

**Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on violence against women, its causes and consequences**

Ref.: OL GBR 9/2022  
(Please use this reference in your reply)

1 July 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 44/4, 43/6, 42/10, 49/10 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government our legal analysis of the Policy Paper, *Memorandum of Understanding (the MOU) concluded 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 arrangement to strengthen shared international commitments on the protection of refugees and migrants*,<sup>i</sup> published on 14 April 2022, and specifically our analysis of the legal obligations arising for the State under international human rights law.

While we have previously engaged with your Excellency's Government in relation to the Nationality and Borders Bill 2021 (see OL GBR 11/2021 of 5 November 2021 and OL GBR 3/2022 of 11 February 2022, and the Government's replies of 11 February 2022 and 5 May 2022, respectively) and are grateful for your response to the questions raised, we have concerns in relation to the MoU and its compatibility with the State's international human rights obligations.

We note that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("the Palermo Protocol") ratified by your Excellency's Government on 9 February 2006 aims to: (i) prevent and combat trafficking in persons, paying particular attention to women and children; (ii) protect and assist the victims of such trafficking, with full respect for their human rights; (iii) promote cooperation among States Parties in order to meet those objectives (article 2).

We are concerned that the arrangements made for an asylum partnership may breach the UK's positive obligations to victims of trafficking and contemporary forms of slavery under article 4 ECHR, including the duty to investigate without delay and take operational measures to protect potential victims, where there are sufficient indicators available of circumstances which give rise to a credible suspicion of a real risk of trafficking or exploitation, before entry to the National Referral Mechanism (NRM), rather than at the reasonable grounds for belief threshold (*Rantsev v. Cyprus and Russia*, App. No. 25965/04 [2010] 51 EHRR 1 at §§286, 296; *TDT, R (On the Application Of) v The Secretary of State for the Home Department (Rev 1)* [2018]

EWCA Civ 1395 (19 June 2018) at §§80, 82).

We are further concerned that the arrangements made may breach the UK's positive obligation to put in place an effective system to protect potential or confirmed victims of trafficking and contemporary forms of slavery, including in the context of asylum procedures, in the absence of an individualised and procedurally fair assessment of the safety and dignity of removal to Rwanda, and the real risk of a breach of Convention rights in Rwanda or of onward refoulement or re-trafficking (Rantsev at §287, Chowdury & Ors v. Greece, App. No. 21884/15, judgment 30 March 2017 at §87).

We are concerned that the State's positive obligations to ensure assistance and protection of victims of trafficking and contemporary forms of slavery are not met through the arrangement for provision of externalised support, and this arrangement may be in breach of the State's obligation of protection, as well as the prohibition of non-punishment, and of discrimination against victims of trafficking.

Specifically, we are concerned that the arrangements concluded under the MOU would fail to ensure sufficient protection against the imminent risk of irreparable harm, specifically treatment that is contrary to article 3 of the European Convention on Human Rights (ECHR), which provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". We highlight that the protections afforded by article 3 are absolute, non-derogable and subject to no exception, neither under the Convention nor under general international law (see, for example, Ireland v. United Kingdom, no. 5310/71, § 163, ECtHR 1978). As has been recognised by the European Court of Human Rights, asylum seekers are considered to be particularly vulnerable, and in need of special protection (M.S.S. v. Belgium and Greece, no. 30696/09, § 251, ECtHR 2011) "because of everything [they have] been through during [their] migration and the traumatic experiences [they were] likely to have endured previously" (ibid., § 232).

We highlight that the European Court of Human Rights has stated that: "the principle according to which indirect refoulement of an alien leaves the responsibility of the Contracting State intact, and that State is required, in accordance with the well-established case-law, to ensure that the person in question would not face a real risk of being subjected to treatment contrary to article 3 in the event of repatriation (see, mutatis mutandis, T.I. v. the United Kingdom (dec.), no. 43844/98, ECHR 2000-III, and M.S.S. v. Belgium and Greece, ...[Application no. 30696/09] § 342)." (Case of Hirsi Jamaa and Others v. Italy, Application no. 27765/09, para. 146).

