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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Trafficking in persons, especially women and children**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, submitted in accordance with Human Rights Council resolution [44/4](#).

* [A/76/150](#).

** The present report was submitted after the deadline owing to circumstances beyond the submitter's control.



Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally

Summary

In the present report, the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, examines the intersections between trafficking by proscribed groups and terrorism, and in particular the continuing failures in terms of identification of and assistance to the victims of trafficking and in terms of the protection of their human rights. Despite increased attention to the intersections between trafficking in persons and terrorism, measures to prevent trafficking are limited and often ineffective, and we see repeated failures of protection. Accountability for the serious human rights violation of trafficking in persons is limited, and impunity persists. In the report, the Special Rapporteur highlights the obligations of States to apply the principle of non-discrimination in all actions to combat human trafficking and to ensure effective access to protection. The particular risks of child trafficking and the targeting of children by proscribed groups are examined, as are the risks faced by persons, who are forcibly displaced, including unaccompanied and separated children. In the report, the Special Rapporteur also highlights the need for more effective prevention and protection measures for all forms of trafficking, particularly in conflict and humanitarian settings, as well as States' positive obligations in respect of the identification of victims, assistance to victims and repatriation.

I. Introduction

1. The Special Rapporteur on trafficking in persons, especially women and children notes that, in line with the increased focusing of attention on conflict-related trafficking in persons, the relationship between trafficking and terrorism has attracted increased attention in international forums including in several Security Council resolutions and in the work of special procedures of the Human Rights Council and of treaty bodies, regional human rights bodies, international organizations and civil society. The intersections of trafficking and terrorism, and in particular the continuing failures in terms of the protection of the human rights of victims of trafficking in this context, are the focus of the present report.¹ The report has benefited from discussions with key stakeholders, civil society, practitioners, policymakers and academics as well as international organizations and United Nations system entities.²

2. Despite increased attention to the intersections between trafficking in persons and terrorism, measures to prevent trafficking are limited and often ineffective, and we see repeated failures of protection. Accountability for the serious human rights violation of trafficking in persons is limited, and impunity persists. These failings are not inevitable. Concerted action by States, peacekeeping forces and humanitarian actors, in partnership with civil society and victims and survivors, can address these failings and ensure the effective implementation of international human rights and humanitarian law to protect victims of trafficking.

3. In his report on the activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy, in advance of the seventh review of the Strategy, the Secretary-General outlines United Nations action with respect to the rights of victims of sexual violence committed by terrorist groups (see [A/75/729](#) and [A/75/729/Corr.1](#)). References to conflict-driven trafficking in persons are included in the report, with particular attention to the disproportionate impact on women and girls, and the stigmatization of survivors and their children. The Special Rapporteur notes that such stigmatization has material consequences for the victims, including their rejection by communities, refusals to provide them with consular assistance or to facilitate and support their repatriation, and difficulties in securing identity documents, which, in turn, leads to statelessness and associated human rights violations. These failures to ensure effective protection of the rights of trafficked persons lead to heightened risks of refoulement and re-trafficking, and to failures of States' positive obligations to provide specialized assistance and protection, and access to effective remedies. These obligations are at the core of a human rights-based approach to prevention and protection, and to ensuring accountability for human trafficking. They are essential to ensure that the object and purpose of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational

¹ There is no universally accepted definition of terrorism. Security Council resolution [1566 \(2004\)](#) refers to: "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism". See also the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism ([A/73/361](#)).

² The Special Rapporteur is grateful to the International Human Rights Clinic at Duke University, in particular to professors Jayne Huckerby and Aya Fujimura-Fanselow, and to Noemi Magugliani, Irish Centre for Human Rights, National University of Ireland, Galway (NUI Galway), for background research for the present report.

Organized Crime (Trafficking in Persons Protocol) – to protect and assist victims of trafficking “with full respect for their human rights” – is fulfilled.

4. The Special Rapporteur notes that while the contexts of terrorism, conflict and forced displacement contribute to heightened risks of trafficking in persons, such risks are rooted in continuums of exploitation linked to structural discrimination, violence, poverty and exclusion, which are part of the everyday and are not exceptional. Structural, sex-based discrimination, constituting gender-based violence, as a root cause of trafficking, is exacerbated in contexts of forced displacement, armed conflict and terrorism. The focusing of attention on the trafficking-terrorism nexus, while essential to recognizing the concerns arising from the activities of proscribed groups and the human rights obligations of States, also brings with it certain risks. Trafficking in persons may appear to be exceptional, and limited attention may be given to underlying persistent root causes that create a climate of impunity for trafficking and that produce the structural conditions within which exploitation occurs (Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, para. 10). It is critical, therefore, that in recognizing the linkages between terrorism and trafficking in persons, that the underlying root causes of exploitation are fully addressed and recognized.

5. There is some, albeit limited, attention given to the linkages between terrorism and trafficking by the United Nations human rights treaty bodies. The link between forced displacement, heightened risks of trafficking and the activities of proscribed groups is recognized by the Committee on the Elimination of Discrimination against Women, for example in its concluding observations on the combined third and fourth periodic reports of the Niger. The Committee noted that terrorist attacks had resulted in major population displacement and specifically highlighted the risks faced by displaced women and girls, including:

sexual and gender-based violence, as well as child marriage, forced marriage, trafficking in persons, forced prostitution and abduction by terrorist groups for use in suicide bombings and sexual slavery³

6. Citing its general recommendations No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations and No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee recommended that the Niger:

Collect data on incidents of gender-based violence against women and girls, in particular sexual violence, and of child marriage, forced marriage, trafficking in persons, forced prostitution and abduction by terrorist groups in the State party⁴

7. The Counter-Terrorism Committee Executive Directorate has highlighted the importance of ensuring that victims of sexual violence associated with human trafficking perpetrated by armed or terrorist groups are recognized as legitimate victims of conflict and/or terrorism and that measures to address their situation are considered to be an integral part of counter-terrorism strategies.⁵ Recognizing trafficked persons as also being victims of terrorism ensures that they may benefit from national relief and reparations programmes on a basis of equality with other such victims.⁶ Such recognition also fulfils the requirements of non-discrimination. It is

³ CEDAW/C/NER/CO/3-4, para. 10 (b).

⁴ Ibid., para. 11 (b).

⁵ Counter-Terrorism Committee Executive Directorate, (2019) “Identifying and exploring the nexus between human trafficking, terrorism and terrorism financing”, p. 52.

⁶ A/73/171, para. 76 (d).

important, however, to ensure that victims of all forms of trafficking are recognized as such, and that all purposes of exploitation are addressed in anti-trafficking actions.

