

**Written Opinion of Prof. Jayne C. Huckerby**

Duke University School of Law

In the Matter of an Appeal under Section 2B of the  
Special Immigration Appeals Commission Act 1997

Between Shamima Begum and Secretary of State for  
the Home Department

July 1, 2022

## Huckerby Written Opinion

### Introduction

#### *Overview of opinion*

1. In this opinion, I focus on three areas:
  - a. the core obligations under international anti-trafficking law and relevant international human rights treaties that require States to prevent trafficking, to investigate and prosecute perpetrators, to identify trafficked persons, to assist and protect victims including through applying the non-punishment principle, and to ensure remedies for trafficked persons;
  - b. how these obligations apply when human trafficking is linked to terrorism, particularly focusing on how governments are required to address situations of proscribed groups using trafficking in recruitment for the purpose of exploitation; and
  - c. preliminary observations on how these international law obligations might apply to the situation of Shamima Begum.
2. Throughout this opinion I use the terms “terrorism,” “terrorist groups” and “proscribed groups” interchangeably and to encompass trafficking for terrorism-related purposes.

#### *Experience*

3. I am Clinical Professor of Law and director of the International Human Rights Clinic at Duke University School of Law. I frequently serve as a human rights law expert to international and regional governmental organizations and non-governmental organizations, particularly on gender, human rights, and national security and including on the nexus between trafficking and terrorism. In focusing on the terrorism-trafficking nexus, I have shared legal expertise and/or testimony with regional and international institutions,<sup>1</sup> governments in bilateral and multilateral settings, non-governmental organizations, attorneys for those alleged to be linked to proscribed actors, and media. I have reviewed public accounts of individuals linked to proscribed groups and of trafficking-terrorism patterns generally, as well as confidential documentation of the experiences of those subject to attempted and actual recruitment by proscribed groups. Since 2009, I have undertaken extensive fact-finding, scholarship, technical assistance, and standard-setting within domestic, regional, and international government and non-

---

<sup>1</sup> For example, this includes providing analysis for the Organisation for Security and Co-operation in Europe (OSCE) on legal aspects of the elements of trafficking by terrorist groups (*see* ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM: HOW AND WHY THEY INTERSECT* (2021)) and background research for the report of the U.N. Special Rapporteur on Trafficking in Persons, Especially Women and Children on trafficking and terrorism (*see* Siobhán Mullally (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report on Trafficking in Persons, Especially Women and Children*, U.N. Doc. A/76/263 (Aug. 31, 2021)).

governmental institutions on the ways in which national security policies both integrate and impact gender and human rights. I have also undertaken significant technical assistance and standard-setting on the international legal framework on trafficking in persons, as well as produced scholarship on this topic. My full resume is attached.

### *Obligation to the Court*

4. I am aware of the duties of experts in civil proceedings as set out in Practice Direction 35 to the Civil Procedure Rules and in preparing this report I have complied with those duties.

### *Instructions*

5. I was instructed to provide an overview of international obligations that govern States' anti-trafficking responses, including in relation to trafficking by terrorist groups—including the elements of the legal definition of trafficking in persons and the scope of applicable legal frameworks, including the obligations to identify, protect, and assist victims, and the principle of non-punishment—as well as to provide preliminary observations on materials in this case in light of those identified obligations. I have been provided with copies of the Secretary of State's materials (subsequent to the Rule 38 process), the Amended Grounds of Appeal, the Scott Schedule, and the First Statement of Gareth Peirce. I have also read the draft opinion of Professor Siobhán Mullally, the U.N. Special Rapporteur on trafficking in persons, especially women and children

## **Opinion**

### *International anti-trafficking obligations: general*

6. The United Kingdom is bound by several regional and international anti-trafficking instruments, human rights treaties, and labor conventions relevant to human trafficking, including the trafficking-terrorism nexus. The relevant regional instruments include the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>2</sup> which the United Kingdom ratified in 1951<sup>3</sup> and the Council of Europe Convention on Action Against Trafficking in Human Beings<sup>4</sup> which the United Kingdom ratified in 2008.<sup>5</sup> Further, the United Kingdom ratified the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the

---

<sup>2</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, E.T.S. No. 5, 213 U.N.T.S. 222.

<sup>3</sup> *Treaty List for a Specific State: United Kingdom*, Council of Eur. (2022), <https://www.coe.int/en/web/conventions/by-member-states-of-the-council-of-europe?module=treaties-full-list-signature&CodePays=UK>.

<sup>4</sup> Council of Europe Convention on Action Against Trafficking in Human Beings, May 16, 2005, E.T.S. No. 197, 197 C.E.T.S. 16.

<sup>5</sup> *Treaty List for a Specific State: United Kingdom*, Council of Eur. (2022), <https://www.coe.int/en/web/conventions/by-member-states-of-the-council-of-europe?module=treaties-full-list-signature&CodePays=UK>.

United Nations (U.N.) Convention Against Transnational Organized Crime<sup>6</sup> (U.N. Trafficking Protocol) in 2006.<sup>7</sup> The United Kingdom has also ratified core international human rights treaties of relevance to trafficking in persons, including the International Convention on the Elimination of All Forms of Racial Discrimination in 1969; the International Covenant on Civil and Political Rights in 1976; the Convention on the Elimination of All Forms of Discrimination against Women in 1986; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1988; the Convention on the Rights of the Child in 1991; and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2009.<sup>8</sup> The United Kingdom has also ratified a series of International Labour Organization conventions, including the Convention Concerning Forced or Compulsory Labour in 1931; the Convention on the Abolition of Forced Labour in 1957; the Worst Forms of Child Labour Convention in 2000; and the Protocol of 2014 to the Forced Labour Convention in 2016.<sup>9</sup>

7. I have read the draft opinion of Professor Siobhán Mullally, the U.N. Special Rapporteur on trafficking in persons, especially women and children, and agree with its contents, but to avoid repetition I will not set out in this opinion the legal framework and obligations arising under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Council of Europe Convention on Action Against Trafficking in Human Beings.
8. Under international law, States are required to prevent trafficking, to investigate and prosecute perpetrators, to identify trafficked persons, to assist and protect victims, and to ensure remedies for victims. These obligations collectively derive from ratified anti-trafficking instruments—primarily at the international level, the U.N. Trafficking Protocol—as well as the relevant binding international human rights treaties identified

---

<sup>6</sup> Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319.

<sup>7</sup> *Status of Treaties: Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. Treaty Collection, [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=xviii-12-a&chapter=18](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-a&chapter=18).

<sup>8</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Mar. 7, 1966, 660 U.N.T.S. 195; the International Covenant on Civil and Political Rights (ICCPR), Dec. 19, 1966, 999 U.N.T.S. 171; the Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, 1465 U.N.T.S. 113; the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, 2171 U.N.T.S. 227. *Ratification Status for United Kingdom of Great Britain and Northern Ireland*, U.N. Treaty Body Database (2022), [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=185](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=185).

<sup>9</sup> Convention Concerning Forced or Compulsory Labour, June 28, 1930, ILO No. 29, 60 U.N.T.S. 264; the Convention on the Abolition of Forced Labour, June 5, 1957, ILO No. 105, 320 U.N.T.S. 4648; the Worst Forms of Child Labour Convention, June 17, 1999, ILO No. 182, 2133 U.N.T.S. 161; and the Protocol of 2014 to the Forced Labour Convention, 1930, Nov. 9, 2016, ILO P029. *Ratifications for United Kingdom of Great Britain and Northern Ireland*, ILO (2022), [https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102651](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102651).

above in paragraph 6. These human rights treaties contain specific rights guarantees that inform States' anti-trafficking responses. These include obligations of non-discrimination that provide a core guarantee in relation to protective measures for victims and all other aspects of States' anti-trafficking responses,<sup>10</sup> as well as the right to a fair trial.<sup>11</sup> International human rights law also contains special protections for child trafficking victims, including through emphasising the primacy of considering the best interests of the child.<sup>12</sup> In addition to specific anti-trafficking obligations in the U.N. Trafficking Protocol, under international human rights law, States also have due diligence obligations<sup>13</sup> to prevent trafficking; to investigate and prosecute perpetrators who are private actors; to identify, assist, and protect victims; and to provide remedies.<sup>14</sup>

---

<sup>10</sup> See, e.g., Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 6, art. 14(2) ("The measures set forth in this Protocol shall be interpreted and 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.").

<sup>11</sup> U.N. Doc. A/76/263, *supra* note 1, ¶ 54 (starting that the non-punishment principle should be implemented consistent with States' "positive obligations of protection, as well as with the peremptory norms prohibiting racial discrimination and protecting the right to a fair trial").

<sup>12</sup> See Convention on the Rights of the Child, *supra* note 8, art. 3(1) ("In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.").

<sup>13</sup> See Velásquez-Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (July 29, 1988) ("An illegal act which violates human rights and which is initially not directly imputable to a State . . . can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation . . ."). For international human rights jurisprudence, see, e.g., Hum. Rts. Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004); Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 19 (Violence against Women)*, ¶ 9, U.N. Doc. A/47/38 (1993); Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, ¶ 13, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010); Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations*, ¶ 15, U.N. Doc. CEDAW/C/GC/30 (Nov. 1, 2013); Comm. on Econ., Soc. and Cultural Rts., *General Comment No. 12: The Right to Adequate Food*, ¶ 15, U.N. Doc. E/C.12/1999/5 (May 12, 1999); Comm. on the Rts. of the Child, *General Comment No. 13: The Right of the Child to Freedom from All Forms of Violence*, ¶ 5, U.N. Doc. CRC/C/GC/13 (Apr. 18, 2011); Comm. Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, ¶ 18, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008); Comm. Against Torture, *General Comment No. 3: Implementation of Article 14 by States Parties*, ¶ 7, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012); Comm. on the Rts. of Persons with Disabilities, *General Comment No. 3 on Women and Girls with Disabilities*, ¶ 26, U.N. Doc. CRPD/C/GC/3 (Nov. 25, 2016).

