

The Rwanda Treaty and Bill and the UK's legal obligations towards victims of modern slavery and human trafficking

Dr Marija Jovanovic

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This legal analysis of the Rwanda Treaty and Bill and the UK's legal obligations towards victims of modern slavery and human trafficking (MSHT) has been conducted by Dr Marija Jovanovic from the University of Essex. She is the author of *State Responsibility for 'Modern Slavery' in Human Rights Law* (Oxford University Press, 2023).

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Executive Summary

This report analyses the provisions of the UK - Rwanda Treaty 2023 and the Safety of Rwanda (Asylum and Immigration) Bill in light of the UK's international obligations towards victims of modern slavery and human trafficking (MSHT) contained in Article 4 of the European Convention on Human Rights 1950 (ECHR) (prohibition of slavery and forced labour) and the Council of Europe Convention on Action Against Trafficking in Human Beings 2005 (ECAT).

It is important to specify that this analysis focuses solely on the requirements under the ECAT and Article 4 ECHR and does not consider the conditions under which International Refugee Law would permit removing people seeking asylum to a third country when the issue of modern slavery and human trafficking was not at stake. Unlike international treaties designed to protect victims of modern slavery and human trafficking, International Refugee Law does not impose an express obligation on States not to remove individuals before their refugee status is determined, nor the obligation to investigate, prosecute, and punish individual perpetrators. Drafted half a century later, the anti-trafficking instruments are much more explicit, concrete, and demanding when it comes to protection requirements. Accordingly, this analysis emphasises the need to distinguish between obligations arising from international anti-trafficking instruments (the majority of which have been integrated in the ECHR) and those established under International Refugee Law, and emphasises the need for decoupling the issue of modern slavery and human trafficking from migration control.

Section 1 of the analysis focuses on the international law obligation to identify and protect every victim of modern slavery and human trafficking. Article 13 of the Rwanda Treaty expressly envisages the UK not completing the victim identification process in relation to individuals who are deemed to have arrived in the UK illegally. This is a breach of an explicit international obligation to identify and assist every victim of modern slavery and human trafficking, including those who entered or are present illegally, contained in both Article 4 ECHR and Article 10 ECAT.

Section 2 of the analysis explains international law obligations pertaining to the removal of victims of modern slavery and human trafficking. It finds that by providing for removal to Rwanda of *suspected* victims of modern slavery or human trafficking (individuals who there are reasonable grounds to believe are victims of modern slavery or human trafficking), Article 13 of the Rwanda Treaty and the Safety of Rwanda Bill contravene the express international obligation in Article 10(2) ECAT not to remove such individuals (including to third countries) until the identification process is

complete. Removing *confirmed* victims of modern slavery or human trafficking to Rwanda without an assessment of the risk of re-trafficking they may face, also gives rise to the risk of breaches of Article 4 ECHR by analogy with Article 16 of ECAT. The latter sets out conditions under which an identified victim of modern slavery and human trafficking can be returned to the country of their nationality/permanent residence, which is permitted only after conducting an assessment of the impact of such return on 'the rights, safety and dignity of that person', including the risk of re-trafficking. While the ECAT does not expressly govern the removal of identified victims to third countries, by analogy the same conditions ought to apply in such cases.

Section 3 of the analysis discusses the operational duty to protect victims of modern slavery or human trafficking contained in Article 4 ECHR, which includes the protection of those at risk of being subject to modern slavery or human trafficking and prevent re-trafficking. This obligation requires states to consider the risk of re-trafficking when making decisions to remove a suspected or confirmed victim of modern slavery and human trafficking from their territory to a third country. The Rwanda Treaty and the Human Rights Memorandum accompanying the Safety of Rwanda Bill fail to acknowledge the risk of violating this obligation and the need to instruct decision-makers to assess the risk of re-trafficking of presumed or confirmed victims of modern slavery or human trafficking.

Section 4 of the analysis considers the international law obligation to prosecute and punish the perpetrators of modern slavery and human trafficking. It finds that in addition to the obligation to identify every victim of modern slavery and human trafficking, the removal of individuals with a reasonable grounds decision envisaged by Article 13 of the Rwanda Treaty risks breaching a duty to investigate and punish the perpetrators of this crime contained in Article 4 ECHR and Article 27 ECAT. Victims of modern slavery and human trafficking are often the only witnesses of this crime and without their assistance the perpetrators are likely to remain at large.

Overall, removing to Rwanda individuals with a positive reasonable grounds decision (suspected victims), as envisaged by Article 13 of the Rwanda Treaty, will automatically and in all cases put the UK in breach of Article 4 ECHR as well as Article 10 ECAT. In addition, removing identified victims of modern slavery and human trafficking without conducting an individualised assessment of the risk of re-trafficking would breach the operational duty under Article 4 ECHR. Lastly, removing suspected or confirmed victims of modern slavery and human trafficking risks interfering with an obligation to investigate and prosecute the perpetrators of modern slavery and human trafficking contained in Article 4 ECHR and Article 27 ECAT.

Importantly, the conclusions in relation to the incompatibility of the Rwanda Treaty and Bill with the UK's obligations under Article 4 ECHR and ECAT are not restricted to Rwanda alone, but would apply to removing individuals to third countries without specific safeguards prescribed by these international instruments.

Finally, the conclusion notes that while the present analysis found the provisions of both the Treaty and the Bill incompatible with protective obligations enshrined in Article 4 ECHR and ECAT, the Rwanda Bill prevents victims of modern slavery and human trafficking from raising those incompatibilities before UK courts. Clause 3 of the Rwanda Bill provides for disapplication of sections 2 and 3 of the Human Rights Act 1998 (HRA), which would enable domestic courts to interpret this legislation in line with the ECHR in relation to Rwanda claims. Furthermore, clauses 1 (4) and (6) of the Rwanda Bill specify that its validity is unaffected by international law, including the ECHR and ECAT and clause 2(5) provides that the conclusive deeming of Rwanda as a 'safe country' applies notwithstanding any interpretation of international law.