8. The coronavirus disease (COVID-19) pandemic has increased the risks of trafficking in persons. These risks are linked to rising unemployment, the closure of schools, the difficulties faced by civil society in providing assistance to trafficked persons, the closure of borders and restrictions on movement, as well as the diversion of law enforcement resources and social protection services to other priority areas. This context has contributed to gaps in protection. At the same time, proscribed groups are taking advantage of the pandemic to intensify their actions and to benefit from opportunities for recruitment through the increased presence of children and adults in the digital environment.⁷

II. Impunity for trafficking in persons linked to terrorism

9. The Special Rapporteur is concerned that despite the increased visibility of and the focusing of attention on the trafficking-terrorism nexus, there continues to be limited accountability for trafficking in persons in such contexts. Rather than prosecutions for crimes of trafficking in persons, the focus is on investigations and prosecutions for affiliation with proscribed groups. This deflection of attention away from trafficking in persons and related human rights obligations of States leads to impunity for the crime of trafficking and a failure to ensure access to justice and to effective remedies for trafficked persons. Much of the attention given to the nexus between human trafficking and terrorism in United Nations action has focused on the linkages between terrorism and organized crime, including human trafficking. There is a risk that responses to human trafficking in United Nations action become highly securitized and remain confined within a law enforcement, security and risk framework. It is critical now, in addressing linkages between trafficking and terrorism, that the human rights of victims of trafficking and States' positive obligations of prevention, protection and partnership, as well as prosecution, are fully and effectively addressed.

10. Failing to recognize the nexus between terrorism and trafficking in persons contributes to a climate of impunity and a failure of accountability for serious human rights violations, including in the context of atrocity crimes. Despite the repeated references to conflict-related trafficking, and to trafficking in persons by proscribed groups, there are limited investigations and prosecutions for such crimes. There is also limited access to remedies for victims. As has been noted, “[p]rosecutions, where they occur, remain mostly based on affiliation with terrorist groups. This leaves survivors completely out of the judicial process.”⁸

11. As the European Court of Human Rights has noted in *Rantsev v. Cyprus and Russia*, as trafficking offences may take place in the country of origin, as well as in the country of destination, a failure to investigate the recruitment aspect of alleged trafficking “would allow an important part of the trafficking chain to act with

⁷ S/2021/312, para. 13. See the submission of the Special Rapporteur on trafficking in persons, especially women and children, on the draft general comment No. 25 of the Committee on the Rights of the Child on child rights in relation to the digital environment, available at: <https://ohchr.org/en/issues/trafficking/pages/traffickingindex.aspx>.

⁸ Statement by the Special Representative of the Secretary-General on sexual violence in conflict at the special event on the gender dimensions of criminal justice responses to terrorism, held in Kyoto, Japan, on 8 March 2021, as part of the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice. Available at: <https://bit.ly/3jY6yzX>.

impunity [...] The need for a full and effective investigation covering all aspects of trafficking allegations from recruitment to exploitation is indisputable”.⁹

12. The Special Rapporteur notes that where the focus of an investigation or prosecution is on trafficking linked to terrorism, this may deflect attention away from accountability for atrocity crimes. Responding to trafficking in persons as an atrocity crime may better reflect the experiences and perspectives of survivors/victims, rather than as a crime linked to terrorism.

III. Non-discrimination: discrimination and racism as obstacles to prevention and to the identification and protection of victims of trafficking

13. The Special Rapporteur is concerned that, rather than being recognized as victims, with corresponding rights, those who are linked to proscribed groups can be wrongly criminalized and stigmatized. The Secretary-General has reflected that: “women and children formerly associated with violent extremist and terrorist groups are viewed primarily as ‘affiliates’ rather than victims”¹⁰ and that “in some cases, actions by the authorities have reinforced those suspicions [...] in Libya, Nigeria and Somalia, returning women and girls have been detained as ‘accomplices’.”¹¹

14. Racism and discrimination against minority groups and indigenous peoples are root causes of trafficking in persons. Such discrimination and related human rights violations also limit States’ responses to trafficking in persons, leading to failures of prevention, of identification and assistance, and consequent failures of protection for victims. The Office of the United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights at International Borders provide that measures taken to address irregular migration or to counter terrorism, human trafficking or migrant smuggling should not be discriminatory in purpose or effect, including by subjecting migrants to profiling on the basis of prohibited grounds.¹² Discrimination is linked to trafficking in persons and to terrorism, in many ways. Persons at a heightened risk of trafficking in the context of conflict and terrorism – irregular migrants, stateless persons, non-citizens and asylum-seekers, members of minority groups and internally displaced persons – are also those most likely to experience discrimination, including multiple and intersecting forms of discrimination on the grounds of race and ethnicity, religion, gender, migration and socioeconomic status.

15. The Special Rapporteur highlights the relevance of the principle of non-discrimination in international human rights law. Specifically, article 14 (2) of the Trafficking in Persons Protocol states that protective measures shall be:

applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

16. It is a very serious concern that, where trafficking occurs in the context of terrorism, discrimination by States leads to a failure to identify victims of trafficking as such, and to consequent failures of protection. As is noted by the Special

⁹ Application No. 25965/04, para. 307.

¹⁰ Report of the Secretary-General on conflict-related sexual violence (S/2020/487), para. 15.

¹¹ Report of the Secretary-General on conflict-related sexual violence (S/2018/250), para. 19.

¹² OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders (Geneva, 2014).

Rapporteur in her comments on the draft general recommendation No. 36 of the Committee on the Elimination of Racial Discrimination on preventing and combating racial profiling by law enforcement officials, racial profiling may lead to a failure on the part of States to identify victims of trafficking and to ensure compliance with the obligation of non-punishment of victims of trafficking.¹³

IV. Recognizing all forms of trafficking in persons and purposes of exploitation

17. The Special Rapporteur notes that the prevention and elimination of trafficking in persons by proscribed groups is frequently included in actions to address sexual and gender-based violence in conflict situations. In his report on the seventh review of the Global Counter-Terrorism Strategy, the Secretary-General addresses sexual violence as a tactic of terrorism, as linked to the strategic objectives, tactics and ideology of certain terrorist groups and used as an instrument to increase their power by supporting financing and recruitment and through the destruction of communities. In paragraph 29 of its resolution 2467 (2019), the Security Council requests the Counter-Terrorism Committee Executive Directorate to continue to include in Executive Directorate country assessments, as appropriate, information regarding Member States efforts to address the issue of trafficking in persons and its link with sexual violence in conflict and post-conflict situations committed by terrorist groups. The Security Council has also addressed trafficking in persons and terrorism in a number of country-specific resolutions. Accountability for trafficking in persons is included, for example, in paragraph 30 (d) (ii) of Security Council resolution 2584 (2021) on the situation in Mali, and listed as a priority task for the mandate of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), as part of a wider focus on violations and abuses committed against women and children.

