University of BRISTOL
HUMAN RIGHTS IMPLEMENTATION CENTRE

29th August 2022

Dear Home Secretary

Re: UK-Rwanda Asylum Partnership Arrangement and the UK's international obligations under refugee and human rights law

We write to you to express our concerns about the government's plans under the UK-Rwanda Asylum Partnership Arrangement. These concerns relate to the inherent incompatibility of the plans with the UK's obligations under the Refugee Convention and international human rights law. In addition, the procedural failings in the UK (in the rushed process of initial "assessment" prior to removal to Rwanda) have negative implications not only in terms of a decision to remove to Rwanda but also for the outcome of assessment of the individual once s/he is in Rwanda. There is likely to be increased trauma for the individual in experiencing a rushed inadequate process leading to removal to a distant country where procedural (and other) failings continue. We also highlight areas in which we think the plans undermine the UK's responsibility to prevent torture and ill treatment as well as the crucial role of mechanisms in the UK and Rwanda to discharge this responsibility.

1. The process is inherently incompatible with the UK's obligations under the Refugee Convention

With respect to how the process is incompatible with the purpose of the Refugee Convention, whilst such arrangements may be justified for 'burden-sharing 'this is clearly an exercise in 'burden-shifting 'and not justified.[1]

The procedure is punitive and discriminates against persons on the grounds of how they arrive in the UK to claim asylum. Accordingly, it is incompatible with Article 31 of the Refugee Convention, which prescribes that Contracting States "shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

As Human Rights Watch have stated the UK-Rwanda arrangement "creates a two-tiered refugee system that discriminates against one group based on their mode of arrival, despite refugee status being grounded solely on the threat of persecution or serious harm and international standards recognizing that asylum seekers are often compelled to cross borders irregularly to seek protection."[2]

The UNHCR has consistently voiced concern that attempting to transfer the fundamental responsibility for the protection of refugees typically involves the forced removal of asylum seekers to third, often developing, nations where human rights safeguards and resources may not be adequate. Under international law, the UK is responsible for ensuring that obligations to protect transferred asylum seekers are met fully by the receiving state – in this case the UK itself. These fundamental safeguards include protection against refoulement, access to fair and efficient asylum procedures, health care, employment, education, and social security, and the right to

[1] Memorandum of Understanding Between the UK and Rwanda, 14 April 2022
https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda
[2] https://www.hrw.org/news/2022/04/14/uk-plan-ship-asylum-seekers-rwanda-cruelty-itself

freedom of movement. UNHCR warns that such practices jeopardize the safety of those in need of international protection.[3]

2. The process is inherently degrading and in violation of the UK's obligations under human rights law

Article 3 of the European Convention on Human Rights (ECHR - made part of UK law by Human Rights Act 1998) states that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment."). The UK also has long-standing obligations under other international human rights law and treaties to which it is a party, such as the United Nations International Covenant on Civil and Political Rights, the Convention against Torture, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities. The protection afforded by Article 3 and the UN treaties listed above is absolute and extends to everyone, regardless of their conduct[4] and must be applied without discrimination. It applies regardless of how or why a person arrived in the UK.

Case law of the ECHR has determined that degrading treatment, contrary to Article 3 (and consequently the HRA), includes any circumstance where a person has "undergone – either in the eyes of others or in his own eyes – humiliation or debasement, typically attaining a minimum level of severity".[5] Treatment, which is sufficiently severe, may be regarded as degrading "if it grossly humiliates him before others or drives him to act against his will or conscience".[6] The European Court of Human Rights (ECtHR) has also found treatment to be degrading when "it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them."[7] We consider that the process of sending people to Rwanda that the government seeks to implement is inherently degrading and in violation of Article 3 of the HRA, as well as the UK's obligations under international law to protect people against torture and other cruel, inhuman or degrading treatment or punishment.