<sup>14</sup> See generally Maria Grazia Giammarinaro (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report on Trafficking in Persons, Especially Women and Children*, U.N. Doc A/70/260 (Aug. 3, 2015). See also OFF. OF THE HIGH COMM'R FOR HUM. RTS., RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING: COMMENTARY (2010) 75 (Principle 2) ("States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons."); *id.* at 117 (Principle 6) ("States shall exercise due diligence in identifying and eradicating public-sector involvement or complicity in trafficking. All public officials suspected of being implicated in trafficking shall be investigated, tried and, if convicted, appropriately punished.") [hereinafter RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING].

9. In brief summary, States that have ratified the U.N. Trafficking Protocol and relevant human rights treaties are required to take the following steps on anti-trafficking:

- a. *Prevent human trafficking.* States have a responsibility to undertake prevention measures<sup>15</sup> that center the “human rights of trafficked persons” in such prevention efforts.<sup>16</sup> This includes measures designed to ensure that persons are not trafficked away from the State’s territory.<sup>17</sup> Governments must “act with due diligence to prevent trafficking and the human rights violations with which it is associated.”<sup>18</sup> This includes ensuring that its authorities including law enforcement have the skills and capacities to “intervene appropriately to prevent trafficking in persons rather than dealing with the aftermath.”<sup>19</sup>
- b. *Identify trafficking victims, including through applying the internationally-accepted definition of trafficking in persons that distinguishes between child and adult trafficking victims.* States have a “positive obligation to take protective operational measures of identification, protection and effective investigation.”<sup>20</sup> Identification is critical as if an individual is not identified as a trafficked person, they will then not be guaranteed the rights to which they are subsequently entitled as a victim of trafficking.<sup>21</sup> The U.N. Trafficking Protocol contains the internationally-accepted definition of trafficking in persons that should be applied to identify trafficked persons. For adult trafficking victims, this definition requires States to assess three elements—whether a person has been subject to an act (such as recruitment, transportation, or transfer) by certain “means” for the “purpose of exploitation.”

---

<sup>15</sup> Protocol to Prevent, Suppress, and Punish Trafficking in Persons, in Persons, *supra* note 6, arts. 9(1)(a), 11(1).

<sup>16</sup> RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 14, at 51 (Principle 1).

<sup>17</sup> *See, e.g.*, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, in Persons, *supra* note 6, arts. 9(1)(a), 11(1).

<sup>18</sup> Joy Ngozi Ezeilo (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, U.N. Doc. A/HRC/26/37, ¶ 55 (Apr. 1, 2014).

<sup>19</sup> Joy Ngozi Ezeilo (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, U.N. Doc. A/65/288, ¶ 69 (Aug. 9, 2010).

<sup>20</sup> Siobhán Mullally (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report on Implementation of the Non-punishment Principle*, ¶ 49, U.N. Doc. A/HRC/47/34 (May 17, 2021).

<sup>21</sup> *See* RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 14, at 246 (Guideline 2) (with Guideline 2 being “[i]dentification of trafficked persons and traffickers”); Joy Ngozi Ezeilo (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report on Trafficking in Persons, Especially Women and Children*, Annex ¶ 7(b), U.N. Doc. A/69/269 (Aug. 6, 2014) (explaining States must ensure trafficking victims “[a]re promptly and accurately identified”); Joy Ngozi Ezeilo (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report on Trafficking in Persons, Especially Women and Children*, ¶ 34, U.N. Doc. A/64/290 (Aug. 12, 2009) (“The proper identification of victims of trafficking is vital in providing the assistance necessary to guarantee full, or at least substantial, recovery from harm suffered and to rehabilitate and reintegrate the victim socially and economically.”).

The definition provides in the full that:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>22</sup>

Under the U.N. Trafficking Protocol “consent” is “irrelevant” for adult trafficking victims where any of the specified means have been deployed.<sup>23</sup> For child victims only an act and exploitative purpose are required, not the “means;”<sup>24</sup> this is because a child cannot legally consent to their own exploitation. A child victim of trafficking is “any person trafficked under 18 years of age,” thus making the age at the time of the alleged trafficking and not the age at which the trafficking was identified the relevant inquiry.<sup>25</sup>

- c. *Protect and assist trafficking victims, including through application of the non-punishment principle.* Under international law, such protection and assistance should be tailored, including on the basis of gender and the particular needs of children.<sup>26</sup> Ensuring guarantees of protection and assistance also means that governments are responsible for applying the non-punishment principle when victims of trafficking commit offences as a consequence of having been trafficked.<sup>27</sup> Such proper application of the non-punishment principle “is critical to the recognition of trafficking in persons as a serious human rights violation”<sup>28</sup> and to ensuring that States’ obligations of assistance and protection toward those trafficked for forced criminality are fully realized.<sup>29</sup> The range of penalties that

---

<sup>22</sup> Protocol to Prevent, Suppress, and Punish Trafficking in Persons, in Persons, *supra* note 6, art. 3(a).

<sup>23</sup> *Id.* art. 3(b) (“The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used”).

<sup>24</sup> For child trafficking victims (i.e., those under eighteen years of age), the “means” element is not required. *See id.* art. 3(c) (“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.”); *id.* art. 3(d) (defining “child” as “any person under eighteen years of age”).

<sup>25</sup> *Id.* art. 3(d).

<sup>26</sup> *Id.* art. 6(4). *See also* U.N. Doc. A/76/263, *supra* note 1, ¶¶ 27–35 (addressing children as victims of trafficking by proscribed groups).

<sup>27</sup> UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 28.

<sup>28</sup> *Id.* ¶ 18.

<sup>29</sup> *Id.* ¶ 28.

States are prohibited from imposing against all trafficking victims is wide, including criminal as well as non-criminal (e.g., administrative or immigration) sanctions.<sup>30</sup>

- d. *Criminalize, investigate, and punish traffickers.* The United Kingdom and other governments have an obligation under the U.N. Trafficking Protocol and human rights law to criminalize trafficking in persons<sup>31</sup> and “effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.”<sup>32</sup>
- e. *Provide remedies to trafficking victims.* Additionally, international law obligations include providing an effective remedy to victims,<sup>33</sup> including for the failure to prevent, investigate, and punish trafficking by non-State actors.<sup>34</sup> The full guarantee of the right to remedy—including rehabilitation and reintegration of victims<sup>35</sup>—is contingent on other State obligations, including to identify trafficking victims.<sup>36</sup>

---

<sup>30</sup> *Id.* ¶ 41 (“The range of forms of punishment covered by the non-punishment principle include the following: exclusion from refugee status or denial of other immigration relief; arbitrary deprivation of nationality; termination of social welfare benefits or denial of social security payments; restrictions on movement, detention or other undue restrictions on liberty, including non-repatriation; and administrative measures, including travel bans, confiscation of travel documents and refusal of entry into, or transit through, countries.” (citations omitted)).

<sup>31</sup> Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 6, art. 5; RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 14, at 185 (Principle 12), 247–48 (Guideline 4).

<sup>32</sup> RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 14, at 193 (Principle 13).

<sup>33</sup> For example, the ICCPR states that States Parties undertake “[t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” International Covenant on Civil and Political Rights, *supra* note 8, art. 2(3). Similarly, CAT contains a provision on redress and “an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.” Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 8, art. 14. Additionally, ICERD stipulates: “States Parties shall assure to everyone within their jurisdiction effective protection and remedies” and also specifically mentions reparation and satisfaction as forms of remedy. International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 8, art. 6.

<sup>34</sup> See RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 14, at 223 (Principle 17) (“States shall ensure that trafficked persons are given access to effective and appropriate legal remedies.”); *id.* at 252–53 (Guideline 9) (ensuring access to remedies); U.N. Doc. A/69/269, *supra* note 21, Annex ¶ 1 (“Victims of trafficking, as victims of human rights violations, have the right to an effective remedy for any harm committed against them.”).

<sup>35</sup> U.N. Doc. A/64/290, *supra* note 21, ¶ 34.

<sup>36</sup> U.N. Doc. A/69/269, *supra* note 21, ¶ 34; *id.* Annex ¶ 7(b).



- f. *Apply special protections with regard to child trafficking victims.* A key obligation is to fully apply the definition of child trafficking under international law.<sup>37</sup> The “identification procedures” applying that definition should take into account the individual circumstances of children, including their “age, gender, cultural background and maturity . . . as well as the circumstances of [their] journey.”<sup>38</sup> In addition to distinguishing definitionally between child and adult trafficking under the U.N. Trafficking Protocol, States are required to ensure tailored protection and assistance approaches for child victims of trafficking.<sup>39</sup> For child trafficking victims who engage in forced criminality, a human rights-based approach requires that their involvement in “criminal activities shall not undermine their status as both a child and a victim, or their related rights to special protection.”<sup>40</sup> Failing to acknowledge the special vulnerability of minors and identify children as trafficked also means that they, rather than their traffickers, can be wrongly prosecuted in violation of the non-punishment principle.<sup>41</sup>

*International anti-trafficking obligations: trafficking by terrorist groups*

10. In this section, I provide some context on how terrorists use human trafficking and identify how the general obligations articulated in paragraph 9 are to be implemented with regard to trafficking by terrorist groups.

---

<sup>37</sup> See Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 6, art. 3(c) (“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.”); *id.* art. 3(d) (defining “child” as “any person under eighteen years of age”).

<sup>38</sup> Special Rapporteur on the Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography, and Other Child Sexual Abuse Material & Special Rapporteur on Trafficking in Persons, Especially Women and Children, *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 the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, U.N. Doc. A/72/164 ¶ 80(b) (July 18, 2017).

