

Evading responsibility for refugee protection

Danish Refugee Council's analysis and recommendations related to the Danish plans to externalize asylum processing and refugee protection.



Photo credit: Jan Grarup, Lesbos, Moria

Background

On 3 June 2021, the Danish Parliament adopted [an amendment to the Aliens Act](#) with a strong majority, establishing the legal basis for the transfer of asylum seekers to a third country for asylum processing. The amendments to the Aliens Act state that a foreigner seeking asylum shall be transferred to a third country for asylum processing under an international agreement unless it would be a breach of Denmark's international obligations. Importantly, asylum seekers found to be in need of international protection upon transfer would not be afforded protection in Denmark, but rather in the third country. Similarly, the responsibility to return rejected asylum seekers will fall on the third country.

The law does not specify how the arrangement will be implemented in practice. It does not clarify questions of jurisdiction and accountability (e.g., whether asylum processing and the management of reception centres will be managed by the Danish authorities or by the host country), it does not provide details on how the arrangement will be monitored, on the situation and conditions for those recognized as refugees, or the return process of those who are rejected. Similarly, it does not in any detail provide clarity regarding profiles that may be exempted from transfer.

The implementation of the amendment is dependent on a treaty with a third country. It will not enter into force until such a formalised agreement is in place. The departing Danish Government has actively pursued an agreement with Rwanda, and it has made explicit that Danish development aid will be used to incentivize cooperation.

Status on negotiations with Rwanda on transfer of asylum seekers

The departing Danish government has actively pursued an agreement on the transfer of asylum seekers with the authorities in Rwanda. The outgoing Minister of Immigration and Integration has indicated that the first transfers to Rwanda are expected by July 2023.

- April 2021: The Social Democratic government initiates formal cooperation with Rwanda and signs two memoranda of understanding, which address what they [call an interest in closer asylum and migration cooperation](#) and [increased political consultations on development cooperation](#).
- January 2022: A delegation of Rwandan officials visits the Danish government, and the Danish government refers to the visit as "[a step towards cooperation between the two countries](#)".
- August 2022: The Danish Ministry of Foreign Affairs announces that it will open a project office in Rwanda's capital, Kigali. It is stated that "the establishment of a project office means that Denmark will have the opportunity to expand development cooperation with Rwanda".
- September 2022: Danish Development Minister, Flemming Møller Mortensen, and Immigration and Integration Minister, Kaare Dybvad Bek, are on a two-day visit to Rwanda. The result is a joint statement between the two countries: [Joint statement on bilateral cooperation \(um.dk\)](#).

Rwanda has previously had similar arrangements with Israel. Most recently the United Kingdom entered into an agreement with Rwanda in April 2022 on the reception and processing of asylum seekers' cases, as well as subsequent refugee protection. However, the first planned transfer was halted in June 2022 due to a ruling by the European Court of Human Rights which issued urgent interim measures, under Rule 39 of the Rules of Court. Further removal flights are now pending resolve of legal challenges.

DRC is **extremely critical towards and opposed to the approach that risks undermining the rights of refugees** and jeopardize international cooperation on refugee protection, as well as the evident instrumentalization of Danish development aid towards domestic objectives.

Flawed rationale and false premises

The Danish scheme for externalizing asylum processing and refugee protection has been presented by the departing Danish government as an innovative and humane alternative to what is perceived as a dysfunctional and unfair asylum system.

It is argued that this scheme will break the incentive that causes refugees to move through irregular and dangerous routes, destroy the business model of smugglers and address the perceived unfairness of the current system that give access to asylum in Denmark and Europe only for those who have the means to make the journey. In addition, it aims to design a more cost-effective system, where refugees are contained closer to home to reduce costs, thereby allowing for an increased flow of financial support to the major refugee hosting countries.

As pointed out by DRC and many other actors, the rationale behind the promotion of this idea for a new asylum system is flawed and the premises are false. The Danish scheme for externalized asylum processing and refugee protection reflects a narrow Danish perspective, based on a misconceived perception widely supported by political rhetoric depicting an insurmountable and unmanageable movements of refugees and migrants towards Europe and Denmark. In reality the global asylum system protects millions of refugees – primarily in neighbouring countries – and this system is jeopardized by Denmark's attempt to evade its responsibility to host an exceedingly small fraction of the world's asylum seekers and refugees. The number of people seeking asylum in Denmark in 2021 amounted to no more than [2,095 people](#).

Here are five reasons why the Danish externalization scheme will not contribute positively to a more humane global asylum system, and the DRC's alternative recommendations:

1. The scheme caters for narrow Danish interests to reduce the number of asylum seekers in Denmark and does nothing to positively address the global refugee situation.

The Danish scheme is mainly based on narrow Danish interests in reducing the number of asylum seekers in Denmark. The model has a disproportionate focus on the small part of the world's displaced people who are moving towards Europe and does not sufficiently recognize that the majority of the world's refugees and displaced persons are hosted in neighbouring countries. Most displaced never cross a border (more than 53 million are internally displaced) and of those who do, the vast majority (72%) remain in close proximity to their home country.

