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**Note Verbal No. 094**

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit its' response to communication OL GBR 1/2024, further to the letter dated 25 January 2024 from the Special Rapporteur on trafficking in persons, especially women and children. The Permanent Mission would like to request that this correspondence be shared with the Special Procedures Mandate Holders concerned with communications OL GBR 9/2022 and OL GBR 9/2023 by way of response.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 11 April 2024.

Special Procedures Branch  
Office of the High Commissioner for Human Rights



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## United Kingdom of Great Britain and Northern Ireland

### Response to Special Procedure communications OL GBR 1/2024 of 25 January 2024, OL GBR 9/2023 of 4 May 2023 and OL GBR 9/2022 of 1 July 2022.

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Thank you for your correspondence on 25 January 2024 regarding the UK/Rwanda Treaty: Provision of an Asylum Partnership ('the Treaty'), and previous correspondence on 4 May 2023 regarding the Illegal Migration Bill and on 1 July 2022 in relation to the Memorandum of Understanding (MoU) between the UK and Rwanda.

With regard to previous correspondence about the Illegal Migration Bill (now Act), this legislation since underwent further parliamentary scrutiny and was passed by both Houses, receiving Royal Assent on 20 July 2023.

It will deliver the bold action needed to tackle the scale of illegal migration in the UK by breaking the business model of criminal people smuggling gangs and so and deterring dangerous small boats crossing the Channel. As set out through the Parliamentary passage of the Illegal Migration Act, the Government takes its international obligations seriously and our approach is not incompatible with international law, including the Refugee Convention.

The Illegal Migration Act is formed around the core premise that those in need of protection should claim asylum in the first safe country they reach – that is the fastest route to safety.

The central points raised in the most recent correspondence of 25 January 2024 have been copied in bold and addressed in turn below, with the Government's responses in plain text.

- (1) The signing of the UK-Rwanda Agreement, in itself, does not address the international human rights and refugee law issues previously raised in my submission to the Court of Appeal in the case of CA-2023-000189: R (Asylum Aid) v Secretary of State for the Home Department. Further the adoption of a legally binding treaty does not address the conclusions of the Supreme Court of the United Kingdom in AAA (Syria) & ors, R (on the application of) v Secretary of State for the Home Department [2023] UKSC 42 (15 November 2023). Specifically issues of compatibility with international law remain in relation to the following areas affecting trafficked persons and persons at risk of trafficking: positive obligations of identification, assistance and protection of victims of trafficking; the**

**principle of non-punishment; the rights of the child and child victims of trafficking; persons with disabilities who are victims of trafficking.**

With regard to the principle of non-punishment, both the High Court and Court of Appeal concluded in *AAA (Syria) & ors, R (on the application of) v Secretary of State for the Home Department [2023] UKSC 42 (AAA v SSHD)* that the policy of relocating asylum seekers to a safe third country for processing is consistent with the UK's obligations under the Refugee Convention, and the Supreme Court did not disturb this. This finding equally applies to victims of trafficking, and as such we disagree with the conclusion that removal to Rwanda would amount to punishment. It is a longstanding established principle that those in need of protection should claim asylum at the earliest opportunity, in the first safe country they reach and there is nothing in the UN Refugee Convention which prevents relocation to a safe third country.

**(2) The signing of the Agreement, in itself, does not ensure that in the short or medium term, identification, assistance and protection measures that meet the State's legal obligations towards victims of trafficking, will be implemented effectively and consistently, prior to, during or after the relocation procedure.**

We recognise the Supreme Court upheld the Court of Appeal's finding that, due to deficiencies in Rwanda's asylum system, relocated individuals faced a real risk of refoulement. We carefully considered how to address the issues raised. This resulted in the Home Secretary, on behalf of the Government, signing the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants ('the Treaty') on 5 December 2023.

There are specific provisions in the Treaty to address the Supreme Court's conclusions, in particular regarding the risk of refoulement. This includes an undertaking from Rwanda that they will not remove any person relocated under the Migration and Economic Development Partnership (MEDP) except to the UK, in very limited circumstances, and that individuals relocated to Rwanda who are not granted asylum or humanitarian protection status will get equivalent treatment to those who are, including permanent residence.

Annex A of the Treaty contains binding legal obligations for the provision of accommodation, food, access to medical care (including mental health support), orientation and support to meet other basic needs, relating to those relocated to Rwanda.

The Treaty also enhances the role of the independent Monitoring Committee. They will ensure obligations under the Treaty are adhered to in practice. This will include an initial period of enhanced, real-time monitoring and will be able to take steps to prevent errors quickly. The Monitoring Committee will have the power to set its own priority areas for monitoring and have unfettered access for the purposes of completing assessments and reports. It will enable relocated individuals and legal representatives to lodge confidential complaints with it directly and will monitor the entire relocation

process from the beginning, including initial screening, to relocation and settlement in Rwanda.

The UK-Rwanda Treaty is binding under international law. It makes clear that Rwanda will not remove any individuals relocated under its terms except, in very limited circumstances, to the UK. We have assurances from the Government of Rwanda that the implementation of all measures within the Treaty will be expedited. It is the UK Government's assessment that the measures set out in the Treaty, in addition to ongoing work by and with the Government of Rwanda to strengthen and build capacity in the Rwandan asylum system and to address the Supreme Court's conclusions, mean that Rwanda is a safe third country for the purpose of relocated individuals under the terms of the MEDP.

