

WRITTEN EVIDENCE FROM CARE (RWA0019)

Introduction to CARE

1. CARE (Christian Action Research and Education) is a well-established mainstream Christian charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives. CARE has worked with MPs, Peers, MSPs and MLAs on human trafficking and modern slavery during the passage of several Acts.¹ CARE submitted evidence to the Committee's scrutiny of the Illegal Migration Bill.²

Summary

2. CARE has answered Q7 as it relates to the human rights of victims of modern slavery who may have arrived in the UK without their consent.
3. CARE urges the Committee to:
 - 3.1. Recommend that the Government confirms victims arriving in the UK will have their reasonable grounds status determined before being removed to Rwanda, so that they might be able to receive services under Article 13 of the Rwanda Treaty;
 - 3.2. Recommend that if a person is removed before the identification process is complete in the UK that it is clear how a determination would be made in Rwanda;
 - 3.3. Seek evidence from the Government on how they intend to meet their international obligations to victims of trafficking; how the guidance under the Illegal Migration Act 2023 (IMA) will operate for victims; and how the needs of victims of trafficking will be met in Rwanda so that the Article 13 Treaty obligations are met.

Q7. Does the Bill give rise to any other significant human rights concerns?

4. CARE is concerned about the future treatment of victims of modern slavery under the Rwanda Treaty and the Rwanda Bill.
5. The Bill is an extension of the IMA, which will **penalise genuine victims** who may be in the UK without their consent, by removing them to another country, even if they get a positive reasonable ground decision under the Government process for determining whether someone is a victim (known as the National Referral Mechanism (NRM)). In this case, to a country where support is unlikely to be comparable to that which could be received in the UK.

The Treaty and the Bill

6. The Rwanda Treaty specifically refers to modern slavery in Article 13.³
 1. *Rwanda shall have regard to information provided about a Relocated Individual relating to any special needs that may arise as a result of their being a victim of modern slavery or human trafficking, and shall take all necessary steps to ensure that these needs are accommodated.*
 2. *For the purposes of Article 13(1), Rwanda agrees to treat as a victim of modern slavery and human trafficking a Relocated Individual who has received a positive reasonable grounds decision made by*

¹ Most recently these have included the Nationalities and Borders Act 2022 and the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022

² <https://committees.parliament.uk/writtenevidence/119905/pdf/>

³ [Agreement between UK and Rwanda for the provision of an asylum partnership to strengthen internal commitments on the protection of refugees and migrants \(publishing.service.gov.uk\)](#)

the United Kingdom (in those cases where the United Kingdom is not obliged to make a conclusive grounds decision prior to removal).

7. The Rwanda Bill states that a safe country “*means a country to which persons may be removed from the United Kingdom in compliance with all of the United Kingdom’s obligations under international law that are relevant to the treatment in that country of persons who are removed there*” (clause 1(5)(a)). International law includes the European Convention Trafficking in Human Beings 2005 (ECAT) (clause 1(6)). The Bill also states that no court or tribunal may consider any complaint that Rwanda is not acting in accordance with the Treaty (clause 2(4)(c)).

The UK’s International Obligations to Victims of Trafficking

8. The European Court of Human Rights has said Article 4 obligations under the European Convention of Human Rights include “*a legislative and administrative framework to prevent and punish trafficking and to protect victims.*”⁴
9. Under ECAT, a Member State has obligations under Article 10 to identify victims however they arrive.⁵ Under Article 13 a victim should receive a recovery and reflection period of at least 30 days to receive support and consider their cooperation in prosecutions,⁶ and while doing so not be removed from the Member State.⁷ GRETA, the ECAT monitoring group has said, under Article 10(2) “*Trafficked persons should have access to specialised shelters and accommodation should be separate from the immigration system.*”⁸
10. The Joint Committee raised concerns in its report on the IMA that the Act not only breached the UK’s legal obligations to victims of modern slavery but could also increase exploitation.⁹

