



UK/Rwanda deal: externalising asylum to Africa, a massive deterrent in Europe

In an urgent stay order of 14 June 2022, the European Court of Human Rights reminded the UK that it is still subject to international asylum law. Whether in the United Kingdom or in the Member States of the European Union, it is no longer the time to welcome people and the race to return them is in full swing.

Externalising asylum to Rwanda was one of the main measures of the UK's "immigration plan", presented on 14 April 2022, and it was supposed to dissuade "irregular" crossings of the Channel. However, the appeals of the complainants - mostly from Syria, Iraq and Iran - and their supporters finally paid off: on 14 June, the European Court of Human Rights prevented in extremis the departure of the first flight of asylum seekers to be "transferred" from the United Kingdom to Rwanda¹, thus saving what remains of the principle of non-refoulement. In view of the British determination to pursue the plan, this is probably only a postponement...

For the desire to "welcome" exiles as far away from European territory as possible is deep-rooted and not new². As early as 1986, Denmark proposed a system for managing asylum applications in regional processing centres, administered by the United Nations, in which asylum seekers who had crossed the border "irregularly" would be systematically placed. In 2003, inspired by Australia's decried "Pacific solution"³, Blair spoke of "transit centres" outside Europe to send asylum seekers to before they reached European soil.

In 2022, it became a reality for Johnson's UK: exiles could have their claims for protection ruled inadmissible if they arrived on British soil outside authorised border crossings, after a "dangerous" journey, or from a safe third country, and could be sent to Rwanda, where they could apply for asylum. If the decision is positive, Rwanda would then become a country of reception and protection for five years, under the Memorandum of Understanding between the two countries, in exchange for £120 million paid by the UK⁴.

With this deal, the UK is taking another step towards violating the principle of non-refoulement, the cornerstone of the right to asylum. It is by no means the only state to move in this direction. For several years now, the member states of the European Union have given up on reception and have been normalising pushbacks at Europe's borders and multiplying formal or informal agreements with the

¹"The European Court grants urgent interim measure in case concerning asylum seeker's imminent removal from the UK to Rwanda", European Court of Human Rights, 14 June 2022: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7359967-10054452&filename=Interim%20measure%20granted%20in%20case%20concerning%20asylum-seeker%E2%80%99s%20imminent%20removal%20from%20the%20UK%20to%20Rwanda.pdf>

² "Protect and control : the Janus face of the UNHCR", Migreurop Brief #11, May 2020, http://migreurop.org/article3007.html?lang_article=en

³ The "Pacific solution" was to detain asylum seekers arriving by sea to Australia in camps on Manus Island, Papua New Guinea: <https://www.amnesty.org/fr/wp-content/uploads/sites/8/2021/06/asa120102002fr.pdf>

⁴ "UK to send asylum-seekers to Rwanda", France 24, 14 April 2022, <https://www.france24.com/en/live-news/20220414-uk-to-send-asylum-seekers-to-rwanda>

countries of the Global South, under the placid gaze and/or with the engagement of European institutions.

A milestone was reached in this respect in 2016 with the EU/Turkey Statement, allowing the return of exiles who arrived on the Greek islands to Turkey, considered by Greece as a safe country.

In 2018, the European Commission proposed to set up "regional disembarkation platforms" in North African countries to "save lives" and sort exiles upstream of European waters and territory⁵, but had to abandon the project when Tunisia, Morocco and Algeria refused to play along.

But in February 2020, in a decision favourable to the Spanish authorities - who had carried out pushbacks at the land border with Morocco in 2017 - the European Court of Human Rights had already ratified - in defiance of the Geneva Convention (art. 31) - the impossibility of lodging an asylum application in case of "illegal border crossing"⁶. In October 2021, Poland legalised the refoulements of those who crossed its border "illegally", not hesitating on this occasion to question the primacy of European law over national law⁷.

Here, once again under the fallacious pretext of "saving lives" by avoiding the risks of a perilous crossing, the United Kingdom has validated the "relocation" to Rwanda of exiles already present on European soil and whose applications for protection were deemed inadmissible without examination on the merits. By doing so, the UK assumes that Rwanda - which has been hosting the UNHCR's emergency programme to evacuate the most vulnerable people from Libyan detention centres to emergency transit centres (under the Emergency Transit Mechanism - ETM) since 2019 - is a 'safe' third country, both for its nationals and for the foreigners returned there. This is despite strong criticism from the political opposition and the international community about the infringement of rights in situ, especially those of LGBTI+ persons⁸ and freedom of expression.

Brexit will undoubtedly have allowed the United Kingdom to partially free itself from the European base of international protection and to take steps towards offloading its responsibilities in terms of reception.

But asylum is under attack from all sides, including from EU member states. For example, in April 2021, Denmark also concluded a Memorandum of Understanding with Rwanda, and in June 2021 it adopted a law allowing it to externalise the examination of asylum applications, transferring applicants who would have already entered its territory to centres located outside the EU, in return for finances⁹.

In practice, externalising asylum outside Europe means that States are trampling on their obligations in terms of reception and international protection and rendering meaningless their ratification of the main international protection instruments (Geneva Convention and European Convention on Human Rights) - to which the United Kingdom is still subject, as the European Court of Human Rights has just reminded it.

⁵ « La migration le long de la route de la Méditerranée centrale - Gérer les flux migratoires, sauver des vies », Commission, 21 janvier 2017 : https://eur-lex.europa.eu/resource.html?uri=cellar:6e6590bb-e2fa-11e6-ad7c-01aa75ed71a1.0010.02/DOC_1&format=PDF

⁶ "European Court of Human Rights: Spain and the European Union will prevail the protection of European borders over the right to asylum", Migreurop, 21 February 2020:

http://migreurop.org/article2954.html?lang_article=en

⁷ "Poland questions EU legal primacy in court ruling", EU Observer, 8 October 2021,

<https://euobserver.com/rule-of-law/153170>

⁸ "UK's Rights Assessment of Rwanda Not Based on Facts, Abuses Overlooked to Justify Cruel Asylum Policy", Human Rights Watch, 12 May 2022: <https://www.hrw.org/news/2022/05/12/uks-rights-assessment-rwanda-not-based-facts>

⁹ "Denmark agrees law to deport asylum seekers outside of Europe", Reuters, 3 juin 2021, <https://www.reuters.com/world/europe/denmark-agrees-law-deport-asylum-seekers-outside-europe-2021-06-03/>

This bargaining logic inherent in externalisation also allows non-European authoritarian regimes to be rehabilitated at the diplomatic level as legitimate partners with the EU, in this case Rwanda, which has been strongly criticised for restricting the freedoms of its nationals.

Externalising asylum is contrary to the letter and spirit of the Geneva Convention and undermines the global refugee regime. It is contrary to the freedom of everyone to choose freely the host country in which he or she wishes to seek protection and settle. It is also the antithesis of solidarity: the UK and Denmark are among the richest countries in the world and receive far fewer exiles than many other much poorer states, particularly in Africa. According to the United Nations High Commissioner for Refugees, "almost 9 out of 10 refugees are hosted in developing countries"¹⁰.

The cruel and shameless policy of sending asylum seekers back from the North to a country in the South thousands of kilometres away must be condemned and fought with determination, in the name of welcoming everyone, so that the right to asylum may live on.

Paris, 20 June 2022

¹⁰ « Le nombre des déplacés et des réfugiés dans le monde a doublé en 10 ans, selon le HCR », UNHCR, 18 June 2021 : <https://news.un.org/fr/story/2021/06/1098432>