

## **RWA0002 Dr Matilde Ventrella**

*I am a senior lecturer in law from Liverpool John Moores University. I have extensive research experience in the field of people smuggling by sea and human trafficking. I have written two books on smuggling of migrants and human trafficking and different articles published among others by the European Law Journal; European Journal of Crime, Criminal law and Criminal Justice; the New Journal of European Criminal Law and the Marmara Journal of European Studies.*

*I have recently completed the editing of a multidisciplinary book titled A Cultural History of Slavery and Human Trafficking for Bloomsbury Publishing (forthcoming) and an article with Professor Sonia Morano Foadi, titled 'Out of sight, out of mind. Reassessing positive obligations towards victims of human trafficking' which will be published by The Journal of Immigration, Asylum and Nationality Law in September 2022.*

My written evidence aims to address question 6 and specifically whether the Memorandum of Understanding (MoU) between the UK and Rwanda is consistent with the obligations of the European Convention on Human Rights (ECHR) and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197).

It is unfortunate that section 14 of the MoU only dedicates 4 lines to arrangements on victims of modern slavery and human trafficking. The MoU prioritizes the rejection of irregular migrants without taking into consideration the legal obligation of the UK towards victims of human trafficking. Consequently, the UK is in breach of Article 4 of the European Convention on Human Rights the CETS 197 and the UNCTOC Trafficking Protocol. In addition, the UK does not show any commitment to the identification and protection of asylum seekers from human trafficking as the MoU states that even asylum seekers can be relocated to Rwanda despite they are vulnerable and traffickers can take an advantage of their vulnerability.

The evidence will highlight:

1. Breaches of Article 4 of the ECHR as the MoU is not complying with the legal obligation to identify victims and potential victims of human trafficking in between migrants who will be relocated to Rwanda;

2. Breaches of Article 3(a) and Article 7 of the UNCTOC Trafficking Protocol because the UK does not provide any protection for victims of human trafficking who instead, should be entitled to remain on their territory;

3. Breaches of Article 4 and Article 29 of the CETS 197 because the relocation to Rwanda does not take into consideration that victims and potential victims of human trafficking should be assessed by trained officers and not relocating without evaluating whether they are victims of human trafficking or could become victims if relocated to Rwanda which has huge gaps on identification and protection of victims of human trafficking;

## **1. Breaches of Article 4 ECHR**

Article 4 ECHR prohibits slavery and forced labour. The European Court of Human Rights (ECtHR) ruled that human trafficking falls within the scope of Article 4 as it considers human trafficking a form of slavery.<sup>1</sup> The scope of protection is very wide not only because Article 4 protects absolute rights which means that they can never be restricted, but also because Article 4 requires that Contracting States (CSs thereafter) identify and protect not only victims but also potential victims of human trafficking. The ECtHR has already ruled that the UK was in breach of Article 4 and Article 6(1) ECHR because two minors had been prosecuted, despite the fact that they were discovered in circumstances which gave rise to a 'credible suspicion' that they were victims of trafficking. The case was *V.C.L. and A.N. v United Kingdom*<sup>2</sup> and the ECtHR clarified that the early identification of actual and potential victims of human trafficking is an absolute priority.<sup>3</sup> Therefore, as soon as the CSs authorities 'are aware or ought to be aware of circumstances giving rise to a credible suspicion'<sup>4</sup> the person should be given protection even if he or she has perpetrated a crime. The ECtHR added that 'he or she should be assessed promptly by individuals trained and qualified to deal with victims of trafficking'.<sup>5</sup>

This case highlights important facts that are missing in the MoU. The legal obligation of the UK to identify not only victims but also potential victims of human trafficking when there is a credible suspicion. The ECtHR does not explain what a credible suspicion is as it leaves to CSs the discretion to evaluate when a person is a victim or risk to become victim of human trafficking. The International Labour Office (ILO) and the European Commission

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<sup>1</sup> See Case *Rantsev v. Cyprus and Russia*, Application no. 25965/04, judgement of 7 January 2010, paragraphs 280-282.

<sup>2</sup> See Case *V.C.L. and A.N. v. United Kingdom* Applications nos. 77587/12 and 74603/12, 5 July 2021, [para 158].

<sup>3</sup> *Ibid*, para. 160.

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

have published a list of possible indicators which British authorities can take into consideration when they evaluate whether a person is a victim or potential victim.<sup>6</sup> The wide list confirms that the evaluation of credible suspicion is left to the discretion of CSs. However, CSs discretion finds a limit within the strict requirements of Article 4 ECHR which protects absolute rights. Therefore, the discretion not only cannot neglect victims of human trafficking but also potential victims and their vulnerability. The MoU states in section 5.1

‘In order to expedite the process of relocation to Rwanda in a timely manner, the United Kingdom will be responsible for the initial screening of asylum seekers, before relocation to Rwanda occurs in accordance with this Arrangement. This process will start without delay after the prospective relocated person arrives in the United Kingdom and has come to the attention of the United Kingdom’.