18. In some situations, terrorist acts may have a strong link to trafficking in persons; the forms of exploitation specified in the Trafficking in Persons Protocol are non-exhaustive, meaning that the definition can capture situations in which people are trafficked for the purpose of being exploited to carry out terrorist activities.¹⁴

19. The Special Rapporteur notes that trafficking by proscribed groups serves multiple and interrelated purposes.¹⁵ A first set of motives includes financial incentives for proscribed groups, who have “integrated human trade into their functions for raising revenue”.¹⁶ Secondly, some groups may use trafficking as a tactic of war and/or recruitment strategy. This underscores a broader strategic dimension of the trafficking-terrorism nexus, going beyond a purely financial understanding of proscribed groups’ involvement in human trafficking. In addition, proscribed groups might engage in human trafficking in order to achieve territorial control and to embed their networks within communities, as well as for the purposes of forced labour and servitude.¹⁷ Reports indicate several instances of trafficking by proscribed groups for a range of purposes. These include: reports of Boko Haram using children as beggars for

¹³ Available at <https://ohchr.org/en/issues/trafficking/pages/traffickingindex.aspx>.

¹⁴ United Nations Office on Drugs and Crime (UNODC), *Countering Trafficking in Persons in Conflict Situations* (Vienna, 2018), p. xi.

¹⁵ See: Organization for Security and Cooperation in Europe (OSCE), *Trafficking in Human Beings and Terrorism* (2021). Available at <https://www.osce.org/cthb/491983>.

¹⁶ Nazli Avdan and Mariya Omelicheva, “Human Trafficking-Terrorism Nexus: When Violent Non-State Actors Engage in the Modern-Day Slavery” (2021), XX(X), *Journal of Conflict Resolution* 1, pp. 4-5.

¹⁷ *Ibid.*, p. 24.

fundraising;¹⁸ forced marriages in Mali by Ansar Eddine and Al-Qaida in the Islamic Maghreb;¹⁹ forced marriages of females abducted by Boko Haram, involving sexual exploitation; the trafficking of Yazidi women and girls by Da'esh for sexual exploitation and slavery.²⁰ Other situations reported include: in Kenya, “reports of women and girls being trafficked by Al-Shabaab from the coastal regions of Kenya to Somalia, where they were forced into sexual slavery, having been deceived by false promises of work abroad”;²¹ and in Yemen, “Concerns have [...] been raised about the linkages between migration, trafficking and sexual violence perpetrated by armed and extremist groups, following a case involving the sexual assault of 13 Ethiopian girls by traffickers in the southern governorate”.²² Reports also indicate the kidnapping of migrants in Libya by militias for the purpose of forced labour (predominantly in cleaning and construction),²³ for forced criminality (including for moving military equipment and ammunition), as well as for the purpose of ransom.²⁴

20. The Special Rapporteur emphasizes the importance of recognizing and responding effectively to all forms of trafficking in persons, and recognizing the diverse forms of exploitation that occur, including through the actions of proscribed groups. In its resolution 2388 (2017), the Security Council specifically recognizes that: “trafficking in persons in areas affected by armed conflict and post-conflict situations can be for the purpose of various forms of exploitation, including exploitation of the prostitution of others or other forms of sexual exploitation, forced labour, slavery or practices similar to slavery, servitude or the removal of organs”. Much of the United Nations action in response to trafficking in persons, however, has limited its focus to trafficking for the purpose of sexual exploitation, thereby contributing to impunity and significant gaps in accountability for other forms of trafficking carried out by proscribed groups. These gaps are evident in limited investigations or prosecutions by States for other forms of trafficking, and in the consequences for victims of other forms of trafficking, such as labour exploitation or forced criminality, who are not identified as victims and not provided with protection. These accountability gaps create a climate in which such trafficking in persons persists.

V. Trafficking in persons and the mandates of peacekeeping missions

21. The Special Rapporteur notes that in addition to requiring accountability for the serious human rights violation of trafficking in persons and related violations of international humanitarian law, it is critical that access to justice for victims and survivors of trafficking in persons, as well as effective prevention and protection measures, are explicitly included in the mandates of United Nations peacekeeping missions. It is not enough to assume that such measures are included within mandate references to sexual violence in conflict or sexual and gender-based violence in conflict and post-conflict situations. The absence of explicit references fails to acknowledge or address other forms of human trafficking, creating a significant

¹⁸ Financial Action Task Force and Asia/Pacific Group on Money Laundering, *Financial Flows from Human Trafficking* (Paris, 2018).

¹⁹ A/HRC/22/33, para. 34.

²⁰ A/HRC/28/2, paras. 746 and 775. See also S/2018/250, para. 77.

²¹ S/2018/250, para. 62.

²² Ibid., para. 80.

²³ See communication LBY 6/2017, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23487>.

²⁴ Amnesty International, “*Between life and death*”: *Refugees and Migrants trapped in Libya’s Cycle of Abuse* (2020), pp. 7, 23.

accountability gap and leaving victims of other forms of exploitation without protection or effective remedies. Prevention measures are also limited, as capacity-building, technical assistance, training, awareness-raising and partnerships with civil society and humanitarian actors fail to address the range of forms of trafficking that may occur. The human rights of victims of trafficking and the obligations of prevention and protection must be explicitly stated in the mandates of peacekeeping missions, to ensure attention is directed at all forms of trafficking in persons and to recognize both the root causes and the indicators of all forms of exploitation.

VI. Security Council resolution 1325 (2000) and the women and peace and security agenda

22. In paragraph 1 (h) of its resolution 44/4, the Human Rights Council highlighted the importance of promoting greater synergy between anti-trafficking efforts and the women and peace and security agenda “especially by addressing the issue of trafficking in persons and its link with conflict-related sexual violence, and by stressing the key role of women’s agency and participation”. The adoption by the Generation Equality Forum of the Compact on Women, Peace and Security and Humanitarian Action is a timely opportunity to ensure that all forms of trafficking in persons are addressed in policy and practice in the areas of women and peace and security and of humanitarian action. It is notable that there is no explicit reference to human trafficking in the Compact, though human trafficking is implicitly included within references to sexual and gender-based crimes. This categorization, however, may limit the forms of trafficking included in the women and peace and security agenda and in humanitarian action, thereby also limiting the effectiveness and scope of prevention and protection measures. The intersections of trafficking in persons and terrorism are not addressed specifically, despite increasing references to trafficking by proscribed groups in the work of the Security Council and other United Nations bodies. These omissions reflect a continuing siloing of action to combat trafficking in persons and the women and peace and security agenda, and a failure to recognize the range of contexts within which trafficking occurs, and in which States’ obligations and the human rights of victims are engaged. It is critically important that the women and peace and security agenda addresses all forms of human trafficking, including for the purposes of labour exploitation, forced marriage and forced criminality, in order to combat impunity and ensure accountability. A comprehensive approach to combating human trafficking is essential in order to fulfil the human rights of victims and to ensure the empowerment of all survivors.²⁵

VII. Stigmatization, discrimination and the risks of using the label of terrorism

23. The Special Rapporteur notes the risks of misusing the label of terrorism. Labelling groups as linked to terrorism may fuel racism and discrimination against religious or ethnic communities, and may be linked to violent and exclusionary state projects. In the context of human trafficking, misuse of the label of terrorist leads to further discrimination and human rights violations, including failures to identify victims of trafficking or to take effective preventive action to combat trafficking that

²⁵ See also the report of the Special Rapporteur on trafficking in persons, especially women and children, with a thematic analysis of trafficking in persons in conflict and post-conflict situations: protecting victims of trafficking and people at risk of trafficking, especially women and children (A/71/303).

targets minority ethnic or religious communities and refugees, stateless persons and internally displaced persons.

