

WRITTEN EVIDENCE TO THE NATIONALITY AND BORDERS BILL PUBLIC BILL COMMITTEE ON PART 4 (Modern Slavery)

DUKE LAW | INTERNATIONAL
Human Rights Clinic

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ABOUT US

The Duke Law International Human Rights Clinic and its leadership have extensive experience in international law on both anti-trafficking and national security, including by providing regional and international institutions with research and legal analysis on the trafficking-terrorism nexus. The Clinic, for example, provided background research for the recent report on the topic of trafficking by proscribed groups and terrorism by the U.N. Special Rapporteur on trafficking in persons, especially women and children (U.N. Doc. A/76/263 (2021)). The Clinic is directed by Professor Jayne Huckerby who has provided various legal and media commentary on the topic, including by contributing to the assessment of the legal aspects of the definition of trafficking for the recent report of the Organization for Security and Co-operation in Europe on the topic (*Trafficking in Human Beings and Terrorism: How and Why They Intersect* (2021)).

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EXECUTIVE SUMMARY

This written evidence submitted by the Duke Law International Human Rights Clinic assesses Part 4 (Modern Slavery) of the Nationality and Borders Bill (the Bill) against international anti-trafficking and human rights law that binds the United Kingdom. It focuses on how the Bill wrongly disqualifies trafficking victims—particularly those linked to terrorism—from identification and various forms of protection, assistance, and support; undermines the rights of child trafficking victims; and fails to prevent, investigate, and punish traffickers from proscribed groups. While this submission focuses on the Bill’s adverse treatment of trafficking victims linked to terrorism, its international law analysis also applies to those victims who the Bill wrongly disqualifies from identification and support for reasons not related to national security.

It concludes that Part 4 falls short of the United Kingdom’s international law obligations in several respects, including:

- By excluding persons identified as a “threat to public order” [cl. 51(1)(a)]—and centring this exclusion primarily on terrorism and terrorism-related offences [cl. 51(3)–(6)]—from a “conclusive grounds” [cl. 51(2)(a)] determination of whether they are a trafficking victim, the Bill **fails to properly apply the international legal definition of trafficking in persons that recognises that persons can be trafficked for terrorism.**
- By raising the threshold of a “reasonable grounds” determination to require that persons “are” a victim of trafficking [cl. 48] and penalising late compliance with information requests [cl. 47(2)]—in addition to precluding identification [cl. 51(2)(a)] of individuals who are “threat[s] to public order” [cl. 51(1)(a)] or who have claimed to be trafficking victims “in bad faith” [cl. 51(1)(b)]—the Bill impedes genuine trafficking victims from being identified as such. This **violates the United Kingdom’s obligations under international law to identify trafficking victims and, specifically, to identify trafficking victims of terrorism.**
- By depriving those victims who are determined to be threats to public order [cl. 51(1)(a)] or who have made claims of victimhood in “bad faith” [cl. 51(1)(b)] of measures such as deportation protection [cl. 51(2)(b)], assistance and support during the 30-day recovery period [cls. 49, 52], and statutory leave to remain [cl. 53(5)–(6)], the Bill **deprives victims of trafficking of the rights and protections afforded to them under international law.**
- By automatically disqualifying those who are a “threat to public order” or make claims in “bad faith” from being identified as trafficking victims [cl. 51(2)(a)] and from a series of protective measures (such as deportation protection, assistance and support during the 30-day recovery period, and statutory leave to remain [cls. 49, 51(2)(b), 52, 53(5)–(6)]), the Bill **violates the principle of non-punishment.** This means that victims rather than their traffickers can be wrongly penalised and **deprives victims of proscribed groups of a right to a remedy.**
- By failing to identify [cls. 46–48, cl. 51(2)(a)] and support trafficking victims of terrorism [cls. 49, 51(2)(b), 52, 53(5)–(6)], as well as failing to apply the non-punishment principle [cl. 51] to protect victims, the Bill necessarily **frustrates the obligation to investigate, criminalise, and punish traffickers.** As such, the Bill’s failure to identify and assist those victims linked to terrorism undermines the ability to gather information on, prevent, and prosecute terrorists for trafficking, **violating the United Kingdom’s human rights due diligence obligations** on anti-trafficking under international law.
- By excluding those identified as a “threat to public order” [cl. 51(1)(a)]—and centring this exclusion primarily on terrorism and terrorism-related offences [cl. 51(3)]—from being identified as trafficking victims [cl. 51(2)(a)] and also from protection and assistance [cls. 49, 51(2)(b), 52, 53(5)–(6)], the Bill results in *de facto* discrimination against certain victims, including based on the status of their trafficker as being linked to terrorism, as well as the victim’s identity (e.g., religion, race, and/or citizenship status). This constitutes a **violation of the United Kingdom’s non-discrimination obligations** under international law.
- By failing to distinguish between adult and child trafficking victims of proscribed groups [cls. 46–53], the Bill violates the United Kingdom’s obligations under international law to address the **special vulnerabilities of children** in identification, protection and support, and application of the non-punishment principle.

I. OVERVIEW

1. This submission assesses whether Part 4 (Modern Slavery) of the Nationality and Borders Bill (the Bill)—catalogued as Bill 141 2021–22 and introduced by Home Secretary Priti Patel on July 6, 2021¹—complies with international anti-trafficking and human rights law.² In particular, this submission focuses on how the Bill wrongly disqualifies trafficking victims—particularly those linked to terrorism—from identification and various forms of protection, assistance, and support. First, it situates Part 4 (Modern Slavery) of the Bill in the United Kingdom’s approach to trafficking victims linked to terrorism. Second, against this backdrop, it analyses the effects of the core provisions of Part 4. Third, it identifies the relevant anti-trafficking and human rights international law on trafficking in persons linked to terrorism and analyses how Part 4 falls short of these guarantees related to identifying and assisting trafficking victims, as well as to preventing, investigating, and punishing traffickers. This submission focuses on the Bill’s adverse treatment of trafficking victims on national security-related grounds because this is much of Part 4’s focus; however, the international law analysis also applies to those trafficking victims who the Bill wrongly disqualifies from identification and support on non-national security grounds.

II. THE BILL AND THE UNITED KINGDOM’S EXISTING TRAFFICKING-TERRORISM POLICIES

2. Both the Bill and the government’s “New Plan for Immigration”³ that it seeks to implement⁴ emphasise the goal of protecting victims of modern slavery while policing false claims, including by those alleged to pose national security risks.⁵ For example, in remarks on the Bill’s second reading, Home Secretary Patel stated that “the law on modern slavery is being exploited” by “people who pose a national security risk—seeking modern slavery referrals, to avoid immigration detention and frustrate removal from the UK.”⁶ The “New Plan for Immigration,” similarly emphasises “distinguishing more effectively between genuine and vexatious accounts of modern slavery and enabling the removal of serious criminals and people who are a threat to the public and UK national security.”⁷

3. The Bill’s characterisation of trafficked persons linked to terrorism as not *bona fide* victims of modern slavery or trafficking continues a troubling trend in U.K. policies and practices on the trafficking-terror nexus. Globally, trafficking has been used by a range of proscribed and terrorist groups, including Boko Haram, al-Shabaab, and ISIS.⁸ Trafficking is used by these groups for a number of purposes, including to target communities, attract fighters, and fund-raise.⁹ It has also “long been a tool for involuntary recruit-

ment, with groups using trafficking tactics to lure adults and minors under false pretenses or force, as well as to keep them in exploitative situations.”¹⁰

4. Consistent with these global trends in the use of trafficking tactics to recruit to terrorist groups, reports have identified cases of British women and girls who were trafficked to ISIS and who are presently stranded in Syria.¹¹ Yet, the U.K. government has failed to prevent this trafficking for terrorism purposes,¹² to identify such persons as trafficked, and to provide assistance and support (including repatriation).¹³ Instead, the U.K. government has punished trafficking victims for their forced criminality through a range of criminal and administrative measures such as stripping of citizenship.¹⁴ These trends shed light on the likely impacts of the Bill, demonstrate how the Bill violates international law when it comes to addressing trafficking by terrorist groups, and are further elaborated in Section IV.

