

21 April 2022

By email: public.enquiries@homeoffice.gov.uk

Matthew Rycroft CBE
Permanent Secretary
Home Office
2 Marsham Street
London SW1P 4DF

Dear Permanent Secretary

Re: Memorandum of Understanding between the governments of the UK and Rwanda

We write having closely considered this Memorandum. We are gravely concerned at the proposal for the UK to abandon its responsibilities to people who seek asylum in the UK by expelling them to Rwanda. The first short section of this letter briefly sets out the primary basis for our objections. However, our main purpose in writing is to seek further information about what the UK Government intends. The further sections, therefore, set out various questions including explanation and context for our raising these.

Primary basis for objections to this Memorandum

Our primary concern is that the Memorandum proposes the transfer of asylum responsibilities from the UK to Rwanda.

The basis for that transfer has nothing to do with any right, interest, connection or wish of any person, who is to be expelled to Rwanda after seeking asylum in the UK. This is straightforwardly an exercise in the UK casting off its asylum responsibilities onto another country. It is the very opposite of the critical underlying principle under the 1951 Refugee Convention and its 1967 Protocol that responsibility for providing asylum is a shared one.

It is particularly detrimental to the aims of the Convention if relatively rich countries receiving relatively few people seeking asylum, such as the UK, abandon their responsibilities in this manner. This is not only incompatible with the Convention's aims. It risks encouraging or licencing wider abandonment of asylum responsibilities that threatens the Convention's very purpose altogether.

We have further concerns about the impact and risks to people expelled under this Memorandum, including that expulsion will:

- deprive them of their right to seek and enjoy asylum,
- fail to protect and respect their human rights more generally,
- expose people to the risk and likelihood of further exploitation including on new dangerous journeys in search of safety, and
- be an impractical and expensive distraction from the urgent need for the UK Government to address its asylum responsibilities through an efficient, effective and humane asylum system that properly determines the claims of those who seek asylum in the UK and respects the rights of those people, including to asylum in the UK where their claims are shown to be well-founded.

Questions

While we are implacably opposed to this Memorandum and the expulsion under it of anyone seeking asylum in the UK, we have several questions about it. Given the gravity of what is proposed under the Memorandum, and paucity of detail in it, we would be grateful for an urgent response to these. For ease of reference, we have numbered these questions, which appear in bold.

Questions concerning UK Government intentions relating to this Memorandum:

- 1. Under what domestic legal power will a person be transported to Rwanda under this Memorandum?**

Please would you specify the relevant legislative provision(s) or rule(s) that it is considered do or will permit this.

- 2. By what criteria will it be decided that a person is to be transported to Rwanda under this Memorandum?**

We note that the Memorandum itself identifies only that a *“relocated individual”* refers to *“an asylum seeker who is being or has been removed from the United Kingdom and that the Participants have agreed is to be relocated to Rwanda.”* An *“asylum seeker”* is defined as *“a person seeking to be recognised as a refugee in accordance with the Refugee Convention or otherwise claiming protection on humanitarian or human rights grounds.”*

On its face, therefore, any person seeking asylum in the UK is within the terms of the Memorandum. Please would you clarify whether there are, or will be, any further limiting criteria concerning who may be expelled under the Memorandum – including whether concerning age, gender, other personal characteristic or history; or concerning such matters as when a person’s asylum claim was made, how that person arrived in the UK and how far that person’s asylum claim has progressed in the UK asylum system?

- 3. By what mechanism will it be decided that a person is to be transported to Rwanda under this Memorandum?**

The Memorandum refers to a *“process of initial screening”*, for which the UK will be responsible. We assume this is to be conducted by the Home Office. Please would you confirm or clarify this? In what way will this process differ from the existing initial screening conducted in respect of people newly seeking asylum in the UK? How will it identify the *“special needs”*, *“health issues”* and *“security issues”* that are referred to in Section 5 of the Memorandum? What steps will the Home Office (or whoever is to conduct this process) take to ensure that any person being screened is sufficiently enabled to disclose or establish any relevant needs or issues?

- 4. What access to legal advice and representation will be made available to someone, who is being considered for transportation to Rwanda under this Memorandum – both before a decision is made on that question and, if it is decided to transport them, before that is done?**



Having regard to the generally-stated intention to conduct initial screening, will everyone considered for transportation to Rwanda under the Memorandum have access to legal advice and assistance in respect of this screening process (including at any interview in that process). Will there be legal aid available; and, if so, when and how will the Legal Aid, Sentencing and Punishment of Offenders Act 2012 be amended to include provision for this; or how else will it be provided for?

5. Does the UK propose to monitor the treatment and welfare of people who are transported to Rwanda under this Memorandum; and, if so, how?

Section 13 of the Memorandum refers to a Monitoring Committee to be established by a Joint Committee. Please provide more information as to when and how these will be established and function, and under what legal authority and powers. What information will they collect and collate, and to whom will that information be available?

Under what circumstances, if any, will the UK discontinue the transportation of people under this Memorandum? How will the UK be in a position to know whether the circumstances for such discontinuation have arisen?

6. What effective remedy will there be for people who are transported to Rwanda under this Memorandum if Rwanda is unable or otherwise fails to meet the asylum and other obligations (whether under the Memorandum or otherwise) owed to anyone whom it receives?