24. The Special Rapporteur would like to highlight the root causes of trafficking in persons, including discrimination, forced displacement, statelessness and poverty. The rhetoric of “terrorism” and the stigmatizing of particular groups as linked to terrorism increases the risks of trafficking and contributes to impunity for traffickers who target minority and displaced communities. In the report of the independent international fact-finding mission on Myanmar, for example, the members of the Commission noted “the association of Rohingya identity with terrorism; and the repeated allusions to illegal immigration”, and cited abductions and the targeting of Rohingya communities for forced marriage and forced labour, as well as rape and other forms of sexual violence perpetrated on a massive scale.²⁶ These incidents are also indicators of trafficking in persons, which, combined with the context of forced displacement, the arbitrary deprivation of nationality and resulting statelessness, contribute to a climate of impunity and an absence of prevention or protection for victims of trafficking. In 2019, the Committee on the Elimination of Discrimination against Women expressed concern in relation to the risks faced by Rohingya women and girls and called upon Myanmar to put in place measures against conflict-related trafficking.²⁷ The Committee has also expressed concern that Rohingya refugee women in Bangladesh face multiple intersecting forms of discrimination and has highlighted the trafficking in Rohingya women and girls and the importance of birth registration.²⁸

25. A deliberate strategy of linking communities to terrorist activity can lead to punishments including the arbitrary deprivation of nationality, prosecution for immigration-related offences, detention, forced returns and exclusion from refugee status. In such contexts, States’ positive obligations of due diligence, to identify victims of trafficking, to ensure protection and the effective implementation of the principle of non-punishment are not met.

VIII. Access to international protection

26. The Special Rapporteur notes that fleeing from terrorist groups can also potentially lead to exploitation that in turn comprises trafficking in persons, and may give rise to claims to asylum or other forms of international protection.²⁹ For example:

in Iraq it was found that some migrant workers fleeing areas under ISIL control, whether held captive at some point or not, were unable to leave Iraq until they had settled debts related to their initial entry into the country [...]. Syrian refugees fleeing conflict have been trafficked into labour in agriculture, industry, manufacturing, catering and other sectors in States neighbouring Syria.³⁰

²⁶ A/HRC/39/64, paras. 38, 62 and 73.

²⁷ CEDAW/C/MMR/CO/EP/1, paras. 39–40.

²⁸ Ibid., paras. 37–40.

²⁹ Sarah Ferguson, “Fleeing Boko Haram, and Tricked into Sexual Exploitation” (United Nations Children’s Fund (UNICEF), United States of America, 2020). Available at: www.unicefusa.org/stories/fleeing-boko-haram-and-tricked-sexual-exploitation/32525.

³⁰ UNODC, *Countering Trafficking in Persons in Conflict Situations*, p. 15.

IX. Child trafficking and terrorism

27. The Special Rapporteur highlights the targeting of children by terrorist and violent extremist groups in circumstances that can meet the definition of child trafficking when there is an “act” (e.g., recruitment or transportation) with the specific intent or “purpose” to exploit.³¹ Where a victim is a child, it is not required to show “means” such as deception, use of force or coercion or “grooming”. As required by international human rights law:

When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.³²

28. As has been highlighted repeatedly, it is the State that is under a positive obligation both to protect victims of trafficking and to investigate situations of potential trafficking. Child victims are particularly vulnerable, and as with all victims of trafficking, “cannot be required to self-identify or be penalised for failing to do so”.³³

29. Recruitment online through grooming processes may lead to travel abroad to join proscribed groups, for exploitation in criminal activities or for the purposes of labour and sexual exploitation.³⁴ Multiple and intersecting forms of exploitation are common. While some children are recruited for more “traditional” forms of exploitation, like sexual exploitation and forced labour, terrorist groups also force children to be involved in criminal activities as perpetrators or accomplices in support roles. This includes the abduction of children, which “can constitute trafficking where abduction is found to include exploitation, whether for sexual, combative, terrorist or other purposes”.³⁵

30. According to the Special Representative of the Secretary-General for children and armed conflict:

the recruitment and use of children nearly always constitutes trafficking. The action (recruitment) and purpose (exploitation) are intrinsic elements of the grave violation.³⁶

31. In conflict settings, children may be recruited into armed groups for the purposes of sexual slavery and exploitation and may also be exploited in supportive roles as domestic labourers, cooks, porters, messengers and lookouts. In addition to being exploited for sex or forced labour, children may also be exploited in combat roles, including for planting explosives, carrying out armed attacks and suicide bombings or as human shields. For example, child recruitment for “combat and support functions” has been carried out by the Ejército de Liberación Nacional in Colombia and the Moro National Liberation Front in the Philippines.³⁷ Another prominent example is Da’esh, which has abducted children, including Sunni Arab and Yazidi boys, to train them in terror tactics, including beheadings and suicide missions.³⁸

³¹ UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System* (Vienna, 2017).

³² Council of Europe Convention on Action against Trafficking in Human Beings, article 10 (3).

³³ *V.C.L. and A.N v. United Kingdom*, applications nos. 77587/12 and 74603/12, para. 199.

³⁴ UNODC, *Countering Trafficking in Persons in Conflict Situations*, p. 9.

³⁵ *Ibid.*, p. x.

³⁶ [A/HRC/37/47](#), para. 16.

³⁷ [S/2017/939](#), para. 9.

³⁸ Counter-Terrorism Committee Executive Directorate, “Identifying and exploring the nexus between human trafficking, terrorism and terrorism financing”, para. 55.

