

RWA0017 Helen Bamber Foundation and Asylum Aid

Introduction

1. The Helen Bamber Foundation is a specialist clinical and human rights charity that works with survivors of trafficking, torture and other forms of extreme human cruelty and believes that all survivors should have safety, freedom and power. Our work alongside survivors shows us that, with early and appropriate care and support, they build the strength to move on with their lives. Our multidisciplinary and clinical team provides a bespoke Model of Integrated Care for survivors which includes medico-legal documentation of physical and psychological injuries; specialist therapeutic care; a medical advisory service; a counter-trafficking programme; housing and welfare advice; legal protection advice; and community integration activities and services.
2. Asylum Aid, part of the Helen Bamber Foundation group, provides high quality legal representation to some of the most vulnerable people seeking asylum in the UK: children, survivors of trafficking, and stateless people. Drawing on its expertise and experience over 30 years of representing asylum seekers seeking protection in the UK, Asylum Aid has serious concerns about the plans to remove asylum seekers to Rwanda and the legality and fairness of the procedure adopted by the UK Home Office for deciding whom to send. Asylum Aid has brought judicial review proceedings against the Home Office as a result of these concerns. Its claim is due to be heard in the High Court on 10-11 October 2022.

What are the implications of signing an agreement that asserts that it is not binding on either Party in international law? Is the MoU an appropriate vehicle for this agreement?

3. The Secretary of State signed the 'Memorandum of Understanding 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' (MoU) on 13 April 2022, the objective of which was "to create a mechanism for the relocation of asylum seekers whose claims are not being considered by the United Kingdom, to Rwanda".¹ The MoU sets out the 'commitments' made by the UK to Rwanda (and vice versa) in relation to, among other things, reception arrangements, asylum processing arrangements, and the treatment post asylum decision of those sent by the UK to Rwanda. The government has described an MoU as "a common mechanism for establishing an arrangement or partnership between countries" and stated that "while not legally binding in international law, the terms of the MoU – including the monitoring arrangements (see 'Inspection and Monitoring' below) – give the assurances we need that the arrangement will be operated in line with our international obligations and in a manner which ensures the safety of those relocated".²

¹ [Memorandum of Understanding 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 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/111111/MoU-UK-Rwanda-Asylum-Partnership-Arrangement.pdf)

4. Foreign, Commonwealth and Development Office (FCDO) guidance suggests that MoUs are used where “it is considered preferable to avoid the formalities of a treaty”,³ for example where arrangements need to be established quickly or operated flexibly. The government has argued that in this context an MoU was used rather than a treaty to allow for changes to be made easily. This is concerning in itself. If the UK is relying on the MoU assurances as to the safety of those removed to Rwanda, but those assurances can be changed by the participants, then this completely undermines said assurances. Furthermore, while the UK-Rwanda MoU does contain specific obligations for both parties, as a non-binding MoU it includes no legally enforceable guarantees of rights or access to due process, or binding rules on what happens if the arrangements are breached. There is no dispute resolution process – the MoU states that the UK and Rwanda should make “all reasonable efforts” to resolve disputes but “neither participant will have recourse to a dispute resolution body”⁴ – and no recourse to international courts.⁵ If those removed to Rwanda do not have access to a fair asylum process, or do not have their rights upheld, legally there is nothing the UK can do to rectify that. There also appears to be nothing preventing either the UK or Rwanda from pulling out of the MoU *after* removals have taken place.
5. The first flight to Rwanda planned for 14th June 2022 did not go ahead in part because the European Court of Human Rights (ECtHR) found that the UK government would have no effective mechanism to force the Rwandan Government to return people to the UK if the UK courts find that the policy is unlawful when they hear the case in full.⁶
6. The decision to agree a non-binding MoU instead of a treaty also meant that there was no parliamentary scrutiny of the merits, practicality, lawfulness, implications or costs of the deal. This is hugely problematic – not least because of concerns raised by the Permanent Secretary to the Home Office, Matthew Rycroft OBE, around the value for money and effectiveness (as a deterrent) of the proposal;⁷ concerns raised by Foreign and Commonwealth civil servants about Rwanda’s human rights record and the risk of fraud,⁸ and the outcry from public and parliamentarians alike since the policy’s announcement.⁹ The lack of opportunity for parliamentary scrutiny means that primary scrutiny is that provided by the courts.

