



UK Mission
Geneva

UK Mission Geneva
PO Box 6
Avenue Louis Casarí 58
1216 Cointrin GE

Tel: 022 918 2453
Fax: 022 918 2333

Note Verbal No. 106

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 AL GBR 2/2024, further to the letter dated 21 February 2024 from the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children.

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, 21 April 2024

Special Procedures Branch
Office of the High Commissioner for Human Rights



UK Mission
Geneva

United Kingdom of Great Britain and Northern Ireland

Response to Special Procedure communications AL GBR 2/2024 from the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children.

As stated in response to your letter of 25 January, we are facing a global crisis in illegal migration, and it requires governments across the world to seek new and bold innovative solutions to tackle the increasing numbers of people crossing our borders illegally through such dangerous means. *The result of not taking action on this issue would be more illegal crossings, more people trafficked, more power for criminal gangs, and more people drowning in the Channel. We note that these vital issues are not addressed in your letter.*

Relocating migrants to safe third countries to process their asylum claims is in principle compliant with the UK's obligations under the Refugee Convention – as confirmed by the UK High Court and the Court of Appeal. It is a model that other countries are also exploring.

1. Please provide any additional information and/ or comment(s) you may have on the above-mentioned assessment of the Safety of Rwanda (Asylum and Immigration) Bill.

The overarching purpose of this policy is to deter dangerous and illegal journeys to the United Kingdom, which are putting people's lives at risk, and to disrupt the business model of people smugglers who are exploiting vulnerable people.

We need to create a deterrent and send a clear message that if you enter the UK illegally you will not be able to stay. The cumulative effect of the provisions in this Bill, and those laid out in the Illegal Migration Act, is to limit routes for legal challenges against removal, except where there is compelling evidence that a person's specific circumstances put them at immediate risk of serious and irreversible harm due to their particular individual circumstances.

Concerns of the Supreme Court

The Government fully respects the role of the courts and indeed the judgment of the Supreme Court in the case of *AAA v Secretary of State for the Home Department*. We do not accept that the Bill seeks to displace a finding of fact made by the Supreme Court that Rwanda is not a safe country for the purposes of third country asylum

processing. It simply responds to the key concerns of the Supreme Court to ensure the policy can go ahead.

The Supreme Court's conclusions were based on the evidence submitted prior to the High Court hearing in summer 2022 and did not consider subsequent and ongoing work that has been undertaken between HMG and the Government of Rwanda since the Partnership was announced to prepare for the operationalisation of the Migration and Economic Development Partnership (MEDP) and, later, to address the findings of the Court of Appeal.

The courts have not concluded that there is a general risk to the safety of relocated individuals in Rwanda. Rather, the Supreme Court's findings were limited to perceived deficiencies in the Rwandan asylum system and the resulting risk of refoulement should any lack of capacity or expertise lead to cases being wrongly decided.

Furthermore, the Court of Appeal unanimously upheld the High Court's finding that a policy of removing individuals to a safe third country where their asylum claims would be determined, did not breach the UK's obligations under the Refugee Convention. The Supreme Court did not disturb that finding.

The Supreme Court recognised that changes may be delivered in the future which could address their concerns. We have been working closely with Rwanda on these changes. Significant work has taken place to strengthen the Rwandan asylum system and build capacity. The UK -Rwanda Partnership: Provision of an asylum partnership strengthens Rwanda's asylum system through the creation of a new First Instance Body to make initial decisions on asylum claims, which will be assisted by independent experts for at least the first six months, and a new Appeal Body to hear cases afresh.

To further support capacity and capability within the Rwandan asylum system and ensure the delivery in practice of the processes set out in the agreed Standard Operating Procedures, UK experts have been working closely with the Government of Rwanda to deliver additional training to Rwandan officials involved in the refugee status determination and appeals processes.