<sup>39</sup> See RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 14, at 161 (Principle 10) (specifying protections for child victims of trafficking); U.N. Doc. A/69/269, *supra* note 21, Annex ¶ 18(a) (“The best interests of the child are a primary consideration, taking into account the individual circumstances of the child, including age, gender, degree of maturity, ethnic, cultural and linguistic background, and protection needs.”).

<sup>40</sup> UNICEF, GUIDELINES ON THE PROTECTION OF CHILD VICTIMS OF TRAFFICKING § 2.1 (Sept. 2006), <https://gdc.unicef.org/media/4531/download>.

<sup>41</sup> See, e.g., V.C.L. and A.N. v. the United Kingdom, App. Nos. 77587/12, 74603/12, ¶¶ 219 (Feb. 16 2021), <http://hudoc.echr.coe.int/eng?i=001-207927> (finding that the U.K. government violated its article 4 obligations by failing “to fulfil its positive obligations . . . to take operational measures to protect the victims of trafficking”). This analysis includes the case of the first applicant who was a minor and for whom “the police and subsequently the [Crown Prosecution Service] should have been aware of the existence of circumstances giving rise to a credible suspicion that he had been trafficked.” *Id.* ¶ 118. Similarly, in the case of the second applicant, the Court states that “his account should have raised concerns that he might have been a victim of trafficking” and “[t]hese concerns should only have intensified when it became apparent that he was a minor” such that “the State had a positive obligation to take operational measures to protect him” rather than allowing “the criminal proceedings . . . to proceed.” *Id.* ¶ 181.

11. Globally, human trafficking has been used by a range of terrorist groups, including Boko Haram, al-Shabaab, and ISIS.<sup>42</sup> Trafficking is used by these groups for a number of purposes, including to target and de-stabilize communities, attract fighters, and fundraise.<sup>43</sup> It is also a tool for involuntary recruitment, with groups using trafficking tactics to lure adults and minors for the purpose of exploitation, as well as to keep them in exploitative situations.<sup>44</sup> The U.N. Security Council has recognized these different connections between trafficking and terrorism in a number of ways including through articulating the relationship between trafficking and transnational organized crime generally;<sup>45</sup> mapping the trafficking-terrorism nexus specifically;<sup>46</sup> condemning the use of sexual violence as a tactic of terrorism<sup>47</sup> and including trafficking in persons as a form of sexual violence;<sup>48</sup> and addressing trafficking by proscribed groups in the context of children and armed conflict.<sup>49</sup> The U.N. Security Council has also emphasized the need to identify victims of trafficking by terrorism groups—including child recruits—and to treat such persons as victims rather than to stigmatize or punish them.<sup>50</sup>

---

<sup>42</sup> See, e.g., U.N. Doc. A/76/263, *supra* note 1, ¶ 19; ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1.

<sup>43</sup> See, e.g., S.C. Res. 2331, U.N. Doc. S/RES/2331 ¶ 8 (Dec. 20, 2016), [http://undocs.org/S/RES/2331\(2016\)](http://undocs.org/S/RES/2331(2016)) (“ . . . acts of trafficking in persons in armed conflict and sexual and gender- based violence in conflict, including when it is associated to trafficking in persons in armed conflict, can be part of the strategic objectives and ideology of, and used as a tactic by certain terrorist groups, by, inter alia, incentivising recruitment; supporting financing through the sale, trade and trafficking of women, girls and boys; destroying, punishing, subjugating, or controlling communities; displacing populations from strategically important zones; extracting information for intelligence purposes from male and female detainees; advancing ideology which includes the suppression of women’s rights and the use of religious justification to codify and institutionalise sexual slavery and exert control over women’s reproduction . . . .”); U.N. Doc. A/76/263, *supra* note 1, ¶¶ 19–20; ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1, at 33–51; COUNTER-TERRORISM EXECUTIVE DIRECTORATE (CTED), IDENTIFYING AND EXPLORING THE NEXUS BETWEEN HUMAN TRAFFICKING, TERRORISM, AND TERRORISM FINANCING (2019); Jayne Huckerby, *When Terrorists Traffic Their Recruits*, JUST SECURITY (Mar. 15, 2021), <https://www.justsecurity.org/75343/when-terrorists-traffic-their-recruits/>; Jayne Huckerby, *When Human Trafficking and Terrorism Connect: Dangers and Dilemmas*, JUST SECURITY (Feb. 22, 2019), <https://www.justsecurity.org/62658/humantrafficking-terrorism-connect-dangers-dilemmas/>; FIN. ACTION TASK FORCE, FINANCIAL FLOWS FROM HUMAN TRAFFICKING ¶ 41 (2018).

<sup>44</sup> See U.N. Doc. A/76/263, *supra* note 1, ¶¶ 18–19; ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1, at 33–36, 40, 47, 49–51, 53; CTED, IDENTIFYING AND EXPLORING THE NEXUS BETWEEN HUMAN TRAFFICKING, TERRORISM, AND TERRORISM FINANCING, *supra* note 43, at 28–29, 33, 44–45; Huckerby, *When Human Trafficking and Terrorism Connect*, *supra* note 43; Huckerby, *When Terrorists Traffic Their Recruits*, *supra* note 43.

<sup>45</sup> See, e.g., S.C. Res. 2482, U.N. Doc. S/RES/2482 (July 19, 2019), [https://undocs.org/S/RES/2482\(2019\)](https://undocs.org/S/RES/2482(2019)).

<sup>46</sup> See, e.g., S.C. Res. 2388, U.N. Doc. S/RES/2388 (Nov. 21, 2017), [https://un.docs.org/S/RES/2388\(2017\)](https://un.docs.org/S/RES/2388(2017)); S.C. Res. 2331, U.N. Doc. S/RES/2331, *supra* note 43.

<sup>47</sup> See, e.g., S.C. Res. 2331, U.N. Doc. S/RES/2331, *supra* note 43.

<sup>48</sup> See, e.g., U.N. Secretary-General, *Conflict-Related Sexual Violence*, U.N. Doc. S/2021/312 ¶ 5 (Mar. 30, 2021), <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2021/04/report/2020-report-of-the-secretary-general-on-crsv-english/2103724Engilsh.pdf>.

<sup>49</sup> S.C. Res. 2427, U.N. Doc. S/RES/2427, ¶ 39 (July 9, 2018), [https://undocs.org/en/S/RES/2427\(2018\)](https://undocs.org/en/S/RES/2427(2018)).

<sup>50</sup> S.C. Res. 2331, U.N. Doc. S/RES/2331, *supra* note 43, ¶¶ 2(d), 10; S.C. Res. 2388, U.N. Doc. S/RES/2388, *supra* note 46, ¶ 17.

12. Much of the recent focus on the trafficking-terrorism nexus at the international and regional level has documented the ways in which ISIS in particular uses human trafficking to further its aims—including for forced recruitment. The latter includes, for example, relying on family members to recruit children,<sup>51</sup> luring recruits with promises of business opportunities,<sup>52</sup> manipulation of social media in order to “groom” potential recruits,<sup>53</sup> deceptive recruitment for sexual exploitation, including in forced marriage;<sup>54</sup> and kidnapping for the purpose of training children “in terror tactics, including beheadings and suicide missions.”<sup>55</sup> Consistent with these global trends in the use of trafficking tactics to recruit to terrorist groups, reports have identified cases of women and girls who were trafficked as recruits from the United Kingdom to ISIS.<sup>56</sup>
13. In general terms, under international law, States are required to apply the international legal definition of trafficking in persons<sup>57</sup> and its anti-trafficking frameworks to encompass trafficking by terrorist groups.<sup>58</sup> All of a State’s due diligence obligations with respect to trafficking in persons generally also continue to apply to trafficking by proscribed groups such as terrorist actors.<sup>59</sup> As with all trafficking cases, the definition of trafficking in persons must be applied consistently with other human rights obligations—including non-discrimination and the rights of the child—when the victim in question is linked to proscribed groups.<sup>60</sup> Indeed, obligations of non-discrimination<sup>61</sup> “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.”<sup>62</sup> Violations of non-

---

<sup>51</sup> ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1, at 35.

<sup>52</sup> *Id.* at 39.

<sup>53</sup> *Id.* at 36.

<sup>54</sup> *Id.* at 47–50.

<sup>55</sup> CTED, IDENTIFYING AND EXPLORING THE NEXUS BETWEEN HUMAN TRAFFICKING, TERRORISM, AND TERRORISM FINANCING, *supra* note 43, at 28.

<sup>56</sup> *See, e.g.*, REPRIEVE, TRAFFICKED TO ISIS: BRITISH FAMILIES DETAINED IN SYRIA AFTER BEING TRAFFICKED TO ISLAMIC STATE (2021), [https://reprieve.org/wp-content/uploads/sites/2/2021/04/2021\\_04\\_30\\_PUB-Reprieve-Report-Trafficked-to-Syria-British-families-detained-in-Syria-after-being-trafficked-to-Islamic-State-1.pdf](https://reprieve.org/wp-content/uploads/sites/2/2021/04/2021_04_30_PUB-Reprieve-Report-Trafficked-to-Syria-British-families-detained-in-Syria-after-being-trafficked-to-Islamic-State-1.pdf); ALL-PARTY PARLIAMENTARY GROUP ON TRAFFICKED BRITONS IN SYRIA, REPORT OF THE INQUIRY BY THE ALL-PARTY PARLIAMENTARY GROUP ON TRAFFICKED BRITONS IN SYRIA (2022), <https://appgtraffickedbritons.org/inquiry-into-trafficked-people-to-isis/>.

<sup>57</sup> Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 6, art. 3.