The Danish scheme stands in stark contrast to the commitments entailed in the Global Compact on Refugees, which Denmark has endorsed. A model that effectively blocks access to spontaneous asylum seekers in Denmark and penalises refugees for moving through irregular routes will contribute to undermine international refugee cooperation. Continued willingness in neighbouring countries to receive and host millions of refugees is not a given but depends on

countries such as Denmark to also show solidarity and willingness to host and protect displaced people.



Photo credit: Mais Salman/DRC. Azraq Camp, Jordan. September 2019.

Danish Refugee Council's recommendation:

Support the global system of refugee protection and contribute to global responsibility sharing. While the number of displaced people across the globe has reached the grim record of over 100 million this year, there is a need for solidarity and global solutions with respect for the Refugee Convention and the right to seek asylum. Lack of respect for the Convention and for global responsibility sharing as a sustaining principle for the global

refugee system has major humanitarian consequences. If a country like Denmark fails to shoulder their share, there is a risk that other refugee-hosting states will follow suit with potential devastating consequences for the protection of refugees globally.

2. The scheme will have no effect in terms of reducing the dangerous journeys or the demand for human smugglers.

A central part of the rationale for the bill and for the Danish plans, is to reduce the number of people travelling along dangerous routes to reach safety in Europe and Denmark. However, the Danish scheme as it stands will not have any effect in terms of reducing the dangerous journeys or the demand for people smugglers. It is not the possibility of asylum in Denmark and Europe, but rather the combination of conflicts, persecution, desperate conditions in congested host countries, and closed borders, that lead far too many people to expose themselves to serious danger and abuse in the attempt to reach safety, protection and better living conditions.

The biggest barrier to safer mobility for people seeking protection are measures such as visa restrictions, border controls and carrier sanctions (liability and punishment through fines by airlines and others for transporting passengers without valid travel documents). A Danish agreement on the transfer of asylum seekers to a third country could possibly have a deterrent effect and thereby reduce the number of asylum seekers in Denmark. However, this is likely to result in the responsibility being shifted to the neighboring countries.

Transferring asylum seekers to a country to which they have no connection and where the possibility of local integration for refugees is questionable will also - as experiences from similar models have shown - entail a substantial risk that they will feel forced to move onwards and re-embark on dangerous journeys and thereby inadvertently [increase the demand for human smuggling](#).

Danish Refugee Council's recommendation:

Strengthen resettlement schemes and safe legal pathways to protection. Resettlement through the UN's resettlement system must be strengthened, and additional safe and legal avenues for protection must be developed, such as the possibility for applying for asylum at embassies and consulates, humanitarian visas and easier access to family reunification. Taking a less restrictive approach to family reunification for refugees is an important alternative pathway to protection in Europe, as experience shows that many refugees and asylum seekers enter via irregular and

dangerous routes to seek protection and be reunited with family members in Europe.

Strengthening resettlement and expanding legal routes to protection will help to address the need of those seeking protection, but it is unlikely to fully eliminate dangerous journeys and the demand for human smugglers. Enhancing safer pathways to protection must however be considered a goal worth striving for in itself.



Photo credit: Jan Grarup, Lesvos, Moria

3. The scheme will make life even more difficult for people seeking protection.

Limiting the possibility and right to seek asylum in Denmark and forcibly transferring asylum seekers to a third country is far from a human alternative. Rather, it is likely to have profound consequences for asylum seekers' and refugees' rights and living conditions.

We expect that the externalisation scheme will greatly increase the use of coercion and deprivation of liberty. This applies initially in Denmark, where the law provides for depriving persons of their liberty prior to deportation. But this equally applies in the third country, where a reception center must be presumed to contain elements of deprivation of liberty during the asylum procedure, but possibly also for rejected asylum seekers, until their return can be effectuated. In addition, the conditions and protection that will be available to recognized refugees in the third country is a concern.

Danish Refugee Council's recommendation:

Uphold and protect the right to seek asylum and the principle of non-refoulement. It is a fundamental and absolute right in refugee and human rights law that states do not return (refoule) people to countries and areas

where their lives are in danger (the principle of non-refoulement). Asylum seekers and refugees must be treated in accordance with the Refugee Convention and other international human rights conventions. This means that asylum seekers must have access to a fair and efficient asylum procedure, which includes among other things, the right to legal advice, qualified interpretation, and an independent appeals body. The use of force and the deprivation of liberty for people who seek protection and who have not committed or are suspected of a criminal act is very problematic.

4. The scheme has no support from key international organizations and institutions.

The Danish externalisation scheme has received widespread criticism from national and international organizations and institutions. The UN High Commissioner for Refugees (UNHCR) and the African Union (AU) have strongly condemned the plans and particularly pointed to the negative consequences such measures can have for international cooperation. In addition, the European Commission has criticized the proposal and warned of possible consequences for Denmark's participation in the Dublin cooperation, which allocates responsibility for asylum seekers among the EU's member states.

