Written Evidence by Dr Ermioni Xanthopoulou and Dr Mohammad Nayyeri (ASU0018)

Written evidence submitted by Dr Ermioni Xanthopoulou[1] and Dr Mohammad Nayyeri[2] (Brunel University London)

We wish to respond to the following questions as set out in the Joint Committee's call for evidence:

> 1. Is it compatible with the UK's human rights obligations to deny asylum to those who do not use what the Government calls "safe and legal routes"?
>
> 3. Is the policy of relocating asylum seekers to third countries consistent with the UK's human rights obligations?

Executive Summary

- The UK has explicit obligations under international law towards refugees arriving in the UK, and the limited resettlement programmes do not remove or exhaust those obligations.
- The narrow understanding of safe and legal routes that only recognises settlement schemes, while treating other asylum seekers as 'illegal' and denying them access to asylum, is incompatible with the UK's human rights obligations.
- The relocation of asylum seekers to third countries is not consistent with several human rights and refugee laws that the UK is bound to respect.
- The current law raises serious legality issues with regard to its retroactive application and its compatibility with the principle of non-refoulement, prohibition of torture or inhumane or degrading treatment, prohibition on collective expulsions, right to asylum, prohibition of penalisation.
- It is proposed that the current relocation agreement is revised.

Q 1. Is it compatible with the UK's human rights obligations to deny asylum to those who do not use what the Government calls "safe and legal routes"?

1.1. The UK has made available a few programmes of admission and resettlement of refugees such as the UK Resettlement Scheme (UKRS) launched in 2021. Such schemes, regardless of their scope and effectiveness,[3] create a protection system that distinguishes between two separate groups:

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[3] Home Office's latest datasets (*Table Asy_D02*) show that as of July 2022 the UKRS has resettled only 1,685 refugees. Under further schemes based on the support of family members (MRS) or local community groups (CSS) only 308 people were resettled in the UK between January 2018 and July 2022.

a. Refugees who have been previously identified by the UNHCR as refugees in need of resettlement and accepted by the UK government under a resettlement scheme;

b. Asylum seekers arriving on a visa (student, tourist, etc), or turning up 'spontaneously' at the border, or enter clandestinely (often following perilous journeys arranged by human smugglers) who claim asylum either at the port of entry, or at a later stage ('in-country' application).

1.2. The UK Government has been treating some individuals in the second category as less-deserving, labelling them as 'illegal' due to their method of arrival to the UK. Section 12 of the Nationality and Borders Act 2022 explicitly differentiates between them and gives them different entitlements in violation of the principle of *non-penalisation* recognised in the 1951 Refugee Convention.

1.3. Many asylum seekers in the second category are effectively denied access to asylum in the UK unless they put their lives in danger and break the law. It must be noted that it is not possible for anyone to obtain a visa in their home country for the purpose of seeking asylum in the UK. The UK immigration authorities strictly (often overzealously) deny visas to anyone from 'refugee-producing' countries if it is suspected that they might claim asylum. It means that an asylum seeker will have no choice but to commit some form of illegal action (e.g. make a false statement to the authorities at the UK embassy in order to obtain a visa, or attempt a clandestine entry), if they are to arrive in the UK to exercise their right to apply for refugee protection.

1.4. The laws and policies that make asylum seekers inadmissible to the UK are the foundation upon which the trade in people smuggling operates, and what make it urgent to provide 'safe and legal routes' for asylum seekers. The Government's narrow view of safe and legal routes, however, has led to rules and policies with the exact opposite effect: unsafe routes and treating asylum seekers as illegal.

1.5. What is particularly concerning is that some authorities in the UK seem to believe that the UK's international obligations are premised on the refugees and asylum seekers pursuing the existing governmental schemes. Refugees, from this perspective, are 'welcome' only if they fit into and follow those limited programmes. A clear example of this is a recent report by the Centre for Policy Studies which has been endorsed by the Home Secretary expressly proposing that asylum shall be granted only through resettlement routes. This, however, is legally erroneous and in contravention of the UK's obligations under international law.

1.6. As a party to the 1951 Refugee Convention and major human rights treaties, the UK has explicit obligations towards all asylum seekers including those who are not eligible for or included in the resettlement schemes. Anyone whose life or fundamental rights and freedoms are at risk in their own country has a human right to seek international protection. No asylum seeker is 'illegal', and the UK has a clear responsibility to provide access to asylum for everyone arriving and seeking protection in its territory.

1.7. The UK humanitarian schemes, while commendable from the perspective of international solidarity and responsibility-sharing, do not remove or exhaust its human rights obligations. Such schemes are distinct from, and may only *partially*

overlap with, those obligations. While those admitted under the resettlement programmes are refugees within the meaning of the Refugee Convention, the UK cannot plausibly claim that by implementing the schemes has exhausted its obligations towards refugees and asylum seekers.

1.8. The right to seek asylum would become illusory and meaningless if it was to be subjected to, or substituted with, discretionary schemes as exclusive means of admitting refugees to the country.