III. SUMMARY OF EFFECTS OF CORE PROVISIONS OF PART 4

5. Part 4 (Modern Slavery) of the Bill comprises clauses 46 to 57 and addresses the processes and standards for identifying victims of modern slavery or human trafficking, as well as the conditions under which certain persons will be disqualified from being fully recognised as victims and accessing other forms of protection.

6. Pursuant to clause 46, the Secretary of State has the authority to “serve a slavery or trafficking information notice on a person who has made a protection claim or a human rights claim,”¹⁵ which requires a person to provide relevant information relating to being a victim of slavery or human trafficking within a specified period.¹⁶ Late compliance with this request for information may be taken into account under clause 47 when assessing the claimant’s credibility.¹⁷ Clause 48 further concerns the identification of potential victims of modern slavery or human trafficking, amending the Modern Slavery Act 2015 (MSA)¹⁸ to make it harder to extend assistance and support to victims; protections will only be available to someone when there are “reasonable grounds” to believe they “are” victims of modern slavery, rather than that they “may be” a victim.¹⁹ Pursuant to clauses 49 and 52, once a “reasonable grounds” decision has been made that a person is a potential victim of modern slavery or human trafficking, the victim is entitled to a 30-day recovery period—including assistance and support—before a “conclusive grounds” decision on the individual’s status as a modern slavery or human trafficking victim may be rendered.²⁰ Clause 50 further identifies limits to the recovery period.²¹

7. Clause 51 is of particular relevance for assessing the Bill’s

impact on those trafficked in connection with terrorism. It disqualifies individuals who have received a positive “reasonable grounds” decision from a) removal protection and b) the right to receive a “conclusive grounds” decision²² under two circumstances: if they are a (1) “threat to public order” or (2) have made a claim to be a victim of trafficking or modern slavery in “bad faith.”²³ The bill does not define “bad faith.” It does enumerate certain non-exhaustive—and broad²⁴—grounds on which individuals will be considered a “threat to public order.”²⁵ These grounds are predominantly focused on national security and include when a person:

- has been convicted of a Schedule 4 offence under the MSA or of a “corresponding offence.”²⁶ Schedule 4 offences include a range of statutory terrorism and terrorism-related offences that are exemptions to the MSA’s statutory defence for slavery or trafficking victims who commit an offence²⁷;
- is “a foreign criminal within the meaning given by section 32(1) of the UK Borders Act 2007”²⁸;
- has been “convicted of a terrorist offence.”²⁹ The latter is defined broadly in the Bill³⁰ to include a terrorist offence under certain statutes,³¹ as well as offences determined to have a “terrorist connection.”³² Offences outside of the United Kingdom are also captured;³³ a “terrorist offence” includes “an act constituting an offence under the law in force in a country outside the United Kingdom” that either “was, or took place in the course of, an act of terrorism or was done for the purposes of terrorism”³⁴ or “would have constituted an offence” within Schedule A1 to the Sentencing Code (terrorism offences: England and Wales) or Schedule 1A to the Counter-Terrorism Act 2008 (terrorism offences: Scotland and Northern Ireland) “if it had been committed in any part of the United Kingdom”³⁵;
- has not been convicted of an offence, but has been subject to a Terrorism Prevention and Investigation Measures (TPIM) notice,³⁶ temporary exclusion order (TEO),³⁷ or deprivation of nationality because it is “conducive to the public good”³⁸;
- has not been convicted of an offence or subject to a measure (e.g., citizenship stripping) but “there are reasonable grounds to suspect that the person is or has been involved in terrorism-related activity within the meaning given by section 4 of that Act [the TPIM Act] (whether or not the terrorism-related activity is attributable to the person being, or having been, a victim of slavery or human trafficking)”³⁹; and
- more generally and nebulously “otherwise poses a risk to the national security of the United Kingdom.”⁴⁰

or has made a claim of victimhood in “bad faith” has additional ripple effects. In addition to not being able to have a “conclusive grounds” determination made about whether they are a victim and not being protected from deportation,⁴¹ a person who has a section 51(1) determination made about them is excluded from assistance and support during the 30-day recovery period.⁴² And while clause 53 creates a statutory leave to remain for individuals who receive a positive conclusive grounds decision, where the Secretary of State determines that the person is a “threat to public order” or has “claimed to be a victim” in “bad faith,” the Secretary is not required to give the person leave and can revoke it if already given.⁴³

IV. THE BILL AND RELEVANT INTERNATIONAL LAW ON TRAFFICKING LINKED TO TERRORISM

9. The United Kingdom is bound by several regional and international anti-trafficking and human rights instruments with which the Bill must comply.⁴⁴ The Home Office has assessed that the bill is consistent with the United Kingdom’s obligations under the European Convention on Human Rights (ECHR)⁴⁵ and the Council of Europe Convention on Action Against Trafficking in Human Beings,⁴⁶ as well as undertaken a positive Equality Impact Assessment.⁴⁷ However, Part 4 (Modern Slavery) is not in compliance with these obligations in a number of ways.⁴⁸ While there are key requirements under regional instruments—including particularly the positive obligations under the ECHR to identify trafficked persons and to apply the principle of non-punishment to those trafficked persons forced to engage in criminality⁴⁹—here we focus on how Part 4 as measured against the U.K. government’s international anti-trafficking and human rights legal obligations wrongly disqualifies those trafficked in connection with terrorism from identification and protection. The following are the core international law obligations of the United Kingdom relevant to Part 4 (Modern Slavery) of the Bill and its impact on those trafficked for reasons linked to terrorism.

Applying the international legal definition of trafficking in persons to terrorism

10. The United Kingdom has an obligation to **apply the international legal definition of trafficking in persons**⁵⁰ to criminalise trafficking and identify victims, including to ensure that the definition captures trafficking **for exploitation by terrorist or violent extremist groups**.⁵¹ This definition must be applied consistent with States’ other human rights obligations, including non-discrimination and the rights of the child.⁵²
11. Under international law, the definition of trafficking in per-

8. The determination that a person is a public order threat

sons is not dependent on the actors to which individuals are trafficked; instead, for adult victims, States are required to assess whether a person has been subject to an “act” (such as being recruited, transported, transferred and/or harboured) by certain “means” for the purpose of exploitation.⁵³ For child victims only the “act” and the exploitative purpose are required.⁵⁴ On the definitional element of “exploitation,” international law recognises that there are a number of ways in which the definition of trafficking in persons “can capture situations in which people are trafficked for the purpose of being exploited to carry out terrorist activities.”⁵⁵ This includes exploitation for forced labour,⁵⁶ sexual exploitation,⁵⁷ criminal activities,⁵⁸ “terrorist or other purposes,”⁵⁹ as combatants,⁶⁰ and/or forced marriage.⁶¹ For adults trafficked by proscribed groups, the “means” used can be overtly coercive (e.g., kidnapping) or not⁶²—a person can still be a victim if proscribed actors use subtle means such as deception⁶³ or abuse of vulnerability⁶⁴ to recruit and/or transfer them. Trafficking—and re-trafficking—for terrorism can arise at multiple points throughout a person’s exposure to a proscribed group. It can occur through an exploitative process or when an exploitative situation results or is maintained without a preceding exploitative process.⁶⁵ And trafficking can also occur as a result of “changed circumstances,”⁶⁶ such as “if women linked to ISIS originally freely agreed to a marriage that instead became ‘domestic servitude or sexual slavery,’ this might change voluntary travel to an involuntary stay.”⁶⁷