First, in considering the protections afforded by Article 3, the ECtHR has determined that refugees and asylum seekers are particularly vulnerable, and in need of special protection, "because of everything [they have] been through during [their] migration and the traumatic experiences [they were] likely to have endured previously."[8] In addition, the Human Rights Committee has stated that the aim of the prohibition of torture and other ill-treatment under Article 7 of the ICCPR "is to protect both the dignity and the physical and mental integrity of the individual". We consider that this procedure neither protects the inherent dignity nor ensures the physical and mental integrity of the individuals singled out for removal.

We consider the punitive and discriminatory basis of the procedure, and the manner in which is it applied, causes significant harm to the mental well-being of the individuals at risk of removal.[9] It fundamentally fails to provide special protection to them, and poses a significant risk of re-traumatisation of victims of human rights violations, including torture and sexual violence. As has already been demonstrated, there is insufficient time for the UK authorities to consider issues of individual vulnerability prior to their removal to Rwanda. Proper consideration of an individual's history and corresponding vulnerability and needs will occur only once being processed in Rwanda. As indicated in oral evidence before the Home Affairs Select Committee: "they then have a seven-day period in which to understand all those things, find out how to get legal advice, get legal advice and respond to the very many complex, novel, legal and factual issues that arise in these cases. We think that that period is

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[3] https://www.unhcr.org/en-us/news/press/2021/5/60a2751813/unhcr-warns-against-exporting-asylum-calls-responsibility-sharing-refugees.htm

[4] Chalal v UK 1996, European Court of Human Rights

[5] See for example, Campbell and Cosans v UK (7511/76 and 7743/76), European Court (1982) §28; Ireland v UK (5310/71), European Court (1978) §162.

[6] The Greek Case, European Commission of Human Rights (3321/67; 3323/67; 3344/67, 1969.

[7] Kudla v Poland (30210/96), European Court Grand Chamber (2000) §92; Jalloh v Germany (58410/00), European Court Grand Chamber (2006) §68.

[8] M.S.S. v. Belgium and Greece, no. 30696/09, ECtHR 2011, §251.

[9] See e.g., where inhuman and degrading conditions in detention caused mental breakdown, *R (MD) v Secretary of State for the Home Department* [2014] EWHC 2249 (Admin). See also, *HA (Nigeria) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin), *D v Secretary of State for the Home Department* [2012] EWHC 2501 (Admin); *S v Secretary of State for the Home Department* [2014] EWHC 50 (Admin).

simply impossibly short for people to effectively respond. …this process is being rushed so much that there is no time for that careful consideration to happen and no opportunity for people to put forward the evidence."[10].

The UNHCR has recognised the significant failings of disclosure in screening interviews, which are typically conducted shortly after arrival. The UNHCR notes that these processes fail to take account of the specific vulnerabilities of victims of trafficking, torture, and other serious human rights violations, stating "[h]istories of trafficking and exploitation are explored in a single, complex question, which can make it difficult for individuals to disclose information."[11] The UN Special Rapporteur on trafficking in persons, has also expressed concern that the initial screening process "was not sufficient to identify and recognise the specific protection needs of asylum seekers, including victims of trafficking."[12]

A report by HMIP on Colnbrook Immigration Removal Centre on 1 July 2022 notes a lack of access to justice for those held in the Centre, with a significant majority having not received legal advice or access to a lawyer. This was particularly acute in urgent cases: "Some detainees who were due to be removed on charter flights were located on Echo Unit as part of the centre's approach to preventing the spread of COVID-19. This resulted in limited access to the internet to communicate with their legal representatives at a critical time."[13]

Furthermore, oral evidence before the Home Affairs Select Committee on 6 July 2022 noted that screening was insufficient to be able to assess vulnerability, with questions not being designed to obtain that information, and the challenges for individuals engaging with the process, because they are frightened, traumatized or lack language skills. In addition, it highlighted the lack of published criteria for determining when removal to Rwanda should occur and this has a number of consequences, including that "opaque discretion creates an opportunity for direct or indirect or unwitting discrimination".[14] As the HMIP report on Colnbrook Immigration Removal Centre stressed "Rule 35 reports lacked detail and did not always provide an adequate assessment of the impact of continued detention on a detainee's physical and mental health", and the reports "were not always submitted in relevant cases".[15]