<sup>58</sup> *See, e.g.*, U.N. Doc. A/76/263, *supra* note 1, ¶¶ 17–20, 36–39; ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1, at 32–51, 53.

<sup>59</sup> U.N. Doc. A/76/263, *supra* note 1, ¶¶ 40–43.

<sup>60</sup> *Id.* ¶ 43.

<sup>61</sup> *See, e.g.*, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 6, art. 14(2).

<sup>62</sup> U.N. Doc. A/76/263, *supra* note 1, ¶ 43.

discrimination guarantees can wrongly lead to those trafficked by terrorist groups not being recognized as victims.<sup>63</sup>

14. The international anti-trafficking obligations identified above in paragraph 9 have been elaborated with regard to trafficking by proscribed groups, including trafficking of child recruits to require that States:

- a. *Prevent trafficking by proscribed groups.* States' obligations to prevent trafficking in persons include to prevent trafficking to proscribed groups.<sup>64</sup> This specifically includes preventing (and investigating)<sup>65</sup> the recruitment component of trafficking in the country of origin in instances of transnational trafficking.<sup>66</sup> It also includes "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)."<sup>67</sup> One of the reasons that prevention is so important in the context of trafficking by terrorist groups is that "[o]nce recruited, victims may themselves contribute to the recruitment of others through posting videos (or having videos of themselves posted) on global video platforms, chatrooms and other widely accessible platforms."<sup>68</sup>
- b. *Identify trafficking victims of proscribed groups, including through applying the internationally-accepted definition of trafficking in persons that distinguishes between child and adult trafficking victims.* States have an obligation to identify trafficking victims of terrorism, including as part of the State's obligations of due diligence to prevent, investigate, and punish trafficking by proscribed groups.<sup>69</sup> The obligation to identify trafficked persons is a positive one and belongs to the State,<sup>70</sup> meaning that it does not rely on victims, particularly minors, to self-identify.<sup>71</sup> Early and timely identification of presumed or identified victims of

---

<sup>63</sup> *See id.* ¶ 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.").

<sup>64</sup> *Id.* ¶ 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."). *See also id.* ¶¶ 40–43.

<sup>65</sup> *Id.* ¶ 11 (citing *Rantsev v. Cyprus*, App. No. 25965/04, ¶ 307 (Jan. 7, 2010), <http://hudoc.echr.coe.int/eng?i=001-96549> (noting this is part of the State's due diligence obligations)).

<sup>66</sup> *Id.* ¶ 42.

<sup>67</sup> *Id.*

<sup>68</sup> ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM*, *supra* note 1, at 36.

<sup>69</sup> U.N. Doc. A/76/263, *supra* note 1, ¶¶ 40–43.

<sup>70</sup> UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 49.

<sup>71</sup> U.N. Doc. A/76/263, *supra* note 1, ¶ 28. *See also* V.C.L. and A.N. v. the United Kingdom, *supra* note 41, ¶ 199 ("[I]t is the State which is under a positive obligation both to protect victims of trafficking and to investigate situations of potential trafficking and that positive obligation is triggered by the existence of circumstances

trafficking by terrorist groups<sup>72</sup> is particularly key for applying the non-punishment principle.<sup>73</sup>

In the context of trafficking by proscribed groups, there are gender and age-specific pathways into proscribed groups<sup>74</sup> that are key to understand to ensure early and accurate identification, and that subsequent treatment of trafficking victims—if a person is identified as such—complies with international law. The importance of integrating a gender and human rights analysis into addressing terrorism and ensuring that counter-terrorism responses do not create further human rights violations has been increasingly recognized at the international level.<sup>75</sup> Against the backdrop of understanding these general gender- and age-specific risk factors for trafficking in persons, case-by-case assessments are still nonetheless necessary because each individual’s recruitment, motivations, and/or experiences with a proscribed group differ.<sup>76</sup> The U.N. Security Council has emphasized the need for “robust” and “individual” identification of victims of terrorist groups.<sup>77</sup>

---

giving rise to a credible suspicion that an individual has been trafficked and not by a complaint made by or on behalf of the potential victim . . . . The State cannot . . . rely on any failings by a legal representative or indeed by the failure of a defendant – especially a minor defendant – to tell the police or his legal representative that he was a victim of trafficking . . . they [child victims of trafficking] cannot be required to self-identify or be penalised for failing to do so.”).

<sup>72</sup> See UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 44 (“It is important to note that the obligation of non-punishment applies extraterritorially to identified or presumed victims of trafficking.”).

<sup>73</sup> See ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM*, *supra* note 1, at 24 (“The starting point for applying this principle is early identification of a situation of human trafficking.”); UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 25 (“Early identification and prompt assessment by trained and qualified individuals is essential to ensuring the effective implementation of States’ obligations of non-punishment.”).

<sup>74</sup> See, e.g., ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM*, *supra* note 1, at 49 (“Terrorism is gendered in its dimensions and effect, since not only do women and men experience distinct pathways when joining terrorist groups, but the purposes of their recruitment also vary according to gender perceptions. Terrorist groups exploit social constructions of masculinity and femininity and take advantage of existing gender stereotypes. To attract, recruit and maintain adherents, terrorist groups tap the diverse vulnerabilities of men and women in different local contexts.”).

<sup>75</sup> See, e.g., Fionnuala Ní Aoláin (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism), *Report on Human Rights Impact of Counter-terrorism and Countering (Violent) Extremism Policies and Practices on the Rights of Women, Girls and the Family*, U.N. Doc. A/HRC/46/36 (Jan. 22, 2021).

<sup>76</sup> CTED, *GENDER DIMENSIONS OF THE RESPONSE TO RETURNING FOREIGN TERRORIST FIGHTERS: RESEARCH PERSPECTIVES* 16 (2019), [https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/files/documents/2021/Jan/feb\\_2019\\_cted\\_trends\\_report.pdf](https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/files/documents/2021/Jan/feb_2019_cted_trends_report.pdf) (“It is therefore clear that female returnees, like their male counterparts, represent a range of roles and experiences. Case-by-case assessments of returnees must therefore take into account both the risks and needs of individuals, depending on their specific experiences and circumstances.”).

<sup>77</sup> S.C. Res. 2331, U.N. Doc. S/RES/2331, *supra* note 43, ¶2(d) (“. . . robust victim, and possible victim, identification mechanisms and provide access to protection and assistance for identified victims without delay, also in relation to trafficking in persons in armed conflict, including where such victims are refugees and internally displaced persons (IDPs), and to address comprehensively victims’ needs, including the provision of or access to medical, psychosocial assistance and legal aid, as well as ensure that victims are treated as victims of crime and in line with domestic legislation not penalized or stigmatized for their involvement in any unlawful activities in which they have been compelled to engage”); *id.* ¶10 (“. . . assess the individual situation of persons

Conversely, identification of trafficking victims is frustrated by measures such as deprivation of nationality.<sup>78</sup>

I offer here some observations on the elements required to identify trafficking in persons by terrorist groups under the U.N. Trafficking Protocol, specifically the “act,” “means,” and purpose of exploitation in the case of adult trafficking, and the “act” and purpose of exploitation in the case of child trafficking:

- i. *Act*: In the context of trafficking by terrorist groups, the “act” can be “committed by any of a broad range of actors”<sup>79</sup> including “not just recruiters, brokers, and transporters, but also owners and managers, supervisors, and controllers of any place of exploitation.”<sup>80</sup> The “act” element of the definition of trafficking in persons requires States to examine not just the process by which terrorist groups target persons but also their subsequent treatment; this is because the “act” “can be part of the initial trafficking process, the end point, or the maintenance of exploitation.”<sup>81</sup> Terrorist “acts” related to trafficking in persons take place in “various environments or venues” including “the internet, including social media and chat rooms, family and local community centres and places of worship, (deceptive) friendships or romance.”<sup>82</sup> In addition to the wide range of actors and sites that may be involved in trafficking for terrorism, the scope of “acts” can be broad, because the list of “acts” of trafficking is neither exhaustive or defined in the U.N. Trafficking Protocol. For example, recruitment “is to be understood in a broad sense, meaning *any activity* leading from the commitment or engagement of another individual to his or her exploitation.”<sup>83</sup>

---

released from the captivity of armed and terrorist groups so as to enable prompt identification of victims of trafficking, their treatment as victims of crime and to consider, in line with domestic legislation, not prosecuting or punishing victims of trafficking for unlawful activities they committed as a direct result of having being subjected to trafficking”); S.C. Res. 2388, U.N. Doc. S/RES/2388, *supra* note 46, ¶ 17 (“*Urges* Member States thoroughly to assess the individual situation of persons released from the captivity of armed and terrorist groups so as to enable prompt identification of victims of trafficking, their treatment as victims of crime and to consider, in line with domestic legislation, not prosecuting or punishing victims of trafficking for unlawful activities they committed as a direct result of having being subjected to trafficking”) (emphasis in original).

<sup>78</sup> UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 41.

<sup>79</sup> ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1, at 33.

<sup>80</sup> ANNE T. GALLAGHER, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 30 (2010).

<sup>81</sup> U.N. Doc. A/76/263, *supra* note 1, ¶ 36. *See also* ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1, at 33.

<sup>82</sup> ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1, at 33.

<sup>83</sup> COUNCIL OF EUROPE & UNITED NATIONS, TRAFFICKING IN ORGANS, TISSUES AND CELLS AND TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF THE REMOVAL OF ORGANS 78 (2009), <https://rm.coe.int/16805ad1bb> (emphasis added).