Details of training delivered as of January 2024 were published in Annex 1 (Government of Rwanda evidence) to the updated Country Information Note: Rwanda Asylum System on 11 January 2024.

The training to date has, where appropriate, been adapted to address specific concerns about the quality of asylum decision-making in the Rwandan system raised by the UNHCR during the legal proceedings against the MEDP, such as focussing on cementing knowledge of the Refugee Convention and other relevant international and domestic law and how to apply that in asylum interviews and decision-making.

The Home Office will continue to work with Government of Rwanda in the development of further training and its subsequent roll out. For example, we are examining how the Home Office's Safeguarding Advice and Children's Champion Team can deliver specialised safeguarding training to relevant Government of Rwanda officials.

The Treaty also enhances the role of the Monitoring Committee. There are eight independent members who form the Monitoring Committee. The details for these are published on .gov.uk: [Monitoring Committee: Migration and Economic Development Partnership - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/monitoring-committee-migration-and-economic-development-partnership)

who will ensure the obligations under the Treaty are adhered to in practice. It will provide real-time, comprehensive monitoring of the end-to-end relocation and asylum process ensuring delivery against the terms of the agreement and in line with both countries' international obligations.

The UK and Rwandan governments will continue to work closely together to implement all the measures under the Treaty and prepare to operationalise the partnership. Once ratified, the Treaty will become law in Rwanda.

The Treaty sets out the international legal commitments that the UK and Rwandan governments have made consistent with their shared standards associated with asylum and refugee protection. It also commits both governments to deliver against key legal assurances in response to the UK Supreme Court conclusions. Article 10 of the Treaty in particular sets out the assurances for the treatment of relocated individuals in Rwanda, including abiding by the Refugee Convention in relation to those seeking asylum.

The Safety of Rwanda Bill reflects the strength of the Government of Rwanda's protections and obligations given in the UK-Rwanda Treaty to people transferred to Rwanda in accordance with the Treaty. The Treaty, alongside the evidence of changes in Rwanda since summer 2022, enables Parliament to conclude that Rwanda is safe.

Vulnerable groups

Rwanda has a long history of supporting and integrating asylum seekers and refugees, having already hosted over 135,000 refugees and asylum seekers, including women and children.

The Treaty lays out a package of support available to all those relocated, including for children who are relocated as part of a family unit. The support will all be in place before we consider people for relocation.

Children

As set out in Annex A, paragraph 1.2 of the Treaty, families relocated with children will be provided with safe and adequate family unit accommodation. In addition to the essential items that will be provided to relocated individuals in Rwanda under paragraph 3.1 of Annex A, the parent, guardian or a responsible adult of the child shall also be provided with: age-appropriate books and toys or a reasonable increase in the allowance for the purchase of these; and a reasonable allowance for any public transport requirement for a relocated child to attend school. Rwanda has both a state and private secondary education system. Secondary education lasts for six years and is subdivided into three years of lower secondary and three years of upper secondary, both culminate with national exams.

Paragraph 8 of Annex A to the Treaty between the governments of the UK and Rwanda provides that, to support successful integration, each relocated individual will have access to quality education as relevant to their age and needs. This covers early childhood, primary, secondary, and tertiary education as well as vocational training and any necessary catch-up programmes.

Victims of human trafficking

Under Article 5(2)(d) of the Treaty, the United Kingdom may (where necessary for the purposes of relocation and where UKGDPR compliant) provide Rwanda with the outcome of any decision in the UK as to whether the Relocated Individual is a victim of trafficking, and this includes positive reasonable grounds decisions.

Under Article 13(1) of the Treaty, Rwanda must 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 must take all necessary steps to ensure that these needs are accommodated.

For the purposes of Article 13(1), Article 13(2) of the Treaty provides that Rwanda agrees to treat as a victim of modern slavery and human trafficking a Relocated Individual who has received a positive reasonable grounds decision made by the United Kingdom (in those cases where the UK is not obliged to make a conclusive grounds decision prior to removal). Those who meet the lower threshold for a reasonable grounds decision will be treated as if they *are* victims of modern slavery or trafficking and receive treatment accordingly.

