Evaluating the Legal Consequences of the 'United Kingdom-Rwanda Migration and Economic Development Partnership'

Researcher: Rhiannon Hopcroft   Supervisor: Professor Sonia Morano-Foadi   Faculty of Law

Abstract

April 2022: the government announced the United Kingdom-Rwanda Migration and Economic Development Partnership which will see asylum seekers who arrived illegally into the UK deported to Rwanda to seek refugee status there. This poster assesses at the legal consequences of this Partnership; particularly its compliance with international law and international human rights mechanisms. This is vital in order to evaluate whether it sufficiently protects vulnerable asylum seekers during a refugee crisis. Conclusions are reached through detailed analysis of the Partnership, a consideration of academic commentary, and comparison to states where similar measures have been adopted.

1. Context

There are estimated to be 26.6 million refugees and 4.4 million asylum-seekers worldwide [1]. In the UK, 85,000 asylum-seekers arrived in 2021: record numbers crossed the English Channel in small boats [2]. In response, the UK Government has adopted a 'hostile environment' towards refugees and asylum-seekers [3]. The hostile environment aims to reduce net migration. In this context that the Nationality and Borders Act 2022 was created, this allows for the implementation of the Arrangement.

2. The Arrangement

Asylum-seekers who have arrived to the UK illegally, after travelling through third countries, can be nominated by the Home Office to be deported to Rwanda [4]. In Rwanda, they will not have the right to apply for refugee status in the UK. This displays the aims of the hostile environment as implementation of the Arrangement will mean that other illegal asylum-seekers are deterred from trying to come to the UK to claim asylum [5].

3. Externalisation Of Borders

The Arrangement is an example of 'externalisation of borders' [6]. This describes the extension of migration controls beyond the so-called 'migrant receiving nations' in the Global North and into 'sending states' in the Global North [7]. The UK seeks to externalise its migration controls and obligations to Rwanda. The Arrangement is an example of 'externalisation of borders.' This results in inappropriate 'burden shifting,' as the arrangement does not enhance burden sharing as required under international law [8].

4. Rationale

Cost efficiency: the total cost of the Arrangement will be similar to the amount of money the UK is already spending on the asylum system [9].

Morally right: the Arrangement will lead to more people smuggling and human trafficking, not less [10].

Rwanda is a safe third country: Rwanda seeks to improve its own international reputation and economic circumstances. Rwanda remains dependent on foreign assistance, they seek to reduce this dependance [11].

Preventing deaths arising from illegal migration: comparison to Australia's offshore detention policy displays that 'externalisation of borders' leads to violence, riots and abuse, it comes at a horrendous financial and human cost [12]. It did not deter boat journeys, nor save lives at sea, nor break the business model of people smugglers [13].

4. International Law

The UK retains its duties under international law. This is due to ordinary state practice, guidance issued by the UNHCR for bilateral transfer arrangements and the 'causal chain' between the UK and Rwanda [14].

The Refugee Convention 1951:

Article 31: Prohibits penalties imposed on account of irregular entry or presence of a refugee or asylum-seeker. ⟶ The Arrangement fails to recognise that asylum-seekers will almost always arrive illegally and breach the UK's ordinary immigration rules [15].

Article 33: The obligation of non-refoulement. ⟶ There is a risk of direct refoulement and constructive refoulement. This is due to the human rights violations reported in Rwanda and the risk of onward removal to a state where such treatment might occur [16].

The Vienna Convention 1969:

Section 26: The 'Good faith' obligation. ⟶ The UK has failed to interpret its obligations under the Refugee Convention 1951 in 'good faith' by interpreting it as excluding illegal asylum-seekers [17].

5. Criticism of High Court Judgement

Rwanda is not a 'safe third country' ⟶ To be a 'safe third country' there must be no risk of refoulement. Engaging with Rwanda's history, there is a clear risk of refoulement: the High Court was wrong to conclude that a lack of investigation into whether Rwanda was a 'safe third country' was permissible [18].

Failure to consider the individual circumstances of asylum-seekers ⟶ The Arrangement nominates illegal asylum-seekers for deportation based on their mode of arrival to the UK: this fails to consider the individual circumstances of each asylum-seeker. The High Court was wrong to accept this discrimination.

6. Conclusions

The hostile environment and the Arrangement cannot be justified.

Externalising the UK's borders results in inappropriate burden shifting.

The UK retains its obligations towards asylum-seekers.

Article 31 and 33 of the Refugee Convention 1951 are violated.

Rwanda is not a 'safe third country' and the Arrangement unlawfully fails to consider individual characteristics of asylum-seekers.

The Court of Appeal should hold the UK-Rwanda Arrangement is unlawful.

[1] Sen P, Crowley G, Arnell P, Katona C, Pillay M, Waterman L and Forrester A, 'The UK's exportation of asylum obligations to Rwanda: A challenge to mental health, ethics and the law' (2022) 62 Medicine, Science and the Law 165, 165. **[2]** Yeo C, 'High court rules Rwanda plan is lawful' (*Freemovement,* 13 December 2022) <https://freemovement.org.uk/high-court-rules-rwanda-plan-is-lawful/> accessed 29 January 2023. **[3]** Kirkup J and Winnett R, 'Theresa May interview: 'We're going to give illegal migrants a really hostile reception' (*The Telegraph*, 25 May 2012) <https://www.telegraph.co.uk/news/0/theresa-may-interview-going-give-illegal-migrants-really-hostile/> accessed 7 December 2022.
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