

Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL OTH 63/2024
(Please use this reference in your reply)

16 April 2024

Dear Mr. Spence,

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 and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 53/9, 52/20 and 52/7.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

We would like to bring your attention to concerns in relation to pending removals of asylum seekers, including potential victims of trafficking, and accompanied children, to Rwanda from the United Kingdom of Great Britain and Northern Ireland (referred to hereinafter as “the United Kingdom”). The policy of asylum externalization would remove to Rwanda, asylum seekers who reached the United Kingdom and claimed asylum under the 1951 Refugee Convention, providing for their claims for asylum to be determined by Rwanda.

This joint allegation letter relates to concerns of complicity of aviation regulators, such as the UK Civil Aviation Authority (CAA) and the European Union Aviation Safety Agency (EASA) and international actors, such as the International Air Transport Association (IATA) and the International Civil Aviation Organization (ICAO). Concerns are related to the potential role of private actors in breaches of internationally protected human rights and of court orders. Private actors engaged by

UK Civil Aviation Authority (CAA)

the State to give effect to State decisions that violate human rights are and must be held responsible for their conduct. We respectfully highlight concerns as to the central role of airlines and aviation authorities in facilitating unlawful removals to Rwanda, pursuant to the Agreement between the Government of the United Kingdom and the Government of Rwanda and the Safety of Rwanda Bill.

Comments regarding draft legislation and legal provisions affecting the human rights of trafficked persons and persons at risk of trafficking were previously addressed¹ through OL GBR 11/2021, OL GBR 3/2022, OL GBR 9/2022, and OL GBR 12/2022, dated 5 November 2021, 11 February 2022, 1 July 2022 and 17 August 2022, respectively. These letters commented on provisions of the Nationality and Borders Bill 2021, and the Memorandum of Understanding (the MoU) concluded between the Government of the United Kingdom and the Government of the Republic of Rwanda. Further comments were made in relation to the Illegal Migration Bill (OL GBR 9/2023). Other comments include concerns made in relation to the signing of the Agreement between the Government of the United Kingdom and the Government of Rwanda (OL GBR 1/2024) and in relation to provisions of the proposed legislation known as Safety of Rwanda Bill (AL GBR 2/2024) which could undermine the independence of the judiciary in the United Kingdom.

According to the information received, AT², is an Iranian individual and an asylum seeker who represents one of many individuals from a range of countries who are in jeopardy of being forcefully relocated to Rwanda. He is a victim of torture, has learning disabilities and is unable to read or write. The other individuals at risk come from a wide range of countries, including (but not limited to) Iraq, Sudan and Syria; and include numerous victims of trafficking. Removals to Rwanda are allegedly premised upon using detention powers en masse to hold persons pending removal.

The Safety of Rwanda Bill is expected to pass and receive royal assent imminently, with flights to follow as soon as possible afterward driven by perceived political expediency and an expected General Election in 2024. These concerns arise given that the Government of the United Kingdom has indicated, including publicly through the Prime Minister that they will disregard any interim measure ordered by the European Court of Human Rights.

Obligations of UK Civil Aviation Authority (CAA) in relation to specific legal concerns arising from the UK-Rwanda treaty and the Safety of Rwanda Bill

The CAA is obliged pursuant to its statutory function to ensure that beneficiaries of Air Transport Licenses (including a Route Licence) are fit persons to operate aircraft. The CAA retains discretion on how to judge fitness of character. It has chosen to apply that discretion through a policy framework that states “the CAA must be satisfied that all individuals and post holders who are licensed by us demonstrate...propensity to obey rules – demonstrably being consistent in applying the rules, in spirit and letter.” This requirement is a mandatory requirement the CAA has accepted on itself: it must engage with whether licensees have demonstrated propensity to obey rules. The definition of ‘obeying rules’ is not narrowly drawn, for example solely by reference to rules on technical aviation competencies. Indeed, the CAA expressly lists criminal convictions or civil sanctions as relevant to the question

¹ Please refer to the communications database of the UN Special Procedures in: <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>

² Initials of the individual are provided in order to safeguard the individual’s identity

of whether a licensee has a propensity to obey rules. This is wholly unsurprising: it reflects the obvious point that propensity to obey rules includes compliance with legal rules and orders. Such rules would logically include non-derogable human rights obligations – the most fundamental of all legal norms; a fortiori where protected by binding orders of the European Court of Human Rights.