- ii. *Means*: Under the U.N. Trafficking Protocol, the “means” element of the definition of trafficking is only required for adult trafficking and it covers both those actions that are overtly coercive (e.g., kidnapping) as well as those that are not explicitly coercive.<sup>84</sup> As such, a person can still be an adult trafficking victim if proscribed actors use subtle means such as deception<sup>85</sup> or abuse of vulnerability<sup>86</sup> to recruit, transfer, harbor or commit any other “act” against them with the intent to exploit. This includes the kinds of deception and abuse of vulnerability that can be involved in recruitment for forced marriages.<sup>87</sup> Indeed, as the Organisation for Security and Co-operation in Europe (OSCE) has recognized, “[d]eceptive recruitment by terrorist groups has long been part of the *modus operandi* of human traffickers to lure young girls and women with promises of gainful employment or romance . . .”<sup>88</sup> Reports indicate too that ISIS “has dedicated operations to entrap and recruit” women and girls “as brides or suicide bombers,”<sup>89</sup> including when “recruiters lure girls by painting a ‘distorted view’ of life inside the Islamic State.”<sup>90</sup> These girls and women themselves as well as other trafficked persons can then be “recruiting tools” as “[t]he trafficking of women has been used to reward fighters . . .”<sup>91</sup>
- iii. *Exploitation*: There are a number of ways in which the “exploitation” requirement in the U.N. Trafficking Protocol definition “can capture situations in which people are trafficked for the purpose of being exploited to carry out terrorist activities.”<sup>92</sup> This includes exploitation for forced

---

<sup>84</sup> U.N. Doc. A/76/263, *supra* note 1, ¶¶ 38–39.

<sup>85</sup> António Guterres (U.N. Secretary-General), *Report on Conflict-Related Sexual Violence*, ¶ 18, U.N. Doc. S/2018/250 (Mar. 23, 2018) (“Armed, terrorist and transnational criminal groups directly profit from trafficking, with victims being either abducted or deceived by false promises of lucrative job offers, their dreams of finding safety and opportunity becoming nightmares of sexual slavery and forced prostitution.”).

<sup>86</sup> See Anne Speckhard & Molly D. Ellenberg, *ISIS in Their Own Words: Recruitment History, Motivations for Joining, Travel, Experiences in ISIS, and Disillusionment over Time*, 13 J. STRATEGIC SEC. 82, 97 (2020) (noting that in some cases, women followed their male partners because they believed “they would be divorced or abandoned if they didn’t agree to travel”). See also REPRIEVE, *TRAFFICKED TO ISIS*, *supra* note 56, at 24.

<sup>87</sup> U.N. Doc. A/76/263, *supra* note 1, ¶ 38 (“Beyond instances of overt coercion or force (such as kidnapping) . . . 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.”).

<sup>88</sup> See also ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM*, *supra* note 1, at 34.

<sup>89</sup> *Id.* at 37.

<sup>90</sup> *Id.* at 45 (citing Katarina Montgomery, *ISIS Recruits Brides to Solve Middle East ‘Marriage Crisis’*, THE NEW HUMANITARIAN (May 8, 2015), <https://deeply.thenewhumanitarian.org/syria/articles/2015/05/08/isis-recruits-brides-to-solve-middle-east-marriage-crisis>). See further ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM*, *supra* note 1, at 34.

<sup>91</sup> *The Islamic State is Forcing Women to Be Sex Slaves*, N.Y. TIMES (Aug. 20, 2015), <https://www.nytimes.com/2015/08/21/world/middleeast/the-islamic-state-is-forcing-women-to-be-sex-slaves.html>.

<sup>92</sup> See U.N. OFF. ON DRUGS AND CRIME, *COUNTERING TRAFFICKING IN PERSONS IN CONFLICT SITUATIONS* xi (2018), [https://www.unodc.org/documents/human-trafficking/2018/17-08776\\_ebook-](https://www.unodc.org/documents/human-trafficking/2018/17-08776_ebook-)

labour,<sup>93</sup> sexual exploitation,<sup>94</sup> criminal activities,<sup>95</sup> “terrorist or other purposes,”<sup>96</sup> as combatants,<sup>97</sup> and/or forced marriage<sup>98</sup> including “to exploit women for multiple purposes, including sexual exploitation, domestic work and forced impregnation.”<sup>99</sup> Under international law, a child marriage—meaning one where at least one of the parties is under 18 years—is considered as a forced marriage.<sup>100</sup> Relevantly, ISIS recruitment of women and girls emphasized marriage and the importance of domestic duties and

---

Countering\_Trafficking\_in\_Persons\_in\_Conflict\_Situations.pdf (“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.”). *See also* U.N. Doc. A/76/263, *supra* note 1, ¶¶ 18–20.

<sup>93</sup> U.N. OFF. ON DRUGS AND CRIME, HANDBOOK ON CHILDREN RECRUITED AND EXPLOITED BY TERRORIST AND VIOLENT EXTREMIST GROUPS: THE ROLE OF THE JUSTICE SYSTEM 45 (2017), [https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook\\_on\\_Children\\_Recruited\\_and\\_Exploited\\_by\\_Terrorist\\_and\\_Violent\\_Extremist\\_Groups\\_the\\_Role\\_of\\_the\\_Justice\\_System.E.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf) (noting that 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 or in support roles”).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> U.N. OFF. ON DRUGS AND CRIME, COUNTERING TRAFFICKING IN PERSONS IN CONFLICT SITUATIONS, *supra* note 92, at x.

<sup>97</sup> *Id.* at 16 (“Although the use of children as combatants is not specifically listed as a form of exploitation in the definition of trafficking, it is clear that the recruitment of children (an act) into armed and/or terrorist groups (a purpose of exploitation) is a form of trafficking in persons.”).

<sup>98</sup> *Id.* at 12; U.N. Doc. A/76/263, *supra* note 1, ¶¶ 19, 37–38, 58(a).

<sup>99</sup> ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1, at 53 (“Numerous sources and consultations also indicate the use of forced marriage to exploit women for multiple purposes, including sexual exploitation, domestic work and forced impregnation.”).

<sup>100</sup> *See, e.g.*, U.N. OFF. ON DRUGS AND CRIME, TRAFFICKING IN PERSONS IN THE CONTEXT OF ARMED CONFLICT 2018 10 (2018), [https://www.unodc.org/documents/data-and-analysis/glotip/2018/GloTIP2018\\_BOOKLET\\_2\\_Conflict.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GloTIP2018_BOOKLET_2_Conflict.pdf) (noting that a “forced marriage is “understood as a union of two persons in which at least one has not given his or her full and free consent.”). *See, e.g.*, Committee on the Elimination of Discrimination against Women & Committee on the Rights of the Child, *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices*, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18, ¶ 20 (Nov. 14, 2014) (“Child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age. The overwhelming majority of child marriages, both formal and informal, involve girls, although at times their spouses are also under 18 years of age. *A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent.* As a matter of respecting the child’s evolving capacities and autonomy in making decisions that affect her or his life, a marriage of a mature, capable child below 18 years of age may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition.”) (emphasis added).



child-bearing and raising of children as part of its state-building project.<sup>101</sup> As noted above, women and girls who were trafficked into forced marriages and sexual exploitation under ISIS were also used as a “recruiting tool” for attracting fighters.<sup>102</sup>

- c. *Obligations to protect and assist trafficking victims of proscribed groups, including through the non-punishment principle.* The United Kingdom has an obligation to protect and assist victims of terrorist groups and to investigate potential trafficking by such actors.<sup>103</sup> Obligations to repatriate trafficking victims<sup>104</sup> also continue to apply to those linked to proscribed groups.<sup>105</sup> This has been characterized as “a strict obligation” which should not be evaded through “fail[ing] to meet [State] obligations of identification, assistance and protection of victims.<sup>106</sup> The obligation to protect and assist those trafficked in connection with terrorism

---

<sup>101</sup> See, e.g., JOANA COOK & GINA VALE, FROM DAESH TO “DIASPORA:” TRACING THE WOMEN AND MINORS OF ISLAMIC STATE 26, 32–33 (2018) (noting that “[p]ull factors ranged from ideological motivations, efforts by IS to portray women’s empowerment in IS, fulfilment of a perceived ‘obligation’ to make hijra and live under strict Islamic jurisprudence and governance, supporting IS’ state-building project, seeking adventure, seeking a husband or travelling to join one already in theatre, travelling with family (whether willingly or not), and even seeking free healthcare or education . . . The question of agency also becomes important – while thousands of women appeared willing and eager to travel to Syria and Iraq, it also appears that some were more likely coerced and in some cases forced to travel.” (*id.* at 26); “IS propaganda has championed minors as the future ‘guardians’ of the group’s ideology and state-building project. Supposedly ‘uncorrupted’ by infidel societies and practices, young children are viewed as the most pure, impressionable, and ideologically committed IS subjects. Consequently, through intense psychosocial indoctrination and physical conditioning, IS has dedicated considerable attention to the ideological education and military training of their ‘cubs’ (boys) and ‘pearls’ (girls) . . . [D]elineation of roles for IS minors can be clearly seen according to gender. In line with their broader gendered policies on women’s appearance and participation in the state-building project, IS rarely includes images of ‘pearls’ in propaganda videos and publications. The expected age of marriage outlined by the media wing of IS’ all-female Al-Khansaa Brigade is particularly young for girls. It is ‘legitimate’ for girls to marry from the age of nine, with young men expected to be no more than 20 years old. However, even among minors brought to IS territory by their parents, marriages have been reported between young girls and far older adult men. Such cases include that of Zaynab Sharrouf, who migrated to Syria with her parents at the age of 13. Within just a year, Zaynab became the second wife (and, subsequently, widow) of 31-year-old fellow Australian migrant Mohamed Elomar. After the deaths of her parents and husband in Syria, Zaynab was left to raise her own new baby girl and her four younger siblings also stranded in Syria. Like many other foreign female children and teenagers, life in IS required her to adopt the roles of orphan, widow and mother.” (*id.* at 32–33)).

