

WRITTEN EVIDENCE FROM HELEN BAMBER FOUNDATION AND ASYLUM AID (RWA0008)

Introduction

1. The Helen Bamber Foundation (HBF) is a specialist clinical and human rights charity that works with survivors of trafficking, torture and other forms of extreme human cruelty. 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, including but not limited to children, survivors of trafficking, and stateless people.
3. This evidence focuses on the provisions in the Safety of Rwanda (Asylum and Immigration) Bill ('the Bill') that require the treatment of Rwanda as safe country, without any court oversight, and the specific risks of the Bill to survivors of trafficking.

Does the requirement to conclusively treat Rwanda as a safe country comply with the UK's human rights obligations, including in particular the prohibition of refoulement and the prohibition of inhuman or degrading treatment under Article 3 of the European Convention on Human Rights (ECHR)?

4. The requirement to conclusively treat Rwanda as a safe country does not comply with the UK's human rights obligations. It was established in *R (Nasseri) v SSHD* [2009] UKHL 23 that a conclusive presumption that a third country is safe would be incompatible with Article 3 where there was evidence of a real risk of refoulement of people sent to that country for their asylum claim to be processed there.¹
5. In *Nasseri*, although the asylum procedure in Greece for people like Mr Nasseri was described by the court as "to say the least, shaky", there was no evidence that anyone had in fact been refouled from Greece and therefore the House of Lords declined to make a declaration of incompatibility.² That stands in stark contrast to the position in respect of Rwanda, where the Supreme Court was provided with evidence of at least 100 cases of refoulement, including under the Israel-Rwanda agreement³ and where it found that there

¹ The presumption in that case was contained in paragraph 3 of Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and applied to a list of countries set out in the Schedule, including Greece.

² Judgment, para 34. The Strasbourg Court later held, in *MSS v Belgium & Greece* (2011) 53 EHRR 2, that on the evidence before it there was a real risk of *refoulement* from Greece, as well as risks of breaches of Article 3 arising from the treatment of people seeking asylum in Greece (including destitution and detention in inhumane conditions), meaning that MSS's removal to Greece had been a breach of Article 3 by Belgium. Since that ruling, in practice the UK has not returned people seeking asylum to Greece.

³ [R \(on the application of AAA \(Syria\) and others\) \(Respondents/Cross Appellants\) v Secretary of State for the Home Department \(Appellant/Cross Respondent\)](#), paras 89 and 96

were systemic deficiencies in the Rwandan asylum procedure which were not capable of preventing such refoulement.

6. The new UK-Rwanda Treaty⁴ ('the Treaty') and the information contained in the policy statement accompanying it do not justify a departure from the conclusion of the Supreme Court that there is a real risk of refoulement from Rwanda and in the circumstances the conclusive presumption is incompatible with Article 3 ECHR.
7. Neither signing a Treaty, which merely contains assurances that the Supreme Court found Rwanda could not fulfil, nor stating in a Bill that Rwanda is safe, changes the reality in country. The Bill and the Treaty do not address a number of issues raised by the Supreme Court, including Rwanda's failure to comply with multilateral treaty obligations in the past; Rwanda's poor human rights record or the profound human rights concerns that remain;⁵ and the lack of legal remedy under Rwanda's legal system if an individual is removed to Rwanda, and Rwanda in fact tries to return them to their country of origin.⁶
8. The Supreme Court also highlighted the lack of Rwandan authorities' experience of considering asylum applications from most of the countries from which asylum claimants in the United Kingdom commonly come, such as Albania, Iran, Iraq, Pakistan, Syria and Vietnam. UNHCR's evidence shows 100% rejection rates during 2020-2022 for nationals of Afghanistan and Syria (who in the UK were granted asylum in 74% and 985 of cases respectively).⁷ The significant changes required to address these issues will take time and cannot be wished into being by a Bill.
9. The existence of a conclusive presumption would also be incompatible with the duty established in *Ilias and Ahmed v Hungary* (2020) 71 EHRR 6 to "conduct a thorough examination of the relevant conditions in the third country concerned and, in particular, the accessibility and reliability of its asylum system".⁸ As was explained by the European Court in that case, this duty requires the authorities of the expelling country before expelling any individual to:

*"...carry out of their own motion an up-to-date assessment, notably, of the accessibility and functioning of the receiving country's asylum system and the safeguards it affords in practice. The assessment must be conducted **primarily with reference to the facts which were known to the national authorities at the time of expulsion** but it is the duty of those authorities to seek all relevant generally available information to that effect. General deficiencies well documented in authoritative reports, notably of the UNHCR, Council of Europe and EU bodies are in principle considered to have been known. **The expelling state cannot merely assume that the asylum-seeker will be treated in the receiving third country in***

⁴ [UK-Rwanda treaty: provision of an asylum partnership](#)

⁵ [R \(on the application of AAA \(Syria\) and others\) \(Respondents/Cross Appellants\) v Secretary of State for the Home Department \(Appellant/Cross Respondent\)](#) Paras 75 and 76

⁶ Ibid, Para 82

⁷ Ibid, Para 77 and 85

⁸ Para 139.

conformity with the Convention standards but, on the contrary, must first verify how the authorities of that country apply their legislation on asylum in practice”⁹

Does legislating, in clause 2, to prevent the courts considering any claim that Rwanda is not safe comply with the UK’s human rights obligations, including in particular Article 13 ECHR?