32. In addition, there can be other links between trafficking in children and proscribed groups beyond recruitment and use:

For example, attacks on schools and hospitals can be used to abduct children, but those violations can also make children more vulnerable to additional abuses and violations. Destroying schools and hospitals and denying education opportunities leave children more vulnerable to trafficking and sale, as they will be forced to seek education, or even employment, elsewhere.³⁹

33. The Special Rapporteur highlights the urgency of ensuring that States' obligations under the Convention on the Rights of the Child and its Optional Protocols are fulfilled, including in ensuring effective action against the trafficking of children in the context of terrorism. It is noteworthy that in its resolution 75/291 entitled "The United Nations Global Counter-Terrorism Strategy: seventh review", the General Assembly again strongly condemns "the violations and abuses committed by terrorist groups against children in all circumstances, including killing and maiming, abduction and rape and other forms of sexual violence, noting that such violations and abuses may amount to war crimes or crimes against humanity", and urges Member States to comply with applicable obligations under the Convention on the Rights of the Child, emphasizing the importance of accountability for such abuses and violations.

34. The Special Rapporteur notes that these violations of human rights and international humanitarian law often have a cross-border dimension, which requires more effective international cooperation to strengthen prevention and response efforts. States' obligations to take effective action to prevent and respond to enforced and involuntary disappearances linked to child trafficking by proscribed groups, and to the urgent situation of missing children and missing migrants, are also relevant, though their application to the context of trafficking in persons is rarely acknowledged.

35. Of particular concern is the impact on children of the denial of humanitarian access, in particular its impact on unaccompanied and separated children. Denial of humanitarian access leaves children more vulnerable to trafficking, as they are forced into riskier situations or to move and leave areas where insufficient aid is provided. As noted previously, effective prevention and protection for children from grave violations, trafficking and sale requires "safe child-friendly spaces in places where migrants or refugees reside, including reception centres, refugee camps or informal settlements that host children and offer them space for recreation, study and rest, separated from other facilities, and [...] family-based and family-like, whenever possible".⁴⁰

X. Applying the definition of trafficking in persons

36. The Special Rapporteur notes that in order to detect trafficking in association with proscribed groups, it is important to recall that trafficking can occur through an exploitative process or when an exploitative situation results or is maintained without a preceding exploitative process.⁴¹ This means that both "buying or otherwise taking possession of an individual through any of the stipulated means for purposes of exploitation" and, "maintaining an individual in a situation of exploitation through

³⁹ Ibid., para. 17.

⁴⁰ Joint report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material and of the Special Rapporteur on trafficking in persons, especially women and children (A/72/164), para. 81 (e).

⁴¹ Jayne Huckerby, "When Human Trafficking and Terrorism Connect: Dangers and Dilemmas" (*Just Security*, 22 February 2019).

any of the stipulated means” would constitute trafficking.⁴² Recognizing how trafficking occurs in this context expands the range of terrorism-related actors who can be addressed through anti-trafficking frameworks, as “not just recruiters, brokers, and transporters, but also owners and managers, supervisors, and controllers of any place of exploitation,” are brought within the potential reach of the definition of trafficking.⁴³ One example of this in the context of terrorism is when a “[w]oman harbours young Yazidi girls and women abducted by armed groups while they are auctioned online”.⁴⁴

37. A change of circumstances may result in a relationship or marriage, that was freely agreed to, becoming a situation of trafficking for the purpose of sexual exploitation, forced marriage, labour exploitation or forced criminality. The possibility of such change of circumstances was explicitly recognized by the European Court of Human Rights in *Chowdury and Others v. Greece*, in which it was also noted that “prior consent” did not exclude the characterization of a situation as one of forced labour, or, as in *Chowdury*, of human trafficking.⁴⁵

38. The Special Rapporteur highlights the many subtle forms of coercion that occur in a trafficking context. Beyond instances of overt coercion or force (such as kidnapping), it is important to recognize that more subtle means may be used to traffic persons. Forced marriages, for example, can occur through any of the means enumerated in the international legal definition of trafficking. The use of deception in recruitment also requires further scrutiny.⁴⁶ Abuse of a position of vulnerability may also occur. Evidence of abuse of a position of vulnerability may be located in a jurisdiction other than that in which prosecutions are taking place. Cross-border cooperation is critical to ensure such evidence is identified and made available.

39. Trafficking can occur through the emotional manipulation or coercive control of the victim, through an existing or cultivated intimate relationship.⁴⁷

XI. Prevention of trafficking in persons and obligations of due diligence

40. Recognizing the nexus between trafficking in persons and terrorism requires States to ensure that the positive obligations of prevention and protection that arise under international human rights law are fulfilled. Rather than the fragmentation of anti-trafficking and counter-terrorism measures, States must ensure that trained professionals are engaged in identifying victims and potential victims of trafficking and ensuring effective protection, including non-punishment.

41. As has been noted repeatedly by the European Court of Human Rights, protection measures include facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery.⁴⁸ These obligations equally apply where the purpose of exploitation is forced criminality, and also apply in the context of trafficking by proscribed groups. In

⁴² Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010), p. 30.

⁴³ *Ibid.*

⁴⁴ UNODC, *Countering Trafficking in Persons in Conflict Situations*, p. 9.

⁴⁵ European Court of Human Rights, *Chowdury and Others v. Greece* (application no. 21884/15), judgment of 30 March 2017, para. 96.

⁴⁶ Counter-Terrorism Committee Executive Directorate, “Identifying and exploring the nexus between human trafficking, terrorism and terrorism financing”, para. 74.

⁴⁷ UNODC, *Female Victims of Trafficking for Sexual Exploitation as Defendants: A Case Law Analysis* (2020), p. 51.

⁴⁸ *Chowdury and Others v. Greece*, para. 110.

practice, however, there is a failure to ensure that such obligations are fulfilled, where victims or potential victims appear to be linked to or affiliated with designated terrorist groups, and do not easily fit the prevalent stereotypes of a trafficked person.

42. States' obligations of prevention in relation to trafficking in persons require that due diligence is exercised in preventing recruitment in home countries in the context of transnational trafficking, as well as ensuring the effective application of extraterritorial human rights obligations to prevent trafficking and re-trafficking (e.g., when someone is re-trafficked through forced marriage in an area under the control of a proscribed group). In addition, States have relevant prevention obligations for those fleeing terrorist groups and at risk of exploitation. For example, in paragraph 16 of its resolution 2388 (2017), the Security Council:

Encourages Member States, in particular transit and destination States receiving persons forcibly displaced by armed conflict, to develop and use early-warning and early-screening frameworks of potential or imminent risk of trafficking in persons to proactively and expeditiously detect victims and persons vulnerable to trafficking, with special attention to women and children, especially those unaccompanied;

43. The Special Rapporteur notes the relevance of States' obligations of due diligence in the context of trafficking by proscribed groups and in the context of trafficking for the purpose of exploitation in criminal activities, including terrorism. In order to fulfil such obligations, States must ensure that trained and qualified professionals with expertise in all forms of human trafficking are involved in the identification of victims of both trafficking and terrorism, so as to avoid the siloing of trafficking expertise away from investigations of the activities of proscribed groups, and to recognize the diverse indicators of trafficking: "To give one example, while security officials may see a destroyed or ISIS-confiscated passport as evidence of fealty to ISIS, anti-trafficking expertise would query if this created conditions tantamount to an involuntary stay."⁴⁹ Ensuring that trained and qualified professionals with expertise in identification of victims of trafficking are part of investigative teams, and that indicators of trafficking are incorporated into training on investigations of terrorism, is critical. The principle of non-discrimination, the requirement to ensure the best interests of the child as a priority, and States' obligations to ensure the effective protection of the rights of the child as recognized under international law, continue to apply without exception in the context of trafficking by proscribed groups, and in all actions to address the intersections of trafficking and terrorism.