The Implications of the Bill

Identification of Victims

11. The Explanatory notes says, “*The Illegal Migration Act 2023 creates a system in which anyone arriving illegally in the UK will not have their....modern slavery referral considered while they are in the UK, but they will instead be promptly removed either to their home country, where it is safe to do so, or to a safe third country to have their protection claims processed there.*”¹⁰ CARE is concerned that this paragraph implies that no-one will be considered for a reasonable grounds decision (RGD) and therefore Article 13 of the Treaty would be meaningless (see above).
12. During evidence to the Home Affairs Select Committee on 13 December 2023, the Minister for Legal Migration said, “*We will always screen individuals properly, identify vulnerabilities, and ensure that those issues are properly addressed and catered for.*” The accompanying Home Office official said the IMA provided a public order exemption to preclude a person from a recovery period but “*it did not prevent the assessment of people for trafficking and that their ongoing needs could be met in Rwanda.*”^{11 12}
13. **CARE recommends** that there should be a clarification of the Bill’s Explanatory Notes to be clear on the expectations for victims and how the UK will meet its ECAT obligations to identify victims. We also urge publication of guidance on how the IMA will function for victims of trafficking.
 - 13.1. It might be that in practice individuals entering the National Referral Mechanism do not get a RGD before being removed as the timeframe for RGDs to be made has significantly increased

⁴ [V.C.L. and A.N. v The United Kingdom](#), February 2021, para 151. See also European Court of Human Rights, Guide on Article 4 of the European Convention on Human Rights, para 56, page 16

⁵ [ECAT Explanatory Report](#), 2005, para 62 and 127

⁶ [ECAT Explanatory Report](#), 2005, para 174

⁷ [Modern Slavery: Statutory Guidance for England and Wales \(under s49 of the Modern Slavery Act 2015\) and Non-Statutory Guidance for Scotland and Northern Ireland](#), version 3.5, October 2023, para 8.20, page 71

⁸ Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection, GRETA, [\(2020\)062](#), para 43, page 13

⁹ <https://committees.parliament.uk/publications/40298/documents/196781/default/> June 2023, para 39, page 126

¹⁰ [Explanatory Notes](#), para 13, pages 5-6

¹¹ [committees.parliament.uk/oralevidence/14013/pdf/](#), 13 December 2023, Q80

¹² See also the [Government’s response](#) to the Committee’s recommendations on the IMA, September 2023, page 20

during 2023. Guidance is that decisions should be made within five working days,¹³ but the latest statistics report decisions taking much longer in 2023: in Q2 - 21 days and Q3 - 47 days.¹⁴ If this were to happen, **individuals who are in the NRM but not yet received a RGD before being removed to Rwanda should be identified as needing particular care and there should be a clear process for how a determination will be made in Rwanda whether a person is a victim of trafficking.**

- 13.2. If the UK intends not to make any RGD for individuals considered for potential removal to Rwanda, this should be made very clear to individuals who are being identified by First Responders as potential victims. It should also be clear how this identification would be carried forward in Rwanda; or how any other similar process would work.

Meeting Article 4 and ECAT Obligations

14. In the ECHR Memorandum of the IMA, the Government said they would meet their Article 4 obligations to victims of trafficking on three grounds, two of which are relevant to this Bill. Firstly, the potential for the person to make a suspensive claim if they can provide compelling evidence that removal to the safe country in question would give rise to a real risk of serious and irreversible harm, which currently applies under clause 4 of this Bill, but is the subject of dispute; and that, secondly, “*the Home Office will ensure that receiving countries are able to investigate trafficking claims and, if made out, provide support to victims*”.¹⁵
15. However, there is a reasonable case to suggest that **the Home Office have not demonstrated that Rwanda is able to investigate trafficking cases or provide the necessary support**, despite the Treaty obligations.
- 15.1. Rwanda passed a human trafficking law in 2018.¹⁶ Five years later, in the US State Department 2023 Trafficking in Persons Report, Rwanda is listed as a Tier 2 country which does not yet meet “*minimum standards...but is making significant efforts do so*” (UK is Tier 1), including a lack of specialised policies “*to adequately screen for trafficking among vulnerable populations and did not refer any victims to services*”.¹⁷ The 2022 Report stated there has been a reduced budget for victim care due to pandemic-related budget constraints.¹⁸
- 15.2. **It is disappointing that the concerns raised by the US Trafficking in Persons Report are not addressed in the Government’s Policy Statement on the Bill, published on 12 December 2023.** It only references the Treaty obligations without evidence that Rwanda can meet the requirements.¹⁹ This is different to a previous 2022 Government document which set out information on Rwanda’s actions to prevent trafficking in *Review of asylum processing Rwanda: country information on general human rights*, which was archived on 11 December 2023.²⁰ That document references a speech made in July 2021 by the UK’s International Ambassador for Human Rights which said, “*we were disappointed that Rwanda did not support the UK recommendation to screen, identify and provide support to trafficking victims*”,²¹ referring to the recommendation set out in the UN Human Rights Council Report on Rwanda published in March 2021.²²