Introduction

The UK Government has sought to operationalise its pledge to 'prevent and deter unlawful migration'¹ through a series of legislative and policy measures. Following the ruling of the UK Supreme Court that the Government's original policy to relocate to Rwanda 'individuals who arrived in the UK through an illegal and dangerous route' was unlawful because it would expose them to a real risk of ill-treatment by reason of refoulement,² the Government entered into a new Treaty with Rwanda³ and introduced a Bill that declares that Rwanda is a 'safe' third country for the purposes of removing people from the UK.⁴

While these actions are likely to have a profound impact on the UK's compliance with its commitments under International Refugee Law, this analysis focuses only on those commitments aimed at protecting victims⁵ of modern slavery and human trafficking (MSHT).⁶ It seeks to answer the following question: **What do the Rwanda Treaty and the accompanying Safety of Rwanda Bill mean for victims of MSHT, and are these instruments compatible with the UK's relevant obligations under the European Convention on Human Rights (ECHR) and the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT)?⁷**

Significantly, the Rwanda Treaty facilitates removal of not just people seeking asylum but also 'other individuals arriving illegally in the United Kingdom'.⁸ This would include suspected or confirmed victims of MSHT deemed to have arrived in the UK illegally, because the Secretary of State's duty under the Illegal Migration Act 2023 (IMA) to remove people arriving without permission applies regardless of whether they claim to be a victim of MSHT,⁹ and sections 22-25 of the IMA, once in force, will expressly exclude such individuals from protection under modern slavery law and provide for their removal.¹⁰

The Bill requires every decision-maker to conclusively treat Rwanda as a safe country,¹¹ and defines a 'safe country' very broadly to mean '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.'¹² Those obligations under international law include the UK's obligations under ECAT and ECHR.

Article 13 of the Treaty makes express provision in relation to modern slavery. It provides:

¹ Section 1 (1) of the Illegal Migration Act.

² [R \(on the application of AAA \(Syria\) and others\) \(Respondents/Cross Appellants\) v Secretary of State for the Home Department \(Appellant/Cross Respondent\); \(supremecourt.uk\).](#)

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

⁴ [Safety of Rwanda \(Asylum and Immigration\) Bill publications - Parliamentary Bills - UK Parliament](#)

⁵ The analysis uses the term 'victim' because it features in legal instruments that regulate the subject of modern slavery and human trafficking.

⁶ These terms are used interchangeably. According to the Modern Slavery Act 2015, the term modern slavery encompasses slavery, servitude, forced labour, and human trafficking.

⁷ The Government has not confirmed a date on which these provisions of the IMA will be brought into force. For their content see the [Explainer and Analysis](#).

⁸ Article 2 (3) (b).

⁹ Section 5(1)(c) of the IMA.

¹⁰ For compatibility of the IMA, see the [Explainer and Analysis](#).

¹¹ Clause 2(1) of the Bill.

¹² Clause 1(5)(a) of the Bill.

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

The Explanatory Memorandum accompanying the Treaty says that Article 13(1) 'ensures Rwanda will provide appropriate support and assistance to those who are victims of modern slavery and human trafficking', while Article 13(2) 'ensures that for those where there are reasonable grounds to consider them victims of trafficking, they will be given appropriate support.'

It is therefore clear that the Government's intention is that the combined effect of the Bill and the Treaty is to block attempts by victims of MSHT to prevent their removal to Rwanda on the basis that Rwanda will not match the UK's ECAT obligations to identify and assist them (*i.e.* isn't 'safe' for victims of MSHT because they won't get the treatment there to which they are entitled under ECAT).

Despite the fact that the Rwanda Treaty expressly envisages the removal to Rwanda of victims of modern slavery and human trafficking, including people who have received a reasonable grounds decision from the NRM, the explanatory material accompanying the Treaty and the Safety of Rwanda Bill devote little attention to the international legal obligations that govern the protection of victims of MSHT.¹³ What is more, the Human Rights Memorandum, which addresses issues arising under the ECHR in relation to the Safety of Rwanda Bill, fails to include any reference to potential issues arising under Article 4 ECHR (prohibition of slavery, servitude, and forced labour).¹⁴ The same is true of the Supreme Court's ruling, which considered the safety of asylum seekers in Rwanda solely from the perspective of Articles 2 (the right to life) and 3 (the prohibition of torture or cruel, inhuman or degrading treatment or punishment) ECHR.

However, the removal to Rwanda of individuals who are either confirmed or suspected victims of MSHT, or at risk of MSHT in the future, raises serious issues under both Article 4 ECHR and the ECAT, irrespective of any claim they may have under International Refugee Law. Therefore, the ensuing analysis of compatibility of the Rwanda Treaty and the Safety of Rwanda Bill with these legal instruments is centred around four core sets of obligations:

- 1. The international law obligation to identify and protect every victim of modern slavery and human trafficking;**
- 2. The international law obligations pertaining to the removal of victims of modern slavery and human trafficking;**
- 3. The international law obligation to prevent modern slavery and human trafficking, including re-trafficking; and**
- 4. The International law obligations to prosecute traffickers.**

¹³ Article 5 (2) (d), Article 6 (2) and Article 13 of the Rwanda Treaty.

¹⁴ [Rwanda ECHR memo \(parliament.uk\)](https://www.parliament.uk/echr-memo).

This analysis concludes that in its current form, neither the Rwanda Treaty nor the Safety of Rwanda Bill comply with a number of international legal obligations of the UK concerning MSHT.

1. International Law obligation to identify every victim of modern slavery and human trafficking

Article 13 of the Rwanda Treaty expressly envisages the UK not completing the victim identification process in relation to individuals who are deemed to have arrived in the UK illegally. This is a breach of an explicit international obligation to identify and assist every victim of MSHT, including those who entered or are present illegally, contained in both Article 4 ECHR and Article 10 ECAT.