XII. Trafficking in persons, abductions and kidnapping for ransom

44. The Special Rapporteur highlights the need for greater attention to the relationship between trafficking linked to terrorism and kidnapping for ransom,⁵⁰ and the related human rights obligations that arise therefrom, including States' obligations of due diligence in prevention and protection, as well as in ensuring effective access to remedies. It has been noted that terrorist groups may treat captured individuals as "[m]erchandise to be sold and re-sold" or as "[a] means to secure ransom payment".⁵¹

⁴⁹ Jayne Huckerby, "When Terrorists Traffic Their Recruits" (*Just Security*, 15 March 2021).

⁵⁰ UNODC, *Countering Trafficking in Persons in Conflict Situations*, p. xi. See also communication EGY 10/2012, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=15162>.

⁵¹ Counter-Terrorism Committee Executive Directorate, "Identifying and exploring the nexus between human trafficking, terrorism and terrorism financing", para. 42.

It is noted also that threats of sexual violence by non-State armed groups, including terrorist groups, may be used to extract ransom payments from the families of abducted women and girls, and in this way, “[t]rafficking for the purpose of sexual slavery or sexual exploitation [...] contributes to the funding and sustainment of criminal and terrorist groups”.⁵² In the case of abductions perpetrated by Boko Haram, for example, they “blur the distinction between human trafficking and kidnapping for ransom”.⁵³

45. The links between abductions, kidnapping for ransom and risks of trafficking, especially targeting children, has been the subject of a joint urgent appeal to Nigeria by several special procedures mandate holders.⁵⁴ In the appeal, they note Security Council resolution 2427 (2018), its condemnation of the human rights abuses and violations of international humanitarian law committed by all non-State armed groups, including those who commit acts of terrorism, including abuses and violations such as mass abductions and sexual and gender-based violence, particularly targeting girls, and Security Council resolution 2467 (2019), which highlights the potential impact of sexual violence in conflict and post-conflict situations on men and boys.

XIII. Addressing the gender dimension of trafficking in the context of terrorism: moving beyond stereotypes

46. Despite progressively inclusive language being deployed, the “nexus between sexual violence, conflict-driven trafficking in persons and violent extremism”, as addressed in Security Council resolution 2331 (2016) is understood in practice to have “continued to disproportionately affect women and girls”.⁵⁵ More broadly, human trafficking continues to be understood as affecting women and girls in particular, and as being predominantly concerned with sexual exploitation. While men and boys are more likely to be viewed as autonomous agents and, in the context of terrorism, as willing participants in terrorist activities, women (and girls) are more likely to be seen as more vulnerable to being coerced into exploitation, as well as association with proscribed groups. The perpetuation of gender stereotypes in anti-trafficking responses hinders the timely and correct identification of victims, and reinforces the invisibility of certain categories of trafficked persons, including men and boys.⁵⁶ This invisibility not only contributes to the further stigmatization of men and boys, but it also results in the deprioritization of programmes and services dedicated to male victims. A failure to identify victims of trafficking and to ensure effective protection is evident where women and girls do not fit the dominant stereotypes of a victim of trafficking, in particular in the context of exploitation for the purpose of criminal activities of terrorist groups. These failings may be evident even where there is

⁵² S/2016/496, annex, p. 3.

⁵³ Counter-Terrorism Committee Executive Directorate, “Identifying and exploring the nexus between human trafficking, terrorism and terrorism financing”, para. 87.

⁵⁴ See communication NGA 1/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26060>; and press release, “Nigeria: Children traumatised by abduction need urgent rehabilitation, say UN experts” (3 March 2021), available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26830&LangID=E>. See also the report of the Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, on the sale of children, child prostitution and child pornography and on contemporary forms of slavery, including its causes and consequences on their joint visit to Nigeria (A/HRC/32/32/Add.2).

⁵⁵ S/2021/312, para. 13.

⁵⁶ See: A/HRC/38/45, para. 38; see also Noemi Magugliani, “Trafficked adult men, gendered constructions of vulnerability, and access to protection”, PhD dissertation, National University of Ireland Galway, 2021.

credible evidence of trafficking, yet victims or potential victims are not identified as such.

47. The Special Rapporteur notes that it is important to reflect on the potential for anti-trafficking measures to be complicit in reinforcing gender inequalities and in limiting women's and girls' agency. In its general recommendation No. 38, the Committee on the Elimination of Discrimination against Women highlights that the causes, consequences and experiences of trafficking differ for young girls, for adolescent girls and for adult women and calls upon States parties "to address the full spectrum of those differences, ensuring age-appropriate and child-centred anti-trafficking response measures, where appropriate". There is a risk that women are assumed to be a homogenous group, and a risk also that anti-trafficking actions conflate women and girls, thereby reinforcing potentially damaging stereotypes of the "ideal victim". This potential is particularly relevant in the context of human trafficking measures, where the tendency to slide into protective measures is ever present and frequently works against the recognition of trafficked persons as bearers of rights. Prioritizing the protection of women, on the basis of their perceived vulnerability, continues to be a core motivating impulse in the anti-trafficking movement, at both the national and international levels. The normative re-emergence of this protective impulse may limit the trafficked woman's agency and mobility. It also hinders the identification of victims of trafficking who do not fit dominant stereotypes of a vulnerable victim, and whose testimonies are not considered credible. The Special Rapporteur highlights the obligation on States to ensure that identification procedures recognize the possible impact of psychological trauma on a victim's ability to consistently and clearly relate the circumstances of exploitation.⁵⁷

XIV. Role of civil society and human rights defenders

48. The Special Rapporteur notes the importance of partnerships with civil society in all anti-trafficking actions.⁵⁸ An enabling environment for civil society and the effective protection of human rights defenders, including those working with victims of trafficking, must be ensured without discrimination. It is critical to ensure that counter-terrorism measures do not lead to restrictions on civil society. The labelling of human rights defenders as "terrorists" or linked to terrorist groups, including through criminalizing the work of non-governmental organizations and overreach in respect of terrorism financing rules, undermines their important work in protecting the rights of trafficked persons, including in conflict, migration and forced displacement settings.