- (3) The duty to identify, assist and protect victims of trafficking and persons at risk of trafficking continues to apply to trafficked persons seeking asylum, and cannot be met by transferring trafficked persons to third states, where real and effective protection is not ensured. The need to avoid 'undue delay' prior to relocation, as stated in the UK-Rwanda Agreement, may not allow for the complex process of identification of victims of trafficking.**

The UK considers that our duty to provide support to potential and confirmed victims of trafficking is discharged through the provisions of the Treaty.

Where there are indicators of modern slavery, there will be a referral under the [National Referral Mechanism to the Single Competent Authority](#), who will consider whether there are reasonable grounds to believe that the person is a victim of slavery or human trafficking, and a reasonable grounds decision will be made following that referral.

The UK is of the view that the duty to identify potential victims of trafficking is discharged through the referral under the National Referral Mechanism. Where a positive reasonable grounds decision has been made for an individual in scope for removal to Rwanda, this information will be shared with Rwanda in order to provide support on arrival. As you have set out, Article 13 (2) of the Treaty provides that Rwanda will treat an individual as a victim of modern slavery and human trafficking where that individual is in receipt of a positive reasonable grounds decision.

Article 13(1) of the Treaty provides that Rwanda shall have regard to information provided about a Relocated Individual relating to any special needs that may arise as a result of their being a victim of modern slavery or human trafficking, and shall take all necessary steps to ensure that these needs are accommodated.

Safeguarding arrangements in Rwanda are set out in detail in the Standard Operating Procedure on Identifying and Safeguarding Vulnerability, as published as part of the Government's evidence pack on [Safety of Rwanda \(Asylum and Immigration\) Bill: supporting evidence - GOV.UK \(www.gov.uk\)](#). The Standard Operating Procedure sets out the process for identifying vulnerable persons and where appropriate making safeguarding referrals to the relevant Protection Team. Screening interviews to identify vulnerabilities will be conducted by Protection Officers who have received the relevant training and are equipped to competently handle safeguarding referrals. Where

appropriate, the Protection Team may refer vulnerable individuals for external support, which may include medical and/or psychosocial support, or support within their accommodation. In addition, Protection Officers may support an individual to engage in the asylum process.

**(4) I note there appears not to have been any consideration of whether the transfer of trafficked persons, including potential victims of trafficking and other asylum seekers, to a third country in relation to which they have no connection, is compatible with the State's obligations under ECHR, including articles 3 and 4 ECHR.**

We have considered the implications of the policy with regards to Articles 3 and 4 throughout its development, and are confident that the provisions in the Treaty, together with the independent Monitoring Committee which will ensure Treaty obligations are being complied with in practice, enable the UK to remove individuals to Rwanda (including potential and confirmed victims of trafficking) in compliance with the UK's obligations under Articles 3 and 4 of the ECHR.

**(5) Further issues arise in relation to the screening arrangements prior to the proposed relocation of asylum seekers. Article 5(1) of the Agreement states that *'The United Kingdom shall be responsible for the initial screening of Relocated Individuals, before relocation to Rwanda occurs in accordance with this Agreement.'* It is not clear that victims of trafficking will have effective access to legal advice and representation, during the initial screening period, prior to commencement of the relocation process.**

Everyone considered for relocation will be screened and have access to legal advice. Individuals in scope for relocation will be issued with a Notice of Intent and given seven days (if detained), or 14 days (if non-detained) from the date of that notice to respond to the Notice of Intent, as well as access to legal advice.

Extensions to the timescales may be granted if necessary. We are satisfied that the timescales applicable to claimants making representations are reasonable, and provide an effective opportunity for them - with the assistance of solicitors – to submit evidence as to why they should be allowed to remain in the UK. This includes claims of being a victim of trafficking or modern slavery. Both the High Court and Court of Appeal concluded in **AAA v SSHD** that the Secretary of State for the Home Department's processes were fair and lawful.

**(6) It appears that the special needs and rights of child victims of trafficking are not sufficiently recognised or protected by the Agreement.**

The needs of relocated individuals, including children, are recognised and provided for under the Treaty, which contains binding legal obligations for the provision of accommodation, food, access to medical care (including mental health support), orientation and support to meet other basic needs.

With regard to the special needs and rights of child victims of trafficking, Article 3(4) of the Treaty states: *“The Agreement does not cover unaccompanied children and the United Kingdom confirms that it shall not seek to relocate unaccompanied individuals who are deemed to be under the age of 18”*. We have been clear from the outset of the partnership, however, that children may be in scope for relocation to Rwanda as part of a family. We recognise that children have unique healthcare, accommodation, educational, nutritional and recreational needs. Part 1 to Annex A of the Treaty therefore states that families will be provided safe and adequate family unit accommodation. Part 1 (1.2.1 to 1.2.3.2) sets out the package of support families will receive in addition to that of all other relocated individuals.

Any person relocated on the basis of being over the age of 18 who is subsequently deemed to be a child by a UK court or tribunal, or where that court or tribunal determines they should be treated temporarily as a child, shall be returned to the UK. This provides for the handling of any exceptionally rare instances of individuals being relocated to Rwanda, on the basis that they are over the age of 18, where this is later disputed, and a return process ordered by a court or tribunal is enacted.