

Written evidence submitted by the UNHCR, the UN Refugee Agency
18 August 2022

1. UNHCR, the UN Refugee Agency, is a non-political, humanitarian organisation. It is entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees, asylum-seekers and stateless persons, and together with governments, to seek permanent solutions to their plight.¹
 2. We welcome the opportunity to contribute to the International Agreements Committee inquiry into the UK-Rwanda Memorandum of Understanding. For the purposes of this submission UNHCR has drawn upon the knowledge and observations of UNHCR staff working in the United Kingdom, who have also consulted with colleagues at Headquarters and in Rwanda where relevant.
- a) What are the implications of signing an agreement that asserts that it is not binding on either Party in international law? Is the MoU an appropriate vehicle for this agreement?**
3. UNHCR believes such agreements should be transparent, binding, and justiciable in a court of law.² In this instance, the enforcement of such matters (i) has been left to diplomatic means; (ii) without the benefit of judicial oversight in either State; and (iii) without the force of international law or the benefit of international dispute resolution mechanisms.
 4. As it stands, neither those removed to Rwanda, nor either of the Parties, have any formal modality to ensure compliance with the MOU. In the event that assurances made by Rwanda were not to be met, United Kingdom's only recourse would be to stop sending asylum-seekers under the agreement. The absence of any available legal process to support or compel compliance, such as with respect to access to interpretation services, asylum appeal rights, or integration support for recognised refugees, is of concern.
 5. MoU §22.1, states that the parties shall make all 'reasonable efforts' to resolve any dispute between them and that neither party shall 'have recourse to a dispute resolution body' outside 'of this'. This appears to preclude the use of (non-legal)

¹ 1950 Statute of the Office of UNHCR paragraph 8(a). UNHCR's supervisory responsibility over the implementation of international instruments is also reflected in Article 35 of the 1951 Convention relating to the Status of Refugees and Article II of its 1967 Protocol (1951 Refugee Convention), obliging State Parties to cooperate with UNHCR in the exercise of its functions. UNHCR has also been formally mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless persons.

² UNHCR's position is that in the context of arrangements between States for the transfer of asylum seekers, such arrangements are best governed by a legally binding instrument, challengeable and enforceable in a court of law by the affected asylum-seekers. Such arrangements should also clearly stipulate the rights and obligations of each State and the rights and duties of asylum seekers.

third party dispute resolution mechanisms (e.g. mediation or arbitration), as well as all legal ones. The MoU is silent as to what happens if the parties cannot, with reasonable efforts, resolve the relevant dispute.

6. As the UK Foreign Office Guidance on Practice and Procedures in relation to Treaties and Memoranda of Understanding (March 2022) observes (§4), 'An MoU is used where it is considered preferable to avoid the formalities of a treaty – for example, where there are detailed provisions which change frequently or the matters dealt with are essentially of a technical or administrative character; in matters of defence or technology where there is a need for such documents to be classified; or where a treaty requires subsidiary documents to fill out the details.'
7. With this guidance in mind, it is not clear why the assurances at issue in the asylum partnership agreement are made non-justiciable and non-binding. The requirements of an adequate asylum process will not 'change frequently'. The MoU is not confidential. Its provisions are not matters that are 'essentially of a technical or administrative character', nor does it require 'subsidiary documents to fill out the details'. It is, on the contrary, concerned with substantive matters that are fundamental to the purported lawfulness of any proposed transfer.

b) How do you assess the assurances and safeguards included in the MoU, particularly those relating to inspection and monitoring, a relocated individuals' access to legal assistance, and data protection?