12. By excluding those (including children) who have received a “reasonable grounds” decision from the right to receive a “conclusive grounds” decision⁶⁸ because they are a “threat to public order”⁶⁹—and centring this exclusion on terrorism or terrorism-related offences⁷⁰—the Bill violates this obligation to apply the definition of trafficking to terrorism.⁷¹ It also violates the obligation to apply the definition of trafficking in persons to those victims who are excluded under the “threat to public order” exemption on non-national security grounds, such as with the non-terrorism offences in the MSA’s Schedule 4⁷² or when someone is a “foreign criminal.”⁷³ By centring exclusion on a range of national security grounds, the Bill seeks not just to “divide victims into worthy and unworthy victims,”⁷⁴ but to improperly divide trafficked persons into victims and non-victims depending on who trafficked them. This contravenes international law’s extensive recognition that trafficking in persons includes trafficking by proscribed groups. And it continues a trend of the U.K. government erring in its understanding of its international obligations to identify trafficking-terrorism victims.⁷⁵

The obligation to identify trafficking victims of proscribed groups

13. The United Kingdom has an obligation to **identify trafficking victims of terrorism, including as part of its obligations of due diligence to prevent, investigate, and punish trafficking by proscribed groups.**⁷⁶ The obligation to identify trafficked persons is a positive one and belongs to the State,⁷⁷ meaning that it does not rely on victims, particularly minors, to self-identify.⁷⁸ Identification is core to a human rights-based approach; if an individual is not identified as a victim, they will then not be guaranteed the rights to which they are entitled as victims of trafficking.⁷⁹ Early and timely identification of presumed or identified victims of trafficking by terrorist groups⁸⁰ is particularly key for applying the non-punishment principle.⁸¹ Lack of identification also impacts the ability of law enforcement to pursue the prosecution of traffickers.⁸²
14. Several features of the Bill preclude the United Kingdom from meeting its identification obligations for all trafficking victims, including the timing limitations in clauses 46 and 47 that penalise late compliance with information requests,⁸³ the raised threshold for a “reasonable grounds” decision in clause 48,⁸⁴ the reduction in the recovery period and its protections in clauses 49, 50, and 53,⁸⁵ and its failure to distinguish between child and adult victims of trafficking.⁸⁶ These measures, specifically the changed threshold in clause 48⁸⁷ and the reduced recovery period,⁸⁸ have both been characterised as “regressive” and contrary to human rights law’s requirement that States ensure “non-regression” in measures to protect the human rights of victims of trafficking.⁸⁹
15. The Bill’s general limitations on identifying all trafficking victims also circumscribe the United Kingdom’s ability to meet its obligations to identify trafficking victims of proscribed groups. First, the Bill’s timing limitations, as well as raising the threshold for a “reasonable grounds” determination, ignore that those trafficked by terrorist groups may not be able to provide timely and full information that proves they are a victim. Notably, the U.K. government’s own policies can at times be responsible for these barriers. For example, stripping of citizenship and non-repatriation of those British citizens linked to ISIS—as well as the absence of consular presence within Syria “from which to assess the needs of or provide assistance to British children”⁹⁰ and others—have necessarily frustrated the ability to identify and support potential trafficking victims,⁹¹ including on a case-by-case basis.⁹² Indeed, earlier this year, the U.K. government failed to confirm whether it assesses if those it has stripped of citizenship are trafficked.⁹³ Instead, it implied the contrary; by responding that the United Kingdom “has an obligation” to identify trafficked persons “who are in the UK” through

use of the National Referral Mechanism (NRM),⁹⁴ it suggested that its obligations do not encompass those trafficked from the United Kingdom and who are presently abroad.⁹⁵ Second, meaningful identification is also inherently hampered here by the breadth of grounds on which someone can be identified as a “threat to public order.” Not only can someone be classified as such without actually being convicted of an offence, but the “threat to public order” designation is based on both offences and measures under U.K. counter-terrorism law that have themselves been critiqued for their breadth, vagueness, lack of transparency, and over-application to minority Muslim communities.⁹⁶ Additionally, as under certain circumstances, foreign terrorism offences will be a basis for determining whether someone is a public order threat, the Bill effectively imports foreign counter-terrorism laws into the determination of who will constitute a trafficked person entitled to protection and assistance, without any meaningful checks and balances on the fairness and scope of those laws.⁹⁷ Third, as noted above, the effect of clause 51(2)(a) is to preclude full identification of those trafficked in connection with terrorism.⁹⁸ Here, the Bill seeks not just to make it harder to identify trafficked persons, but instead to take away the government’s obligation to fully identify a trafficked person *altogether*; when an exemption applies, there will be no requirement to make a “conclusive grounds” decision about whether a person is a trafficking victim.

Obligations to protect and assist trafficking victims of proscribed groups, including through the non-punishment principle

16. The United Kingdom has an obligation to **protect and assist** victims of terrorist groups and to investigate potential trafficking by such actors.⁹⁹ Obligations to repatriate trafficking victims¹⁰⁰ also continue to apply to those linked to proscribed groups.¹⁰¹ Under international law, such protection and assistance should be tailored, including on the basis of gender and the particular needs of children.¹⁰² Instead, under the Bill, where a person has been determined to be a public order threat or has made a claim of victimhood in “bad faith,” that person is not protected from deportation and is excluded from assistance and support during the 30-day recovery period, and the U.K. government is not required to give the person the statutory leave to remain and can revoke it if already given.¹⁰³
17. The obligation to protect and assist those trafficked in connection with terrorism includes keeping the victim status of trafficked persons in tact in situations of forced criminality (the non-punishment principle).¹⁰⁴ States are responsible for **applying the non-punishment principle** because of their “positive obligation to take protective operational measures of identification, protection and effective investigation.”¹⁰⁵ Under international law, the non-punishment principle continues to apply when victims of trafficking commit terrorist offences as a consequence of having been trafficked.¹⁰⁶ Proper application of the non-punishment principle “is critical to the recognition of trafficking in persons as a serious human rights violation”¹⁰⁷ and to ensuring that States’ obligations of assistance and protection toward those trafficked for forced criminality are fully realised.¹⁰⁸ The non-punishment principle must be applied consistently with a host of other legal obligations, including “States’ obligations of non-discrimination and positive obligations of protection, as well as with the peremptory norms prohibiting racial discrimination and protecting the right to a fair trial.”¹⁰⁹
18. The non-punishment principle requires States to identify victims—including those linked to terrorism—“as early as possible.”¹¹⁰ The guarantee of non-punishment covers a range of unlawful acts¹¹¹ and applies irrespective of the “gravity or seriousness of the offence committed,”¹¹² including terrorism.¹¹³ The range of penalties that States are prohibited from imposing against all trafficking victims is also wide, including criminal as well as non-criminal (e.g., administrative or immigration) sanctions.¹¹⁴
19. 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.¹¹⁵ 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.”¹¹⁶ Indeed, “rather than being recognized as victims, with corresponding rights, those who are linked to proscribed groups can be wrongly criminalized and stigmatized.”¹¹⁷
20. As it currently stands, the U.K. government’s *existing* general statutory approach to trafficking in persons¹¹⁸ falls short of international law’s full guarantee of non-punishment.¹¹⁹ Additionally, the United Kingdom’s specific, current approach to those persons linked to ISIS has also been critiqued as falling short of the non-punishment guarantee, either because it precludes full application of the non-punishment principle (for example, not providing consular assistance to those linked to ISIS frustrates identifying victims¹²⁰) or violates it (for example, stripping persons of their citizenship and refusing to repatriate them¹²¹ without assessing whether they are victims of trafficking forced into acts linked to terrorism¹²²).
21. Against this backdrop, the Bill¹²³ further compounds these violations of the non-punishment principle under interna-

tional law as follows, particularly (but not exclusively¹²⁴) in instances of national security:

- The Bill specifies a number of grounds for determining that someone is a “threat to public order” that in and of themselves violate the non-punishment principle. For example, the Bill explicitly provides that a trafficking victim can be defined as a threat even if they have engaged in forced activities; a person can be deemed a “threat to public order” if there are “reasonable grounds to suspect that the person is or has been involved in terrorism-related activity” under section 4 of the Terrorism Prevention and Investigation Measures Act 2011 (*whether or not the terrorism-related activity is attributable to the person being, or having been, a victim of slavery or human trafficking*).¹²⁵ It also uses *inter alia* terrorism and terrorism-related offence exemptions to the MSA’s statutory defence to determine a “threat to public order,”¹²⁶ where the MSA’s scheme has itself been much critiqued, including for non-compliance with the non-punishment principle.¹²⁷ Additionally, the Bill uses certain sanctions to define someone as a “threat to public order,” which have been found to violate international law’s guarantee of non-punishment if applied against those trafficked persons who engage in forced criminality linked to terrorism. For example, under the Bill, an individual who has had their nationality stripped because it is “conducive to the public good” is defined as a “threat to public order.”¹²⁸ Yet, citizenship-stripping of trafficking victims linked to terrorism has been characterized as a violation of the non-punishment guarantee.¹²⁹
- The Bill removes the U.K. government’s obligation to investigate and to identify trafficking victims, which is a core part of the non-punishment principle.¹³⁰ The non-punishment principle must be applied at an early stage and not just to fully-identified victims but also to presumptive ones, meaning it does not require a formal identification of the person as a trafficking victim.¹³¹ The Bill as presently drafted directly violates the non-punishment principle by automatically¹³² disqualifying individuals from a “conclusive grounds” identification when there are “reasonable grounds” to believe they are trafficked but “[a] competent authority” determines they are a “threat to public order” or that they have made a claim to be a victim in “bad faith.”¹³³
- The Bill removes the United Kingdom’s obligations to provide protection and assistance to those forced to engage in unlawful acts as a result of their status as a trafficking victim. It does so in at least three ways: a) if a “competent authority” determines the individual is a “threat to public order” or has made a claim to be a victim in “bad faith” and the person has received a “reasonable grounds” determination, the individual no longer has protection from removal from the United Kingdom¹³⁴; b)

if a “competent authority” determines the individual is a “threat to public order” or has made a claim to be a victim in “bad faith” and the person has received a “reasonable grounds” determination, the individual is excluded from assistance and support during the 30-day recovery period¹³⁵; and c) if the individual has received a positive “conclusive grounds” decision but the Secretary of State determines that the person is a “threat to public order” or has made a claim to be a victim in “bad faith” the Secretary is not required to give the person statutory leave to remain and can revoke it if already given.¹³⁶ Rather than take this approach, the U.K. government should, consistent with international law, adopt protection and assistance measures that reflect gender and age sensitivities and recognise that those linked to proscribed groups can also be victims of terrorism.¹³⁷

Obligations to prevent, criminalise, investigate, and punish terrorist-traffickers

22. The United Kingdom has an obligation to **criminalise trafficking in persons**¹³⁸ and “effectively **investigate**, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.”¹³⁹ This obligation to criminalise and investigate trafficking in persons continues to apply to trafficking by terrorist groups.¹⁴⁰ Failure to identify and support victims, as well as the non-application of the non-punishment principle, necessarily frustrates the ability to punish traffickers.¹⁴¹
23. States also have a responsibility to **undertake prevention measures**¹⁴² that centre the “human rights of trafficked persons” in prevention efforts,¹⁴³ including to prevent trafficking to proscribed groups.¹⁴⁴ This specifically includes preventing (and investigating)¹⁴⁵ the recruitment component of trafficking in the country of origin in instances of transnational trafficking.¹⁴⁶ 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).”¹⁴⁷
24. In addition to specified obligations of prevention and criminalisation under international anti-trafficking law, under international law, States are required to **exercise due diligence** to prevent trafficking, to investigate and prosecute perpetrators, to identify, assist, and protect victims, and to ensure remedies.¹⁴⁸ This derives from States’ positive obligations of due diligence to protect individuals against human rights abuses by private actors.¹⁴⁹ These due diligence obligations apply to trafficking by proscribed groups such as terrorist actors.¹⁵⁰

25. As such, the Bill's failure to conclusively identify those linked to terrorism as victims and to preclude them from assistance, including in the form of the recovery period,¹⁵¹ undermines the ability to prosecute terrorists for trafficking and to prevent both trafficking and re-trafficking by proscribed groups. Indeed, commentary on the Bill has noted that it would "make it harder to tackle trafficking and exploitation"¹⁵² and hinder efforts "to gather the intelligence necessary to dismantle trafficking networks."¹⁵³

Obligations to provide a remedy to trafficking victims of proscribed groups

26. Additionally, the United Kingdom's obligations include **providing an effective remedy** to victims,¹⁵⁴ including for the failure to prevent, investigate, and punish trafficking by non-State actors such as proscribed groups.¹⁵⁵ This includes provision of a remedy for the State's failure to prevent, investigate, and punish trafficking by non-State actors such as proscribed groups.¹⁵⁶ This is because under international law, the "failure to exercise due diligence is consequential, meaning that States that have failed to exercise due diligence towards private actors incur international responsibility that then requires them to provide an effective remedy for victims of trafficking in persons."¹⁵⁷ The full guarantee of the right to remedy—including rehabilitation and reintegration of victims¹⁵⁸—is contingent on other State obligations, including to identify trafficking victims.¹⁵⁹

27. By disqualifying those who are a "threat to public order" or make claims in "bad faith" from being identified as trafficking victims¹⁶⁰ and precluding victims from protection and assistance¹⁶¹—including by failing to fully apply the non-punishment principle¹⁶²—the Bill fails to ensure trafficking victims the right to a remedy where the State has failed in its due diligence obligations.

Non-discrimination obligations toward trafficking victims of terrorism

28. The United Kingdom **has obligations of non-discrimination** that provide a core guarantee in relation to protective measures¹⁶³ and "continue[s] to apply without exception in the context of trafficking by proscribed groups, and in all actions to address the intersections of trafficking and terrorism."¹⁶⁴ Violations of non-discrimination guarantees can lead to those trafficked by terrorist groups not being recognised as victims.¹⁶⁵ By disqualifying those who are a "threat to public order" or make claims in "bad faith" from being identified as trafficking victims,¹⁶⁶ the *de facto* result is that the Bill improperly discriminates against certain victims, including based on the status of their trafficker as be-

ing linked to terrorism, as well as the victim's identity (e.g., religion, race, and/or citizenship status).¹⁶⁷