The obligation to identify a victim of MSHT is one of the three core obligations under Article 4 ECHR.¹⁵ It is part of an obligation to take 'operational measures to protect victims, or potential victims',¹⁶ which includes 'facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery'.¹⁷

This obligation is triggered by a 'credible suspicion' (reasonable grounds to believe) that a person is a victim of modern slavery¹⁸ and does not depend on a victim's self-identification. Instead, 'the authorities must act of their own motion once the matter has come to their attention'.¹⁹ However, if an individual does raise a claim of being a victim of modern slavery, the ECtHR requires that such claims 'as a whole were taken seriously'.²⁰

Importantly, even when an individual is not a victim of exploitation in a specific ECHR Member State, all State Parties are under a positive obligation to identify and support any suspected victim – not just those exploited in the country in which they are discovered.²¹

Furthermore, while the obligation to protect victims, or potential victims, is not unlimited – the appropriate measures required from national authorities must be within the scope of their powers and must not be interpreted to impose 'an impossible or disproportionate burden' on them²²– it must be acknowledged that the European Court of Human Rights (ECtHR) treats Article 4 ECHR as one of the four unqualified and non-derogable rights in the Convention.²³ This means that even in situations of extreme crisis ('in time of war or other public emergency threatening the life of the nation' (Article 15(1) ECHR)) states are not permitted to limit, modify, or suspend their obligations arising out of such 'absolute' rights in pursuit of any competing public interests.²⁴

¹⁵ See Legal Analysis of the IMA for a more detailed discussion of this duty. See also Marija Jovanovic, *State Responsibility for Modern Slavery in Human Rights Law: A Right Not to Be Trafficked?* (Oxford University Press 2023).

¹⁶ *VCL and AN v United Kingdom*, paras 152 – 153; *J and Others v Austria*, paras 109-111.

¹⁷ *VCL and AN v United Kingdom*, para 153. See also *Chowdury and Others v Greece*, para 110.

¹⁸ European Court of Human Rights, 'Guide on Article 4 of the European Convention on Human Rights: Prohibition of slavery and forced labour' (updated on 31 August 2022) paras 60 and 69. See also *VCL and AN v the United Kingdom*, para 152; *Rantsev v Cyprus and Russia*, paras 286 and 288; *CN v the United Kingdom*; *SM v Croatia* [GC], para 307.

¹⁹ European Court of Human Rights, 'Guide on Article 4 of the European Convention on Human Rights: Prohibition of slavery and forced labour' (updated on 31 August 2022) paras 60 and 69. *CN v the United Kingdom*, para 69; *Chowdury and Others v Greece*, para 116; *J and Others v Austria* para 107; *Zoletic and Others v Azerbaijan*, para 185.

²⁰ *J and Others v Austria*, paras 110 and 111.

²¹ *J and Others v Austria*, paras 110 - 111.

²² *Zoletic and Others v Azerbaijan*, para 188.

²³ These are: the right to life (Article 2 ECHR); the prohibition of torture and inhuman or degrading treatment (Article 3 ECHR), the prohibition of slavery and servitude (Article 4 ECHR), and the prohibition on retrospective criminal law (Article 7 ECHR).

²⁴ *Rantsev v Cyprus and Russia*, para 283.

In interpreting this positive obligation under Article 4 ECHR, the ECtHR draws expressly on Article 10 ECAT, which requires States to make arrangements 'so that victims can be identified'. Like Article 4 ECHR, the obligation to identify victims arising out of Article 10 ECAT is unqualified. ECAT Explanatory Report expressly states that 'the Convention applies both to victims who legally entered or are legally present in the territory of the receiving Party and those who entered or are present illegally.'²⁵ Accordingly, the obligation to identify every victim of MSHT must be observed regardless of whether the individual is lawfully present in the UK.

International obligation to support suspected victims of MSHT during a victim identification process

Identifying a trafficking victim is a process which takes time.²⁶ As noted by the Explanatory report to ECAT, this 'may require an exchange of information with other countries or Parties or with victim-support organisations, and this may well lengthen the identification process.'²⁷ Still, ECAT recognises that many victims may be illegally present in the country and therefore at risk of being removed from the country before they can be identified as victims. This would make their rights, spelled out in Chapter III of this Convention 'purely theoretical and illusory'.²⁸ For that reason, Article 10 (2) of the ECAT requires that all suspected victims, that is individuals with a positive reasonable grounds decision, should have the benefit, during the identification process, of the assistance measures provided for in Article 12 (1) and (2) of the ECAT.²⁹ GRETA has similarly noted that:

Identifying a trafficking victim is a process which takes time; therefore the Convention provides that when the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, he/she *must not be removed from the country until the identification process is completed* and must receive the assistance required by the Convention.³⁰

The ECtHR expressly noted that obligations under Article 4 ECHR 'must be construed in the light of the Council of Europe's Anti-Trafficking Convention (...) The Court is guided by that Convention and the manner in which it has been interpreted by GRETA.'³¹ This means that Article 4 ECHR similarly requires States to protect a suspected victim of MSHT during a victim identification process.

Importantly, by virtue of Article 13 ECAT, victims of MSHT are entitled to a recovery and reflection period of a minimum 30 days. This protective obligation has a dual aim – to allow victims to recover and escape the influence of traffickers³² and to allow victims to come to a decision on cooperating with the law-enforcement authorities in any prosecution of the traffickers.³³ While it applies to any victim of MSHT, it is particularly designed to protect those 'who are illegally present in a Party's territory or who are legally resident with a short-term residence permit.'³⁴

²⁵ Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (16 May 2005) para 62 (ECAT Explanatory Report).

²⁶ *Ibid* para 131.

²⁷ *Ibid*.

²⁸ *Ibid*.

²⁹ Notably, according to Article 12 (3) ECAT, those victims of MSHT who are lawfully resident within a territory of a Member State and 'who do not have adequate resources and need such help' are entitled to 'medical or other assistance'. In addition, Article 12 (4) ECAT provides that victims of MSHT with lawful residence are entitled to 'access to the labour market, to vocational training and education.'

³⁰ GRETA, '4th General Report on GRETA's Activities', GRETA(2015)1(March 2015) 40 (emphasis added).

³¹ *Chowdury and Others v Greece*, para 104.