Risk of Refoulement

The Treaty contains, amongst other provisions, an undertaking from Rwanda that they will not remove any person relocated under the 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. This directly addresses the findings of the Supreme Court and means that no individual relocated under the scheme is at risk of refoulement.

The Joint Committee and the independent Monitoring Committee, both of which are already established, will oversee the partnership and ensure the obligations under the Treaty are adhered to in practice. This will prevent the risk of any harm to relocated individuals, including potential refoulement, before it has a chance to occur.

In the unlikely event that an individual needs to be returned to the UK in line with Article 11.1 of the Treaty, both parties would work together to ensure this was done in compliance with their obligations under the Treaty. We continue to work with Rwanda to support the implementation of all necessary Treaty measures and this includes the enhanced Monitoring Committee functions, which will enable risks to be identified and addressed as and when they arise, preventing errors at an early stage. 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.
- Monitor the entire relocation process from beginning, including initial screening, to relocation and settlement in Rwanda.
- Be responsible for developing a system to enable relocated individuals and legal representatives to lodge confidential complaints directly to the Committee.

The UK Government will ratify the Treaty only once we agree with Rwanda that all necessary implementation is in place for both countries to comply with the obligations under the Treaty.

2. Please explain how the independence of the judiciary will be safeguarded within the amendments to the immigration law proposed by the Safety of Rwanda (Asylum and Immigration) Bill.

The Bill strikes the appropriate balance of limiting challenges that frustrate removal whilst maintaining the principle of access to the courts where an individual may be at a real risk of serious and irreversible harm.

Clause 4 of this Bill preserves the ability of individuals to challenge removal due to their particular individual circumstances if there is compelling evidence that Rwanda is not a safe country for them.

Taken as a whole, the limited availability of domestic remedies maintains the constitutional balance between Parliament being able to legislate as it sees necessary, and the powers of our Courts to hold the Government to account.

The judiciary's independence is a fundamental principle of our constitution. The Government is committed to enabling judicial decisions to be made independently and impartially, whether domestically or in relevant international courts and tribunals.

In line with its commitments in the Treaty, Rwanda is introducing a new asylum law, which will strengthen and streamline key aspects of the end-to-end asylum system, in particular decision-making processes and associated appeals processes, ensuring the final determination of an asylum claim is independent. The new Appeals Body which will assess the small number of cases where an individual's claim may be refused initially by Rwanda. The appeal body will be co-chaired by one Rwandan and one Commonwealth judge, who will select a panel of judges from Rwanda and the Commonwealth to hear these appeals against refusals of asylum or humanitarian protection claims.

3. Please explain how the Safety of Rwanda (Asylum and Immigration) Bill is compatible with the international human rights obligations under ICCPR and CAT.

The Government takes its international obligations seriously. There is nothing in this Bill that places the UK in breach of its obligations. The Bill is predicated on both

Rwanda and the UK's compliance with international law in the form of the Treaty, which itself is underpinned by wider international legal obligations of which the UK and Rwanda are bound.

The Bill explicitly protects access to justice by ensuring that courts can continue to consider the safety of Rwanda based on compelling evidence relating specifically to a person's particular individual circumstances. This underpins the principle that no one should be put into a position where they would face a real risk of harm and contributes to the Bill's compatibility with the UK's international legal obligations, including under Articles 2, 3 and 13 of the European Convention on Human Rights.

Rwanda is a signatory to key international agreements protecting the rights of refugees and those in need of international protection, including the United Nations Convention against Torture, the Refugee Convention, and other core UN human rights conventions. Rwanda's obligations under these international agreements are embedded in its domestic legal provisions. The Rwandan constitution ensures that international agreements Rwanda has ratified become domestic law in Rwanda. Article 28 of the Rwandan Constitution recognises the right of refugees to seek asylum in Rwanda.