Second, the need for a proper and fair process for potential victims of trafficking and persons at risk of being trafficked has been highlighted by the UN Special Rapporteur on Trafficking in Persons and by the Group of Experts on Action against Trafficking in Human Beings (GRETA). GRETA have stated that "[a]ccess to justice and effective remedies is contingent on the fulfilment of a number of preconditions, including prompt and accurate identification of victims of trafficking, the provision of a recovery and reflection period, the availability of material, psychological, medical and legal assistance, access to translation and interpretation, when appropriate, regularisation of the victim's stay, the right to seek and enjoy asylum, and full respect for the principle of non-refoulement."[16]

In its expert evaluation of the UK in 2021, GRETA urged the UK to review its return and repatriation policies to ensure compliance in law and practice with Article 16 of the Council of Europe's Convention on Action against Trafficking in Human Beings, including by: " […] ensuring that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity, is preferably voluntary and complies with the obligation of non-refoulement. This includes informing victims about existing support programmes, protecting them from re-victimisation and re-trafficking […]."[17]

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[10] Alison Pickup, https://committees.parliament.uk/oralevidence/10545/html/ 6 July 2022 (Q211)
[11] UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement, para. 15, https://www.unhcr.org/publications/legal/62a317d34/unhcr-analysis-of-the-legality-and-appropriateness-of-the-transfer-of-asylum.html
[12] https://www.ohchr.org/en/press-releases/2022/06/un-expert-urges-uk-halt-transfer-asylum-seekers-rwanda
[13] https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2022/06/Colnbrook-web-2022.pdf
[14] Enver Solomon, https://committees.parliament.uk/oralevidence/10545/html/ Q263
[15] HMIP Report, paras 1.39 and 2.12.
[16] GRETA Evaluation Report UK, 2021, p.6 https://rm.coe.int/greta-third-evalution-report-on-the-united-kingdom/1680a43b36
[17] GRETA, Evaluation Report UK, 2021, §322

Furthermore, a number of the UN Special Procedures authorities, in a statement on 1 July 2022, noted their concerns about the MoU between the UK and Rwandan governments stating "that the arrangements made may breach the UK's positive obligation to put in place an effective system to protect potential or confirmed victims of trafficking and contemporary forms of slavery, including in the context of asylum procedures, in the absence of an individualised and procedurally fair assessment of the safety and dignity of removal to Rwanda, and the real risk of a breach of Convention rights in Rwanda or of onward refoulement or re-trafficking"[18].

Reports and testimonies of the way in which the attempted removals in June 2022 were conducted (i.e. at short notice and with the application of restraint and force) are evidence it was not in compliance with Article 16 of the Convention on Action against Trafficking in Human Beings, the recommendations of GRETA, and Article 3 of the HRA, having caused stress and trauma to already vulnerable individuals. The evidence highlights the inherently degrading nature of the procedure. We endorse the position of the UNHRC:

> *'UNHCR considers that the initial asylum screening interview, which will take place prior to deciding whether an individual may be transferred to Rwanda, is not sufficient to discharge the UK's obligations to ensure the lawfulness and appropriateness of removal to Rwanda on an individual basis.'*[19]

Therefore, we consider that the authorities have insufficient time to ensure that issues of vulnerability and safety are properly investigated, and the hurried removal process increases the likelihood that restraint and/or force will be applied to the individuals concerned, arousing feelings of fear and consequently exacerbating the potential trauma and degradation experienced by them and the likelihood of human rights breaches.