³² ECAT Explanatory Report, paras 172-173.

³³ *Ibid*, para 174.

³⁴ *Ibid*, para 172.

Unlike the obligation to identify every victim of MSHT contained in Articles 4 ECHR and 10 ECAT, the Article 13 obligation to provide for a reflection and recovery period provides for a narrow exception on public order grounds.

Notably, Article 13 (3) ECAT permits States to not observe the recovery and reflection period 'if grounds of public order prevent it or if it is found that victim status is being claimed improperly.' Because of the protective nature of the obligation contained in Article 13, any exception must be narrowly interpreted³⁵ and any restrictions or denial of protection must be amply justified by a State in each individual case. This has been confirmed most recently by the Council of Europe expert body tasked with monitoring compliance with ECAT (GRETA)³⁶ in its written submission to the enquiry by the Joint Committee on Human Rights conducted in relation to the IMA. GRETA noted that 'the grounds of public order should always be interpreted on a case-by-case basis ... [and] are intended to apply in very exceptional circumstances and cannot be used by States Parties to circumvent their obligation to provide access to the recovery and reflection period.'³⁷

According to the Explanatory Report to ECAT, the Article 13(3) exception from a duty to provide for a recovery and reflection period on public order grounds has a very limited purpose: '[it] aims to guarantee that victims' status will not be illegitimately used.'³⁸ According to GRETA:

Considering a person arriving irregularly on the territory of a State Party as *per se* a threat to the public order would be contrary to the purpose of Article 13 of the Convention and would deprive the recovery and reflection period of meaning, application and effectiveness. In practical terms, this would amount to a reservation to the Convention, which is not allowed under Article 45.³⁹

The provisions of the IMA⁴⁰ do precisely that, because they mandate that a wide class of suspected victims⁴¹ who have been granted reasonable grounds decisions are *deemed* to represent a threat to public order and therefore are excluded from protection.⁴² Moreover, the IMA also breaches Article 13 ECAT on a wider basis, because it specifies that all 'illegal' migrants to whom the general duty to make arrangements for removal under section 2 IMA applies, including those suspected MSHT victims with reasonable grounds decisions, are to be excluded from protection. The only exceptions to that rule apply to persons in respect of whom the Home Secretary considers there are particularly compelling circumstances requiring them to be in the UK to cooperate with criminal proceedings or investigation.⁴³

In giving effect to the IMA, Article 13 (2) of the Rwanda Treaty expressly envisages individuals arriving in the UK 'illegally' being relocated to Rwanda *before* they are conclusively identified and supported during the process of identification. This is

³⁵ A rule of treaty interpretation based on the Latin maxim that an exception to a general rule should be narrowly construed to avoid undermining the general rule ('exceptio est strictissimae applicationis'). See for instance *Sabeh El Leil v France*, [GC] (29 June 2011) para 66; Alexia Solomou, 'Exceptions to a Rule Must Be Narrowly Construed' in Joseph Klingler et. al (eds) *Between the Lines of the Vienna Convention? Canons and Other Principles of Interpretation in Public International Law* (Kluwer Law International 2019) 359-385.

³⁶ Group of Experts Against on Action Against Trafficking in Human Beings.

³⁷ Joint Committee on Human Rights, Legislative Scrutiny: Illegal Migration Bill, 'Written Evidence by the GRETA (IMB0024) to the JCHR enquiry' paras 15 and 16. <https://committees.parliament.uk/writtenevidence/119915/html/>.

³⁸ ECAT Explanatory Report, para 173. In January 2023, GRETA announced intention to publish guidance on Article 13 ECAT. [GRETA holds its 49th plenary meeting - Action against Trafficking in Human Beings \(coe.int\)](https://www.coe.int/en/web/greeta/49th-assembly-2023-action-against-trafficking-in-human-beings).

³⁹ Joint Committee on Human Rights, Legislative Scrutiny: Illegal Migration Bill, 'Written Evidence by the GRETA (IMB0024) to the JCHR enquiry' para 15. <https://committees.parliament.uk/writtenevidence/119915/html/>.

⁴⁰ The relevant IMA provisions have not yet been brought into force.

⁴¹ Including any non British citizen who has been convicted of an offence and sentenced to imprisonment in the UK. See Section 63 NABA and Section 29 IMA.

⁴² Section 63 to be amended on a date to be appointed by Section 29 IMA.

⁴³ Sections 22-25 IMA. See the [Explainer and Analysis](#).

manifestly in breach of a clear and unqualified obligation to identify and assist every victim of MSHT guaranteed in Articles 10 (2) and 12 (1) and (2) of the ECAT as well as Article 4 of the ECHR.

2. International law obligations concerning the removal of victims of modern slavery and human trafficking

By providing for removal to Rwanda of individuals who there are reasonable grounds to believe are victims of MSHT, the Rwanda Treaty and the Safety of Rwanda Bill contravene the express international obligation in Article 10(2) ECAT not to remove such individuals (including to third countries) until the identification process is complete. Removing confirmed victims of MSHT to Rwanda without an assessment of the risk of re-trafficking they may face, also gives rise to the risk of breaches of Article 4 ECHR by analogy with Article 16 of ECAT. The latter sets out conditions under which an identified victim of MSHT can be returned to the country of their nationality/permanent residence, which is permitted only after conducting an assessment of the impact of such return on 'the rights, safety and dignity of that person', including the risk of trafficking or re-trafficking. While the ECAT does not expressly govern the removal of identified victims to third countries, by analogy the same conditions ought to apply in such cases.

Article 13(2) of the Rwanda Treaty envisages that individuals who have received a positive reasonable grounds decision by the UK (and are therefore recognised to be a suspected victim of modern slavery) will be relocated to Rwanda.

Article 10 (2) ECAT expressly prohibits removing suspected victims from the State Party to ECAT until the identification process is complete:

Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities.