Denmark alone cannot create a better global system for refugees. The scale of today's displacement requires global cooperation, global solutions and genuine global responsibility sharing.

Danish Refugee Council's recommendation:

Support and contribute positively to joint solutions. If the desire of the Danish social-democratic government is to contribute positively with solutions to a more humane global asylum system, then the considerations and opinions of institutions - such as the UNHCR, the AU and the European Commission must be duly considered and incorporated. Denmark's continued pursuit of a model that seeks to transfer asylum seekers to a third country risks damaging its reputation in the European and international context, thereby also affecting its possibility of playing a positive role in relation to global solutions. It is crucial that Denmark shows real solidarity with the countries that host far more asylum seekers and refugees by continuing to ensure access to seek asylum and by increasing the number of refugees received through the UN resettlement system.

International criticism and legal challenges

- UNHCR has [warned](#) about the global implications of externalisation of asylum processing and refugee protection and pointed to the incompatibility of these initiatives with international human rights obligations, including the risk of refoulement and their failure to provide sufficient protection against irreparable harm contrary to Article 3 of the European Convention of Human Rights (ECHR). UNHCR has provided comprehensive comments to both the [Danish legislative proposal](#) and the [UK-Rwanda Asylum Partnership Agreement \(APA\)](#).
- The **African Union (AU)** has [condemned the Danish plans](#), underlined the negative consequences such measures can have for international cooperation and emphasized the contradictions with the commitments of equitable responsibility-sharing as envisioned in the Global Compact on Refugees.
- The **European Commission** has [spoken out](#) strongly against efforts of individual states to externalise asylum processing and refugee protection and pointed to contradictions with EU law. It is at odds with the Treaty of the Functioning of the EU, prevailing primary law obligations to comply with the right to asylum following Article 18 of the EU Charter of Fundamental Rights, as well as secondary legislation ensuring the right to seek asylum, which includes access to the territory and to fair asylum procedures.

Ongoing legal challenges related to the UK-Rwanda scheme

The first transfers under the UK-Rwanda scheme scheduled Mid-June 2022 were halted because the European Court of Human Rights issued urgent interim measures in individual cases, under Rule 39 of the Rules of the Court. In the first case, the European Court of Human Rights indicated to the British Government that a removal to Rwanda could not take place until three weeks after the delivery of a final domestic decision in the ongoing judicial review proceedings.

Currently, there are several cases being considered by the British courts. The cases focus on:

- compliance with duties of inquiry and investigation at common law and under Article 3 of the European Court of Human Rights;
- Rwanda's asylum system and potential risks of breaches of the broader rights of the Refugee Convention for people transferred, including in particular onward refoulement (expulsion from Rwanda);
- potential contradiction with Article 31 of the Refugee Convention on non-penalization.

5. The scheme further cements the tendency towards short-term instrumentalization of development aid on account of those most in need.

More than 100 million people live in displacement worldwide, including more than 26 million refugees. The evident use of Danish development aid as an incentive for a quid-pro-quo agreement driven by a Danish domestic political agenda sends a negative signal to the world's poor and conflict-affected countries and contributes to undermining global solidarity and responsibility sharing. The use of aid for national interest risks detracting from the traditional purposes of development cooperation (such as poverty reduction and human rights) and risk diverting aid allocations from where it is needed the most.



Photo credit: DRC, Burkina Faso 2021

Danish Refugee Council's recommendation:

Focus on preventing conflict and displacement, invest in the capacity of host countries, and maintain the long-term focus of development aid. Addressing displacement requires a far greater focus on resolving conflicts politically, as well as on conflict prevention by supporting sustainable growth, inclusive communities, and access to rights. The countries hosting the vast majority of the world's refugees must be supported so that they are able to manage the pressure put on their education, health, justice, and asylum system, local economies, and infrastructure, to prevent secondary displacement and lasting impoverishment of both displaced people and their host communities.

Development aid should be increased and not eroded, and the success of development aid must be measured by its ability to create positive change through increased protection, access to rights and poverty reduction, and not by whether it contributes to limiting and containing mobility.

To achieve real solutions, there is a great need for principled and protection-oriented development aid that is needs-based and long-term and founded on the basis of human rights protection.



Founded in 1956, the Danish Refugee Council (DRC) is Denmark's largest international NGO, with a specific expertise in forced displacement. DRC is present in close to 40 countries and employs 7,500 staff globally.

DRC advocates for the rights of and solutions for displacement-affected communities, and provides assistance during all stages of displacement: In acute crisis, in exile, when settling and integrating in a new place, or upon return. DRC supports displaced persons in becoming self-reliant and included into hosting societies. DRC works with civil society and responsible authorities to promote protection of rights and inclusion.

Our 6,200 volunteers in Denmark make an invaluable difference in integration activities throughout the country.

DRC's code of conduct sits at the core of our organizational mission, and DRC aims at the highest ethical and professional standards. DRC has been certified as meeting the highest quality standards according to the Core Humanitarian Standard on Quality and Accountability.

HRH Crown Princess Mary is DRC's patron.

To read more about what we do, see: www.drc.ngo

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