29. One prominent example of this is the case of Shamima Begum, who was stripped of her British citizenship by then-Home Secretary Sajid Javid in February 2019.¹⁶⁸ Begum was further denied the opportunity to return to the United Kingdom to appeal this decision by a Supreme Court ruling on February 26, 2021,¹⁶⁹ and is presently in al-Roj, a camp in Syria.¹⁷⁰ In Begum's case, it is a matter of public record that she was recruited online before she went to Raqqa in 2015 as a child at the age of fifteen. According to Begum, she was "being fed a lot of information on the internet by people" and "'groomed and taken of [sic] advantage of and manipulated into' travelling to Syria"¹⁷¹ by those "who convinced her that by joining them she'd 'get married, have children and lead a pure Islamic life.'"¹⁷² On arrival in Syria, Begum was put in a "women's centre"¹⁷³ and married an adult Dutch fighter.¹⁷⁴ A child bride, she was pregnant the next year with a daughter who later died.¹⁷⁵ A second child would die in 2018,¹⁷⁶ and a third in 2019.¹⁷⁷

30. From a legal perspective, "this is not a very difficult case" for establishing that Begum is a trafficking victim of ISIS.¹⁷⁸ If ISIS recruited and/or transported Begum with the specific purpose to exploit her (including for forced marriage), this means that she was trafficked.¹⁷⁹ Unlike with adult victims, the means by which it 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."¹⁸⁰ Indeed, Begum's lawyers have argued that there is "overwhelming evidence" she was trafficked "when she left" the United Kingdom¹⁸¹ and that "the Home Office failed to consider whether she was 'a child trafficked to, and remaining in, Syria for the purposes of sexual exploitation and forced marriage.'"¹⁸² Parallels can be seen here, for example, with cases that have involved prosecutions of Newcastle gang members for trafficking for sexual exploitation of "vulnerable victims of an organised, cynical, systematic organisation."¹⁸³ Yet rather than seeing Begum as a child who was groomed online by a criminal group known for its predation, the tribunal that in 2020 upheld revoking her citizenship described the child recruit of ISIS as a woman who was in her situation "as a result of her own choices and of the actions of others."¹⁸⁴ The Bill would continue this artificial differentiation between those trafficked by terrorists and those trafficked by others (e.g., gangs), as well as compound the failure to meaningfully apply the distinction between the definition of adult and child trafficking.

Obligations to child victims of trafficking by proscribed groups

31. The United Kingdom has a series of key obligations that apply to child victims of trafficking by terrorist groups.¹⁸⁵ A key obligation is to properly **apply the definition of child trafficking under international law**.¹⁸⁶ 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 to their own exploitation.¹⁸⁷ Indeed, children are often targeted for recruitment and exploitation by terrorist groups.¹⁸⁸ 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.¹⁸⁹ 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.¹⁹⁰
32. 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.”**¹⁹¹ In general terms, international human rights law contains special protections for children, including through emphasising the primacy of the “best interests” principle with respect to children generally¹⁹² as well as child victims of trafficking in particular.¹⁹³ For child trafficking victims, 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.”¹⁹⁴
33. However, the Bill’s identification—and protection provisions—adversely impact both adult and child victims,¹⁹⁵ disqualifying child victims of terrorism from being identified as victims and accessing protection. As one commentary notes, pursuant to clause 51 “children even suspected of ‘terrorism related links’ will be precluded from being identified as victims, even if they have been groomed and exploited by armed groups. . . . in direct contravention of international law.”¹⁹⁶ The Bill’s failure to address the “additional vulnerabilities and barriers” that children face due to their age¹⁹⁷ and its “lack of detail on provisions for children,”¹⁹⁸ violates the United Kingdom’s obligations under anti-trafficking and human rights law to **address the special vulnerabilities of children** in identification, protection and support, and application of the non-punishment principle.

ENDNOTES

- 1 Nationality and Borders Bill 2021–22, HC Bill [141].
- 2 By focusing on Part 4 (Modern Slavery), this written submission should not be understood as accepting that all other parts of the Bill comply with the United Kingdom’s international obligations. Additionally, this written evidence focuses primarily on how the Bill measures against the United Kingdom’s obligations under international anti-trafficking and human rights law and does not constitute a full analysis of the Bill under the U.K. government’s regional anti-trafficking and human rights obligations.
- 3 HOME OFFICE, NEW PLAN FOR IMMIGRATION (July 22, 2021), <https://www.gov.uk/government/consultations/new-plan-for-immigration/new-plan-for-immigration-policy-statement-accessible> [<https://perma.cc/NV8Q-38C3>].
- 4 MELANIE GOWER, NATIONALITY AND BORDERS BILL 4 (House of Commons Library 2021), <https://commonslibrary.parliament.uk/research-briefings/cbp-9275/> [<https://perma.cc/PM6T-QD68>].
- 5 Commentators have criticized the inclusion of modern slavery provisions in an immigration bill. See, e.g., ECPAT UK, *Statement on the Nationality and Borders Bill*, EVERY CHILD PROTECTED AGAINST TRAFFICKING (July 6, 2021), <https://www.ecpat.org.uk/news/statement-on-the-nationality-and-borders-bill> [<https://perma.cc/644Q-LWCX>] (“Identifying victims is not an immigration matter but a safeguarding matter. These measures will create a two-tier system of support for victims with irregular immigration status and those who are not.”).
- 6 Priti Patel, Home Sec’y, Opening Speech for Nationality and Borders Bill at the House of Commons (July 19, 2021), <https://www.gov.uk/government/speeches/home-secretary-opening-speech-for-nationality-borders-bill> [<https://perma.cc/BF5Y-XRR8>].
- 7 HOME OFFICE, NEW PLAN FOR IMMIGRATION, *supra* note 3, ch. 6 (explaining the government aims to “[i]dentify victims as quickly as possible and enhance the support they receive, while distinguishing more effectively between genuine and vexatious accounts of modern slavery and enabling the removal of serious criminals and people who are a threat to the public and UK national security”).
- 8 See, e.g., 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, ¶ 19 (Aug. 31, 2021) [hereinafter Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021)]; ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM: HOW AND WHY THEY INTERSECT* (2021).
- 9 See, e.g., Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 19–20; ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM: HOW AND WHY THEY INTERSECT* 33–51 (2021); COUNTER-TERRORISM EXECUTIVE DIRECTORATE (CTED), *IDENTIFYING AND EXPLORING THE NEXUS BETWEEN HUMAN TRAFFICKING, TERRORISM, AND TERRORISM FINANCING* (2020); Jayne Huckerby, *When Terrorists Traffic Their Recruits*, JUST SECURITY (Mar. 15, 2021), <https://www.justsecurity.org/75343/when-terrorists-traffic-their-recruits/> [<https://perma.cc/NA7Q-CENW>]; 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/> [<https://perma.cc/7KCD-SL3Y>]. Note that the extent to which proscribed groups have relied on trafficking as a revenue source has been qualified. See, e.g., FIN. ACTION TASK FORCE, *FINANCIAL FLOWS FROM HUMAN TRAFFICKING* ¶ 41 (2018) (“While there are indications that human trafficking may be a source of income for terrorist groups, particularly those that control territory, this appears not to be a key source of revenue for terrorist groups, especially considering the erosion of the territory held by terrorist groups.”).
- 10 Huckerby, *When Terrorists Traffic Their Recruits*, *supra* note 9. See also Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 18–19; ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM*, *supra* note 8, at 33–36, 40, 47, 49–51, 53; CTED, *IDENTIFYING AND EXPLORING THE NEXUS BETWEEN HUMAN TRAFFICKING, TERRORISM, AND TERRORISM FINANCING*, *supra* note 9, at 28–29, 33, 44–45; Huckerby, *When Human Trafficking and Terrorism Connect*, *supra* note 9.
- 11 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://perma.cc/7B9D-SENE>]; Frank Andrews, *UK MPs launch investigation into Briton trafficked by Islamic State group*, MIDDLE EAST EYE (July 14, 2021, 9:37 AM), <https://www.middleeasteye.net/news/syria-uk-mps-investigation-britons-trafficked-islamic-state> [<https://perma.cc/3RFU-VA7M>].
- 12 A number of reports raise questions about the U.K. government’s failure to prevent trafficking from its territory, including through not sharing information with the families of girls recruited to ISIS. See, e.g., Mark Townsend, *Met police kept families of ISIS schoolgirls ‘in the dark,’* THE GUARDIAN (Feb. 24, 2019, 3:00 AM), <https://www.theguardian.com/uk-news/2019/feb/24/police-kept-families-of-isis-bethnal-green-schoolgirls-in-dark-shamima-begum> [<https://perma.cc/Q25V-9QV6>]; *British police knew ISIS encouraged girls to go to Syria and did nothing: Begum family*, AL ARABIYA NEWS (Feb. 21, 2019, 12:00 AM), <https://english.alarabiya.net/features/2019/02/21/British-police-knew-ISIS-encouraged-girls-to-go-to-Syria-and-did-nothing-Begum-family> [<https://perma.cc/W8MP-BEPR>]. See also *Syria girls: Met Police chief apologises for letter failure*, BBC NEWS (Mar. 10, 2015), <https://www.bbc.com/news/uk-31820783> [<https://perma.cc/2X3V-J6S8>]; REPRIEVE, *TRAFFICKED TO ISIS*, *supra* note 11, at 46.
- 13 REPRIEVE, *TRAFFICKED TO ISIS*, *supra* note 11, at 41–45, 48–54; REPRIEVE, *SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, FOR THE THEMATIC REPORT ON THE IMPLEMENTATION OF THE NON-PUNISHMENT PRINCIPLE IN THE CONTEXT OF TRAFFICKING IN PERSONS* (2021), <https://www.ohchr.org/Documents/Issues/Trafficking/submissions-HRC47/NGOs-and-academia/Reprieve.docx> [<https://perma.cc/9V9C-8T3C>].
- 14 *Id.*
- 15 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 46(1).
- 16 *Id.* cl. 46(2).
- 17 *Id.* cl. 47.
- 18 Modern Slavery Act 2015, c. 30, § 49 (2015).
- 19 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 48. Additionally, clause 48 “specifies that the standard of proof for conclusive grounds decisions is the ‘balance of probabilities’ . . . [but] does not specify a standard of proof for reasonable grounds decisions.” GOWER, NATIONALITY AND BORDERS BILL, *supra* note 4, at 54. The U.K. government maintains these amendments will align the MSA with the language in the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT). HOME OFFICE, NATIONALITY AND BORDERS BILL: EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM 24–25 (July 2021), <https://bills.parliament.uk/bills/3023/publications#collapse-publication-human-rights-memorandum> [<https://perma.cc/4QHA-ARK5>].
- 20 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cls. 49, 52.
- 21 *Id.* cl. 50.
- 22 *Id.* cl. 51(2)(a).
- 23 *Id.* cl. 51(1).
- 24 See, e.g., Dame Sara Thornton, *Letter to Home Secretary: The Nationality and Borders Bill*, OFF. OF THE INDEP. ANTI-SLAVERY COMM’R (Sept. 7, 2021), <http://www.antislaverycommissioner.co.uk/media/1668/iasc-letter-to-the-rt-hon-pri-pati-patel-mp-home-secretary-march-2021.pdf> [<https://perma.cc/LVN3-G74Q>] (“I am particularly concerned about Clause 51 and the relatively low threshold for defining public order grounds which would restrict foreign nationals who have received sentences in excess of twelve months from being able to access support through the National Referral Mechanism (NRM). There is a real risk this will limit victim engagement in prosecutions and therefore significantly undermine the ability of law enforcement to bring traffickers to justice.”).
- 25 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(3).
- 26 *Id.* cl. 51(3)(b).
- 27 See Modern Slavery Act 2015, c. 30, § 45, sched. 4 (2015).
- 28 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(3)(f).
- 29 *Id.* cl. 51(3)(a). See, e.g., *Operation of police powers under the Terrorism Act 2000, quarterly update to June 2021*, GOV.UK (Sept. 9, 2021), <https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-june-2021> [<https://perma.cc/HZ9J-5BE5>] (containing statistics relating to the Terrorism Act 2000 and subsequent legislation); *User guide to operation of police powers under the Terrorism Act 2000 and subsequent legislation*, GOV.UK (Sept. 9, 2021), <https://www.gov>