As the Explanatory Report to ECAT spells out, this means that as soon as the NRM has made a positive reasonable grounds decision (i.e. that there are reasonable grounds to believe that the person is a victim), the State shall not remove them from their territory before the identification process is complete. Significantly, the Explanatory Report also makes clear that '[t]he words 'removed from its territory' refer both to removal to the country of origin *and removal to a third country*.⁴⁴

Removal of an individual with a positive reasonable grounds decision to a third country would therefore be a clear breach of Article 10(2) ECAT. The express prohibition on removal of such an individual before the identification process is complete means that States cannot sub-contract or delegate to third countries their obligations under ECAT to identify and support suspected victims of modern slavery. Article 13 of the Rwanda Treaty, if implemented, would therefore put the UK in clear breach of its ECAT obligations.

⁴⁴ ECAT Explanatory Report, para 133 (emphasis added).

Article 13(1) of the Rwanda Treaty envisages that *confirmed* victims of modern slavery (*i.e.* individuals who have received a conclusive grounds decision) might also be relocated to Rwanda.

ECAT does not expressly cover the possibility of removing an identified victim to a third country. It does provide, in Article 16, for the repatriation and return of identified victims to a State 'of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party'. . However, such return is subject to two express conditions, which are in turn predicated upon a State's compliance with a range of obligations that arise from both ECHR and ECAT, as well as other international instruments binding on the UK, such as the 1951 UN Convention Relating to the Status of Refugees.

First, before returning a person to their country of nationality or permanent residence, states must observe a clear and unequivocal obligation to identify every victim of modern slavery regardless of their immigration status. As discussed above, no exceptions or limitations of this obligation are permitted under Article 4 ECHR and Article 10 (2) ECAT.

Second, before returning an identified victim of MSHT to their country of nationality or permanent residence, Article 16 ECAT requires State Parties to make an individualised assessment of the impact of such return on 'the rights, safety and dignity of that person'. The Explanatory Report to ECAT elaborates that 'such rights include, in particular, the right not to be subjected to inhuman or degrading treatment, the right to the protection of private and family life and the protection of his/her identity'⁴⁵ referring in that regard to the ECHR jurisprudence available at the time.

Significantly, GRETA expressly noted that the phrase 'due regard for the rights, safety and dignity' of victims also implies protection from re-trafficking, and not just from the risk of being subjected to torture or to inhuman or degrading treatment or punishment.⁴⁶ It clarified that:

A full and competent risk assessment must be carried out before anyone is returned. Risk assessments should include an assessment of at least the risk of re-victimisation and re-trafficking, and options for reintegration and societal participation, including access to the labour market and education.⁴⁷

The Explanatory Report to ECAT further notes that '[t]he return of a victim shall also take into account the status of any legal proceedings related to the fact that the person is a victim, in order not to affect the rights that the victim could exercise in the course of the proceedings as well as the proceedings themselves.'⁴⁸ This suggests that a decision maker must consider a person's removal in light of any ongoing criminal proceedings against the traffickers, which represent a separate obligation under both Article 4 ECHR and Article 27 ECAT (see Section 4 below).

Although ECAT does not specifically address the possibility of removing an identified victim to a third country, the object and purpose of ECAT as an instrument designed to

⁴⁵ Para 202.

⁴⁶ GRETA, 'Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by UK' (First evaluation round, 12 September 2012) GRETA(2012) 6, para 312; GRETA, 'Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France' (First evaluation round, 28 January 2013) GRETA(2012)16, para 198; GRETA, 'Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy' (First evaluation round, 4 July 2014) GRETA(2014)18, para 175.

⁴⁷ GRETA, '[Guidance note on the entitlement of victims of trafficking and persons at risk of being trafficked to international protection](#)' (2020) para 44.

⁴⁸ *Ibid.*

protect victims of MSHT would call for the same type of assessment of the impact of removal on their rights.

The nature and scope of such an assessment is guided by the rules established in the jurisprudence of the ECtHR on expulsion, deportation, and extradition.⁴⁹ It must be noted however that while Article 16 ECAT governs the repatriation of victims of MSHT, the ECHR applies to *any* person at risk of being removed to a country where they may face serious human rights violations, most notably the right to life and prohibition of torture contained in Articles 2 and 3 respectively.⁵⁰ In the landmark case of *Soering v United Kingdom*,⁵¹ in the context of extradition, the Court found that:

[S]uch a decision may give rise to an issue under Article 3 and hence engage the responsibility of that State under the convention, where *substantial grounds* have been shown for believing that the person concerned, if extradited, faces a *real risk* of being subjected to torture or to inhuman or degrading treatment or punishment.⁵²

The ECtHR has not yet ruled on the risk of Article 4 violation as potential grounds for preventing return or removals of either victims of MSHT,⁵³ or other migrants. However, when a person subject to removal is a suspected or confirmed victim of MSHT, the positive Article 4 ECHR duty to take operational measures to protect them applies, mandating in itself an assessment of whether there are substantial grounds to believe that their removal will expose them to a real risk of trafficking or re-trafficking, as noted by GRETA⁵⁴ and discussed further in Section 3 below.

Clause 4 (1) of the Rwanda Bill provides for an exception to the conclusive deeming of Rwanda as a safe country 'where compelling evidence exists specifically related to the person's particular individual circumstances.' In such circumstances, Clause 4 (4) stipulates that the court or tribunal may grant an interim remedy that prevents or delays the removal of the person to Rwanda:

[O]nly if the court or tribunal is satisfied that the person would, before the review or appeal is determined, face a real, imminent and foreseeable risk of serious and irreversible harm if removed to the Republic of Rwanda.

The Bill draws on the examples of serious and irreversible harm contained in Section 39 of the IMA. While these include the risk of death, torture or inhuman or degrading treatment, which would engage Articles 2 (the right to life) and 3 (the prohibition of torture) ECHR, respectively, neither the IMA nor the Safety of Rwanda Bill and the accompanying Human Rights Memorandum envisage the risk of Article 4 (the prohibition of slavery) violations as grounds for preventing removals. As explained above, this is

⁴⁹ ECAT Explanatory Report paras 202-203. See also the European Court of Human Rights, [Guide on the case-law - Immigration \(coe.int\)](#).

⁵⁰ The European Court of Human Rights, [Guide on the case-law - Immigration \(coe.int\)](#).