However, how can victims and potential victims of human trafficking be identified if the aim is ‘to expedite the process of relocation’? In this section and in the following section there is no mention of victims and potential victims of human trafficking and what causes further concern is section 8.2 as it states that relocated migrants ‘will be free to come and go...at all times’. Vulnerable people, when relocated to Rwanda, could be approached by human traffickers who in the meantime might have been relocated with them or might have links with human trafficking organisations based in the country. The International Organization for Migration (IOM) has reported that in Rwanda perpetrators recruit their victims by gaining their trust.<sup>7</sup> Local criminals might well approach migrants relocated to Rwanda by this means and the MoU does not take this fact into consideration.

Mixing all migrants before deporting them without investigating whether they are traffickers or migrants not entitled to a visa, may put vulnerable migrants in the position of being recruited by traffickers when they will be in Rwanda.

The ECtHR has highlighted that irregular migrants should not be neglected by States, as their position of ‘vulnerability’ can lead them to become victims of human trafficking.<sup>8</sup> The IOM has emphasised that migrants are more vulnerable to exploitation when the State

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<sup>6</sup> For a list of indicators see UNODC, *Anti-human trafficking manual for criminal justice practitioners*, Module 2: Indicators of trafficking in Persons, 2009, and ILO and European Commission, *Operational indicators of trafficking in human beings*, Results from a Delphi survey implemented by the ILO and the European Commission, Revised version of September 2009. Available on [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_105023.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf), accessed on 6 June 2022. This document sets indicators of trafficking of adults and children for sexual exploitation and labour exploitation.

<sup>7</sup> David Kagoro Baguma, MA, Reverien Interayamahanga, MA, Eugene Ntaganda, LL.M, Joseph Ryarasa Nkurunziza, MD, Rose Munetsi Runyararo, MA ‘*Understanding Human Trafficking In Rwanda: Causes, Effects and Impact*’. August 2019, p. 14 available on <https://neveragainrwanda.org/wp-content/uploads/2021/11/NAR.IOM.GOV.Understanding-Human-Trafficking-in-Rwanda-Causes-Effects-and-Impact-Baseline-Report.pdf> accessed on 21/06/2022.

<sup>8</sup> See *Chowdury and Others v. Greece*, Application no. judgement of 30 March 2017, para. [86]-[128].

is unable to protect them 'either through lack of capacity, applicable laws or simple neglect'.<sup>9</sup>

If the UK aims to relocate irregular migrants to Rwanda, they have to comply with their legal obligations towards victims and potential victims of human trafficking and the MoU does not permit this compliance as there is the automatism between detection of irregular migrants and relocation to Rwanda.

## **2. Breaches of the of the Human Trafficking Protocol of the United Nations Convention against Transnational Organized Crime (UNCTOC)**

The Preamble of the UNCTOC Trafficking Protocol establishes that State Parties should adopt legal measures to prevent human trafficking, protect victims and 'their internationally recognized human rights'. It is unfortunate that the UK has not prioritized the protection of victims' 'internationally recognized human rights' in the MoU. The right to be protected from human trafficking is a human right that should have a priority on any restrictive policy on migration. However, by simply reading the MoU, it is clear that the UK government considers rejection of irregular migrants more important than the protection of victims and potential victims. Specifically, the UK is breaching Article 3(a) of the UNCTOC Trafficking Protocol and Article 4 of the CETS 197 which define human trafficking in the same way. According to the two Articles, human trafficking which is

'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, **for the purpose of exploitation**' (emphasis is mine).

The UNCTOC Trafficking Protocol and the CETS 197, require that not only victims but also potential victims are protected in order to prevent their victimization. This is because these two Conventions state that trafficking occur not only when a person is exploited but also when persons are recruited for the purpose of exploitation. Many irregular migrants relocated to Rwanda might be in this position as they are vulnerable, especially asylum seekers, and the MoU does not address this issue.

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<sup>9</sup> Fiona David, Katharine Bryant and Jacqueline Joudo Larsen 'Migrants and their vulnerability to human trafficking, modern slavery and forced labour' page 10. International Organization for Migration 2019. Available on [https://publications.iom.int/system/files/pdf/migrants\\_and\\_their\\_vulnerability.pdf](https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf), accessed on 18/06/2022.

The UK is in breach of Article 7 of the UNCTOC Trafficking Protocol which states that 'each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases'. The UK is not even evaluating whether irregular migrants are victims or may become victims of human trafficking as they are simply relocating to Rwanda people who do not have the right to stay on their territory.

### **3. Breaches of the Council of Europe Convention on action against trafficking in human beings (CETS 197).**

As stated in section 2 of this evidence, the UK is in breach of Article 4 of the CETS 197. Furthermore, the UK is in breach of Article 10 (2) CETS 197 which states that 'Each 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...has been completed'. Conversely, the MoU states that all detected irregular migrants should be relocated to Rwanda without evaluating whether there are reasonable ground indications to believe that a person can be a victim of human trafficking.

There is a breach of Article 29 CETS 197 because the MoU does not take into consideration Article 29 CETS 197 which requires that each CSs 'provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, focus on: methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers'.