¹³ [Modern Slavery: Statutory Guidance](#), version 3.5, *Op Cit*, para 14.49, page 132

¹⁴ [Table 19](#), NRM Statistics July to September 2023,

¹⁵ <https://publications.parliament.uk/pa/bills/cbill/58-03/0262/ECHR%20memo%20Illegal%20Migration%20Bill%20FINAL.pdf> para 46, page 10

¹⁶ Law No. 51/2018 of 13/08/2018 relating to the prevention, suppression, and punishment of trafficking in persons and exploitation of others (Rwanda). See [Gazette of 24/9/2018](#), pages 90-131

¹⁷ [NAR.IOM_GOV_Understanding-Human-Trafficking-in-Rwanda-Causes-Effects-and-Impact-Baseline-Report.pdf](#) (neveragainrwanda.org) 2019

¹⁸ <https://www.state.gov/reports/2023-trafficking-in-persons-report/rwanda/>

¹⁹ <https://www.state.gov/wp-content/uploads/2022/04/337308-2022-TIP-REPORT-inaccessible.pdf> pages 468-470

²⁰ https://assets.publishing.service.gov.uk/media/657850ff254aaa00d050b07/Policy_Statement_-_Safety_of_Rwanda_Asylum_and_Immigration_Bill.pdf 12 December 2023, para 133

²¹ [RWA CPIN Review of asylum processing - human rights information \(publishing.service.gov.uk\)](#), Version 1, May 2022, section 8.6, pages 55-58),

²² [UN Human Rights Council: Universal Periodic Review Adoption – Rwanda - GOV.UK \(www.gov.uk\)](#) 8 July 2021

²³ United Nations, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Rwanda. [A/HRC/47/14](#), March 2021, para 135.46, page 20

15.3. We note with concern that there was no assessment in the IMA on how many modern slavery victims will be affected once it comes into effect²³ nor did it address the impact on the welfare of victims, including the impact of potentially being relocated to Rwanda. The Impact Assessment did say there could be “*a perceived welfare loss for the individuals relocated to a third country who would otherwise be granted support in the UK although this may be mitigated to the extent that the support provided in a third country is comparable.*”²⁴ Given the comments above about care in Rwanda, it is reasonable to assume that any support provided would **not be comparable** to support received in the UK.

15.4. Furthermore, by definition, Rwanda is not a signatory to either the ECHR or ECAT so has no obligation under international law to meet those requirements, nor can it be held to account by either the European Court or the GRETA Committee, respectively.

Lack of Ability to Raise Concerns

16. CARE is extremely concerned that the Bill prevents victims having any right of appeal if their modern slavery claim is or is not processed in Rwanda nor the ability to raise concerns about the support they might or might not receive under Article 13 of the Treaty.²⁵

Northern Ireland

17. We also raise with the Committee the potential that victims in Northern Ireland have additional rights under the Windsor Framework, including ECHR rights removed by this Bill. The Northern Ireland Human Rights Commission (NIHRC) argues that the European Trafficking Directive still **applies to Northern Ireland under Article 2 of the Northern Ireland Protocol**, saying “*Because the Trafficking Directive protects a subset of ‘victims’ in Northern Ireland, the Trafficking Directive should also fall within the scope of Protocol Article 2.*”²⁶ The Commission have taken legal action against the UK Government with a 3 day hearing due to start on 29 January 2024.²⁷ At Second Reading of the Bill, the Home Secretary recognised, “*The point...about differential treatment in different parts of the United Kingdom is one that we are conscious of.*”²⁸

(12 January 2024)

²³ *Ibid*, para 83, page 24

²⁴ *Ibid*, para 83, page 24

²⁵ Clause 2(4)(b)-(c)

²⁶ [Joint NIHRC / ECNI Briefing Paper](#) on the Modern Slavery and Human Trafficking and Electronic Travel Authorisation provisions in the Nationality and Borders Bill, January 2022, para 3.2, page 6

²⁷ [Illegal Migration Act challenge Factsheet | Northern Ireland Human Rights Commission \(nihrc.org\)](#) 7 December 2023

[Northern Ireland Human Rights Commission begins a legal challenge of the Illegal Migration Act | Northern Ireland Human Rights Commission \(nihrc.org\)](#) 3 October 2023

²⁸ Hansard, Second Reading, [12 December 2023](#), col 749