⁵¹ (7 July 1989, Series A No. 161).

⁵² Emphasis added. The same rule has been confirmed to apply in cases of deportation in *Cruz Varaz and Others v. Sweden* (20 March 1991, Series A, No. 201). In *D v United Kingdom* (2 May 1997, Reports of Judgments and Decisions, 1997-III), the Court ruled that the responsibility of States Parties was also engaged when the alleged ill treatment did not follow directly or indirectly from public authorities of the destination country.

⁵³ In *M v the United Kingdom* (Application No. 16081/08) (1 December 2009, strike-out decision) the applicant alleged that she had been trafficked and forced into prostitution in her country of origin, Uganda. She alleged that there was a risk she might be found by the traffickers and subjected once again to sexual exploitation if she was deported. In this case the Court decided to apply Rule 39 of the Rules of Court, requesting the Government of the United Kingdom to refrain from deporting the applicant pending the outcome of the proceedings before it. The application was ultimately struck out after the Government and the applicant reached a friendly settlement. The Government have agreed to grant the applicant three years' leave to remain in the United Kingdom.

⁵⁴ GRETA, '[Guidance note on the entitlement of victims of trafficking and persons at risk of being trafficked to international protection](#)' (2020) para 44.

problematic, especially in cases where a person facing removal is an identified victim of MSHT.

The treatment of victims of MSHT in Rwanda

Notwithstanding that removal of suspected MSHT victims to Rwanda before the completion of their identification process is a clear breach of Article 10(2) of ECAT, and removal of confirmed victims without an individualised re-trafficking risk assessment is in breach of Article 4 ECHR, it is also worth pointing out that Rwanda's records when it comes to the protection of victims of MSHT is far from exemplary. According to the 2023 US Trafficking in Persons Report, Rwanda 'did not report referring any victims to services compared with one victim referred in the previous reporting period.'⁵⁵ The report also notes that NGOs reported that the centres established to provide shelter and psycho-social, medical, and legal services 'would primarily focus on the needs of female victims, negatively affecting readiness to assist male victims.' It further points out that:

Observers reported officials did not follow victim referral procedures with respect to the LGBTQI+ community and individuals in commercial sex due to widespread cultural prejudice. Officials were less likely to refer LGBTQI+ trafficking victims for services, if at all.

The report also noted that 'NGOs offered general assistance and support in refugee camps, but a lack of capacity and resources inhibited the implementation of effective procedures, screening, and assistance to trafficking victims in refugee camps.' However, none of these issues have been mentioned in the Government's 'policy statement' in support of the Rwanda Treaty and Bill, which has been referred to by Ministers as an 'evidence pack' to assess the safety of Rwanda.⁵⁶ The Bill in its current form would prevent a suspected or confirmed victim of MSHT from relying on these documented deficiencies in provision for MSHT victims in Rwanda to prevent their removal.

3. International Law obligation to prevent human trafficking including re-trafficking

The obligation to protect victims of MSHT contained in Article 4 ECHR requires states to consider the risk of re-trafficking when making decisions to remove a suspected or confirmed victim of MSHT from their territory to a third country. The Rwanda Treaty and the Human Rights Memorandum accompanying the Safety of Rwanda Bill fail to acknowledge the risk of violating this obligation and the need to instruct decision-makers to assess the risk of re-trafficking of presumed or confirmed victims of MSHT.

States have a duty to prevent human trafficking and to protect victims under Article 4 ECHR. An obligation to prevent human trafficking encompasses both general and special prevention. The former refers to the requirement for states to 'establish and/or strengthen effective policies and programmes to prevent trafficking in human beings'⁵⁷ and 'in particular for persons vulnerable to trafficking'.⁵⁸ Special prevention, on the other

⁵⁵ <https://www.state.gov/reports/2023-trafficking-in-persons-report/rwanda/>. See also Supporting evidence relating to the Safety of Rwanda (Asylum and Immigration) Bill: 'Country information note: Rwanda human rights' section 14, available at: <https://www.gov.uk/government/publications/safety-of-rwanda-asylum-and-immigration-bill-supporting-evidence>https://assets.publishing.service.gov.uk/media/65a15b7369fbd3000d25c04f/CIN_RWA_Human_rights2.pdf; FCDO, 'UN Human Rights Council: Universal Periodic Review Adoption – Rwanda', 8 July 2021 available at: <https://www.gov.uk/government/speeches/un-human-rights-council-universal-periodic-review-adoption-rwanda>.

⁵⁶ <https://www.gov.uk/government/publications/safety-of-rwanda-asylum-and-immigration-bill-policy-statement>.

⁵⁷ *VCL and AN v United Kingdom*, para 151. See also Article 5 (2) ECAT.

⁵⁸ ECAT Explanatory Report, para 103.

hand, concerns measures owed to particular individuals who are at risk of being subject to trafficking and exploitation, which the ECtHR refers to as 'operational measures'. Therefore, in the landmark *Rantsev* case, and drawing a parallel with Articles 2 and 3, the ECtHR ruled that Article 4 too 'may, in certain circumstances, require a state to take operational measures to protect victims, or *potential* victims, of trafficking.'⁵⁹ The test outlined by the Court reads as follows:

In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the state authorities were aware, or ought to have been aware, of circumstances giving rise to a *credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited* within the meaning of art.3(a) of the Palermo Protocol and art.4(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of art.4 of the Convention where the authorities fail to take *appropriate measures within the scope of their powers to remove the individual from that situation or risk*.⁶⁰

It is clear from this test, which has been repeated in all subsequent caselaw on human trafficking,⁶¹ that the protective ambit of Article 4 covers not just those who already are victims of trafficking but also those who are 'at real and immediate risk of being, trafficked or exploited'. This is a factual question that decision-makers must assess in each individual case.