3. Concerns regarding assurances and their implementation

We note assurances by the Rwandan government that "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"[20]. In its 2015 report on Extradition, the House of Lords Select Committee on Extradition Law noted that "assurances should always be handled carefully and subjected to rigorous scrutiny, particularly to ensure that they are properly and precisely drafted, and comply fully with the Othman criteria. The importance of ensuring that they are genuine and effective cannot be overestimated. They must provide Requested People with real protection from human rights abuse".[21] Furthermore, "without an effective monitoring system we cannot know whether assurances do in fact avoid the risks foreseen by the courts".[22] It therefore recommended that "greater consideration be given to including in assurances details of how they will be monitored. The Government and CPS should be particularly astute to request such details when they are seeking assurances".[23]

Furthermore, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prematurely terminated its visit to Rwanda citing a lack of cooperation by the authorities obtaining access to places of detention, and the ability to conduct interviews in private and without fear of reprisals against those with whom it spoke.[24] Concerns regarding the lack of credible and effective investigations into allegations of torture, ill-treatment, arbitrary detention and other human rights abuses, as well as detention of individuals in unofficial centres where there was evidence of torture, were highlighted by stakeholders to the UN delegation during Rwanda's last Universal Periodic Review (UPR) in January 2021.[25] During the consideration of Rwanda's UPR report, the UK itself expressed concern about restrictions to media freedom and civil and political rights and

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[18] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27407

[19] https://www.unhcr.org/publications/legal/62a317d34/unhcr-analysis-of-the-legality-and-appropriateness-of-the-transfer-of-asylum.html Para 15

[20] https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda 9.1.1

[21] Extradition, UK Law and Practice, 2014 HL Paper 126, para 88

[22] para 90

[23] para 94

[24] A/HRC/WG.6/37/RWA/2, para 8

[25] A/HRC/WG.6/37/RWA/3, November 2020, paras 20-28

urged Rwanda to model Commonwealth values.[26] There are ongoing concerns that media freedom, and other civil and political rights, are frustrated in Rwanda, raising concerns that it will be difficult to monitor and confirm whether Rwanda is respecting the assurances given.[27]

4. The responsibility to prevent torture and ill treatment and the role of mechanisms in the UK and Rwanda to discharge this responsibility

Given the evidence so far, there is a significant likelihood of ill treatment occurring during the removal process to Rwanda. We know already from deportation processes that there is high use of restraint, often disproportionate, and risks of harm and sometimes death.[28] We are concerned that this ill-treatment is inevitable given the very short time scales and rushed nature of this process.

Obligations to prevent ill treatment require independent monitoring and both the UK and Rwanda have ratified the United Nations Optional Protocol to the Convention Against Torture (OCPAT) and have obligations under it. A number of issues arise related to these obligations:

- At the UK end, it is essential that independent monitoring is in place to cover all aspects of the detention, escort and deportation process, as required under Article 4 of OPCAT. It is not clear to what extent this is in place to enable monitoring as soon as the removal and flight commence, which is essential given the risks. We note that the Chief Inspector of Borders and Immigration told HASC he is "satisfied at the moment that, with joint co-operation with Her Majesty's Inspector of Prisons, we do cover the end-to-end process and that we have the ability to inspect where we need to inspect" but we know that his ability to be heard by the Home Secretary and other ministers, and to publish timely reports is severely limited [29].
- The proposed role of the "Monitoring Committee" set out in the UK-Rwanda MOU[30] is an inadequate safeguard for preventing torture and ill treatment. It is unclear who will be responsible for drafting and agreeing its terms of reference, membership and methodology. It appears to come with no guarantees of independence or accountability, and the MoU is silent on the Committee's powers should they have concerns about, or find, potential human rights breaches. This is of particular concern in light of the evident sensitivity of Rwanda to criticism and scrutiny, and corresponding restrictions on media freedom, as noted above.
- There is significant likelihood of duplication and blurred responsibilities between the proposed Monitoring Committee and existing independent scrutiny bodies, not least given that the Monitoring Committee is expected to "monitor the entire relocation process from the beginning including the initial screening and information provided by the United Kingdom" which, as above, should already be subject to scrutiny by HMIP and the Independent Monitoring Boards (as part of the UK NPM under OPCAT) and ICBI (see points from the Chief Inspector of Borders and Immigration in oral evidence to the Home Affairs Committee).[31] Given that "relocation process" will include detention, monitoring of these aspects must therefore be subject to OPCAT and falls within the remit of the current UK NPM and would be better achieved through existing monitoring bodies. That arrangement, however, should be accompanied by necessary additional resources rather than merely expecting the monitoring bodies to subsume the task in their workload using existing resources that are already earmarked for other work.