10. Clause 2 of the Bill, preventing the courts from considering any claim that Rwanda is not safe, does not comply with the UK’s human rights obligations. Article 13 of the ECHR provides for an effective remedy to be available for the violation of any Convention rights. It is not one of the “Convention rights” contained in the Schedule to the Human Rights Act 1998 (HRA). The reason for this is that the HRA was intended to ensure, in particular through section 6, that there is always an effective remedy available domestically for any actual or threatened breach of Convention rights. Clause 3 of the Bill seeks to disapply relevant provisions of the HRA, including section 6, to decisions taken on the basis of the statutory requirement to treat Rwanda as safe. The only remedy available under the HRA to a person who claims that the conclusive presumption is incompatible with his Convention rights would appear to be a declaration of incompatibility under section 4 HRA.¹⁰ A declaration of incompatibility is not an effective remedy for Article 13 purposes – not least because it does not affect the lawfulness or validity of either any decision taken on the basis of the impugned provision, or of the provision itself, and is not binding on the parties.¹¹

Does the Bill give rise to any other significant human rights concerns?

11. The issue of (re)trafficking was not addressed in the Supreme Court judgment but the risk remains that survivors of trafficking who claim asylum in the UK (93% of HBF clients who are survivors of trafficking have made both asylum applications and been referred to the National Referral Mechanism) could be removed to Rwanda in contravention of Article 4 of the European Convention on Human Rights and the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) (the Bill explicitly refers to both in clause 1(6) when setting out what ‘international law’ includes).
12. The UN Special Rapporteur on trafficking in persons, especially women and children, highlighted concerns that the UK’s Memorandum of Understanding with Rwanda 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 ECAT, including the duty to investigate without delay and take operational measures to protect potential victims,

⁹ Para 141, emphasis added.

¹⁰ Section 4(6) HRA 1998.

¹¹ The Committee may wish to be aware that Mr Nasseri, the applicant in the *Nasseri* case referenced above, applied to Strasbourg for a finding that his Article 13 rights had been violated by the existence of the conclusive presumption of the safety of Greece. The claim was communicated by Strasbourg, including as to whether the application of the conclusive presumption in his case breached his rights under Article 13 read with Article 3, but later struck out by the court without consideration of the merits because Mr Nasseri had been granted refugee status in the UK: *Nasseri v United Kingdom* Application no. 24239/09, decision of 5 November 2015. Available at: <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-158649&filename=NASSERI%20v.%20THE%20UNITED%20KINGDOM.docx&logEvent=False>

where there are sufficient indicators available of circumstances which give rise to a credible suspicion of a real risk of trafficking or exploitation.¹² These concerns are not only not negated by the new Treaty but Article 13(2) of the Treaty specifically envisages Rwanda receiving individuals for whom the UK has made a positive reasonable grounds decision that they are a ‘potential’ victim of trafficking, before the UK has made a conclusive grounds decision under the National Referral Mechanism.

13. The positive obligations arising under Article 4 ECHR means that the UK government should ensure that victims of trafficking are provided with assistance and protection. Article 13 of the Treaty states that Rwanda will have ‘regard’ to information about the special needs of victims of modern slavery or human trafficking, and take ‘all necessary steps to ensure that these needs are accommodated’. But this must be examined in combination with concerns already raised about the risks of trafficking and re-trafficking in Rwanda. Citing the 2021 US State Department Trafficking in Person Report (TIPP), 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”.¹³ The 2023 Trafficking in Persons Report highlighted that the Rwandan government still “did not meet the minimum standards in several key areas”. The government “continued to lack specialized Standard Operating Procedures (SOPs) to adequately screen for trafficking among vulnerable populations and did not refer any victims to services”.¹⁴
14. The Bill risks depriving victims of trafficking of their rights to recovery and exposing them to the risk of further exploitation, in clear violation of the UK’s international obligations.

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¹² 9 OL GBR (9.2022)_1 (ohchr.org)
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27407>

¹³ [UK’s slavery tsar slams ‘lack of humanity’ in Rwanda asylum deal | The Independent](#)

¹⁴ US Department of State, [2023 Trafficking in Persons Report: Rwanda](#)