We remind your Excellency's Government of the Concluding Observations of the UN Committee Against Torture (2019): "[...] the State party should ensure that any legislative changes do not diminish the State party's current level of legal protections regarding the prohibition of torture and other ill-treatment." (CAT/C/GBR/CO/6, para 11).

We highlight and agree with concerns raised by the UN High Commissioner for Refugees (UNHCR), in relation to risks and failures of protection arising from the individual refugee status determination processes in Rwanda, which would give rise to a real risk of onward refoulement of those transferred under the MOU. Specifically, UNHCR has stated that it:

“[...] considers that the initial asylum screening interview, which will take place prior to deciding whether an individual may be transferred to Rwanda, is not sufficient to discharge the UK’s obligations to ensure the lawfulness and appropriateness of removal to Rwanda on an individual basis. There are long-standing concerns about the quality of information collected at screening and registration, and in particular about the identification of vulnerabilities.” (UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement, para.15)

We highlight the State’s positive obligations arising under international human rights law, and under article 4 of the ECHR, read in conjunction with the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), ratified by Your Excellency’s government on 17 December 2008, specifically article 10 (Identification of the Victims). article 10(2) provides: “[e]ach Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of ... (trafficking in human beings) has been completed by the competent authorities ...”

The positive obligations arising under article 4 ECHR, to ensure that victims of trafficking and contemporary forms of slavery are provided with assistance and protection, have been recognised in domestic courts in the United Kingdom in *K & AM v SSHD*: “[...] I am in no doubt article 4 does indeed carry with it the positive obligations to provide appropriate support and assistance to the victims.”

We are particularly concerned that the MOU would not provide sufficient guarantees to ensure effective protection against refoulement. We are concerned that although assurances are given in the MOU, in relation to Rwanda’s asylum processing arrangements (articles 8-10), no provision is made for resolution of disputes by an independent body to ensure compliance with obligations arising under the MOU or to give meaningful effect to the assurances stated. As such, the requirement for an effective mechanism to monitor and ensure compliance with the obligations arising under the ECHR, are not met.

We highlight the jurisprudence of the European Court of Human Rights, relating to reliance on diplomatic assurances and its statement in *Othman (Abu Qatada v United Kingdom)*, Application no. 8139/09): “In a case where assurances have been provided by the receiving State, those assurances constitute a further relevant factor which the Court will consider. However, assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment.” (para.187) The Court has specifically highlighted the importance assessing whether compliance with the assurances, “can be objectively verified through diplomatic or other monitoring mechanisms” (*Ibid.* para. 189).

We highlight concerns that have been raised by UN Committee on the Elimination of Racial Discrimination (CERD) that indicate a real risk of treatment contrary to articles 3 and 4 ECHR. (See for example, Concluding observations on the eighteenth to twentieth periodic reports of Rwanda: CERD/C/RWA/CO/18-20) Para. 20. While taking note of the information provided by the State party, the Committee is concerned at information to the effect that: (a) Burundian refugees may

be relocated to third countries; (b) some requests for asylum lodged by Eritreans and South Sudanese with the Directorate General of Immigration and Emigration have not been transmitted immediately to the Refugee Status Determination Committee of Rwanda, despite the 15-day time limit on asylum applications set by the law of the State party, which could well expose them to the risk of refoulement.

We highlight the *Committee Against Torture: Concluding observations on the second periodic report of Rwanda*, commenting on Non-refoulement and detention of asylum seekers (21 December 2017) CAT/C/RWA/CO/2):

“Para. 46. While welcoming the new legal framework aimed at strengthening protection against refoulement, the Committee is concerned at the reported delays in registering asylum seekers, placing them at risk of being deported. It also expresses concern at the difficulties in accessing the asylum procedure faced by Turkish residents as well as Eritreans and South Sudanese relocated from Israel, some of whom have reportedly been forcibly expelled to neighbouring countries.”