² [Asylum: Rwanda: Question for Home Office](#) UIN 28508, tabled on 30 June 2022

³ Foreign & Commonwealth Office and Foreign, Commonwealth & Development Office, [Treaties and MOUs: Guidance on Practice and Procedures](#), 15 March 2022

⁴ Para 22.1

⁵ Para 2.2 makes clear that the commitment in the MoU “do not create or confer any right on the individual, nor shall compliance with this Arrangement be justiciable in any court of law”.

⁶ Press release ECHR 197 (2022), 14 June 2022 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7359967-10054452&filename=Interim%20measure%20granted%20in%20case%20concerning%20asylum-seeker%E2%80%99s%20imminent%20removal%20from%20the%20UK%20to%20Rwanda.pdf>

⁷ [Letter from Matthew Rycroft to Rt Hon Priti Patel](#), 13 April 2022

⁸ The Guardian, [UK officials raised concerns over Rwanda policy](#), documents show, 19 July 2022

⁹ See, for example, [Asylum Seekers: Removal to Rwanda - Hansard - UK Parliament](#) and IMIX, [Open letter to the Prime](#)

7. The government should be accountable to parliament before introducing such a controversial policy. It is not acceptable that parliamentary scrutiny can be avoided by the government choosing to use an MoU to facilitate the scheme rather than a binding treaty.

How do you assess the assurances and safeguards included in the MoU, particularly those relating to inspection and monitoring, a relocated individuals' access to legal assistance, and data protection?

8. The Rwanda removals process relies on the premise that Rwanda is a 'safe third country' to which people seeking asylum can be removed and which can process their claims and settle or remove (as appropriate) individuals after their claim is decided.¹⁰ The only previous experience the government has of safe third country removal of significant numbers of individuals is in the context of the European Union (EU). When the UK was a member of the EU, it was party to the multi-lateral 'safe third country' asylum returns agreement known as "Dublin" (most recently EU Regulation 604/2013 ("Dublin III")). Under Dublin III, the approach to decision-making for removals was heavily influenced by the fact that all other Member States were required to meet minimum standards before accession to the EU; were signatories to the European Convention on Human Rights (ECHR); and were bound by the EU Charter of Fundamental Rights and part of the Common European Asylum System (CEAS). Consequently, Parliament adopted statutory presumptions of safety in relation to EU countries, and the courts accepted that the UK government could apply presumptions of safety flowing from the existence of the CEAS and the entire structure of the EU legal order, as well as the fact that the EU safe third countries were subject to the jurisdiction of the CJEU and the European Court of Human Rights.¹¹ Even then, in some cases and particularly where the asylum systems of individual states were overwhelmed, the courts accepted at times that systemic deficiencies in the asylum system meant that it was not safe to send asylum seekers – either generally or for those who were particularly vulnerable – to those countries.¹²
9. There is no such factual or legal underpinning to the agreement with Rwanda. Instead, the MoU outlines assurances and safeguards regarding the treatment of those removed to Rwanda with little or no way of ensuring they are upheld.

Assurances regarding treatment of individuals in Rwanda

10. The MoU states that Rwanda will ensure the following:

Minister and Home Secretary about plans to send people seeking asylum to Rwanda, 14 April 2022

¹⁰ [Memorandum of Understanding 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](#)

¹¹ see e.g. *R (Nasseri) v SSHD* [2009] UKHL 23 per Lord Hoffmann at paras 23-25 and 36-39

¹² See e.g. *C-411/10 R (NS (Afghanistan)) v SSHD* and *MSS v Belgium & Greece* (concerning Greece) and *R (EM (Eritrea)) v SSHD* (concerning Italy).