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[26] A/HRC/47/14, para 114,

[27] Sarah Johnson, https://www.theguardian.com/global-development/2022/aug/17/access-denied-i-went-to-rwanda-to-talk-firsthand-to-refugees-and-the-state-wouldnt-let-me

[28] CPT https://rm.coe.int/168069871b paras 33-35; https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/08/Nigeria-and-Ghana-escorts-web-2019.pdf; https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/11/Nigeria-and-Ghana-escort-and-removals-web-2018.pdf; https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2022/06/AMENDED-CFMT-AR-2021-final-for-circulation.pdf

[29] https://committees.parliament.uk/oralevidence/10372/pdf/ Qs127-134; 152-155

[30] https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda 13, 15

[31] https://committees.parliament.uk/oralevidence/10372/pdf 8 June 2022

- The Monitoring Committee is also envisaged as playing a role regarding the conditions in Rwanda yet similarly makes no reference to Rwanda's OPCAT obligations. Rwanda has ratified OPCAT so has a clear obligation to prevent torture, but the fact that Rwanda does not have an effective and independent NPM means the government will not be able to give any guarantees to UK that they have an effective mechanism to prevent ill treatment, which should be operating in places of likely deprivation of liberty and detention. [32]
- The implementation in Rwanda of assurances that "a relocated individual will be free to come and go, to and from accommodation that has been provided, at all times, in accordance with Rwandan laws and regulations as applicable to all residing in Rwanda"[33] must be subject to careful independent scrutiny. We are concerned that individuals may be subject to further prolonged detention if their asylum status is not speedily resolved (based on an IRRI report of experiences of Israeli deportees).[34]

Finally, it is important to note the ongoing responsibilities under international law of the UK for those transferred to Rwanda. It is a basic principle of international law that a State cannot abrogate its treaty obligations. We therefore wholeheartedly endorse the legal position set out by the UNHCR:

> *'In the context of initiatives involving the transfer of asylum-seekers from one country to another for the purpose of processing their asylum claims, transferring States retain responsibilities under international refugee and human rights towards transferred asylum-seekers. In the current case, neither the arrangement entered into between the UK and Rwanda nor the fact of transfers conducted under it would relieve the UK of its obligations under international refugee and human rights law towards asylum-seekers transferred to Rwanda. At a minimum, and regardless of the arrangement, the transferring State (in this instance the UK) would be responsible for ensuring respect for the principle of non-refoulement. Non-refoulement obligations would be triggered in case of a risk of persecution or ill-treatment in the state to which the asylum-seekers would be transferred (direct refoulement), or of onward removal to another country where they could face such risks (indirect refoulement).'*[35]

We thank you for considering our concerns,

Prof Sir Malcolm Evans, Professor of Public International Law, University of Bristol Law School, former Chair of the UN Subcommittee on Prevention of Torture

Dr Silvia Casale, Former President of the European Committee for the Prevention of Torture, former Chair of the UN Subcommittee on Prevention of Torture

John Wadham, former Chair of the UK National Preventive Mechanism

Louise Finer, Visiting Fellow, University of Bristol and University of Essex, former Head of Secretariat of UK National Preventive Mechanism

Dr Debra Long, Co-Deputy Director, Human Rights Implementation Centre, University of Bristol Law School

Prof Rachel Murray, Professor of International Human Rights, Director Human Rights Implementation Centre, University of Bristol Law School

Prof Judy Laing, Professor of Mental Health Law, Rights and Policy, Member of Human Rights Implementation Centre, University of Bristol Law School

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[32] UN SPT, Scope of Article 4 of OPCAT

[33] https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda 8.2

[34] International Refugee Rights Initiative, *"I was left with nothing": 'Voluntary' departures of asylum seekers from Israel to Rwanda and Uganda*, September 2015

[35] https://www.unhcr.org/publications/legal/62a317d34/unhcr-analysis-of-the-legality-and-appropriateness-of-the-transfer-of-asylum.html para 6