In *Rantsev v. Cyprus and Russia*, the European Court of Human Rights affirmed the status of the prohibition of trafficking in human beings within the ordre publique of the ECHR. In an oft-cited statement, the Court concluded that the prohibition of trafficking falls within the non-derogable norm stated in article 4 ECHR: “There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention” (*Rantsev v. Cyprus and Russia* App no 25965/04, para 282).

Article 40(4) of the Council of Europe Convention on Action Against Trafficking in Human Beings provides (ECAT): “Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.”

The Explanatory Report to the Convention, with regard to article 40(4), notes: “The fact of being a victim of trafficking in human beings cannot preclude the right to seek and enjoy asylum and Parties shall ensure that victims of trafficking have appropriate access to fair and efficient asylum procedures. Parties shall also take whatever steps are necessary to ensure full respect for the principle of non-refoulement.” (Council of Europe Convention on Action against Trafficking in Human Beings 2005, Explanatory Report, para. 377).

The obligation of non-refoulement has been stated also by the monitoring body, the Group of Experts on Action against Trafficking in Human Beings (GRETA). See: Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection.” (GRETA(2020)062). In its recent Country Report on the United Kingdom, GRETA urges the UK authorities to review the victim return and repatriation policies in order to ensure compliance in law and practice with article 16 of the Convention, including by:

“[...] ensuring that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity, is preferably voluntary and complies with the obligation of non-refoulement. This includes informing victims about existing support programmes, protecting them from re-victimisation and re-trafficking. Full consideration should be given to the UNHCR’s guidelines on the application of the Refugees Convention to trafficked people and to GRETA’s Guidance Note on the entitlement of victims of human trafficking, and persons at risk of being trafficked, to international protection” (Evaluation Report, United Kingdom (Third Evaluation Round) Access to justice and effective remedies for victims of trafficking in human beings, GRETA(2021)12, para.322).”

As is highlighted in the UNHCR Guidelines on International Protection: The application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (2006): “Trafficked women and children can be particularly susceptible to serious reprisals by traffickers after their escape and/or upon return, as well as to a real possibility of being re-trafficked or of being subjected to severe family or community ostracism and/or severe discrimination” (para 19).

The UNHCR Guidelines further provide that assistance to victims of trafficking seeking asylum, should be provided in an age and gender sensitive manner, they note that victims of trafficking may rightly be considered as victims of gender-related persecution: “They will have been subjected in many, if not most, cases to severe breaches of their basic human rights, including inhuman or degrading treatment, and in some instances, torture” (para 47).

We remind your Excellency’s Government of the obligation to ensure the rights of all victims of trafficking to seek and enjoy asylum, without discrimination. Specifically, with respect to the obligations of the State arising under article 4 ECHR, we are concerned that there is a failure in the MOU, to provide sufficient guarantees against risks of trafficking or re-trafficking for those who may be denied asylum or arbitrarily removed to another state from Rwanda. We also highlight the prohibition of refoulement, and the obligation on the State under article 9(1) (b) of the Palermo Protocol: “To protect victims of trafficking in persons, especially women and children, from re-victimization”.

While we understand that no women and children have yet been issued with any notices of intent to remove them, the Government of the UK has not ruled out that they can be included.

Furthermore, the characteristics of those entering the UK may change in the future due to impact of the recent policies adopted. The Home Office’s statistics show that the overwhelming majority of family reunion visas issued in the last five years have been granted primarily to women and children joining their spouses that had entered on their own. <sup>ii</sup> Under the Border and Nationality Bill, single men arriving irregularly will be considered as Group 2 and will have limited family reunification rights, which could arguably encourage more women and girls to make the dangerous journeys themselves. Not only do they increase their risk to trafficking but they may also then be subject to removal to Rwanda.