"9.1.1 at all times it will treat each Relocated Individual, and process their claim for asylum, in accordance with the Refugee Convention, Rwandan immigration laws and international and Rwandan standards, including under international and Rwandan human rights law, and including, but not limited to ensuring their protection from inhuman and degrading treatment and refoulement; [and]

9.1.2 each Relocated Individual will have access to an interpreter and to procedural or legal assistance, at every stage of their asylum claim, including if they wish to appeal a decision made on their case;"

11. However, Rwanda's record on human rights, refugee status determination and commitment to the rule of law has been the subject of consistent international criticism. The Country Policy and Information Notes (CPINs) on Rwanda¹³ do not support a conclusion that Rwanda will be able to uphold the assurances quoted in paragraph 10 above. Rwanda is simply not a safe third country capable of conducting Refugee Status Determination akin to the process available in the UK for those who claim asylum, and where rights under the ECHR will be respected.
12. For example, the CPINs indicate that:
 - there appear to be no official interpreters provided and while those seeking asylum *may* be able to organise their own interpreters, there is no evidence that professional interpreters are available for the range of languages that would be required or how they could be accessed.¹⁴
 - there are serious deficiencies in procedural safeguards; for example, information about the process is limited and only provided orally, there are no interviews with written records, no opportunities to check notes made by the status determination committees, no apparent process for submitting evidence or obtaining expert evidence.¹⁵
 - there is no legal aid, there is no routine legal advice at the stage of claiming asylum, and a single NGO provides legal assistance to a small number of asylum seekers.¹⁶
 - the appeals process is untested – "it is unclear how often, if at all, either one or both appeal routes has been exercised" and the first stage of the appeal process (to a minister) does not seem to be fully independent.¹⁷
13. Further analysis of the of the key issues that are likely to affect people seeking asylum to Rwanda with the greatest immediacy and the "main information gaps and omissions" in the CPINs can be found in the Asylors

¹³ The CPIN consists of four documents:

(1) Review of asylum processing. Rwanda: assessment (V.1) May 2022 ('Assessment CPIN')
(2) Review of asylum processing. Rwanda: country information on the asylum system (V.1) May 2022 ('Asylum CPIN')
(3) Review of asylum processing. Rwanda: country information on general human rights (V.1) May 2022 ('HR CPIN')
(4) Review of asylum processing. Rwanda: interview notes (Annex A) (V.1) May 2022 ('Interview CPIN')

Available at [Rwanda: country policy and information notes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/rwanda-country-policy-and-information-notes)

¹⁴ See paras 2.1.8 of Assessment CPIN and paras 4.9.1-4.9.6 of Asylum CPIN.

¹⁵ Asylum CPIN, paras 4.5.1-4.5.4; 4.6.3; 4.7.3; 4.7.5; 4.8.6; and 4.9.2-4.9.3.

¹⁶ Assessment CPIN, paras 2.2.1-2.2.2; Asylum CPIN, paras 4.8.2-4.8.8.

¹⁷ Assessment CPIN, paras 2.3.3 and para 2.3.7; Asylum CPIN, paras 4.11.8, 4.14.5.

report 'A Commentary on the UK Home Office *Country Policy and Information Note: Rwanda, asylum system, and the related Country Policy and Information Note: Rwanda, assessment*', published in July.¹⁸