8. Our understanding is that Terms of Reference have not yet been agreed for the Monitoring Committee charged with reporting on compliance with the MoU. Similarly, as far as we are aware, members of the Committee have not yet been appointed. While not part of the MEP's monitoring structures, UNHCR will endeavor to continue to monitor refugee protection as part of its supervisory responsibilities under the Refugee Convention and in line with its mandate. UNHCR Rwanda is though neither systematically apprised of all asylum claims nor decisions taken and will not be able to ensure compliance with assurances given.
9. UNHCR's assessment is that the capacities are also not yet in place to enable compliance with the commitments on access to legal assistance. Current barriers include a lack of on-site interpretation in the languages spoken by those who would be subject to removal to Rwanda and the scarcity of advisors in refugee law. UNHCR has been advised that telephone interpretation will be provided where needed. For communication with officials who do not speak English well, two interpreters may be necessary.
10. To the best of UNHCR's knowledge, UNHCR has not been allowed to monitor interviews undertaken by the Directorate General of Immigration and Emigration (DGIE), the Ministry in Charge of Emergency Management (MINEMA), nor into sessions of the National Refugee Status Determination Committee (RSDC). Refugee status has in the vast majority of cases been accorded on a group basis

to Burundians and Congolese, so there is no existing pool of professionals trained or experienced to provide counselling or representation.

c) Is the MoU consistent with the UK's obligations under international law, including the 1951 Refugee Convention?

11. The primary responsibility to provide protection rests with the State where asylum is sought. States cannot avoid their obligations under international refugee and human rights law by transferring applicants abroad. In UNHCR's view, notwithstanding the MEP and transfer to Rwanda, the UK would retain responsibility for ensuring respect for Refugee Convention rights.
12. Transfer arrangements should enhance burden-and responsibility-sharing and international/regional cooperation and should not result in burden-shifting. In order to remain compliant with international refugee law, such arrangements should contribute to the enhancement of the overall protection space in the transferring State, the receiving State and/or the region as a whole. Transfer arrangements would not be appropriate where they represent an attempt, in whole or part, by a 1951 Convention State party to divest itself of responsibility; or where they are used as an excuse to deny or limit jurisdiction and responsibility under international refugee and human rights law.
13. It is UNHCR's position that the bilateral relocation modality entered into by the UK and Rwanda does not contribute to burden- and responsibility-sharing. Nor does it enhance international cooperation or enhance the protection space in any State. Developing countries, including in Africa, host the vast majority of the world's refugees, with the least developed countries providing asylum for one-third of the global total. If prosperous States such as the UK only accept refugees who have been 'invited', the international cooperation upon which the institution of asylum rests would be at risk. In light of these perspectives, UNHCR considers the arrangement to be inconsistent with global solidarity and responsibility-sharing.
14. UNHCR notes that whilst Rwanda has generously provided haven to refugees (on a group basis) for decades and has made efforts to build the capacity of its domestic asylum system, this 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. As part of its submissions as intervenor in ongoing litigation, UNHCR has described its serious concerns regarding access to asylum, the due process afforded applicants, and resultant risk of refoulement given the gaps in process and decision making. It is UNHCR's assessment that long-term and fundamental engagement is required to develop Rwanda's national asylum structures to fairly adjudicate individual asylum claims. The assurances provided in the MOU and Note Verbales are largely aspirational and the process for meeting such assurances are not set out.

15. UNHCR is also concerned that the relocation of asylum-seekers from the UK to Rwanda is not in accordance with Article 31(1) of the 1951 Convention. Article 31(1) prohibits penalties imposed on account of irregular entry or presence of a refugee or asylum-seeker. UNHCR, based on widely-accepted principles of treaty interpretation and supported by academic experts, considers that the term “penalties” should be interpreted broadly, referring to any criminal or administrative measure taken by the State that has a detrimental effect on the refugee or asylum-seeker. As such, the relocation of asylum-seekers from the UK to Rwanda is prohibited under Article 31(1) for those who have come directly, presented themselves to the authorities without delay and shown good cause for their irregular entry/presence. For those who have not come directly, the penalties which can be imposed cannot deny access to asylum nor infringe on Convention rights.
16. In sum, UNHCR’s view is that the UK-Rwanda arrangement cannot be brought into line with international legal obligations through minor adjustments as it violates both the letter and spirit of the Refugee Convention.