



# Rwanda cases: Tips for solicitors

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# Introduction

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- This talk aims to:
  - Look at the current legal basis for transfers to Rwanda
  - Consider how legal representatives should respond
  - Consider strategies for representing clients faced with removal to Rwanda



## Current legal context: (1)

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- The mechanism for removals to Rwanda is currently set out in the Immigration Rules at 345A-D
- This sets out two key legal concepts:
  - Inadmissibility
  - Safe Third Country



## Current legal context: (2) Inadmissibility

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*“Inadmissibility of non-EU applications for asylum*

*345A. An asylum application may be treated as inadmissible and not substantively considered if the Secretary of State determines that:*

*(i) the applicant has been recognised as a refugee in a safe third country and they can still avail themselves of that protection; or*

*(ii) the applicant otherwise enjoys sufficient protection in a safe third country, including benefiting from the principle of non-refoulement; or*

*(iii) the applicant could enjoy sufficient protection in a safe third country, including benefiting from the principle of non-refoulement because:*

*(a) they have already made an application for protection to that country; or*

*(b) they could have made an application for protection to that country but did not do so and there were no exceptional circumstances preventing such an application being made, or*

*(c) they have a connection to that country, such that it would be reasonable for them to go there to obtain protection.*



## Current legal context: (3) Safe Third Country

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*“Safe Third Country of Asylum*

*345B. A country is a safe third country for a particular applicant, if:*

*(i) the applicant’s life and liberty will not be threatened on account of race, religion, nationality, membership of a particular social group or political opinion in that country;*

*(ii) the principle of non-refoulement will be respected in that country in accordance with the Refugee Convention;*

*(iii) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected in that country; and*

*(iv) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Refugee Convention in that country.”*



## Current legal context: (4) Removal

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*345C. When an application is treated as inadmissible, the Secretary of State will attempt to remove the applicant to the safe third country in which they were previously present or to which they have a connection, or to **any other safe third country which may agree to their entry.***



# Current legal context: (5) Exceptions

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*Exceptions for admission of inadmissible claims to UK asylum process*

*345D. When an application has been treated as inadmissible and either*

*(i) removal to a safe third country within a reasonable period of time is unlikely; or*

*(ii) **upon consideration of a claimant's particular circumstances the Secretary of State determines that removal to a safe third country is inappropriate***

*the Secretary of State will admit the applicant for consideration of the claim in the UK.”*





# How to respond: (1) Fast

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- Policy currently provides 7 days for response to a Notice of Intent if detained or 14 if not detained
- Lawyers will need to:
  - Respond with detailed reps
  - Gather evidence
  - Request more time to respond (with detailed reasons)
  - Make any relevant referrals



## How to respond: (2) Attack the inadmissibility decision

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- Take instructions on why client did not claim asylum in “*safe third country*”
- Were there “*exceptional circumstances*” preventing a claim?
  - Was there a risk of homelessness/destitution?
  - Was it safe? (e.g. Albanian cases)
  - Do they have family members in the UK?
  - Did they have a choice?
  - Were they a child?
  - Did they try to claim?
- Gather evidence to support that case



## How to respond: (3) Attack the removal decision

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- “*Exceptional circumstances*” why a person should not be removed will usually be the easiest way in to attack the decision
- What exceptional circumstances?
  - Is there a risk of homelessness/destitution?
  - Do they have family members in the UK?
  - Did they have a choice?
  - Are they a child?
  - Is it safe?
- Again, evidence will be vital



## How to respond: (4) Attack the system

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- Challenge conditions in Rwanda (we won Italy, we can win Rwanda)
- Challenge the interpretation of the Rules
- Rely on the grounds in the generic challenges – but distinguish



# How to respond: (5) Divert

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- Was your client trafficked? Get an NRM referral
- Is your client very vulnerable? Get a psych report and a fitness to fly assessment
- Is your client's case complex? Make detailed and individual representations
- Does your client have e.g. family here? Make a human rights claim



# How to respond: (6) Challenge

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- Judicial review is the remedy of last resort, especially given the recent decisions
- PAP
  - Engage with key decisions, distinguish your case, don't just rely on the lead cases
- Evidence:
  - Detailed relevant evidence from Rwanda
  - Detailed relevant evidence from your client
  - Detailed relevant evidence on the inadmissibility decision
- Judicial review grounds
  - Attack the key decisions
  - Distinguish your client's case
  - If seeking interim relief you must engage with reasons a temporary removal would impact on your client
- Don't forget the option of going to Strasbourg



# Thank you

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# Rwanda: The Country Evidence

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20 June 2022



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# Introduction

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- This talk aims to:
  - Provide overview and initial resource of what is available that can be used as starting point
  - Consider how the country evidence may be used in challenging proposed removal to Rwanda



# SSHD country guidance (1)

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- In May 2022, SSHD published these Country Policy and Information Notes (CPINs) on its own assessment of asylum system and related matters in Rwanda:
  - [Assessment](#), v. 1.0, May 2022;
  - [Asylum system](#), v. 1.0, May 2022;
  - [General human rights](#), v. 1.0, May 2022;
  - [Interview notes \(Annex A\)](#), v. 1.0, May 2022. *[contains info gathered during visits to Rwanda in January and March 2022]*
- Also important:
  - [Equality Impact Assessment](#), 9 May 2022;
  - [Memorandum of Understanding](#) btw UK and Rwanda Govs, published 14 April 2022;
  - Note Verbales disclosed and relied on by the SSHD in AAA v SSHD CO/2032/2022: address asylum process in Rwanda and practical support to be provided to asylum seekers and those granted refugee status (see Asylum Aid interim relief bundle or ask GLD for disclosure)