uk/government/publications/user-guide-to-operation-of-police-powers-under-the-terrorism-act-2000-and-subsequent-legislation/user-guide-to-operation-of-police-powers-under-the-terrorism-act-2000-and-subsequent-legislation [https://perma.cc/67G5-BQZG].

30 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(4).

31 *Id.* cl. 51(4)(a).

32 *Id.* cl. 51(4)(b)(c).

33 *Id.* cl. 51(4)(d).

34 *Id.* cl. 51(4)(d)(ii).

35 *Id.* cl. 51(4)(d)(i).

36 *Id.* cl. 51(3)(c). As of 28 February, 2021, there are three TPIM notices in force, all against British citizens. HOME OFFICE, WRITTEN STATEMENT, TERRORISM PREVENTION AND INVESTIGATION MEASURES (1 DECEMBER 2020 TO 28 FEBRUARY 2021) (Apr. 20, 2021), <https://questions-statements.parliament.uk/written-statements/detail/2021-04-20/hcws926> [https://perma.cc/8YGJ-B9NR].

37 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(3)(e). Since the first TEO of April 2017, a total of thirty-five TEOs have been imposed through December 31, 2020, with nine imposed in 2017, sixteen in 2018, nine in 2019, and one in 2020. HM GOVERNMENT, MEMORANDUM TO THE HOME AFFAIRS COMMITTEE POST-LEGISLATIVE SCRUTINY OF THE COUNTER-TERRORISM AND SECURITY ACT 2015 9–10 (2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994074/CCS207_CCS0621700320-001_CP_455_Web_Accessible.pdf [https://perma.cc/N6BL-M3WG].

38 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(3)(g). See, e.g., 654 Parl Deb HC (Feb. 20, 2019) col. 1485 (UK), <https://hansard.parliament.uk/commons/2019-02-20/debates/4DEC2589-7212-48A0-8507-9D38C0DEC42A/DeprivationOfCitizenshipStatus> [https://perma.cc/W7VF-QZWX] (statement of Sajid Javid, Secretary of State for the Home Dep’t) (in response to a question on the U.K. government’s “use of the power to deprive a person of citizenship status,” stating that “[t]his power is used only in extreme circumstances, where conducive to the public good. Since 2010, it has been used about 150 times for people linked to terrorism or serious crimes”).

39 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(3)(d).

40 *Id.* cl. 51(3)(i).

41 *Id.* cl. 51(2).

42 *Id.* cl. 52.

43 *Id.* cl. 53(1), (2), (5), (6).