In these circumstances, should the CAA learn that any airline is considering or has entered into a chartering arrangement with the UK Government to remove individuals to Rwanda, it must scrutinise whether the licensee airline can feasibly continue to satisfy fitness requirements. It is difficult to see how, in the premises, it can – a fortiori where the licensee airline removes an individual in breach of a Strasbourg interim measure; which would indicate lack of propensity to obey rules.

Without prejudging the accuracy of these allegations, we wish to express our concern that the removal of asylum seekers to Rwanda or a country where they are at risk of refoulement breaches the fundamental right to be free from torture and other cruel, inhuman or degrading treatment. Removal of asylum seekers to Rwanda are in conflict with the United Kingdom’s international human rights obligations, in particular as set out in the International Covenant on Civil and Political Rights (ICCPR), (in particular, articles 7 and 8) the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), (article 3) the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol), articles 6, 7 and 14, the Convention on the Rights of the Child (CRC), the European Convention on Human Rights (ECHR), articles 3, 4 and 13, and the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), in particular, articles 10-12, 16, and 40(4).

A violation of the non-derogable article 3 of the European Convention on Human Rights (ECHR) would leave individual asylum seekers with no possibility of effective challenge to a removal decision in domestic courts and the customary law principle of non-refoulement. The absence of an effective domestic remedy would constitute a violation of the rights of individual asylum seekers under article 13 of ECHR. Further, the current draft of the Rwanda Bill empowers the United Kingdom to ignore interim measures issued by the European Court of Human Rights without recourse to any domestic remedy, despite interim measures being binding on parties to the ECHR and would constitute a violation of article 34 of ECHR.

Further, the United Kingdom Supreme Court unanimously found in a judgment dated 15 November 2023 that removals to Rwanda would violate non-derogable article 3 ECHR rights and found the policy to be unlawful. *R (AAA and Ors) v Secretary of State for the Home Department* [2023] UKSC 42 The Court found that the “*central issue*” was Rwanda’s lack of “*practical ability to fulfil assurances...in the light of the present deficiencies of the Rwandan asylum system, the past and continuing practice of refoulement...and the scale of the changes in procedure, understanding and culture which are required*” (§102). The Court stated that “*the necessary changes may not be straightforward, as they require an appreciation that the current approach is inadequate, a change of attitudes, and effective training and monitoring*” (§104). *In reaching its judgment, the Court noted that (§102): “The central issue in the case...is [Government of Rwanda’s] practical ability to fulfil its assurances, at least in the short term, in the light of the present deficiencies of the Rwandan asylum system, the past and continuing practice of*

refoulement (including in the context of an analogous arrangement with Israel), and the scale of the changes in procedure, understanding and culture which are required.”

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law and guidelines on business and human rights** attached to this letter which cites international human rights instruments, standards and guidelines relevant to these allegations.

As it is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify 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 concerns.
2. Please provide information regarding human rights compliance and due diligence concerning risk of complicity in human rights abuses by airlines regulated by CAA.
3. Please provide information regarding the consequences for licensee airlines that remove individuals in breach of fundamental rights or interim measures of the European Court of Human Rights.
4. Please provide information in respect of any airline which has been contracted by the UK Government to remove individuals to Rwanda; and also of any airline that has been approached by the UK Government to enter into a chartering arrangement, and that airline's response.
5. Please provide information of any mechanisms of redress and remedy in case of any breaches of internationally protected human rights.
6. Please provide information as to consequences for licensee airlines that remove individuals in breach of fundamental rights or interim measures of the European Court of Human Rights, given CAA's regulatory obligation to ensure licensees are of repute and the CAA's policy framework which requires licensees to demonstrate propensity to obey rules, in spirit and letter.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from you will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with you to clarify the issue/s in question.

Please be informed that a letter on this subject matter has been also sent to the European Union Aviation Safety Agency (EASA), the International Air Transport Association (IATA) and the International Civil Aviation Organization (ICAO), and a copy of this letter has been sent to the United Kingdom of Great Britain and Northern Ireland.

Please accept, Mr. Spence, the assurances of our highest consideration.

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Gehad Madi
Special Rapporteur on the human rights of migrants

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law and guiding principles on business and human rights

In connection with above alleged facts and concerns, we would like to draw attention to the international norms and standards applicable to the present case and applicable in the United Kingdom based on customary law and treaties ratified therein.

We would also like to draw attention to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the United Kingdom in 1988. Article 3 paragraph 1 provides that “(n)o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Paragraph 2 of the same article provides that “(f)or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

We would also like to draw attention to article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights (ICCPR) and article 15 of the Convention on the Rights of Persons with Disabilities which provide that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

Article 8 ICCPR ratified by the United Kingdom in 1976 refers to the prohibition of slavery, servitude or slave like practices in all forms.