## SSHD country guidance (2): Key findings

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- Confirms that each case must be considered on an individual basis. But generally, Rwanda is a safe third country. There are no substantial grounds for believing that a person, if relocated to Rwanda, would face a real risk of being subjected to treatment that is likely to be contrary to Article 3 of the ECHR.
- Asylum system in Rwanda and access to it is sufficient (areas evaluated: access to asylum procedure, access to legal representation, ability to challenge/ appeal negative decision, documentation confirming status).
- Reception conditions are adequate including access to healthcare, housing, employment, financial support and education.
- In relation to human rights generally, there are no issues with respect for sexual orientation and gender identity, risk of sexual and/or gender-based violence, freedom of speech and political association etc.



# Asylum system in Rwanda: UNHCR's view (1)

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- UNHCR published its [Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement](#) on 8 June 2022 including:
  - [11]: *“UNHCR notes that whilst Rwanda has generously provided safe haven to refugees for decades and has made efforts to build the capacity of its asylum system, its national asylum system is still nascent. In UNHCR’s assessment, there is a serious risk that the burden of processing the asylum claims of new arrivals from the UK could further overstretch the capacity of the Rwandan national asylum system, thereby undermining its ability to provide protection for all those who seek asylum.”*
  - [17]: *“UNHCR has serious concerns that asylum seekers transferred from the UK to Rwanda will not have access to fair and efficient procedures for the determination of refugee status, with consequent risks of refoulement. [...] structures for determining eligibility for refugee status are still in development in Rwanda and have primarily provided protection to asylum-seekers from neighbouring countries on a prima facie basis.”*



## Asylum system in Rwanda: UNHCR's view (2)

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Para 18 lists concerns re shortcomings in the capacity of the Rwandan asylum system. UNHCR's concerns in this regard include:

- a) Some persons seeking asylum are arbitrarily denied access to asylum procedures... This places those wishing to claim asylum undocumented, at risk of detention and deportation and has resulted in recent incidents of chain refoulement.
- b) Discriminatory access to the asylum procedures is of concern, including the fact that some LGBTIQ+ persons are denied access to asylum procedures.
- c) Concerns about the impartiality of the RSD Committee's decision making, with high rates of rejection observed for asylum applicants originating from both neighbouring and non-African countries.
- d) Lack of legal representation.
- e) Long delays.
- f) Insufficient access to interpreters.



## Asylum system in Rwanda: UNHCR's view (3)

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



# Rule 39 Ruling

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[ECtHR press release](#) re urgent interim injunction granted in case concerning asylum-seeker's imminent removal from UK to Rwanda:

*“The Court had regard to the concerns identified in the material before it, in particular by the United Nations High Commissioner for Refugees (UNHCR), that asylum-seekers transferred from the United Kingdom to Rwanda will not have access to fair and efficient procedures for the determination of refugee status as well as the finding by the High Court that the question whether the decision to treat Rwanda as a safe third country was irrational or based on insufficient enquiry gave rise to “serious triable issues”. In light of the resulting risk of treatment contrary to the applicant’s Convention rights as well as the fact that Rwanda is outside the Convention legal space (and is therefore not bound by the European Convention on Human Rights) and the absence of any legally enforceable mechanism for the applicant’s return to the United Kingdom in the event of a successful merits challenge before the domestic courts, the Court has decided to grant this interim measure to prevent the applicant’s removal until the domestic courts have had the opportunity to first consider those issues.”*





# Other country evidence

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- Asylors have started collating country evidence from various sources re conditions in Rwanda:

[https://docs.google.com/document/u/o/d/1-b\\_H4Wj9uZa8cCGtEZUxfStSXTOQ8Qym/mobilebasic](https://docs.google.com/document/u/o/d/1-b_H4Wj9uZa8cCGtEZUxfStSXTOQ8Qym/mobilebasic)

Cite the references at source. Current resources deal with a lot of issues, including refugee status determination; Rwandan nationals who claim asylum in other countries; experience of individuals seeking asylum in Rwanda; LGBTQI+ persons; conditions for refugees in Rwanda; conditions for failed asylum seekers in Rwanda; the Israel-Rwanda agreement.

- Expert evidence?



# How to use country guidance (1)

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- CG is most relevant to arguing that Rwanda is not a ‘safe third country’ for the Claimant as defined by s. 16(4) NABA 2022 from 28 June 2022 (currently set out in similar terms at para 345B IR):

*“(a) the claimant’s life and liberty are not threatened in that State by reason of their race, religion, nationality, membership of a particular social group or political opinion,*

*(b) the State is one from which a person will not be sent to another State—*

*(i) otherwise than in accordance with the Refugee Convention, or*

*(ii) in contravention of their rights under Article 3 of the Human Rights Convention (freedom from torture or inhuman or degrading treatment), and*

*(c) a person may apply to be recognised as a refugee and (if so recognised) receive protection in accordance with the Refugee Convention, in that State..”*



## How to use country guidance (2)

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- Consider difficulties/ safety concerns experienced by Claimant of removal to Rwanda:
  - Sexual orientation
  - Gender
  - Health (mental and physical)
  - Disability
  - Religion
  - Ethnicity
  - Language
  - Age
  - Cultural issues
  - Community in Rwanda



# Thank you

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