14. To give another example, there is significant evidence that refugees in Rwanda face risks of trafficking¹⁹ and little to suggest that victims of trafficking can be adequately supported and protected in Rwanda. The 'Review of Asylum Processing Rwanda: Assessment' CPIN²⁰ itself acknowledges the vulnerability of, and risk of trafficking in, young women and girls and persons living in refugee camps. It suggests that the risk is lower for 'urban refugees' but those living in towns would need the funds to do so, raising further questions about the risks of exploitation.
15. Generally, Rwanda's record on political freedom and human rights is poor, with a lack of space for political opposition, civil society and media and lack of independence of the courts.²¹ Government disclosures as part of the legal challenge to the Rwanda removals scheme have revealed that prior to the MoU being signed, the UK High Commissioner to Rwanda warned against the UK doing a deal with Rwanda because the African country had been accused of recruiting refugees to conduct armed operations in neighbouring countries. Rwanda was identified as one of 14 countries assessed as presenting substantial issues in relation to asylum systems and human rights and a Foreign, Commonwealth and Development Office memo dated 20 May 2021 urged No 10 not to get involved with the Rwanda deal owing to significant human rights concerns. A document from the day the memorandum was signed stated that the first group of asylum seekers due to be flown to Rwanda could "test" Rwanda's refugee determination processes.²² It is very concerning that the government's response to these serious concerns about Rwanda's asylum process was to "test" out the risks on real people.

Inspection and monitoring

16. The MoU states that Rwanda's commitments on reception arrangements and accommodation, asylum processing and treatment post asylum decision will be monitored by a Joint Committee of UK and Rwanda representatives and by an Independent Monitoring Committee established under the MoU.²³ However, prior to the first flight scheduled for 14th June, the Monitoring Committee had not yet been set up²⁴ - it is a significant cause for concern that the UK was proposing to remove the first group to Rwanda before having established the Monitoring Committee. They should ensure it is fully operational and effective - at minimum - before anyone is sent there.

¹⁸ [Rwanda: Asylum System | Asylos](#)

¹⁹ Assessment CPIN, paras 2.12.6-2.12.7.

²⁰ Para 2.12.6

²¹ See paras 3.1.4, 3.2.2, 3.2.3 of HR CPIN and also p.4 of the Equality Impact Assessment.

²² [UK officials raised concerns over Rwanda policy, documents show | Immigration and asylum | The Guardian](#)

²³ Para 10.6

²⁴ See House of Lords written question 900, answered 27 June 2022 <https://questions-statements.parliament.uk/written-questions/detail/2022-06-13/hl900>

17. At the end of July the government stated that “the terms of reference of the Monitoring Committee for the Migration and Economic Development Partnership have been agreed and will set out how the Monitoring Committee will report its findings. The Monitoring Committee is due to become established over the next few weeks and the membership is in the process of being agreed”.²⁵ At the time of writing, it is still not operational. Furthermore, the MoU does not outline what happens if a Committee finds a breach, how those removed to or facing removal to Rwanda will be informed of any such finding, or what remedial action is available.

Given Article 5.1 of the MoU does not impose an obligation on the UK to provide legal assistance during the screening of asylum seekers before relocation to Rwanda, what mechanisms are there for legal advice to be provided to the individuals selected for relocation?

18. Under the MoU, the UK is responsible for initial screening of asylum seekers prior to requesting their approval for transfer. Following the screening, which must commence “without delay”, the UK is required to provide Rwanda with information about any individual whom it proposes to transfer, including details of any “special needs that they may have that may need to be accommodated in Rwanda”, “any health issues”, “any security issues”, as well as details of the individual’s identity and any biometric data.²⁶ Therefore, the screening procedures under the MoU must be adequate to enable the UK to provide this information to Rwanda.
19. Alongside the MoU, the Home Office is using a number of powers in the Nationality Immigration and Asylum Act 2002, the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, and under the Immigration Rules in order to make the following decisions as part of identifying who will be sent to Rwanda
- Whether an individual’s asylum claim is ‘inadmissible’ on the basis that i) they could have claimed asylum in another country through which they passed en route to the UK, and ii) that country is determined to be a ‘safe third country’ for those individuals;
 - If the claim is deemed inadmissible, whether Rwanda is a safe third country in which the individual will not face threats to their life or liberty contrary to the Refugee Convention, or refoulement to face such threats, and will also be able to apply for and be granted refugee status in accordance with the Convention;
 - If Rwanda is a safe third country, assess whether removal of the individual to Rwanda will not violate their rights under the ECHR;
 - If these conditions are met, certify the individual’s asylum claim so that they may be removed to Rwanda without any right of appeal on asylum grounds.