As has been noted by the Council of Europe Group of Experts on Action against Trafficking in Human Beings, (GRETA), in its Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection:

“The Convention recognizes that trafficked people may have international protection needs, and it requires Parties to duly assess such protection needs. The essence of international protection is to provide relief from a potential future danger. Accordingly, the duty of international protection applies not only to victims of trafficking, but also to those at risk of being trafficked, should they return to their country of origin. Any removal of a person to a territory where they are at risk of being trafficked will constitute a violation of the principle of non-refoulement.”

We highlight the analysis of UNHCR, that there are recognized barriers to disclosure in screening interviews, which are usually conducted shortly after arrival. These fail to take account of the specific vulnerabilities of victims of trafficking and other serious human rights violations: “Histories of trafficking and exploitation are explored in a single, complex question, which can make it difficult for individuals to disclose information.” (UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement, para.15).

We highlight, *S.M v. Croatia*, in which the European Court of Human Rights set out the positive obligations placed upon the State, and the importance of not placing responsibility on the victim: “In this connection it is important to stress that, in accordance with their procedural obligation, the authorities must act of their own motion once the matter has come to their attention. In particular, they cannot leave it to the initiative of the victim to take responsibility for the conduct of any investigatory procedures.” Further, in *S.M. v. Croatia*, the Court highlighted the specific impact of trauma on victims of trafficking and contemporary forms of slavery, citing the conclusions of the Council of Europe monitoring body, the Group of Experts on Action against Trafficking (GRETA): “[...] it has already been recognised in the work of GRETA and other expert bodies that there may be different reasons why victims of human trafficking and different forms of sexual abuse may be reluctant to cooperate with the authorities and to disclose all the details of the case. Moreover, the possible impact of psychological trauma must be taken into account”.

As has been noted by the European Court of Human Rights in a series of cases, article 4 ECHR requires States to adopt a range of measures to prevent trafficking and contemporary forms of slavery and to protect the rights of victims: “Protection measures include facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery.” (*V.C.L. and A.N. v. United Kingdom*, Apps. No. 74603/12 and No. 77587/12, para. 153). We are concerned that there is a failure to ensure that these obligations are met in the arrangements stated in the MOU, and as such, the obligations arising under articles 3 and 4 ECHR, and articles 13 and 14 ECHR, will not be discharged by the State.

The consequences of the failure of the State to identify, assist, and protect victims were highlighted in the recent judgment in *V.C.L. and A.N. v. the United Kingdom*, where the failure to identify the victims resulted in a breach of the non-punishment principle, and violations of article 4 (prohibition of slavery, servitude and

forced or compulsory labour) and article 6 (right to fair trial) of ECHR, In V.C.L. and A.N. the European Court of Human Rights held that:

“The State cannot, ... rely on any failings by a legal representative or indeed by the failure of a defendant – especially a minor defendant – to tell the police or his legal representative that he was a victim of trafficking. As the 2009 CPS guidance itself states, child victims of trafficking are a particularly vulnerable group who may not be aware that they have been trafficked, or who may be too afraid to disclose this information to the authorities [...]. Consequently, they cannot be required to self-identify or be penalised for failing to do so.”

The application of the non-punishment principle should follow a full assessment of the individual situation of the victim of trafficking. We are concerned that the screening procedures, and asylum partnership arrangement, would not ensure an adequate or effective trafficking assessment by a trained and qualified person, or ensure effective and continuing identification procedures in the asylum determination process, which are trauma-informed, and age and gender sensitive, recognising “the important public interest in combatting trafficking and protecting its victims.”<sup>iii</sup>

We remind your Excellency’s Government that the Palermo Protocol, requires States to take into account “the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children”. We recall the Concluding Observations of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland, which specifically addressed failures to identify victims:

“While appreciating the ongoing reforms to improve the national referral mechanism, the Committee remains concerned that many victims of trafficking and modern forms of slavery remain unidentified and that the support provided to victims is inadequate, putting victims at risk of homelessness, destitution and further exploitation” (CEDAW/C/GBR/CO/8, para 33).