Accordingly, if there is a credible suspicion ('reasonable grounds to believe') that a person 'had been, or was at real and immediate risk of being, trafficked or exploited', the obligation to protect them from further harm would warrant an assessment of the risk of re-trafficking before they could be removed. As with other obligations arising from Article 4 ECHR, such assessment should be conducted on the authorities' own initiative, as soon as 'the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion' that a person might be at risk.⁶² GRETA has therefore expressly stated that:

The risk of being re-trafficked would in itself trigger a State's obligation to protect against the possibility of being subjected to slavery, servitude or forced labour. The removal of a person to a territory where they are at risk of being trafficked or re-trafficked would expose the person to a risk of being subjected to a violation of Article 4 of the European Convention on Human Rights.⁶³

This is consistent with the decision on the requirements of Article 4 ECHR set out by the English Court of Appeal in *R (TDT) v Secretary of State for the Home Department*. There Underhill LJ held that:

[H]aving [been trafficked in the past] is the paradigm case of someone who is likely to be at real and immediate risk and so require protection (...) In order to decide whether a past victim is indeed no longer at real and immediate risk of being (re-) trafficked the authorities will in any event have to conduct a careful assessment of the kind for which they contended.⁶⁴

⁵⁹ *Rantsev v Cyprus and Russia*, para 286 (emphasis added).

⁶⁰ *Ibid* (emphasis added).

⁶¹ See for example, *CN v the United Kingdom*, para 67; *VCL and AN v United Kingdom*, para 152.

⁶² European Court of Human Rights, 'Guide on Article 4 of the European Convention on Human Rights: Prohibition of slavery and forced labour' (updated on 31 August 2022) para. 60.

⁶³ GRETA, '[Guidance note on the entitlement of victims of trafficking and persons at risk of being trafficked to international protection](#)' (2020) para 32.

⁶⁴ *R (TDT) v Secretary of State for the Home Department* [2018] 1 WLR 4922, paras 40 and 41.

Despite the clarity of what Article 4 ECHR requires, none of the instruments that enable removals of suspected or confirmed victims of MSHT, notably the IMA, the Rwanda Treaty, and the Safety of Rwanda Bill, nor the Human Rights Memorandum accompanying the Bill, refer to this assessment of the risk of re-trafficking as part of the decision-making process.⁶⁵

This assessment of the risk of re-trafficking required by Article 4 ECHR must be individualised: in line with the established practice of the human rights tribunals, such decisions are to be made in each individual case based on the specific facts and available information. Furthermore, the risk factors which make individuals susceptible to trafficking or re-trafficking are manifold and complex and the risks to each person are specific,⁶⁶ although it has been noted that 'forced removals and deportation are evidenced in literature to be factors related to re-trafficking.'⁶⁷ The overall situation in Rwanda with regards to protections available to victims of trafficking would of course serve as a backdrop to such an individual assessment. The lack of adequate support for victims of MSHT in Rwanda, illustrated by the US TiP Report referred to in Section 2 above, therefore reinforces the need for a mandatory assessment of the risk of re-trafficking of all suspected or confirmed victims of MSHT subject to removal to Rwanda.

Overall, removing to Rwanda individuals with a positive reasonable grounds decision, as envisaged by Article 13 of the Rwanda Treaty, will automatically and in all cases put the UK in breach of Article 4 ECHR as well as Article 10 ECAT. In addition, removing identified victims of MSHT without conducting an individualised assessment of the risk of re-trafficking would breach the operational duty under Article 4 ECHR.

4. International Law obligation to prosecute and punish traffickers

In addition to the obligation to identify every victim of MSHT, the removal of individuals with a reasonable grounds decision envisaged by Article 13 of the Rwanda Treaty risks breaching a duty to investigate and punish the perpetrators of this crime contained in Article 4 ECHR and Article 27 ECAT. Victims of MSHT are often the only witnesses of this crime and without their assistance the perpetrators are likely to remain at large.

Article 4 ECHR and Article 27 ECAT contain a duty to investigate and prosecute the perpetrators of MSHT.⁶⁸ Like the duty to identify victims (see section 1 above), this obligation is triggered by the presence of a 'credible suspicion' (reasonable grounds to believe) that a person is a victim of MSHT.⁶⁹ This duty also does not depend on a complaint from the victim or next-of-kin: 'once the matter has come to the attention of the authorities they must act of their own motion.'⁷⁰

⁶⁵ It is worth pointing out that the most recent version of the Modern Slavery Statutory Guidance introduces a requirement for caseworkers to conduct a risk of re-trafficking assessment for those subject to the public order disqualification pursuant to Section 63 of the Nationality and Borders Act. See 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 3.6, January 2024) paras 14.268 – 14.270. As shown in the present analysis, the obligation to conduct a re-trafficking assessment should be extended to all removals/returns/repatriations.

⁶⁶ IOM, 'The Causes and Consequences of Re-Trafficking: Evidence from the IOM Human Trafficking Database' (2010). See also P Hynes and P Burland, et al., 'Between two fires' (University of Bedfordshire, IOM and ASR, 2019) page 8. Available at: https://www.iom.int/sites/default/files/default/between_two_fires_report_ct_2019.pdf.

⁶⁷ University of Nottingham Rights Lab and Independent Anti-Slavery Commissioner, 'Re-trafficking: The current state of play' (November 2021) page 14.

⁶⁸ European Court of Human Rights, 'Guide on Article 4 of the European Convention on Human Rights: Prohibition of slavery and forced labour' (updated on 31 August 2022) paras 69 – 77.

⁶⁹ *Ibid*, paras 60 and 69.

⁷⁰ *Ibid*. See also *Chowdury v Greece*, para 116.