²⁵ [Asylum: Rwanda: 26 Jul 2022: Hansard Written Answers - TheyWorkForYou](#)

²⁶ Para 5.2

- Finally, (i) assess any human rights claim the individual may have, and (ii) if rejected determine if it is 'clearly unfounded' and if so certify the claim so that there is no right of appeal on human rights grounds.

The factual and legal enquiries and assessments required to make these decisions in individual cases are not insignificant.

20. The government's factsheet on the 'Migration and Economic Development Partnership' outlined the need for careful case by case consideration before a decision is taken to remove a person to Rwanda, stating that "everyone considered for relocation will be screened and have access to legal advice. Decisions will be taken on a case-by-case basis, and nobody will be removed if it is unsafe or inappropriate for them" and each case would be assessed individually.²⁷
21. However, evidence from organisations providing direct support to those issued with 'notices of intent' for removal to Rwanda, including Asylum Aid, has highlighted that this has not been the case.²⁸ There has not been an adequate screening process, nor have the necessary mechanisms for accessing legal advice been put in place.
22. All those issued with notices of intent, and subsequently removal directions, have been placed in detention centres. Recent arrivals in the UK were detained without any screening for vulnerabilities and "while detained, isolated, frightened and overwhelmed, they often do not understand what is happening to them"²⁹ – questions to officials from NGOS regarding the process of screening for those arriving on small boats have been unanswered and there is no transparency about the process. Detainees have then been told that they may be sent to Rwanda and have only seven days in which to access legal advice and respond to the very many complex, novel, legal and factual issues that arise in these cases. After that, decisions are served with only five or six working days' notice being given of removal to Rwanda.³⁰ This is an impossibly short time period for people to effectively respond.
23. The main way that detainees can access advice is through the Detained Duty Advice (DDA) scheme, a rota scheme operated by a large number of firms and sole practitioners that have a daily 30 minute slot where they can see up to 10 individuals. There is little that can be achieved in 30 minutes, especially when speaking through an interpreter, beyond obtaining basic information and assessing eligibility for legal aid. The range of tasks that then need to be done in the subsequent period are extremely challenging, even for experienced lawyers. There are also often long waits to get DDA slots. Very

²⁷ Home Office [Factsheet: Migration and Economic Development Partnership](#), 14 April 2022. Similar assurances about the need for case-by-case consideration and access to legal advice are contained in a letter from Daniel Hobbs, a senior Home Office civil servant, to members of the Strategic Engagement Group on 13 May 2022

²⁸ [Home Affairs Committee Evidence Session 6 July 2022](#)

²⁹ Testimony of Alison Pickup, Director, Asylum Aid, [Home Affairs Committee Evidence Session 6 July 2022](#), p.3.

³⁰ Inadmissibility Guidance, p 15; "I'm being considered for relocation to Rwanda – What does this mean for me?" (Information Pack provided to recipients of the "Notices of Intent"). See also The Guardian, "[‘I thought the UK was a good country’: Sudan massacre refugee faces removal to Rwanda](#)", 18 May 2022

few of the people that we are aware of at Asylum Aid have accessed advice and representation through the DDA scheme. Others have received poor advice. They are often entirely reliant on NGOs who go into immigration removal centres to provide support (including referrals to lawyers) and who are often over-stretched and at capacity.