Paragraph 1.6 of the Memorandum states that it “*will not be binding in International law*”. Paragraph 2.2 states that “*the commitments set out in this Memorandum are made by the United Kingdom to Rwanda and vice versa and do not create or confer any right on any individual, nor shall compliance with this Arrangement be justiciable in any court of law by third-parties or individuals.*” Paragraph 22.1 states that, “*The Participants will make all reasonable efforts to resolve between them all disputes concerning this Arrangement. Neither Participant will have recourse to a dispute resolution body outside of this.*” We note that Section 1 makes clear that the Arrangement is the Memorandum; and the Participants are the Governments of the UK and Rwanda.

It appears to us that the Memorandum sets out to exclude any domestic or international court or other independent body from jurisdiction to either review or enforce the Memorandum and any standards that either do or ought to apply to treatment under it. Is that correct? If it is not correct, please explain what judicial or other effective remedy will be available to the UK Government or an individual transported to Rwanda under the Memorandum for any breach of it or the standards that either explicitly or implicitly must apply by reason e.g. of international human rights law?

Questions concerning the wider relation of this Memorandum to UK asylum policy and practice:

The Preamble to the Memorandum states:

“Reaffirming the commitment... to enhance the international protection of refugees by promoting responsibility sharing by ensuring that refugees are not subject to penalties on

account of their illegal entry or presence, and ensuring the expeditious determination of claims to refugee status and asylum..."

- 7. Having regard to this statement in the Preamble, please explain how the transportation of a person seeking asylum in the UK to Rwanda, unless that person wishes to be transported there, will not constitute a penalty?**
- 8. Please explain how it will be expeditious to subject a person who has made a claim for asylum in the UK to a process for their transportation and then transport them thousands of miles to Rwanda rather than determine their claim in the UK where they are and have made their claim?**
- 9. Please explain how it is considered to promote responsibility sharing for a relatively rich country like the UK to transport people seeking asylum on its territory to a significantly poorer country such as Rwanda, which is already hosting a disproportionately large refugee population?**

The Preamble to the Memorandum also refers to the UK's scheme in the immigration rules for British Nationals (Overseas) in connection with "*safe and legal pathways*".

- 10. Having regard to that statement in the Preamble, please would you confirm whether a British National (Overseas), who cannot meet the financial or other requirements in the immigration rules, will nonetheless be eligible to receive a visa to come to the UK if she, he or they wish to seek asylum from persecution in Hong Kong. If so, please identify under what immigration rule or policy this will be possible for such a person?**
- 11. Please would you also confirm whether a Hong Kong resident who is not a British National (Overseas) will nonetheless be eligible to receive a visa to come to the UK if she, he or they wish to seek asylum from persecution in Hong Kong. If so, please identify under what immigration rule or policy this will be possible for such a person?**

Concerning people transported to Rwanda under the Memorandum, section 10.4 of the Memorandum states:

"...Rwanda will only remove such a person to a country in which they have a right to reside. If there is no prospect of such removal occurring for any reason Rwanda will regularise the person's immigration status in Rwanda."

- 12. Please would you confirm that the UK has no similar legislative or policy position; identify where in law or policy the position is set out. If it is correct that the UK does not currently have, will the UK adopt, such a position (how and when)?**

Questions concerning your correspondence of 13 April 2022 with the Home Secretary:

In your letter of 13 April 2022 to the Home Secretary, requiring a written instruction, you write:

"Evidence of a deterrent effect is highly uncertain and cannot be quantified with sufficient certainty to provide me with the necessary level of assurance over value for money."



"I do not believe sufficient evidence can be obtained to demonstrate that the policy will have a deterrent effect significant enough to make the policy value for money..."

13. Has the Home Office (or UK Government) conducted any evaluation of the arrangement between Israel and Rwanda by which Israel had previously transported refugees and people seeking asylum to Rwanda? If so, please would you disclose a copy of that evaluation?

14. Has the Home Office (or UK Government) conducted any evaluation of the arrangements, referred to in the Preamble to the Memorandum, concerning Rwanda's participation in the Emergency Transit Mechanism for "refugees trapped in detention in Libya"? If so, please would you disclose a copy of that evaluation?

Questions concerning the media and social media campaign by the Home Office in support of the adoption of this Memorandum and wider asylum policy:

We are aware of a considerable volume of promotional and public relations material being distributed by the Home Office, particularly via social media, concerning this Memorandum, the Nationality and Borders Bill and wider asylum policy. We are concerned about this material. Firstly, it contains information that is, in our view, either wrong or misleading. Secondly, we are concerned that what is being spent on this material would be better spent on attending to the needs of people seeking asylum in the UK and the responsibilities of the Home Office (including in determining claims) to them.

15. Please would you disclose the cost of this – how much has been spent and/or how much has been set aside to be spent on promotional and public relations material upon these various matters (a) over first sixth months of 2021, (b) over the last sixth months of 2021, (c) over the first sixth months of 2022, and (d) over the last sixth months of 2022?

Whereas we acknowledge the degree of detail that we are seeking by this letter, our expectation is that these matters ought to be known to the Home Office given the Memorandum has now been both announced and published; and we are led to believe by Ministers' public pronouncements may be put into operation relatively shortly.

Accordingly, we look forward to your response.

Sincerely,

Steve Valdez-Symonds
Refugee and Migrant Rights Programme Director
Amnesty International UK