The obligation on States to identify victims of trafficking is stated in CEDAW General Recommendation no.38, 2020, on trafficking in women and girls in the context of global migration, which specifically states: “International human rights law imposes positive obligations on States to identify victims of trafficking. This duty is placed firmly on States irrespective of the lack of self-identification by a victim”. (CEDAW /C / GC/ 38, para 38) Further, CEDAW highlights the specific obstacles to reporting and disclosure for survivors of trafficking: “Survivors are often reluctant to self-identify and disclose their traffickers for fear of retaliation, due to lack of information on the crime and where to report it, and fear of engaging with authorities, including being detained, prosecuted, punished and deported” (CEDAW /C / GC/ 38, para 38).

We bring to the attention of your Excellency’s Government, the obligations under the Convention on the Rights of the Child, ratified by your Excellency’s Government on 16 December 1991, applicable to child victims of trafficking and contemporary forms of slavery. As is noted in the Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the

Child on the general principles regarding the human rights of children in the context of international migration, States must ensure the, “primacy of the rights of the child in the context of international migration” (CMW/C/GC/3-CRC/C/GC/22, para.13) States are required to ensure that the best interests of the child are taken fully into consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases, and to undertake best interests assessments and determination procedures: “as part of, or to inform, migration related and other decisions that affect migrant children” (CMW/C/GC/3-CRC/C/GC/22, para. 31). We are concerned that there is to ensure the protection and best interests of children, including potential child victims of trafficking and contemporary forms of slavery.

We remind your Excellency’s Government of the obligation under the Convention on the Rights of the Child (CRC), to respect and ensure the rights set forth in the CRC to each child within their jurisdiction without discrimination of any kind. (article 2). The Convention on the Rights of the Child provides that: “[...] non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non- State actors or whether such violations are directly intended or are the indirect consequence of States parties’ action or inaction” (CMW/C/GC/3-CRC/C/GC/22, para 46).

We highlight the State’s obligations under ECAT to ensure that: “Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child” (article 16(7)).

We highlight the recent Report on the United Kingdom and concerns raised by GRETA (GRETA (2021)12), stressing that, “the implementation of the new Plan for Immigration must be done in compliance with the obligations arising from the Council of Europe Anti-Trafficking Convention, in particular the obligations to identify victims of trafficking, including among asylum seekers, and to refer them to assistance, as well as the non-punishment provision contained in article 26 of the Convention.”(para. 48) Further GRETA stressed the importance of ensuring that victims should be provided with information on rights in a manner which takes into account their cognitive skills and psychological state. “For example, victims who are traumatised may have difficulties in adequately understanding and analysing the information before taking a decision. This is why it is important that information on rights be provided repeatedly by different professionals, including psychologists, social workers and lawyers, while ensuring that the provision of information is structured and consistent throughout the victims’ pathway of engaging with different agencies and organisations” (para.71).

We further highlight the *GUIDANCE NOTE on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection GRETA(2020)062*, which states in relation to obligations arising under ECAT:

“Access to fair and efficient asylum procedures, early legal counselling and specialised assistance in accordance with article 12 of the Convention is essential if victims of trafficking are to be enabled to present an asylum claim effectively. [...] Given the complex nature of the crime of trafficking, and the trauma endured by victims or presumed victims of trafficking, such asylum claims require an examination on their merits in regular procedures. Therefore,



claims based on the harms associated with human trafficking are particularly unsuited to accelerated processing and may impede identification of victims.”

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please provide detailed information on how your Excellency’s Government intends to proceed with asylum partnership arrangement and Memorandum of Understanding, and what further measures will be taken to ensure compliance with the United Kingdom’s obligations under international law, including in relation to the protection of victims of trafficking in persons and contemporary forms of slavery.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the human rights of migrants

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<sup>i</sup> See: <https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-government-of-the-republic-of-r#part-2--responsibilities-of-the-participants>

<sup>ii</sup> <https://famiestogether.uk/2021/06/10/press-release-refugees-family-reunion-bill/>

<sup>iii</sup> V.C.L. and A.N. v. United Kingdom, Apps. No. 74603/12 and No. 77587/12, para 202