UNITED NATIONS
HUMAN RIGHTS
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Mandate of the United Nations Special Rapporteur on Trafficking in Persons, especially women and children, Siobhán Mullally

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"Rule 39 – Urgent": K.N. v. the United Kingdom (application no. 28774/22)

Re: Pending removal of K.N. from the United Kingdom to Rwanda, at 10.30pm (British Summer Time - "BST") on Tuesday 14 June 2022

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Dear President Spano,

I write to you in my capacity as United Nations Special Rapporteur on trafficking in persons, especially women and children, appointed pursuant to Human Rights Council resolution 44/4.

I am requesting consideration of my brief observations in relation to the pending removal of K.N. from the United Kingdom to Rwanda, at 10.30pm (British Summer Time - "BST") on Tuesday 14 June 2022, and the application to be considered for interim measures under Rule 39.

My observations are provided on a voluntary basis without prejudice to, and should not be considered as, a waiver, express or implied, of any privileges or immunities which the United Nations, its officials or experts on mission, pursuant to 1946 Convention on the Privileges and Immunities of the United Nations. Authorisation for the positions and views expressed by the Special Rapporteur, in full accordance with my independence, was neither sought nor given by the United Nations, including the Human Rights Council or the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.

The removal of K.N.is undertaken pursuant to the Memorandum of Understanding (the MOU) between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of a "for the provision of an asylum partnership arrangement to strengthen shared international commitments on the protection of refugees and migrants", published on 14 April 2022.

I am concerned that the scheduled removal of K.N. and the arrangements concluded under the MOU fail to ensure sufficient protection against the imminent risk of irreparable harm, specifically treatment that is contrary to Article 3 ECHR, which provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment".

The protections afforded by Article 3 are absolute, non-derogable and subject to no exception, neither under the Convention nor under general international law (see, for example, Ireland v. United Kingdom, no. 5310/71, § 163, ECtHR 1978). As has been recognised by the European Court of Human Rights, asylum seekers are considered to be particularly vulnerable, and in need of special protection (M.S.S. v. Belgium and Greece, no. 30696/09, § 251, ECtHR 2011) "because of everything [they have] been through during [their] migration and the traumatic experiences [they were] likely to have endured previously" (ibid., § 232).

As Special Rapporteur, I note that the Court has stated that, "the principle according to which indirect refoulement of an alien leaves the responsibility of the Contracting State intact, and that State is required, in accordance with the well-established case-law, to ensure that the person in question would not face a real risk of being subjected to treatment contrary to Article 3 in the event of repatriation (see, mutatis mutandis, T.I. v. the United Kingdom (dec.), no. 43844/98, ECHR 2000-III, and M.S.S. v. Belgium and Greece, …[Application no. 30696/09] § 342)." (Case of Hirsi Jamaa and Others v Italy, Application no. 27765/09, para. 146).

The UN High Commissioner for Refugees (UNHCR) has identified failings in Rwanda's individual refugee status determination process, which give rise to a real risk of onward refoulement of those transferred there under the MOU. Specifically, UNHCR has stated that it:

> "[…] 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. There are long-standing concerns about the quality of information collected at screening and registration, and in particular about the identification of vulnerabilities." (UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement, para.15)

The Special Rapporteur is particularly concerned that the MOU fails to provide sufficient guarantees to ensure effective protection against refoulement, and to prevent the applicant in this case, and other potential returnees, from being arbitrarily deported to their country of origin. The Special Rapporteur is concerned that although assurances are given in the MOU, in relation to Rwanda's asylum processing arrangements (Articles 8-10), no provision is made for resolution of disputes by an independent body to ensure compliance with obligations arising under the MOU or to give meaningful effect to the assurances stated. As such, the requirement for an effective mechanism to monitor and ensure compliance with the obligations arising under the ECHR, are not met.

Specifically, with respect to the obligations of the State arising under Article 4 ECHR, the Special Rapporteur is concerned that there is a failure in the MOU, to provide sufficient guarantees against risks of trafficking or re-trafficking for those who may be denied asylum or arbitrarily removed to another state from Rwanda.

As is noted further by UNHCR, there are recognized barriers to disclosure in screening interviews, which are usually conducted shortly after arrival. These fail to take account of the specific vulnerabilities of victims of trafficking and other serious human rights violations: "Histories of trafficking and exploitation are explored in a single, complex question, which can make it difficult for individuals to disclose information." (UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement, para.15)

In Rantsev v. Cyprus and Russia, the European Court of Human Rights affirmed the status of the prohibition of trafficking in human beings within the ordre publique of the European Convention on Human Rights (ECHR). In an oft-cited statement, the Court concluded that the prohibition of trafficking falls within the non-derogable norm stated in Article 4 ECHR:

> "There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. " (Rantsev v. Cyprus and Russia App no 25965/04, para 282)

Article 40(4) of the Council of Europe Convention on Action Against Trafficking in Human Beings provides:

> "Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein."

The Explanatory Report to the Convention, with regard to Article 40(4), notes:

> "The fact of being a victim of trafficking in human beings cannot preclude the right to seek and enjoy asylum and Parties shall ensure that victims of trafficking have appropriate access to fair and efficient asylum procedures. Parties shall also take whatever steps are necessary to ensure full respect for the principle of non-refoulement." (Council of Europe Convention on Action against Trafficking in Human Beings 2005, Explanatory Report, para. 377).

The obligation of *non-refoulement* has been stated also by the monitoring body, the Group of Experts on Action against Trafficking in Human Beings (GRETA). See: *Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection."* (*GRETA(2020)062*). In its recent Country Report on the United Kingdom, GRETA urges the UK authorities to review the victim return and repatriation policies in order to ensure compliance in law and practice with Article 16 of the Convention, 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. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people and to GRETA's Guidance Note on the entitlement of victims of human trafficking, and persons at risk of being trafficked, to international protection."(Evaluation Report, United Kingdom (Third Evaluation Round) Access to justice and effective remedies for victims of trafficking in human beings, GRETA(2021)12, para.322)

As has been noted by the European Court of Human Rights in a series of cases, Article 4 ECHR requires States to adopt a range of measures to prevent trafficking and to protect the rights of victims: "Protection measures include facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery." (V.C.L. and A.N. v. United Kingdom, Apps. No. 74603/12 and No. 77587/12, para. 153). I am concerned that there is a failure to ensure that these obligations are met in the arrangements stated in the MOU, and as such, the obligations arising under Articles 3 and 4 ECHR will not be discharged by the State.

Yours sincerely,

Siobhán Mullally

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