It is widely known that victims of MSHT are often instrumental for securing convictions for this crime,⁷¹ which means that their removal to a third country would make the possibility of prosecuting the perpetrators next to impossible. This was acknowledged by the UK Supreme Court in the case of *MS (Pakistan) v Secretary of State for the Home Department*,⁷² where the Court expressly recognised that a positive obligation to conduct an investigation into the allegations of human trafficking under Article 4 ECHR also includes a duty to prevent deportation or removal of suspected victims while the investigation is ongoing. In that case, the Supreme Court considered whether, having decided that the appellant was indeed a victim of trafficking, his removal from the UK would amount to a breach of any of the positive obligations in Article 4 of the ECHR. Having summarised the relevant ECHR jurisprudence, the Court agreed with the Upper Tribunal (Immigration and Asylum Chamber) which held that 'it is inconceivable that an effective police investigation and any ensuing prosecution could be conducted without the full assistance and cooperation of the appellant. Realistically this will not be feasible if he is removed to Pakistan'.⁷³

Sections 22 (3), 24 (3) and 25 (3) of the Illegal Migration Act (IMA), which the Rwanda Treaty seeks to give effect to, provide a limited exception from an obligation to remove individuals who satisfy the conditions required by section 2 (a person is in the UK without legitimate leave to enter or remain and they did not arrive to the United Kingdom directly from a country in which they face persecution). According to these provisions, removing a person from, (or requiring them to leave) the UK could be set aside if the Secretary of State was satisfied that the person was cooperating with authorities in an investigation or criminal proceedings in respect of their trafficking experience. Even this possibility is circumscribed by further conditions that their presence in the UK is 'necessary' and that 'the public interest in the person providing that cooperation is outweighed by any significant risk of serious harm to members of the public which is posed by the person.' What is more, these provisions create a legal presumption that it is not necessary for the person to be present in the United Kingdom to provide the cooperation in question – a presumption that could only be set aside by the presence of 'compelling circumstances which require the person to be present in the UK for that purpose'.

However, because individuals with a reasonable grounds decision will be denied a reflection and recovery period of 30 days by virtue of Section 22 of the IMA, they will need to decide whether to cooperate with law enforcement authorities immediately. This directly contradicts the express instruction in the Explanatory Report to ECAT that the reflection and recovery period aims 'to enable victims to recover and escape the influence of traffickers and/or to take an informed decision on co-operating with the competent authorities, the period, in itself, is not conditional on their co-operating with the investigative or prosecution authorities.'⁷⁴

Therefore, identification of victims of modern slavery is instrumental for discharging not just the States' positive obligation to provide them support guaranteed by international law, but also the obligations to prevent these crimes and to prosecute and punish the perpetrators. The risk of removal to Rwanda of suspected or confirmed victims of MSHT who arrived in the UK irregularly would limit their involvement in any investigations, prosecutions, and criminal proceedings.

⁷¹ House of Commons, House of Lords, Joint Committee on Human Rights, 'Legislative Scrutiny: Illegal Migration Bill', Twelfth Report of Session 2022–23 (11 June 2023) paras 282 – 285; House of Commons Home Affairs Committee, 'Human trafficking: First Report of Session 2023–24' paras 175-182.

⁷² [2020] UKSC 9.

⁷³ *Ibid*, para 36.

⁷⁴ ECAT Explanatory Report, para 175. See also GRETA, '4th General Report on GRETA's Activities', GRETA(2015)1(March 2015) 47.

Conclusion

Much of the debate about the Rwanda scheme has centred around the questions of whether or not Rwanda is a safe country for people seeking asylum,⁷⁵ whether it is for Parliament or the courts to determine that question,⁷⁶ and whether the scheme is practically and financially feasible.⁷⁷ These questions are beyond the scope of this analysis, which has focused on the scheme's compatibility with international obligations binding on the UK which govern the protection of victims of MSHT.

Importantly, the conclusions in relation to the compatibility of the Rwanda Treaty and Bill with the UK's obligations under Article 4 ECHR and ECAT are not restricted to Rwanda alone, but would apply to removing individuals to third countries without specific safeguards prescribed by these international instruments.

What is more, while the present analysis found the provisions of both the Treaty and the Bill incompatible with protective obligations enshrined in Article 4 ECHR and ECAT, the Rwanda Bill prevents victims of MSHT from raising those incompatibilities before UK courts. Clause 3 of the Rwanda Bill provides for disapplication of sections 2 and 3 of the Human Rights Act 1998 (HRA), which would enable domestic courts to interpret this legislation in line with the ECHR in relation to Rwanda claims. Furthermore, clauses 1 (4) and (6) of the Rwanda Bill specify that its validity is unaffected by international law, including the ECHR and ECAT and clause 2(5) provides that the conclusive deeming of Rwanda as a 'safe country' applies notwithstanding any interpretation of international law.

Overall, this analysis focused solely on the requirements under the ECAT and ECHR and did not consider the conditions under which International Refugee Law would permit removing people seeking asylum to a third country when the issue of MSHT was not at stake. It is important to note that unlike international treaties designed to protect victims of MSHT, International Refugee Law does not impose an express duty on States to not remove asylum seekers until the process of determining their refugee status is completed, nor the obligation to investigate, prosecute, and punish individual perpetrators. Drafted half a century later, the anti-trafficking instruments are much more explicit, concrete, and demanding when it comes to protection requirements. Accordingly, this analysis emphasises the need for decoupling the issue of MSHT from migration control, and distinguishing between obligations arising from international anti-trafficking instruments and those established under International Refugee Law.⁷⁸

⁷⁵ UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers under the UK-Rwanda arrangement: an update (15 January 2024) available at: [updated_unhcr_analysis - uk-rwanda arrangement 1.pdf](#). See also <https://www.dw.com/en/fact-check-just-how-safe-is-rwanda-for-migrants/a-62188450>.

⁷⁶ Murray Hunt, 'Safety of Rwanda (Asylum and Immigration) Bill: A Preliminary Rule of Law Analysis for House of Commons Second Reading' (Bingham Centre for the Rule of Law, December 2023).

⁷⁷ Peter William Walsh, 'Q&A: The UK's policy to send asylum seekers to Rwanda' (The Migration Observatory, 10 January 2024).

⁷⁸ See also House of Commons Home Affairs Committee, 'Human trafficking: First Report of Session 2023–24' paras 28, 143, 225 and recommendation 2.

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Modern Slavery and Human Rights Policy and Evidence Centre
c/o British Institute of International and Comparative Law
Charles Clore House, 17 Russell Square, London, WC1B 5JP

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office@modernslaverypec.org

www.modernslaverypec.org