24. There are quality controls for those giving legal advice under Legal Aid Agency immigration contracts, including peer reviews of firms that take place. However, we understand that some firms giving advice via the DDA scheme have been categorised as below competence by the Legal Aid Agency and we have significant concerns about the quality of advice and about the experience of the people who are giving it.
25. Detainees served with notices of intent are able to request an ad hoc extension to the seven days but the Home Office have no published policy on extensions and detainees do not appear, for the most part, to be told that an extension is a possibility. It is only where people have been able to access legal advice that they realise this is an option - often that happens towards the very end of the seven-day period or even after it has ended. The extensions we have heard of are generally between seven and 14 days, so not long enough to address those concerns - in other cases, extensions have been refused altogether.

Is the MoU consistent with UK domestic law at present, or does UK legislation require any amendment to implement the MoU?

26. It is important to note that Rwanda has not been added to the list of 'safe third countries' under Schedule 3 of the 2004 Asylum and Immigration Act - this would require a statutory instrument approved by both Houses of Parliament. The Home Secretary would have to be satisfied that the criterion for inclusion on a list - namely that the third country would be safe generally for asylum seekers - are met. The consequence of not doing so is that an individualised decision needs to be taken in each case, without operating any presumption, as to whether Rwanda is a safe third country. The procedure which the Home Office has adopted for deciding who to remove to Rwanda is plainly inadequate for that purpose. It is too short and consequently there is a real risk that people will be removed to Rwanda without having had a fair opportunity to access legal advice and the courts, and where it is not safe for them.

Is the MoU consistent with the UK's obligations under international law, including (but not limited to) the 1951 Refugee Convention, the European Convention on Human Rights, and the Council of Europe Convention on Action against Trafficking in Human Beings?

Compliance with the European Convention on Human Rights

27. The removal of a person seeking asylum to a third country may result in a breach of Article 3 of the ECHR, where “substantial grounds have been shown” for that they would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country”.³¹ This includes where they may be sent from that country to another country where there is such a real risk, without full and proper consideration of that risk. The UK government must ensure that Rwanda’s asylum procedure “affords sufficient guarantees to avoid an asylum-seeker being removed, directly or indirectly, to his country of origin without a proper evaluation of the risks he faces from the standpoint of Article 3 to the Convention”.³² As part of this, the government must “examine thoroughly the question whether or not there is a real risk of the asylum seeker being denied access... to an adequate asylum procedure, protecting him or her against refoulement”³³ and must ensure “the accessibility and functioning of [Rwanda’s] asylum system and the safeguards it affords in practice”.³⁴ It is not sufficient to “merely assume that the asylum seeker will be treated in [Rwanda] in conformity with the Convention standards” – the government must “verify how the authorities of that country apply their legislation on asylum in practice”.³⁵
28. As outlined above, the assurances in the MoU are not sufficient for ensuring that the process and human rights protections in Rwanda are such that there is no risk of breach of Article 3 of the ECHR because of an inadequate systemic examination of country conditions in Rwanda on the part of the UK, and because of the lack of guarantees and legal enforceability.
29. The assurances also fail to take into consideration Article 4 duties under the ECHR – see below.

Compliance with the Refugee Convention

30. In order to remove an asylum seeker to Rwanda without considering their claim, the government must ensure that Rwanda will in fact discharge the obligations owed to those individuals under the Refugee Convention (both during the refugee status determination process and, where applicable, when they are recognised as refugees). This obligation arises from the wording, context, and object and purpose of the of the Refugee Convention, and the obligation, under Article 26 of the Vienna Convention on the Law of Treaties, to implement treaty obligations in good faith.
31. Within this, the UK is under a duty to implement the Refugee Convention “in a manner which is reasonably efficacious”.³⁶ This duty will be breached if “a combination of acts or omissions has the overall effect of rendering the

³¹ *Ilias and Ahmed v Hungary* (Application no. 47287/16), para 126

³² *Ibid*, para 133

³³ *Ibid*, paras 134 and 139

³⁴ *Ibid*, paras 141

³⁵ *Ibid*, paras 141

³⁶ *Saad v Secretary of State for the Home Department* [2001] EWCA Civ 2008, para 11

fulfilment of treaty obligations obsolete, or defeat the object and purpose of a treaty".³⁷