XV. Extraterritorial obligations and obligations of repatriation

49. The Special Rapporteur notes the strict obligation imposed on States parties to the Trafficking in Persons Protocol, article 8 (1):

The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

50. It is noteworthy that article 8 is a strict obligation on States. Currently, however, we see a reluctance on the part of States to acknowledge this obligation of

⁵⁷ *S.M. v. Croatia*, application no. 60561/14, para. 80.

⁵⁸ Trafficking in Persons Protocol, article 9 (3).

repatriation, where the victim is associated with a designated terrorist group.⁵⁹ States seek to avoid the obligation of repatriation by failing to meet their obligations of identification, assistance and protection of victims. A positive obligation to take operational measures arises where: “[...] 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”.⁶⁰ A failure to take appropriate measures within the scope of their powers to remove the individual from that situation or risk violates a State’s obligations under international human rights law.⁶¹ While these obligations are well established as a matter of international law, we continue to see a reluctance on the part of States to take operational measures in relation to victims of trafficking linked to proscribed groups.

51. The Committee on the Rights of the Child, in its concluding observations on the combined fifth and sixth periodic reports of Belgium, noted “the State party’s decision to provide assistance for the repatriation of Belgian children under the age of 10 years of foreign terrorist fighters located in the Syrian Arab Republic or Iraq”,⁶² and recommended that the State party:

promptly facilitate the repatriation of all Belgian children and, wherever possible, their families, regardless of age or the degree of suspected involvement in the armed conflict and in compliance with article 9 of the Convention⁶³

52. The Committee Against Torture, in March 2020, issued a decision on provisional measures in a complaint brought by CB against Belgium. Specifically, the Committee requested that Belgium: (a) provide [CB] with the necessary documents for her repatriation, organized by the Government or a humanitarian organization; and (b) take any other measure useful and reasonably within its powers to protect actively the physical and psychological integrity of CB.⁶⁴ In a decision on admissibility in *L.H., L.H., D.A., C.D. and A.F. v France* (30 September 2020), the Committee on the Rights of the Child specifically addressed the issue of whether the State Party has competence *ratione personae* over the children detained in the camps in north-eastern Syrian Arab Republic.⁶⁵ In its decision upholding admissibility, the Committee recalled that, under the Convention, States have the obligation to respect and ensure the rights of the children within their jurisdiction, but the Convention does not limit a State’s jurisdiction to “territory”.⁶⁶ Territorial jurisdiction, it was noted, was deliberately left out of article 2 (1) of the Convention.⁶⁷ Of particular relevance to the positive obligations of States in relation to their nationals who are victims of trafficking is the Committee’s conclusion that a State may have jurisdiction in respect of acts that are performed, or that produce effects, outside its national borders. Citing joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the

⁵⁹ See submission by the Special Rapporteur on trafficking in persons, especially women and children, in the cases of *H.F. and M.F. v. France* (App. No. 24384/19) and *J.D. and A.D. v. France* (App. No. 44234/20) before the European Court of Human Rights.

⁶⁰ *V.C.L. and A.N. v. United Kingdom*, applications nos. 74603/12 and no. 77587/12, judgment of 16 February 2021, para. 152.

⁶¹ *Rantsev v. Cyprus and Russia* (application no. 25965/04), judgment of 7 January 2010, para. 286.

⁶² [CRC/C/BEL/CO/5-6](#), para. 50.

⁶³ *Ibid.*, para. 50 (b).

⁶⁴ Committee against Torture, communication regarding complaint 993/2020 (6 March 2020) G/SO 229/31 BEL(3).

⁶⁵ [CRC/C/85/D/79/2019–CRC/C/85/D/109/2019](#) (2020).

⁶⁶ *Ibid.*, para. 9.6.

⁶⁷ See Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child: Volume I* (New York and Geneva, United Nations, 2007), pp. 332–333.

Rights of the Child (2017),⁶⁸ the Committee stated that States should take extraterritorial responsibility for the protection of children who are their nationals outside their territory through child-sensitive, rights-based consular protection.⁶⁹ Ultimately, the Committee concluded that the State party, as the State of the children's nationality, has the capability and the power to protect the rights of the children in question by taking action to repatriate them or provide other consular responses. The relevant circumstances cited by the Committee include:

[...] the State party's rapport with the Kurdish authorities, the latter's willingness to cooperate and the fact that the State party has already repatriated at least 17 French children from the camps in Syrian Kurdistan since March 2019.⁷⁰

XVI. The principle of non-punishment of victims of trafficking

53. The Special Rapporteur notes the central importance of the principle of non-punishment of victims of trafficking when considering the rights of children detained for association with armed groups, including designated terrorist groups. Such children should be recognized as victims of grave violations of human rights and humanitarian law.⁷¹ In its resolution 2427 (2018), applicable to the treatment of children associated or allegedly associated with all non-State armed groups, including those who commit acts of terrorism, the Security Council called for the establishment of standard operating procedures to ensure their timely handover to civilian child protection actors.⁷² The Special Representative of the Secretary-General on violence against children has stated that:

The United Nations standpoint is that identified children should be repatriated and children born to nationals be granted citizenship. Further, such children should be considered as having been illegally recruited by violent extremist groups, and thus should be treated primarily as victims and decisions concerning them made in accordance with their best interests.⁷³

54. The obligations arising in international human rights law to eliminate direct, indirect and structural racial discrimination are particularly relevant to the application of the non-punishment principle.⁷⁴ A range of punishments applied to victims or potential victims of trafficking linked to proscribed groups have been highlighted in recent communications to States by several special procedures mandate holders⁷⁵ and in my report on the implementation of the non-punishment principle (2021).⁷⁶ Such forms of punishment are frequently seen in the context of unlawful acts associated

⁶⁸ CMW/C/GC/4-CRC/C/GC/23.

⁶⁹ CRC/C/85/D/79/2019–CRC/C/85/D/109/2019, para 9.6, citing paras. 17 (e) and 19 of CMW/C/GC/4-CRC/C/GC/23.

⁷⁰ CRC/C/85/D/79/2019–CRC/C/85/D/109/2019, para. 9.7.

⁷¹ Convention on the Rights of the Child (adopted 20 November 1989; entered into force 2 September 1990), arts. 38–39. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000; entered into force 12 February 2002) is aimed at protecting children from recruitment and use in hostilities.

⁷² Of relevance also is the restorative justice focus of article 7 of the Statute of the Special Court for Sierra Leone.

⁷³ Special Representative of the Secretary-General on violence against children, “Solutions for children previously affiliated with extremist groups: an evidence base to inform repatriation, rehabilitation and reintegration” (2020), p. 6.

⁷⁴ A/75/590, paras. 55–56.

⁷⁵ See, for example, communication GBR 2/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25972>.