This is also a requirement of Article 4 ECHR as the ECtHR ruled that each individual who can be a victim or a potential victim of human trafficking, has to be assessed by an individual who is trained and qualified.<sup>10</sup> The MoU does not even give trained staff the opportunity to access and assess victims and potential victims as the relocation shall proceed promptly as soon as irregular migrants are detected at the border. The Group of Experts on Action against Trafficking in Human Beings (GRETA) emphasised that identification at an early stage is very important in order to ensure that they receive appropriate assistance and protection.<sup>11</sup> GRETA has reported that 'there is considerable

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<sup>10</sup> Section 1 of this evidence.

<sup>11</sup> 10<sup>th</sup> General Report on Greta's Activities 1 January 31 December 2020 para [80]. Available on <https://rm.coe.int/10th-general-report-greta-activities-en/1680a21620>, accessed on 19/06/2022.

reliance on self-identification of victims' in CSs.<sup>12</sup> Research has shown that often victims do not self-report because they fear that criminal organisations can retaliate against them.<sup>13</sup> France, Germany, Italy and Spain highlighted that self-reporting is very rare because traffickers exercise extensive control over victims.<sup>14</sup> They may not self-report because they may not be aware of their status of victim or they do not trust police and asylum authorities or they fear identification and the return to their countries of origin or they do not know their legal rights or do not speak the country of destination's language.<sup>15</sup> Since it is very difficult to make victims and vulnerable migrants in the position to report their traffickers, staff adequately trained should be employed to permit adequate support. It is unfortunate that the MoU requires that all irregular migrants including asylum seekers are relocated to Rwanda. Victims may certainly be reluctant to report their situation of exploitation because, the UK by adopting the MoU is not giving them any support and any legal assistance to overcome obstacles in reporting. UK authorities might certainly have no time to fulfil this legal obligation as, according to the MoU, they will have to relocate irregular migrants promptly. In fact, the government does not even give them adequate training. GRETA has reported that in the UK 'Poor training and a focus on immigration offences mean that victims are being sent to immigration detention despite having raised trafficking indicators...'<sup>16</sup>. The MoU does not even permit to raise trafficking indicators as victims are not even seen by staff who should support and help them.

If the British government intends to persist in relocating irregular migrants to Rwanda, they should be committed to train staff in the UK and from Rwanda in order to prepare them to identify and protect victims and potential victims of human trafficking as requested by CETS 197 and by the Modern Slavery Act 2015. By the adoption of the MoU, the UK is simply shifting its legal obligation as established by Article 4 ECHR, the UNTOC Trafficking Protocol and CETS 197, to Rwanda without checking whether they have the capabilities and means to address human trafficking. In fact, IOM has reported that in Rwanda there are gaps in the fight against human trafficking in relation to 'data limitations, capacity-building especially when it comes to the identification of human trafficking, victim protection and assistance, and investigation, prosecution, and conviction'.<sup>17</sup> How can they

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<sup>12</sup> 10<sup>th</sup> General Report on Greta's Activities above para [81].

<sup>13</sup> . See also See empirical study conducted by Matilde Ventrella, *The Control of People Smuggling and Trafficking in the EU: Experiences from the UK and Italy* (Routledge, 2010) pp. 198-201.

<sup>14</sup> See European Commission (March 2014) Identification of victims of trafficking in human beings in international protection and forced return procedures. On [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn\\_synthesis\\_identification\\_victims\\_trafficking\\_final\\_13march2014.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_synthesis_identification_victims_trafficking_final_13march2014.pdf), 20, accessed on 18/06/2022.

<sup>15</sup> Ibid.

<sup>16</sup> GRETA Evaluation Report United Kingdom. Third evaluation round. Access to justice and effective remedies for victims of trafficking in human beings. 20 October 2021 Para [264]. On <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36> accessed on 21/06/2022.

<sup>17</sup> David Kagoro Baguma, MA, Reverien Interayamahanga, MA, Eugene Ntaganda, LLM, Joseph Ryarasa Nkurunziza, MD, Rose

identify victims and potential victims of human trafficking when there are gaps in the identification, protection and assistance?

The British government should invest money and human resources in order to train adequately staff from Rwanda, bearing in mind that the standard of human rights in Rwanda may not be the same required by UK legislation and European legislation to which the UK is legally bound.<sup>18</sup> In order to achieve this objective, all international agreements concluded by the British government should ensure Parliamentary scrutiny and should embed human rights expertise during their negotiation.<sup>19</sup> The MoU is just an agreement which has bypassed Parliamentary scrutiny and should be set aside.

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Munetsi Runyararo, above note 9, p. 15.

<sup>18</sup> Human rights abuses have been reported by Human Rights Watch 'Rwanda'. On <https://www.hrw.org/africa/rwanda>, accessed on 20/06/2022.

<sup>19</sup> House of Commons House of Lords-Joint Committee on Human Rights *Human Rights Protection in International Agreements*. 7<sup>th</sup> Report of Session 2017-19 HC 1833 HL Paper 310, 12 March 2019 p. 1 and 8. Available on <https://publications.parliament.uk/pa/jt201719/jtselect/jtrightts/1833/1833.pdf>, accessed on 20/06/2022.