32. There is clear evidence that Rwanda will not discharge the full set of obligations owed under the Refugee Convention to those transferred. In addition to the concerns raised above about the adequacy and fairness of the system for processing asylum claims in Rwanda (which mean that there is a real risk that refugees will not obtain recognition or protection to which they are entitled), there are specific concerns about Rwandan domestic law's compatibility with the Refugee Convention. For example:

- Contrary to Article 1C(1) of the Refugee Convention, Article 4 of the 'Ministerial Instructions No. 02/2016 Determining the Management of Refugees and Refugee Camps' (Ministerial Instruction)³⁸ provides that "[a] refugee who returns to the country of origin loses his/her refugee status".
- Contrary to Article 1C and/or Article 33(1) of the Refugee Convention, Article 16 of 2014 law Relating to Refugees in Rwanda provides that "[a] person granted the refugee status...may have his/her status revoked...for reasons of territorial integrity".
- Contrary to Article 1F(b) of the Refugee Convention, under Rwandan law, refugees who have committed any non-political felony are automatically excluded from refugee status, whether or not the offence is sufficiently serious to qualify for exclusion under Article 1F(b).
- Contrary to Articles 7 and/or 15 of the Refugee Convention, Article 2 of the Ministerial Instruction prohibits refugees from, inter alia, "political activities" and "gathering based on ethnicity, nationality, or any other sectarian ground".
- Contrary to Article 33 of the Convention, there are substantial grounds to believe that Rwanda will not adhere to the prohibition against refoulement (because of the serious deficiencies in relation to the RSD process identified in paras 10 above).

Compliance with the European Convention on Action against Trafficking in Human Beings and Article 4 of the ECHR

33. The UN Special Rapporteur on trafficking in persons, especially women and children, has highlighted concerns that the Rwanda agreement may breach the UK's positive obligations to victims of trafficking and contemporary forms of slavery under Article 4 of the ECHR, read in conjunction with the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), 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.³⁹

³⁷ [The Refugee in International Law - Guy S. Goodwin-Gill, Jane McAdam](#), p 387

³⁸ ['Ministerial Instructions No. 02/2016 Determining the Management of Refugees and Refugee Camps'](#), 1 June 2016

³⁹ [OL GBR \(9.2022\) 1 \(ohchr.org\)](#)

34. The positive obligations arising under Article 4 means that the UK government should ensure that victims of trafficking are provided with assistance and protection. However, as highlighted by the UN High Commissioner for Refugees,⁴⁰ people seeking asylum face significant difficulties in disclosing traumatic experiences – such as trafficking – in their screening interviews, which are usually conducted shortly after arrival. Under the MoU, UK authorities will conduct an initial screening before deciding on whether an individual may be transferred to Rwanda but this is not sufficient to identify and recognise the specific protection needs of asylum seekers, including victims of trafficking. This needs to be seen in combination with concerns already raised about the risks of trafficking and re-trafficking in Rwanda: citing the US government latest Trafficking in Person Report for 2021, the previous Independent Anti-Slavery Commissioner, raised concerns that Rwanda has detained thousands of potential trafficking victims without conducting adequate screening or referring identified victims to proper care and assistance; that in 2021 Rwanda investigated fewer trafficking cases and prosecuted and convicted fewer traffickers compared to the previous year, and that it “lacked a victim-witness support program”.⁴¹
35. In short, the MoU contains very little assurance on the identification, support and protection of victims of trafficking in both the UK and Rwanda, such that we do not see how it can be in compliance with the UK’s obligations under ECAT and the ECHR.

⁴⁰ UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement, para.15

⁴¹ [UK’s slavery tsar slams ‘lack of humanity’ in Rwanda asylum deal | The Independent](#)