Article 14(1) UDHR provides for the right to seek and to enjoy in other countries asylum from persecution.

We would also like to draw attention to the Convention on the Elimination of All Forms of Discrimination against Women, which was ratified by the United Kingdom in 1986 and to article 6 which requires States Parties to take all measures, including legislation, to suppress all forms of traffic in women.

We would also like to draw attention to the International Convention on the Elimination of All Forms of Racial Discrimination, which was ratified by the United Kingdom in 1969, and in particular to article 5 which establishes obligations to States Parties to guarantee the rights of everyone, without distinction as to race, colour or national or ethnic origin to equality before the law in the enjoyment of equal treatment before tribunals and all other organs administering justice, the right to security of person and protection by the State and well as other civil and political rights without discrimination.

We would also like to draw attention to the Convention on the Rights of Persons with Disabilities, which was ratified by the United Kingdom in 2009, and in particular to article 4 which refers to the general obligations of the States Parties to undertake to ensure and promote the full realization of all human rights and

fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. We would also like to draw attention to article 15 which obligates States Parties to undertake all effective legislative, administrative, judicial and other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture, or cruel, inhuman or degrading treatment or punishment.

We would also like to draw attention to obligations arising from the European Convention on Human rights and Charter of Fundamental Rights of the European Union (EU Charter). Article 3 European Convention on Human Rights (ECHR) and Article 4 of the Charter of Fundamental Rights of the European Union (EU Charter) both provide that “no one shall be subject to torture or to inhuman or degrading treatment or punishment.” Article 19(2) EU Charter provides that “no one shall be removed, expelled, or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.” Article 13 ECHR provides “everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” Article 34 ECHR provides for the right of individual petition to the European Court of Human Rights. Deliberate non-compliance with rule 39 Interim Measures would place the UK Government in breach of its obligations under article 34 of the ECHR: *Mamatkulov and Askarov v Turkey* [2005] 41 EHRR 25 §128.

We would also like to draw attention to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by the United Kingdom in 2006. The Palermo Protocol recalls States’ obligations to establish and implement programmes and policies to prevent trafficking in persons and protect and assist victims of trafficking and to consider adopting legislative and other appropriate measures that permit victims of trafficking to remain in its territory in appropriate cases, giving consideration to humanitarian and compassionate factors. (articles 6 and 7).

We would also like to draw attention that the obligation of non-refoulement arising under international human rights law is absolute and permits of no exceptions. Its application in relation to any proposed transfer to another state of a victim of trafficking is recognised in the Palermo Protocol, article 14(1) of which provides for the continuing application of 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.

We would also like to draw attention to the aviation regulators and international organizations and business actors’ obligations to respect human rights based on the United Nations Guiding Principles on Business and Human Rights, including guiding principles 11 and 12. Any airline intending to enter into a chartering arrangement must address the role it has been asked to play in the potential violations of this non-derogable right, and a fortiori where the European Court of Human Rights has issued interim measures.

The Commentary to principle 11 records that business enterprises should not undermine States' abilities to meet their own human rights obligations "including by actions that might weaken the integrity of judicial processes"

Guiding principle 13: the reasoning above applies analogously to 13(a). As regards 13(b), any affected airline would, at an absolute minimum, need to ensure that no-one was removed on its flights in breach of rule 39 Interim Measures from the European Court of Human Rights – regardless of the UK Government's preferred course of action.

Guiding principle 14: any affected airline will almost inevitably be a sophisticated international operation. It will be an operator in a regulated industry, and regulated under EU law, further grounding the standards of business and human rights compliance expected of it. The human rights impacts in question are also severe.

Guiding principles 17 and 21: any affected airline is required to publish all/any human rights due diligence it may have conducted; and provide thorough information to the UN Special Procedures Mechanisms on how it has sought to engage with affected stakeholders, including those asylum-seekers who stand to be removed on its flights.

As regards obligations to respect human rights given operator and route licensing conditions, the CAA's regulatory framework requires airlines to demonstrate a propensity to obey rules, in spirit and letter. It is (at least) strongly arguable that relevant rules which ought to be obeyed include binding Court decisions such as interim measures of the European Court of Human Rights; and the requirement to avoid complicity in breach of non-derogable article 3 ECHR rights. Any airline considering entering into such a chartering arrangement with the UK Government ought to give serious consideration of the consequences of the arrangement for its broader ability to comply with licensing requirements.