.

³⁷ Home Office, *Illegal Migration Bill Economic Impact Assessment* (26 June 2023) para 129 <https://assets.publishing.service.gov.uk/media/64999700831311001329637f/Illegal_Migration_Bill_I_A_-_LM_Signed-final.pdf>.

³⁸ Institute for Public Policy Research, 'Hidden Costs of Rwanda Scheme Revealed to be in the Billions, Finds IPPR' (18 March 2024) <<https://www.ippr.org/media-office/hidden-costs-of-rwanda-scheme-revealed-to-be-in-the-billions-finds-ippr>>.