**Rwanda-UK Asylum Scheme: Legality and Safety Under Scrutiny - A Closer Look at the Controversial Partnership**

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In April 2022, the prime minister of the United Kingdom (UK), Boris Johnson, announced a memorandum of understanding (MoU) concerning an asylum transfer scheme with Rwanda. A MoU is different from a treaty, it is an agreement between states, but its content is not legally binding in international law.[[1]](#footnote-1) B. Johnson developed a migration and economic partnership by giving about £120 million of development funds to the Rwandan government in exchange of receiving asylum seekers.[[2]](#footnote-2)

For several years now, the UK has been facing an increasing number of migrants coming irregularly from France in small boats by the English Channel; with a peak in August 2022: 8,631 migrants have been detected crossing the Channel, and more recently, in October 2023, 1,869 have been detected. In 2022, 90% of the migrants entering the UK claimed asylum, which put a burden on their asylum system.[[3]](#footnote-3) It is also important to mention that the UK, not being in the European Union (EU) anymore, is not part of the Dublin Regulation since January 2021, which means that they are not allowed to return asylum seekers to the country where they entered the EU territory.[[4]](#footnote-4)

Nonetheless, the UK tried to establish a two-tiered refugee system that discriminates against one set of immigrants based on their mode of entry. However, because international rules recognize that asylum seekers are frequently obliged to cross borders illegally in order to get protection, refugee status should be established only on the criteria of threat of persecution or substantial injury.[[5]](#footnote-5) Consequently, several institutions already questioned the legality of this project with Rwanda. Leaving the EU made this project possible for the UK, since EU law prohibits this type of arrangement. However, in recent weeks, numerous European nations have contemplated the prospect of entering into agreements with third countries to address the burgeoning challenges posed by irregular migration. Notably, Italy has undertaken such initiatives and has formalized an agreement with Albania. The outlined plan entails the establishment of two reception centers within Albania, dedicated to processing asylum claims of migrants rescued in the Mediterranean. The intended outcome is the direct relocation of asylum seekers to Shëngjin, a coastal city in Albania. With the establishment of these reception hubs, Giorgia Meloni aims to facilitate the adjudication of approximately 36,000 asylum applications annually, with the exclusion of minors, pregnant women, and vulnerable individuals from the scope of this project. However, it is imperative to underscore that this accord has encountered criticism, with several non-governmental organizations contending its legality. While the European Commission refrains from outright rejection of the initiative, it has admonished the Italian government, stipulating that the proposed project must align with both European and international legal frameworks.[[6]](#footnote-6)

Another example relates to Denmark which tried to follow the same path as the UK. In September 2022, the government ministers signed a statement of bilateral cooperation about a similar migration program, which includes that spontaneous asylum seekers arriving to Denmark would be redirected to Rwanda. So that Rwanda takes into consideration their application for asylum. Nevertheless, this law has provoked a reaction from the EU institutions. The European Commission estimated that it was a violation in the EU asylum rules and that it would take legal actions against Denmark if the project was implemented.[[7]](#footnote-7) This project attempt by Denmark can question the actions of the UK on their own scheme. Naturally, the EU tried to stop the project led by B. Johnson. On the 14th of June 2022, when a flight with about seven migrants was supposed to leave the UK to reach the Rwandan territory, the European Court of Human Rights with several lawyers, managed a few hours before the flight departure to get it canceled through an emergency application. The lawyers stopped the flight thanks to a ruling of the European Court of Human Rights on one of the seven cases which allowed the six others to do the same afterwards. Following this event, a court hearing was organized a month after to judge on the legality of the MoU.[[8]](#footnote-8)

From a legal standpoint, there is several evidence that the scheme violates the law. First of all, it was found that the Rwanda policy was a breach of Article 3 of the European Convention on Human Rights (ECHR). This Article ensures “*the prohibition of torture and inhuman or degrading treatment or punishment.*”. Moreover, it states under Article 15 § 2, that even in case of an influx of migrants and asylum seekers there cannot be any derogation. It describes very explicitly that “*deportation, extradition or any other measure to remove an alien may give rise to an issue under Article 3 (…), if removed, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In such circumstances, Article 3 implies an obligation not to remove the individual to that country (Ilias and Ahmed v. Hungary [GC], 2019, §§ 125-126)”. [[9]](#footnote-9)* It is relevant to mention that the debate concerning the breach of Article 3 of ECHR had a controversy of opinion. The majority believed in a real risk for migrants being sent to Rwanda to be returned to their home country from which they fled and are seeking international protection. On the contrary two Lords, Lord Chief Justice and Lord Burnett of Maldon, concluded very differently on the topic. They saw no real risk of asylum seekers being wrongfully returned to their home country, with a low probability of this occurring because Rwanda has no specific agreement with any of the countries in question.

Secondly, Article 33 of the Convention Relating to the Status of Refugees sets out the principle of *non-refoulement*. This convention was signed in 1951 by the UK with its other founding members.[[10]](#footnote-10) The principle of *non-refoulement* is a core principle of international refugee and human rights law which prohibits states from returning individuals to a country where there is a real risk they will be subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation. [[11]](#footnote-11) This raises the question of the safety of deported migrants in Rwanda. In addition to the risk of having their asylum application rejected and having to return to a country where their life is in danger; if their application is accepted, what kind of life can they expect in Rwanda?