<sup>102</sup> *The Islamic State is Forcing Women to Be Sex Slaves*, *supra* note 91.

<sup>103</sup> See U.N. Doc. A/76/263, *supra* note 1, ¶ 28 (“[I]t is the State that is under a positive obligation both to protect victims of trafficking and to investigate situations of potential trafficking.”); *id.* ¶ 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.”). See also *id.* ¶¶ 40–43; UNITED NATIONS OFFICE OF COUNTER-TERRORISM, ET AL., MODEL LEGISLATIVE PROVISIONS TO SUPPORT THE NEEDS AND PROTECT THE RIGHTS OF VICTIMS OF TERRORISM 134 (2022).

<sup>104</sup> See Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 6, art. 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.”).

<sup>105</sup> U.N. Doc. A/76/263, *supra* note 1, ¶¶ 49–52.

<sup>106</sup> *Id.* ¶ 50.

includes keeping the victim status of trafficked persons intact in situations of forced criminality (the non-punishment principle discussed further below).<sup>107</sup> Victims of trafficking in persons by terrorist groups<sup>108</sup>—including those who are trafficked as recruits<sup>109</sup>—are also considered to be victims of terrorism. For example, the U.N. has developed model legislative provisions on the rights of victims of terrorism that *inter alia* “reaffirms the status of trafficked persons as victims of terrorism, and not as accomplices of terrorist organizations.”<sup>110</sup>

Under international law, the non-punishment principle continues to apply when victims of trafficking commit terrorist offences as a consequence of having been trafficked.<sup>111</sup> The non-punishment principle requires States to identify victims—including those linked to terrorism—“as early as possible.”<sup>112</sup> A decision on

---

<sup>107</sup> UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 49.

<sup>108</sup> In its resolution 2388, the U.N. Security Council urged States to promptly identify “victims of trafficking” “released from the captivity of armed and terrorist groups,” and to ensure “their treatment as victims of crime.” (S.C. Res. 2388, U.N. Doc. S/RES/2388, *supra* note 46, ¶ 17). The U.N. Security Council’s Counter-Terrorism Executive Directorate has recommended that States “[e]nsure 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” (CTED, IDENTIFYING AND EXPLORING THE NEXUS BETWEEN HUMAN TRAFFICKING, TERRORISM, AND TERRORISM FINANCING, *supra* note 43, at 52). The U.N. Special Rapporteur on trafficking in persons, especially women and children, has emphasized that in the context of terrorism, “it is important . . . to ensure that victims of all forms of trafficking are recognized as such.” (U.N. Doc. A/76/263, *supra* note 1, ¶ 7).

<sup>109</sup> MODEL LEGISLATIVE PROVISIONS TO SUPPORT THE NEEDS AND PROTECT THE RIGHTS OF VICTIMS OF TERRORISM, *supra* note 103, Chapter XIII. Victims of trafficking by terrorist groups.

<sup>110</sup> *Id.* at 135.

<sup>111</sup> ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1, at 30. *See also* Samantha Power (President of the Security Council), *Statement on behalf of Security Council*, U.N. Doc. S/PRST/2015/25 (Dec. 16, 2015) (calling upon States “to ensure that victims of trafficking in persons are treated as victims of crime and in line with domestic legislation not penalized or stigmatized for their involvement in any unlawful activities in which they have been compelled to engage”); U.N. OFF. ON DRUGS & CRIME, HANDBOOK ON CHILDREN RECRUITED AND EXPLOITED BY TERRORIST AND VIOLENT EXTREMIST GROUPS, *supra* note 93, at 81 (“Whenever the violence committed against a child by a terrorist or violent extremist group qualifies as trafficking in persons, the child . . . should not be prosecuted, deprived of liberty or otherwise sanctioned, whether criminally or administratively, for offences committed as a consequence of his or her situation as a trafficked person.”); UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 41 (describing the range of punishments proscribed by the non-punishment principle); U.N. Doc. A/76/263, *supra* note 1, ¶¶ 53–54 (noting “the central importance of the principle of non-punishment of victims of trafficking”); MODEL LEGISLATIVE PROVISIONS TO SUPPORT THE NEEDS AND PROTECT THE RIGHTS OF VICTIMS OF TERRORISM, *supra* note 103, at 134 (“A victim of trafficking in persons for reasons related to terrorism shall not be held detained, held legally liable or punished penalized for . . . [Offences or unlawful acts] committed by him or her, to the extent that such involvement is a direct consequence of their situation as a trafficked person”).

<sup>112</sup> Maria Grazia Giammarinaro (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *The Importance of Implementing the Non-punishment Provision: The Obligation to Protect Victims*, ¶ 39 (July 30, 2020) [hereinafter Special Rapporteur on Trafficking in Persons, Especially Women and Children, *The Importance of Implementing the Non-punishment Provision*]. *See also* ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 1, at 24 (“The starting point for applying this principle is early identification of a situation of human trafficking.”); UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 25 (“Early identification and prompt assessment by trained and qualified individuals is essential to ensuring the effective implementation of States’ obligations of non-punishment.”).

applying the non-punishment principle in any situation “should follow a full assessment of the individual situation of the victim of trafficking . . . Any decision should be taken only following a trafficking assessment by a trained and qualified person, and the assessment must be trauma-informed, given the important public interest in combatting trafficking and protecting its victims.”<sup>113</sup> Under international law, the guarantee of non-punishment covers a range of unlawful acts<sup>114</sup> and applies irrespective of the “gravity or seriousness of the offence committed,”<sup>115</sup> including terrorism.<sup>116</sup> Relevantly for the purposes of the trafficking-terrorism nexus, the principle of non-punishment proscribes those national security-related sanctions that punish trafficking victims by “denial of other immigration relief” and deprivation of nationality.<sup>117</sup> Additionally, the non-punishment principle is often “defeated through refusals to provide consular assistance to victims or potential victims, or to repatriate victims to their countries of origin from conflict-affected regions.”<sup>118</sup> Indeed, “rather than being recognized as victims, with corresponding rights, those who are linked to proscribed groups can be wrongly criminalized and stigmatized.”<sup>119</sup>

- d. *Obligations to criminalize, investigate, and punish terrorist-traffickers.* The obligation to criminalize and investigate trafficking in persons continues to apply to trafficking by terrorist groups.<sup>120</sup> Failure to identify and support victims, as well as the non-application of the non-punishment principle, necessarily frustrates the ability to punish traffickers.<sup>121</sup>

---

<sup>113</sup> UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 48.

<sup>114</sup> *Id.* ¶ 32 (“Ensuring a comprehensive response to human trafficking requires that the non-punishment principle is applied to unlawful acts, which are understood broadly to include criminal, immigration, administrative or civil offences, and not ‘status-related’ offences only.”).

<sup>115</sup> *Id.* ¶ 37. *See also* Special Rapporteur on Trafficking in Persons, Especially Women and Children, *The Importance of Implementing the Non-punishment Provision*, *supra* note 112, ¶ 41 (“Any trafficking-related unlawful activity carried out by a victim of trafficking must be covered by a guarantee of non-punishment, regardless of the gravity or seriousness of the offence committed.”).

<sup>116</sup> *See, e.g.*, U.N. Doc. A/76/263, *supra* note 1, ¶¶ 53–54; UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 41.

<sup>117</sup> UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 41.

<sup>118</sup> *Id.* ¶ 43. *See also* Huckerby, *When Terrorists Traffic Their Recruits*, *supra* note 43 (“When governments respond to ISIS recruits with blanket measures such as citizenship deprivation, aggressive criminal responses, and non-repatriation, these are sanctions that violate the non-punishment guarantee for ISIS recruits who were trafficked.”).

<sup>119</sup> U.N. Doc. A/76/263, *supra* note 1, ¶ 13.

<sup>120</sup> *Id.* ¶¶ 40–43.

<sup>121</sup> *See id.* ¶ 9 (“[The] 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.”); UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 18 (“Punishment of victims also undermines the fight to combat impunity for trafficking in persons, given that it targets victims rather than perpetrators, limiting both the effectiveness of investigations and the promise of accountability.”).

- e. *Obligations to provide a remedy to trafficking victims of proscribed groups.* International law obligations to provide an effective remedy to victims, include providing a remedy for the State’s failure to prevent, investigate, and punish trafficking by non-State actors such as proscribed groups.<sup>122</sup> The full guarantee of the right to remedy—including rehabilitation and reintegration of victims<sup>123</sup>—is contingent on other State obligations, including to identify trafficking victims.<sup>124</sup>
- f. *Specific obligations to child victims of trafficking by proscribed groups.* The United Kingdom and other States have a series of key obligations that apply to child victims of trafficking by terrorist groups.<sup>125</sup> Children are often targeted for recruitment and exploitation by terrorist groups.<sup>126</sup> According to the U.N. Office on Drugs and Crime (UNODC), while some children are recruited for more “traditional” forms of exploitation like sexual exploitation and forced labor, terrorist groups also “force children to be involved in criminal activities as perpetrators or accomplices in support roles.”<sup>127</sup> This recruitment of children comprises trafficking in persons because: “Although the use of children as combatants is not specifically listed as a form of exploitation in the definition of trafficking, it is clear that the recruitment of children (an act) into armed and/or terrorist groups (a purpose of exploitation) is a form of trafficking in persons . . .”<sup>128</sup>

In the context of child trafficking by proscribed groups it has been specifically noted that “[c]hild victims are particularly vulnerable” and are not—as with all trafficked persons—required to self-identify as victims.<sup>129</sup> As mentioned above, under the international law definition of trafficking, in the case of children, unlike with adult victims, the “means” do not need to be proven as a minor cannot consent

---

<sup>122</sup> See RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 14, at 223 (Principle 17) (“States shall ensure that trafficked persons are given access to effective and appropriate legal remedies.”); *id.* at 252–53 (Guideline 9) (ensuring access to remedies); U.N. Doc. A/69/269, *supra* note 21, Annex ¶ 1 (“Victims of trafficking, as victims of human rights violations, have the right to an effective remedy for any harm committed against them.”).