The enhanced monitoring committee will be in place to robustly monitor adherence to those obligations. As previously set out where somebody with a particular vulnerability is relocated to Rwanda, there will be the necessary treatment and specialist support available, with safeguarding processes in place.

We do not accept that individuals relocated to Rwanda would be at risk of torture or any other form of inhumane or degrading treatment. The UK Government's assessment is that Rwanda is generally a safe country and respects the rule of law.

4. Please provide detailed information on the measures taken to ensure judicial oversight of asylum cases, including claims of violations of human rights law and the principle of non-refoulement.

The Treaty sets out a new system for assessing and deciding asylum claims in Rwanda and includes new monitoring mechanisms to ensure practical compliance with the terms of the Treaty. It also introduces a binding dispute-resolution procedure and provides for the opportunity to suspend and terminate the Treaty if required.

The new Appeals Body will include Rwandan and Commonwealth co-presidents, who will be responsible for selecting judges from a mix of nationalities to sit in panels of three. One of the co-presidents will always be in the panel hearing appeals. This means that an experienced judge with asylum and humanitarian protection experience will always be involved in any appeal. There will be an expert in asylum and humanitarian protection law, independent from the Government of Rwanda, providing advice to the panel before any appeal is determined (for the first 12 months). This expert opinion will be published, and the Appeal Body will take the expert's opinion into account when coming to a decision.

Once any relocated individual is in Rwanda, the Treaty ensures under Article 10(2) that they will receive the same treatment regardless of the eventual outcome of any

claim for asylum and will be able to stay in Rwanda and receive the same rights and treatment as set out in Part 2 of Annex A to the Treaty.

This means that once their status is recognised or otherwise regularised, they will receive the rights and treatment set out in Part 2 of Annex A for up to five years from the date of their arrival, in addition to any other specific support they may be entitled to as per elsewhere in the Treaty. At all times, Rwanda will ensure that those recognised as refugees benefit from the rights set out in the Refugee Convention and those not deemed a refugee shall benefit from equivalent rights (paragraph 13 of Annex A).

For those who are not recognised as refugees, Rwanda shall consider whether the Relocated Individual has another humanitarian protection need, such that return to their country of origin would result in a real risk of their being subject to inhuman, degrading treatment or torture or a real risk to their life. Where such a protection need exists, Rwanda shall provide treatment consistent with that offered to those recognised as refugees (as set out in Article 10(1)) and permission to remain in Rwanda. For those relocated individuals who meet neither criterion, Rwanda shall regularise that person's immigration status in Rwanda, to ensure a right to remain in Rwanda in the form of a permanent residence permit. They will be able to live and work in Rwanda during and beyond the five-year support period.

The Monitoring Committee will undertake daily monitoring of the partnership for at least the first three months to ensure rapid identification of and response to any shortcomings. This enhanced phase will ensure that comprehensive monitoring and reporting takes place in real time. The Monitoring Committee is independent of both the UK and Rwandan Governments to ensure there is a layer of impartial oversight of the operation of the partnership. Maintaining the Committee's independence is an integral aspect of the design of the policy. The Monitoring Committee will ensure obligations in the Treaty are adhered to in practice and – as set out in Article 15, 4b – it will report to the Joint Committee, which is made up of both UK and Rwandan officials. As per Article 15, 4c of the Treaty, the Monitoring Committee will make any recommendations to the Joint Committee which it sees fit to do.

The Government is satisfied the provisions within the Bill are consistent with our international law obligations. The Government of Rwanda has systems in place to safeguard relocated individuals with a range of vulnerabilities. The Bill includes adequate safeguards which allows decision makers to consider certain claims that Rwanda is unsafe for an individual person due to their particular circumstances, despite the safeguards in the Treaty, if there is compelling evidence to that effect.