1.9. Consequently, any law or policy that recognises settlement schemes as the only safe and legal routes of seeking asylum and, as a result, treats the rest of the asylum seekers as illegal and denies them asylum will be in breach of the UK's international obligations including the right to asylum, and principles of *non-refoulement* and *non-penalisation*.

2.

Q 3. Is the policy of relocating asylum seekers to third countries consistent with the UK's human rights obligations?

3.1. On 14 April 2022, the UK government published a Memorandum of Understanding (MoU) that was concluded with the government of Rwanda. The MoU provides for 'a mechanism for the relocation of asylum seekers whose claims are not being considered by the United Kingdom' (MoU 2.1).

3.2. In principle, states are allowed to externalise elements of their asylum system to third states if this is done in a way compliant with their legal obligations under domestic and international law. However, the relocation of asylum seekers under the MoU is not consistent with several human rights and refugee laws, under domestic and international agreements, that the UK is bound to respect. There is no doubt about the applicability of these rules, as the asylum seekers affected by the MoU are clearly within the UK jurisdiction and are, therefore, beneficiaries of the UK's legal commitments.

3.3. Moreover, the announcement that 'anyone entering the UK illegally – as well as those who have arrived illegally since January 1st – may now be relocated to Rwanda' raises serious legality issues. Indeed, retrospective application of the rules under the MoU to asylum seekers who arrived in the UK before the MoU was even signed raises constitutional concerns about legal certainty which is a significant aspect of the rule of law, a fundamental principle of the UK constitutional law.

3.4. In addition, the MoU raises serious issues of compatibility with the 1951 Refugee Convention, the Convention against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the European Convention on Human Rights (ECHR).

3.5. First, by distinguishing asylum seekers whose claims are not being considered by the UK because of their irregular entry, the MoU effectively penalises them. This is in violation of Article 31(1) of the Refugee Convention which exempts refugees from penalisation for irregular entry, recognising that most refugees have often no choice on this matter.

3.6. The UK is also in breach of the principle of non-refoulement, protected by Article 33(1) of the Refugee Convention, Article 3(1) CAT, and implied in a range of rights in the ICCPR and ECHR. While Rwanda is seen to have made some progress in relation to human rights standards, it is questioned whether Rwanda is in fact a 'safe third country' and any transfer to Rwanda might breach the non-refoulement or cause chain-refoulement.

3.7. In tandem with refoulement, the UK law is very likely to also be in breach of the absolute prohibition of torture or inhumane or degrading treatment, protected in Article 3 of the ECHR and by the Human Rights Act 1998.

3.8. The UK is, furthermore, very likely to be in breach of the right to asylum, protected in 1951 Refugee Convention that every person is entitled to exercise. By relocating asylum seekers to a third country, the UK effectively denies them from an actual opportunity to exercise their right to asylum in its territory.

3.9. Another relevant principle whose protection will also be at stake is the absolute prohibition on collective expulsions set out in Article 4 Protocol 4 to the ECHR, as groups of people are threatened for a transfer to a third country without having their applications for international protection individually assessed by UK asylum authorities.

3.10. Particular concerns exist about specific groups of asylum seekers, such as LGBTQ asylum seekers whose claims might not be given adequate attention. The agreement fails to respond to the intersectional vulnerabilities of LGBTQ asylum seekers who might end up being further discriminated, persecuted and potentially refouled back to their country of origin. Human Rights Watch documented how Rwandan authorities arbitrarily detained members of the LGBTQ community.

3.11. In addition, the partnership as well as other externalisation initiatives in relation to border control, do not sit well with the good faith duty of cooperation, the principles of solidarity and responsibility-sharing that underpin international refugee law, as highlighted by the Global Compact on Refugees and the Global Compact on Safe, Orderly and Regular Migration (GCM), which the UK endorsed in 2018.

3.12. So far, an attempt for relocation has been blocked by a late intervention from the European Court of Human Rights (ECtHR) that recognised the danger of exposing asylum seekers to inhumane or degrading treatment if transferred to Rwanda. Such an eventuality directly stems from the incompatibility of the UK-Rwanda Partnership Agreement with the UK's human rights obligations under domestic and international law.

3.13. Three unsuccessful comparative examples of schemes aiming at the relocation of asylum seekers should also be considered as valuable lessons could be learned from these initiatives.

a. A similar partnership agreement between Rwanda and Israel was unsuccessful and collapsed. The Israeli state as a result decided to abandon the partnership due to harrowing reports on human rights violations.

b. The Australian example where part of the scheme ended and the government had to pay tens of millions of dollars in compensation to refugees has also

been associated with a shameful human rights record that the UK should not want to replicate.

c. A similar plan is also sought by Denmark which voted for legislation allowing the conclusion of external partnerships. The plan is heavily criticised for its incompatibility with human rights laws.

3.14. From a cost perspective, the current policy is estimated to cost £120m of tax-payers money for an initiative that is not even feasible under the UK's laws.

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