44 The relevant regional instruments include, for example, the 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, which the United Kingdom ratified in 1951, and the 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, which the United Kingdom ratified in 2008. *Treaty List for a Specific State: United Kingdom*, COUNCIL OF EUR. (2021), <https://www.coe.int/en/web/conventions/by-member-states-of-the-council-of-europe?module=treaties-full-list-signature&CodePays=UK>, [https://perma.cc/X4WK-QT8D]. See also HOME OFFICE, NATIONALITY AND BORDERS BILL: EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM, *supra* note 19, at 14 (“The UK is and will remain a signatory of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), which sets out our international obligations to identify and support victims of modern slavery.”). Further, the United Kingdom ratified the 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 [hereinafter 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 (Oct. 13, 2021), https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-a&chapter=18 [https://perma.cc/D9T6-3Z7P]. 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 (ICERD), Mar. 7, 1966, 660 U.N.T.S. 195, in 1969; the International Covenant on Civil and Political Rights (ICCPR), Dec. 19, 1966, 999 U.N.T.S. 171, in 1976; the Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, in 1986; the Convention against Torture and Other Cruel, Inhu-

man or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, 1465 U.N.T.S. 113, in 1988; the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, 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, May 25, 2000, 2171 U.N.T.S. 227, in 2009. *Ratification Status for United Kingdom of Great Britain and Northern Ireland*, U.N. Treaty Body Database (2021), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=185 [https://perma.cc/NAB2-9MAX]. The United Kingdom has also ratified a series of International Labour Organization conventions, including the Convention Concerning Forced or Compulsory Labour, June 28, 1930, ILO No. 29, 60 U.N.T.S. 264, in 1931; the Convention on the Abolition of Forced Labour, June 5, 1957, ILO No. 105, 320 U.N.T.S. 4648, in 1957; the Worst Forms of Child Labour Convention, June 17, 1999, ILO No. 182, 2133 U.N.T.S. 161, in 2000; and the Protocol of 2014 to the Forced Labour Convention, 1930, Nov. 9, 2016, ILO P029, in 2016. *Ratifications for United Kingdom of Great Britain and Northern Ireland*, ILO (2021), https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102651 [https://perma.cc/M3SL-RTMB].

45 HOME OFFICE, NATIONALITY AND BORDERS BILL: EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM, *supra* note 19, at 1.

46 *Id.* at 24–25.

47 See generally HOME OFFICE, NEW PLAN FOR IMMIGRATION OVERARCHING EQUALITY IMPACT ASSESSMENT OF POLICIES BEING DELIVERED THROUGH THE NATIONALITY AND BORDERS BILL (Sept. 16, 2021), https://publications.parliament.uk/pa/bills/cbill/58-02/0141/Nationality_and_Borders_Bill_-_EIA.pdf [https://perma.cc/BM8K-FFDZ].

48 See Nationality and Borders Bill (141), Public Bill Committee 104 (Sept. 23, 2021), https://publications.parliament.uk/pa/bills/cbill/58-02/0141/amend/PBC141_Nationality_1st_4th_Compilation_23_09_2021_REV.pdf [https://perma.cc/LYP2-4NBX] (statement of Siobhán Mullally, United Nations Special Rapporteur on Trafficking in Persons) [hereinafter Statement of Siobhán Mullally, United Nations Special Rapporteur on Trafficking in Persons] (“I think that part 4, as it is currently drafted, is not in compliance, as I said, with international law. It is not in compliance with the state’s obligations under the ECHR, the Council of Europe’s convention on action against trafficking or the UN’s protocol to prevent, suppress and punish trafficking in persons, especially women and children—the Palermo protocol.”).

49 See V.C.L. and A.N. v. the United Kingdom, App. Nos. 77587/12, 74603/12, ¶¶ 156, 159–162 (Feb. 16 2021), <http://hudoc.echr.coe.int/eng/?i=001-207927> [https://perma.cc/V57L-FH2C].

50 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 44, art. 3(a) (“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 . . .”). See also *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 . . .”). See, e.g., Chowdury and Others v. Greece, App. No. 21884/15, ¶¶ 93, 96 (Mar. 30, 2017), <http://hudoc.echr.coe.int/eng/?i=001-172701> [https://perma.cc/4FK8-YEUJ] (noting that “prior consent” did not “exclude the characterisation of work as forced labour,” with “exploitation through work . . . constitu[ing] an aspect of human trafficking”).

51 See, e.g., Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 17–20, 36–39; ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 8, at 32–51, 53.

52 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 43.

53 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 44, art. 3(a).

54 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, transpor-

tation, 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").

55 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-Countering_Trafficking_in_Persons_in_Conflict_Situations.pdf [<https://perma.cc/KTC2-B6TZ>] ("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 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 18–20.

56 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://perma.cc/6CCJ-D4ZV>] (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").

57 *Id.*

58 *Id.*

59 U.N. OFF. ON DRUGS AND CRIME, COUNTERING TRAFFICKING IN PERSONS IN CONFLICT SITUATIONS, *supra* note 55, at x.

60 *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.>").

61 *Id.* at 12; ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 8, 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."); Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 19, 37–38, 58(a).

62 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 38–39.

63 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.>").

64 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 11, at 24.

65 Huckerby, *When Human Trafficking and Terrorism Connect*, *supra* note 9; Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 36.

66 Huckerby, *When Terrorists Traffic Their Recruits*, *supra* note 9. See also Huckerby, *When Human Trafficking and Terrorism Connect*, *supra* note 9; Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 37.

67 *Id.*

68 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(2)(a).

69 *Id.* cl. 51(1)(a).

70 *Id.* cl. 51(3)–(7).

71 ECPAT UK, *Statement on the Nationality and Borders Bill*, *supra* note 5 (nothing that under clause 51, "children even suspected of 'terrorism related links' will be precluded from being identified as victims, even if they have been groomed and exploited by armed groups," which is "in direct contravention of international law"). See also Nationality and Borders Bill (141), Public Bill Committee 120 (Sept. 23, 2021), https://publications.parliament.uk/pa/bills/cbill/58-02/0141/amend/PBC141_Nationality_1st_4th_Compilation_23_09_2021_REV.pdf [<https://perma.cc/LYP2-4NBX>] (statement of Patricia Durr, ECPAT) ("We are also concerned about the terrorism subsections of clause 51, which will exclude child victims exploited by non-state armed groups from accessing protection. The international legal framework on the use of children in armed conflict defines this form of exploitation as the worst form of child labour, and exclusion of children recruited by armed groups on public order grounds will significantly hinder their ability to be safeguarded from harm and to access support and protection. We draw particular attention to the impact it will have, not only on migrant children. It may include the identification of children domestically, such as those in Northern Ireland who are recruited into paramilitarism.>").

72 See, e.g., Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(3) (b) (defining a "threat to public order" as including a person who has been convicted of a Schedule 4 offence under the MSA, or of a "corresponding offence"). For commentary on this aspect of the Bill, see Nationality and Borders Bill (141), Public Bill Committee 95 (Sept. 23, 2021), https://publications.parliament.uk/pa/bills/cbill/58-02/0141/amend/PBC141_Nationality_1st_4th_Compilation_23_09_2021_REV.pdf [<https://perma.cc/AY97-DDLH>] (statement of Dame Sara Thornton, Independent Anti-Slavery Commissioner) (questioning the inclusion of the MSA Schedule 4 offences in the definition of "threat to public order" as the Schedule 4 list of offences was created "for a very different purpose"—the statutory defence—than that contemplated by the public order exemption); UNIV. NOTTINGHAM RTS. LAB, NATIONALITY AND BORDERS BILL PART 4: MODERN SLAVERY CONSIDERATION PAPER ¶¶ 222–23 (2021), <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/october/consideration-paper-nationality-and-borders-bill.pdf> [<https://perma.cc/2H22-ED8P>] ("The statutory defence in Section 45 was designed to provide further encouragement to victims of slavery to come forward and give evidence without fear of being convicted for offences connected to their slavery or trafficking situation. . . . The listed offences exempt from the Modern Slavery Act (2015) Section 45 statutory defence may still arise in trafficking cases, and evidence as to whether the statutory defence applies may not always be clear. Therefore, victims may still not be culpable because they have a common law defence of duress or it is not in the public interest to prosecute.>").

73 See, e.g., Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(3) (f) (defining a "threat to public order" to include a "person is a foreign criminal within the meaning given by section 32(1) of the UK Borders Act 2007"). See further, e.g., Thornton, *Letter to Home Secretary*, *supra* note 24 (expressing concern about cl. 51(3)(f) as being "far too broad. . . . Home Office officials have clarified that this clause will include sentences for crimes committed both within and outside of the UK" and arguing "this is a low threshold and will encompass a wide range of offences. Sentences given outside the UK may not reflect the sentencing guidelines in the UK which may draw in minor offending to this provision").