Firstly, one fundamental aspect is the recognition of their rights. The respect of human rights in Rwanda has been questioned for years. There were cases of suspicious deaths in custody, extrajudicial killings, unlawful or arbitrary detention, abusive prosecutions, especially targeting critics and dissidents, and torture. In reality, the UK has expressed its concerns about human rights violations with Rwanda directly, and it has granted asylum to Rwandans who have fled the country, including four in 2021. [[12]](#footnote-12) Moreover, Rwanda has already raised concerns about its asylum process, with for instance denial of access to the asylum procedure, discrimination against LGBTIQ+ asylum seekers, risk of detention and deportation, and inadequate legal representation.[[13]](#footnote-13)

Secondly, their living conditions can be impacted. Concerning the detention conditions while waiting for the final decision of their application, some camps have been investigated. Interviews of migrants living in the Gashora camp, in the Eastern province of Rwanda, have been conducted and have concluded that the living conditions were insufficient to lead a normal life. Similar to Rwandans, about 40% of the population still lives below the poverty line, thus unfortunately, migrants have not benefited from the country's important economic growth over the past 10 years. It is then economically difficult for them to survive in this country. Moreover, the testimonies highlighted the problem of integration. A large part of them suffered from a feeling of isolation, because nothing or few is organized by the country to integrate migrants into the Rwandan society.[[14]](#footnote-14) Also, this deportation can add or exacerbate existing mental health issues; Medical Justice called the Rwanda policy a "*cruel and reprehensible scheme*" after considering this instance as well as others involving mental health problems among migrants and refugees in the UK.[[15]](#footnote-15)

The final factor which makes Rwanda a critical country for being safe for migrants is the support of their government towards the March 23 Movement (M23). It is a militant group primarily active in the Democratic Republic of the Congo with goals at the intersection of local, national, and regional power interests. Since late 2022, they have allegedly committed unlawful killings, rapes, and other war crimes. Rwanda has a long history supporting this movement, various evidence suggests that Rwanda is not only providing the M23 with logistical assistance, but that Rwandan troops are also bolstering or fighting with the armed organization inside of the Democratic Republic of the Congo. The Rwandan government has however consistently denied funding the M23 rebels.[[16]](#footnote-16) The UK has remained silent on this issue, ignoring the possibility of a catastrophic humanitarian crisis and the displacement of over one million people, despite the fact that the situation could lead to a clearly unsafe environment for migrants.[[17]](#footnote-17)

This type of agreement is not new for Rwanda, the country already had a similar scheme with Israel. Indeed, between 2013 and 2017, Israel transferred undocumented migrants from Sudan and Eritrea to unnamed “third countries” in Africa. Since the agreements it has made with them were private, Israel has never revealed the names of the countries involved in this scheme, but it is widely recognized that they were Uganda and Rwanda. This action consisted in a breach of Article 33 of the Refugee Convention. Israel took part in 1951 in the Convention’s drafting as well as that of its 1967 Protocol, and which it ratified in 1954 and 1968. It has been reported that the asylum seekers' position on the ground swiftly deteriorated. When trying to reach Europe, the majority "*ended up in the hands of smugglers and were subjected to slavery*," Abdul Tejean-Cole, a lawyer and human rights advocate, told InfoMigrants. The ensuing public scandal forced Israel to abandon the program.[[18]](#footnote-18)

However, despite all these fundamental points proving the non-legality of the UK-Rwanda migration agreement and questioning the fact that Rwanda can be considered as a safe third country, the UK is still very determined to see the project through. Suella Braverman, Home Secretary of the UK, has announced on radio in August 2023, that she is prepared to do anything to ensure that the project is completed: “*If we are thwarted by the courts, or indeed by Strasbourg, then we will have to do whatever it takes, ultimately, to ensure that we can stop the boats. (…), We’re very clear that the [Rwanda] scheme complies with our international obligations (…)”.* With the adoption of the Illegal Migration Act, the Home Secretary has a legal duty to deport anyone entering the UK illegally, including those arriving by small boat and other modes of transportation, either to their home country or to a safe third country like Rwanda.[[19]](#footnote-19)

In conclusion, Boris Johnson's project has elicited a wide range of reactions. Despite numerous organizations' efforts to demonstrate that the project is illegal, unsafe and wrongful, it is still today on the UK's migration policy agenda. However, it remains to be seen how the agreement's continuation will evolve in the current context, as well as what legal actions from international organizations will be taken to prevent any deportation of migrants to Rwanda.

Furthermore, as previously mentioned, additional European nations are aligning their immigration policies with the trajectory set by the UK. A case in point is Suella Braverman, the Home Secretary of Britain, who stated on November 1st that Britain and Austria confront "*shared challenges to protect our borders, defeat extremism, and keep our people safe*." Evidently, Austria seeks to adopt a model akin to the Rwanda scheme, where asylum applicants would be evaluated in a third country before any determination regarding entry into Europe is made.[[20]](#footnote-20) Concurrently, Germany is engaged in negotiations with Morocco and Nigeria to establish analogous agreements on migration matters.[[21]](#footnote-21) Thus, the Rwanda scheme emerges as an initial step in the formulation of comprehensive policies addressing irregular migration within the European continent.

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 [↑](#footnote-ref-8)
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