<sup>123</sup> U.N. Doc. A/64/290, *supra* note 21, ¶ 34.

<sup>124</sup> U.N. Doc. A/69/269, *supra* note 21, ¶ 34; *id.* Annex ¶ 7(b).

<sup>125</sup> See generally U.N. Doc. A/76/263, *supra* note 1, ¶¶ 27–35.

<sup>126</sup> See generally U.N. OFF. ON DRUGS AND CRIME, HANDBOOK ON CHILDREN RECRUITED AND EXPLOITED BY TERRORIST AND VIOLENT EXTREMIST GROUPS, *supra* note 93. See also U.N. OFF. ON DRUGS AND CRIME, COUNTERING TRAFFICKING IN PERSONS IN CONFLICT SITUATIONS, *supra* note 92, at 9.

<sup>127</sup> U.N. OFF. ON DRUGS & CRIME, HANDBOOK ON CHILDREN RECRUITED AND EXPLOITED BY TERRORIST AND VIOLENT EXTREMIST GROUPS, *supra* note 93, at 45.

<sup>128</sup> U.N. OFFICE ON DRUGS AND CRIME, COUNTERING TRAFFICKING IN PERSONS IN CONFLICT SITUATIONS, *supra* note 92, at 16 (see also page 17 for examples).

<sup>129</sup> U.N. Doc. A/76/263, *supra* note 1, ¶ 28.

to their own exploitation.<sup>130</sup> This becomes particularly important in assessing the legal status of child recruits of terrorist or violent extremist groups as unlike trafficking of adults, it is not required to show the “means” of recruitment such as actual deception or “grooming” to determine if a child was trafficked, because legally a child cannot give informed consent to, or voluntarily agree to, their own exploitation. To illustrate this principle, UNODC has recognized that an example of child trafficking in the recruitment process is when “[a] teenager is indoctrinated and recruited by terrorist fighters online . . . [and] pays smugglers to facilitate his travel abroad to join the terrorist group.”<sup>131</sup>

In addition to applying the unique definition of trafficking in children, States are required to guarantee that when addressing child trafficking by proscribed groups, they “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.”<sup>132</sup>

*Preliminary observations on application of international anti-trafficking obligations to Shamima Begum*

15. In this section, I offer preliminary observations based on the U.K. government’s statements in this case and the First Statement of Gareth Peirce, read in light of the international law obligations outlined above in paragraphs 9, 13, and 14 in particular:

- a. *Obligation to prevent the trafficking of Shamima Begum to and/or by ISIS.* As noted above, States’ obligations to prevent transnational trafficking in persons to proscribed groups specifically includes preventing (and investigating)<sup>133</sup> the recruitment component of trafficking in the country of origin.<sup>134</sup> There is information in the U.K. government’s statements and in the First Statement of Gareth Peirce that implicate the U.K. government’s prevention obligations and would require further scrutiny, including:
  - i. general known patterns of ISIS recruitment of adults and children before the time of Shamima Begum (and Khadiza Sultana and Amira Abase)

---

<sup>130</sup> ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM*, *supra* note 1, at 33; Huckerby, *When Human Trafficking and Terrorism Connect*, *supra* note 43; Huckerby, *When Terrorists Traffic Their Recruits*, *supra* note 43; U.N. Doc. A/76/263, *supra* note 1, ¶ 27 (“Where a victim is a child, it is not required to show ‘means’ such as deception, use of force or coercion or ‘grooming.’”).

<sup>131</sup> See U.N. OFF. ON DRUGS AND CRIME, *COUNTERING TRAFFICKING IN PERSONS IN CONFLICT SITUATIONS*, *supra* note 92, at 9.

<sup>132</sup> U.N. Doc. A/76/263, *supra* note 1, ¶ 43 (“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.”).

<sup>133</sup> *Id.* ¶ 11 (citing *Rantsev v. Cyprus*, App. No. 25965/04, ¶ 307 (Jan. 7, 2010), <http://hudoc.echr.coe.int/eng?i=001-96549>) (noting this is part of the State’s due diligence obligations).

<sup>134</sup> *Id.* ¶ 42.

leaving the United Kingdom on February 17, 2015, including common travel routes from the United Kingdom to Syria;<sup>135</sup>

- ii. that Sharmeena Begum, a pupil at Bethnal Green Academy, with whom Shamima Begum had “close friendship ties,”<sup>136</sup> left the United Kingdom to ISIS on December 5, 2014;<sup>137</sup>
- iii. actions taken by U.K. authorities to prevent the travel of Sharmeena Begum to ISIS and to facilitate her return to the United Kingdom. This is relevant to the State’s obligations to prevent Shamima Begum’s travel, given Sharmeena Begum’s alleged involvement in Shamima Begum’s recruitment by ISIS: the U.K. government states that “Open Source reporting indicates that SHARMEENA may have encouraged and assisted BEGUM, ABASE, and SULTANA’s travel to Syria.”<sup>138</sup>
- iv. actions taken in other cases of attempted recruitment and/or travel from the United Kingdom to ISIS, including that reportedly taken on December, 6, 2014 when “a similarly aged girl from the same London borough” as Shamima Begum left home with the intention to travel to Syria and was intercepted by U.K. authorities within the United Kingdom;<sup>139</sup>
- v. actions taken by the U.K. government in non-terrorism contexts to prevent transnational trafficking in persons, including particularly of children, as well as actions taken by the U.K. government in non-terrorism contexts when a child or an unaccompanied minor is concerned to be at risk of, or has, traveled abroad without parental consent;<sup>140</sup>
- vi. interactions of all U.K. authorities with Shamima Begum prior to her departure from the United Kingdom, including any risk assessment(s) undertaken; any actions based on those risk assessment(s); and meetings with Shamima Begum (including the meeting in early December 2014 and February 5, 2015);<sup>141</sup>
- vii. actual and intended communications with the family of Shamima Begum, including the decision to give Shamima Begum and six other girls a

---

<sup>135</sup> First Statement of Gareth Peirce (June 24, 2022), Exhibit GP 3.

<sup>136</sup> First Statement of Gareth Peirce, *supra* note 135, Exhibit GP 1.

<sup>137</sup> First Statement of Gareth Peirce, *supra* note 135, at 2.

<sup>138</sup> *The Security Service’s (MI5) Amended First National Security Statement on behalf of the Secretary of State*, ¶ 7 (May 27, 2022).

<sup>139</sup> First Statement of Gareth Peirce, *supra* note 135, at 3. *See also* Exhibit GP 4.

<sup>140</sup> First Statement of Gareth Peirce, *supra* note 135, Exhibit GP 3.

<sup>141</sup> First Statement of Gareth Peirce, *supra* note 135, at 2–3.

“parental consent letter” to take home on February 5, 2015 rather than to directly communicate with family members,<sup>142</sup>

- viii. actions of the U.K. authorities, as well as other States, taken between the time of Shamima Begum’s arrival in Turkey and subsequent arrival in Syria.<sup>143</sup>
- b. *Obligation to identify whether Shamima Begum was trafficked by ISIS by applying the internationally-accepted definition of child trafficking, including in assessing her recruitment in the United Kingdom and travel from the United Kingdom.* As noted above, the obligation to identify trafficked persons is a positive one and belongs to the government,<sup>144</sup> meaning that it does not rely on victims, particularly minors, to self-identify.<sup>145</sup> There are no statements in the U.K. government’s submissions that suggest that it has proactively and fully assessed, including for example through interviewing Shamima Begum, whether she was trafficked. Instead, the U.K. government has deprived Begum of her British nationality, a measure that has been characterized as inherently hindering the identification of trafficking victims.<sup>146</sup>

Under the U.N. Trafficking Protocol, the definition of child trafficking means that if there was an “act” against Begum (for example, if she was recruited, transported, harbored, and/or received) for the purpose of exploitation by ISIS (including for forced marriage and/or sexual exploitation) she was trafficked. Based on this definition, the following are relevant considerations:<sup>147</sup>

- i. *Act:* The U.K. government’s statements reference activities that on their face comprise relevant “acts” such as recruitment, transport, receipt and/or harboring of Begum by ISIS. For example, the U.K. government states that:
- “Open Source reporting indicates that SHARMEENA may have encouraged and assisted BEGUM, ABASE, and SULTANA’s travel to Syria;”<sup>148</sup>

---

<sup>142</sup> First Statement of Gareth Peirce, *supra* note 135, at 4. *See also* Exhibit GP 6.

<sup>143</sup> First Statement of Gareth Peirce, *supra* note 135, Exhibit GP 3.

<sup>144</sup> UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 49.

<sup>145</sup> U.N. Doc. A/76/263, *supra* note 1, ¶ 28. *See also* V.C.L. and A.N. v. the United Kingdom, *supra* note 41, ¶ 199.

<sup>146</sup> UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 41.

<sup>147</sup> While I focus primarily here on anti-trafficking obligations and the reported circumstances surrounding Shamima Begum’s travel to Syria and her marriage as a child, other aspects of her subsequent experience(s) in Syria may also be relevant for assessing the extent to which the U.K. government has complied with its full range of international obligations.

<sup>148</sup> *The Security Service’s (MI5) Amended First National Security Statement on behalf of the Secretary of State*, *supra* note 138, ¶ 7.