⁷⁶ A/HRC/47/34, para. 41.

with proscribed groups, and disputes in relation to trafficking for the purpose of forced criminality. In paragraph 98 of its general recommendation No. 38 (2020), the Committee on the Elimination of Discrimination against Women reiterates the importance of the non-punishment principle and the obligation of States to ensure its application to all victims without exception. Its application must comply with States' obligations of non-discrimination and positive obligations of protection, as well as with the peremptory norms prohibiting racial discrimination and protecting the right to a fair trial. The European Court of Human Rights has highlighted the relevance of the non-punishment principle to the right to a fair trial, as protected by article 6 of the European Convention on Human Rights in *V.C.L. and A.N. v. United Kingdom*.⁷⁷

XVII. Conclusions and recommendations

55. The Special Rapporteur has highlighted the importance of ensuring that survivors of trafficking inform and lead in prevention, protection, participation and relief and recovery measures, which are also the four main pillars of the women and peace and security agenda of the Security Council. The empowerment of all survivors of trafficking in persons, including in responding to trafficking by proscribed groups, is critical in ensuring that the human rights of victims of human trafficking are fulfilled without discrimination.

56. All actions to address sexual violence in conflict should explicitly address trafficking in persons for the purposes of sexual exploitation by proscribed groups.

57. All peacekeeping mandates should explicitly include measures to combat all forms of trafficking in persons by proscribed groups and linked to terrorism, through effective prevention, protection and partnership.

58. Recognizing the positive obligation on States to ensure timely identification of, assistance to and protection of victims, States must:

(a) **Ensure that trafficking in persons for all purposes of exploitation are recognized, including for the purposes of forced labour, servitude, slavery or practices similar to slavery, forced marriage and forced criminality;**

(b) **Ensure that identification procedures and outreach activities are not limited by stereotypes of "ideal" victims;**

(c) **Recognize the complex victimhood and vulnerabilities of persons trafficked by proscribed groups;**

(d) **Give due consideration to early warning signs, including indicators of vulnerabilities to trafficking for all purposes of exploitation, especially in refugee and internally displaced persons camps and host communities affected by conflict;**

(e) **Ensure effective access to legal assistance and specialized psychological, medical and counselling support, especially on migration routes, in all situations of forced displacement and in conflict settings;**

(f) **Ensure that all relevant actors in conflict and post-conflict situations, in humanitarian settings, refugee and internally displaced persons camps, are trained to identify all forms of human trafficking, giving particular attention to indicators of trafficking for purposes of labour exploitation, forced marriage and forced criminality.**

⁷⁷ *V.C.L. and A.N. v. United Kingdom*, para. 200.

59. **Recognizing the principle of non-discrimination, States must ensure:**
- (a) All victims of trafficking are identified and receive assistance and protection without discrimination on grounds such as race or ethnicity, religion, gender, disability or migration status;
 - (b) The gender dimensions of trafficking by proscribed groups are recognized, including the particular vulnerabilities of women and girls, and of men and boys, to all forms of trafficking;
 - (c) The heightened risks that may be faced by lesbian, gay, bisexual, transgender, queer and intersex persons are recognized and necessary measures taken to ensure effective prevention, assistance and protection measures.
60. States must ensure that measures to combat trafficking in persons are disability-inclusive and comply with the Convention on the Rights of Persons with Disabilities and with Security Council resolution [2475 \(2019\)](#) on the protection of persons with disabilities in conflict, in order to ensure effective access to justice, assistance and protection, and effective remedies.
61. States must ensure that victims of trafficking by proscribed groups have effective access to international protection, including asylum, and to resettlement and family reunification, without discrimination.
62. Pursuant to objective 10 of the Global Compact for Safe, Orderly and Regular Migration to prevent, combat and eradicate trafficking in persons, States should expand access to regular migration routes and pathways to residence and citizenship for victims of trafficking.
63. Recognizing that trafficking by proscribed groups may intersect with the recruitment and abduction of children and that attacks against schools and hospitals may be used as tactics to abduct or recruit children, States must take all necessary measures to:
- (a) Strengthen child protection systems;
 - (b) Ensure protective environments for children and prioritize rehabilitation, specialized assistance and protection for child victims, including sexual and reproductive health care.
64. Recognizing the particular vulnerability of children and child victims of trafficking, States must:
- (a) Ensure effective prevention and protection measures for children in situations of conflict or forced displacement, including for unaccompanied or separated children at risk of exploitation by proscribed groups;
 - (b) Ensure that children detained for association with armed groups, including proscribed groups, are recognized as victims of grave violations of human rights and humanitarian law. Recovery, reintegration and family reunification should be prioritized;
 - (c) Country-based task forces on monitoring and reporting established pursuant to Security Council resolution [1882 \(2009\)](#) should ensure that all forms of human trafficking are expressly included in monitoring and reporting processes.
65. States must ensure that actions taken to address trafficking in persons in the context of terrorism comply with international human rights law and international humanitarian law, and that human trafficking is not instrumentalized to enhance counter-terrorism measures that undermine human rights.

66. Recognizing the importance of the non-punishment principle, particularly in relation to trafficking by proscribed groups and forced criminality, the Special Rapporteur reiterates recommendations from her report on the implementation of the non-punishment principle (A/HRC/47/34) and highlights the commitment made in objective 10 of the Global Compact for Safe, Orderly and Regular Migration to facilitate:

access to justice and safe reporting without fear of detention, deportation or penalty, focusing on prevention, identification, appropriate protection and assistance, and addressing specific forms of abuse and exploitation;

67. All parties to a conflict must ensure that humanitarian access is maintained so as to ensure specialized assistance to and protection of victims of trafficking, in order to enable timely identification and prevent re-trafficking.

68. Recognizing the positive obligations of States under international human rights law to identify and ensure the protection of victims of trafficking, States should take immediate action to:

(a) Repatriate victims of trafficking and children of victims, ensuring the best interests of the child as a priority and a protective environment for children;

(b) Provide consular assistance to all victims of trafficking without discrimination.

69. States must ensure that prevention, protection and partnership responses to trafficking in persons by proscribed groups must be informed and led by survivors of all forms of trafficking, including all actions to ensure accountability for the serious human rights violation of trafficking.

70. Recognizing that trafficking in persons by proscribed groups may be linked to enforced disappearances, and recognizing States' positive obligations of international cooperation, States must ensure accountability for such violations of human rights and international humanitarian law. Such obligations must be fulfilled without discrimination and in accordance with States' obligations under international human rights law to investigate such acts and to bring those responsible to justice.

71. States must ensure that all necessary measures are taken to strengthen international cooperation in searches for missing persons, including in particular missing children, and to strengthen investigations and prosecutions.

72. Pursuant to objective 10 of the Global Compact for Safe, Orderly and Regular Migration, States must: strengthen cooperation between all relevant actors, including financial intelligence units, regulators and financial institutions, to identify and disrupt financial flows associated with trafficking in persons by proscribed groups, and enhance judicial cooperation and enforcement with the aim of ensuring accountability and ending impunity.