- “BEGUM received encouragement and assistance to travel to Syria;”<sup>149</sup> and
  - “Open source reporting indicates that once BEGUM, ABASE and SULTANA arrived in Turkey, they were met by Mohammed AL-RASHED, who helped facilitate the girls across the Turkey-Syria border. We assess that AL-RASHED facilitated their movement between Turkey and Syria.”<sup>150</sup>
- ii. *Means*: Unlike with adult victims, the means by which child trafficking happened, such as grooming, do not have to be proven, as minors cannot consent to their own exploitation even if they seem to have agreed to travel to a terrorist group.<sup>151</sup> This means that even if a child appears to have consented to associating with a proscribed group they are still nonetheless legally classified as having being trafficked under the U.N. Trafficking Protocol if there is a relevant act and intent to exploit them. Because of this test, armed groups’ “recruitment and use of children nearly always constitutes trafficking.”<sup>152</sup> The U.K. government makes various statements as to the voluntariness of Begum’s travel, including that:
- “We assess that BEGUM’s travel was voluntary and that her activities prior to and during travel to Syria demonstrated determination and commitment to aligning with ISIL. We assess this is demonstrated by her use of her sisters (sic) passport;”<sup>153</sup> and
  - “Notwithstanding that BEGUM received encouragement and assistance to travel to Syria, we maintain our assessment that BEGUM’s travel was voluntary and that her activities prior to and during travel demonstrated determination and commitment to aligning with ISIL”<sup>154</sup>

---

<sup>149</sup> *Id.* ¶ 11.

<sup>150</sup> *Id.* ¶ 9. In addition to the act of “transport,” this is also relevant definitionally to the act of “receipt” of persons as receipt “is not limited to receiving them at the place where the exploitation takes place either, but also means meeting victims at agreed places on their journey to give them further information on where to go or what to do.” *See* ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM*, *supra* note 1, at 34 (citing COUNCIL OF EUROPE & UNITED NATIONS, *TRAFFICKING IN ORGANS, TISSUES AND CELLS AND TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF THE REMOVAL OF ORGANS*, *supra* note 83, at 78).

<sup>151</sup> *See supra* notes 130–131.

<sup>152</sup> Special Representative of the Secretary-General for Children and Armed Conflict, *Annual Rep. of the Special Representative of the Secretary-General for Children and Armed Conflict*, ¶16, U.N. Doc. A/HRC/37/47 (Jan. 8, 2018), <https://undocs.org/A/HRC/37/47> (starting that in relation to armed groups “. . . the recruitment and use of children nearly always constitutes trafficking. The action (recruitment) and purpose (exploitation) are intrinsic elements of the grave violation.”).

<sup>153</sup> *The Security Service’s (MI5) Amended First National Security Statement on behalf of the Secretary of State*, *supra* note 138, ¶ 10.

<sup>154</sup> *Id.* ¶ 11.



These assessments of voluntariness are legally irrelevant to determining whether Shamima Begum’s circumstances meet the international law definition of child trafficking.

iii. *Exploitation*: As noted above, there are a number of ways in which the “exploitation” requirement in the U.N. Trafficking Protocol definition “can capture situations in which people are trafficked for the purpose of being exploited to carry out terrorist activities.”<sup>155</sup> Children can, for example, be recruited, transported, harbored and/or received by proscribed groups for forced labour, sexual exploitation, criminal activities as perpetrators or in support roles, and/or forced marriage (which includes child marriage<sup>156</sup>).<sup>157</sup> While there may be other exploitative purposes for which Shamima Begum was recruited, the following U.K. government statements are relevant for determining if there was an exploitative purpose of forced marriage and/or sexual exploitation, in Shamima Begum’s recruitment, transport, harboring and/or receipt by ISIS:

- “BEGUM said that following her arrival in Raqqa, she applied to marry an English-speaking fighter between 20 and 25 years old; shortly after this, she married RIEDIJK”<sup>158</sup> (an adult Dutch fighter);
- “We note that BEGUM was 15 at the time of the marriage;”<sup>159</sup>
- “BEGUM stated that she had given birth to two children in Syria, who had died at the ages of eight months and 21 months. She said that the grief at the loss of her two children had accentuated a desire to ensure her unborn child survives. BEGUM’s third child died at the age of 3 weeks.”<sup>160</sup>

Additional relevant information for fully assessing the purpose(s) of ISIS’ recruitment of Shamima Begum include, for example, known patterns in ISIS recruitment of girls (and women) for marriage and domestic activities

---

<sup>155</sup> See U.N. OFF. ON DRUGS AND CRIME, COUNTERING TRAFFICKING IN PERSONS IN CONFLICT SITUATIONS, *supra* note 92, xi. See also U.N. Doc. A/76/263, *supra* note 1, ¶¶ 18–20.

<sup>156</sup> See *supra* notes 54, 67, 87, 98–102 and accompanying text.

<sup>157</sup> See *supra* notes 92–99 and accompanying text.

<sup>158</sup> The Security Service’s (MI5) Amended First National Security Statement on behalf of the Secretary of State, *supra* note 138, ¶ 20.

<sup>159</sup> *Id.* ¶ 14.

<sup>160</sup> *Id.* ¶ 21.

(including childbearing and childrearing)<sup>161</sup> and how these identified patterns manifested in Shamima Begum’s case in particular.

- c. *Obligations if Shamima Begum is a trafficking victim of ISIS.* There are a host of obligations that are triggered if Begum is a trafficking victim of ISIS. Under international law, these include, for example, obligations to protect and assist Begum and to investigate her trafficking,<sup>162</sup> including through proper application of the non-punishment principle. Relevantly, the principle of non-punishment proscribes both deprivation of nationality and non-repatriation of trafficking victims.<sup>163</sup> Accordingly, the following actions and statements of the U.K. government—the deprivation of Shamima Begum’s nationality; failure to repatriate her from Syria to the United Kingdom; and statement that “We assess that if BEGUM’s activities were indeed limited to this, her travel to Syria and alignment with ISIL nevertheless posed a risk to national security, as set out in the ISIL statement”<sup>164</sup>—are, on their face, antithetical to the non-punishment principle and undermine the obligation to protect and assist Begum as a trafficking victim, including by providing her with a remedy.

There are also specific additional obligations to Shamima Begum if she was a child victim of trafficking by a proscribed group.<sup>165</sup> This includes: providing “child-sensitive, rights-based consular protection;”<sup>166</sup> “promptly facilitat[ing] repatriation . . . regardless of age or the suspected degree of involvement in the armed conflict;”<sup>167</sup> “recogniz[ing such children] as victims of grave violations of human rights and humanitarian law;”<sup>168</sup> and having “decisions concerning them made in accordance with their best interests.”<sup>169</sup>

Additionally, if Shamima Begum is a trafficking victim, there are obligations to criminalize, investigate, and punish those involved in her recruitment, transport,

---

<sup>161</sup> See *supra* notes 101–102.

<sup>162</sup> See U.N. Doc. A/76/263, *supra* note 1, ¶¶ 28, 40–43; MODEL LEGISLATIVE PROVISIONS TO SUPPORT THE NEEDS AND PROTECT THE RIGHTS OF VICTIMS OF TERRORISM, *supra* note 103, at 134.

<sup>163</sup> UN. Doc. A/HRC/47/34, *supra* note 20, ¶¶ 41, 43.

<sup>164</sup> *The Security Service’s (MI5) Amended First National Security Statement on behalf of the Secretary of State*, *supra* note 138, ¶ 34.

<sup>165</sup> See generally U.N. Doc. A/76/263, *supra* note 1, ¶¶ 27–35.

<sup>166</sup> *Id.* ¶ 52 (citing *L.H. et al. v. France*, Committee on the Rights of the Child, CRC/C/85/D/79/2019–CRC/C/85/D/109/2019, ¶ 9(6) (Sept. 30, 2020)).

<sup>167</sup> See Commission on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Belgium*, U.N. Doc. CRC/C/BEL/CO/5-6 ¶ 50(b) (Feb. 28, 2019).

<sup>168</sup> U.N. Doc. A/76/263, *supra* note 1, ¶ 53.

<sup>169</sup> 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* 6 (2020).

receipt, and/or harboring.<sup>170</sup> However, failure to identify and support victims, as well as the failure to apply the non-punishment principle, necessarily frustrates the ability to punish traffickers for their trafficking crimes.<sup>171</sup>

### *Conclusion*

16. Under international law, including particularly the U.N. Trafficking Protocol and relevant human rights treaties, States are required to prevent trafficking, to investigate and prosecute perpetrators, to identify trafficked persons, to assist and protect victims including by applying the non-punishment principle, and to ensure remedies for victims. These obligations continue to apply when the alleged human trafficking is linked to terrorism, including in those situations where proscribed groups use trafficking in recruitment. Core among these obligations in potential cases of trafficking of child recruits is the requirement to fully apply the definition of child trafficking to identify victims. This definition is distinct from the definition of adult trafficking as it is not contingent on an assessment of the means by which the trafficking occurred because a minor cannot consent to their own exploitation even if they otherwise appear to have voluntarily joined, traveled to, and/or aligned themselves with a proscribed group. As such, under the definition of child trafficking in the U.N. Trafficking Protocol, if ISIS undertook an “act” against Shamima Begum (for example, if it recruited, transported, harbored, and/or received Begum) for the purpose of exploitation (including but not limited to the purposes of forced marriage and/or sexual exploitation) she was trafficked by ISIS. This in turn triggers a host of obligations that reflect the status of a person as a trafficking victim, such as the obligation to have prevented their trafficking, to protect and assist the trafficked person (including by applying the non-punishment principle in situations where there is alleged criminality as a consequence of the person having been trafficked), and to investigate and punish the traffickers to ensure accountability for trafficking crimes.

Signed: 

Dated: July 1, 2022

---

<sup>170</sup> U.N. Doc. A/76/263, *supra* note 1, ¶¶ 40–43.

<sup>171</sup> *See id.* ¶ 9; UN. Doc. A/HRC/47/34, *supra* note 20, ¶ 18.