74 LAW SOCIETY OF SCOTLAND, EVIDENCE TO THE NATIONALITY AND BORDERS BILL PUBLIC BILL COMMITTEE WITH AMENDMENTS TO BE TABLED IN COMMITTEE 16 (Aug. 2021), <https://bills.parliament.uk/publications/42824/documents/704> [<https://perma.cc/QM5R-AMW8>].

75 The U.K. government has recently, for example, misapplied the definition of trafficking in persons under international law to preclude trafficking to terrorist groups for forced labour. See REPRIEVE, SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, *supra* note 13, at 4 ("In December 2020, it was revealed during the course of UK High Court proceedings in the case of *FR* (the child of the claimant) that during the period of December 2019 to August 2020, Home Office officials were working under 'a misunderstanding of the law and the definition of human trafficking' pursuant to an 'unpublished policy' that they 'do not consider that terrorism or potential acts of terrorism fall under the definition of modern slavery.' Specifically, the [Home Office] decided there were no reasonable grounds to believe that the child in issue was a [victim of human trafficking] because

‘forced labour for the purposes of terrorism does not constitute “forced labour” for the purposes of the “exploitation.”’ (emphasis in original and citations omitted). See also REPRIEVE, *TRAFFICKED TO ISIS*, *supra* note 11, at 49.

76 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 40–43.

77 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) [hereinafter Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*].

78 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 28. See also V.C.L. and A.N. v. the United Kingdom, *supra* note 49, ¶ 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 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.”).

79 See OFF. OF THE HIGH COMM’R FOR HUM. RTS., *RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING* 246 (Guideline 2) (2010) [hereinafter *RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING*] (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) [hereinafter Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (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) [hereinafter Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (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.”).

80 See Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 44 (“It is important to note that the obligation of non-punishment applies extraterritorially to identified or presumed victims of trafficking.”).

81 See ORG. FOR SEC. & COOP. IN EUR., *TRAFFICKING IN HUMAN BEINGS AND TERRORISM*, *supra* note 8, at 24 (“The starting point for applying this principle is early identification of a situation of human trafficking.”); Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 25 (“Early identification and prompt assessment by trained and qualified individuals is essential to ensuring the effective implementation of States’ obligations of non-punishment.”).

82 See, e.g., Joy Ngozi Ezeilo (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report on Trafficking in Persons, Especially Women and Children*, ¶ 31, U.N. Doc. A/HRC/20/18 (June 6, 2012) (“Timely and efficient identification of victims is central to the criminalization of trafficking, as it affects the ability of law enforcement officials to prosecute traffickers effectively and is fundamental in terms of being able to provide trafficked persons with the necessary support services.”).

83 Clauses 46 and 47 have been criticized for putting the onus on the trafficked person to provide information about their claim and penalizing late compliance with information requests. This, for example, works to “ignore[] the many barriers to disclosure faced by victims of modern slavery.” JRS UK, *THE NATIONALITY AND BORDERS BILL: JRS UK EVIDENCE TO THE BILL COMMITTEE* (Sept. 23, 2021), <https://publications.parliament.uk/pa/cm5802/cmpublic/Nationality-Borders/memo/NBB07.htm> [https://perma.cc/G34D-AWQL]. These provisions also inadequately protect victims who may have a “distrust or lack of familiarity with officials within a state, where there may be language barriers or delays

in accessing legal assistance, or where there may be fears of reprisals for the victims or their families, that can lead to delays.” Statement of Siobhán Mullally, United Nations Special Rapporteur on Trafficking in Persons, *supra* note 48, at 99. See also 699 Parl Deb HC (July 19, 2021) col. 728 (UK), <https://hansard.parliament.uk/commons/2021-07-19/debates/FC19E458-F75D-480D-A20D-CD1E7ADC937E/NationalityAndBordersBill> [https://perma.cc/69LB-LS9G] (statement of Theresa May) (expressing concerns about “timing and the issue that the Secretary of State can require information to be provided within a specified period” and “the change from needing reasonable grounds that a person may be a victim of modern slavery to reasonable grounds that a person is a victim of modern slavery”); *id.* col. 746 (statement of Sir Iain Duncan Smith) (“I support much of what the Bill is trying to do, and I understand the motives behind it, but part 4 deals with those from the most terrible backgrounds and facing the worst persecution, trafficked as they are. We need to give them time, and that time will help us prosecute the very people we wish to go after.”); Thornton, *Letter to Home Secretary*, *supra* note 24 (“It is recognised that for those who have experienced trauma, it can often take a considerable amount of time before they feel comfortable to disclose fully what has happened to them. It is therefore problematic that the Bill does not specify the timescales within which individuals would be required to provide this information.”).

84 WOMEN FOR REFUGEE WOMEN, *EVIDENCE TO THE NATIONALITY AND BORDERS PUBLIC BILL COMMITTEE* (Sept. 2021), <https://bills.parliament.uk/publications/42825/documents/705> [https://perma.cc/SWB4-EX9K] (opposing clause 48’s raised threshold by arguing it would only exacerbate the challenges survivors face in “be[ing] properly identified by the Home Office and receiv[ing] the support they need”); CENTRE FOR SOCIAL JUSTICE, *NATIONALITY AND BORDERS BILL BRIEFING 1* (July 2021), <https://www.centreforsocialjustice.org.uk/library/nationality-and-borders-bill-briefing> [https://perma.cc/2PFW-6BZU] (“Raising the MSA 2015 Reasonable Grounds threshold (clause 48) . . . may impact negatively on those genuine victims of modern slavery unable to provide objective evidence of their exploitation.”); LAW SOCIETY OF SCOTLAND, *EVIDENCE TO THE NATIONALITY AND BORDERS BILL PUBLIC BILL COMMITTEE WITH AMENDMENTS TO BE TABLED IN COMMITTEE*, *supra* note 74, at 16 (“Raising the standard of proof at RG [reasonable grounds] stage . . . could foreseeably result in fewer referrals being made and will increase the prospect of potential victims not being identified by the NRM, without an investigation even taking place.”); JRS UK, *THE NATIONALITY AND BORDERS BILL*, *supra* note 83 (“Victims already face immense barriers to recognition. JRS UK frequently works with people with strong indicators of trafficking who have received negative decisions within the NRM The lower threshold currently in place at least seeks to reflect the inherent difficulty of proving one is a victim and allow one to access support while the issue is further assessed.”).

85 By shortening the recovery period to 30 days, the Bill departs from the current approach in England and Wales, which is to provide a 45-day minimum recovery period. See CROWN PROSECUTION SRVS., *HUMAN TRAFFICKING, SMUGGLING AND SLAVERY* (last updated Apr. 30, 2020), <https://www.cps.gov.uk/legal-guidance/human-trafficking-smuggling-and-slavery> [https://perma.cc/J493-574E]; GOWER, *NATIONALITY AND BORDERS BILL*, *supra* note 4, at 54.

86 See *infra* notes 185–198.

87 See, e.g., Statement of Siobhán Mullally, United Nations Special Rapporteur on Trafficking in Persons, *supra* note 48, at 98 (“A concern here would be the possible impact of changing the threshold in terms of potential victims of trafficking accessing support and assistance and in processes of identification. Is it likely to have a negative impact? Is it likely to increase difficulties in identifying victims and referring them in a timely way for assistance and protection? That would be a concern if it is a regressive measure from where we are now; in terms of human rights law, you want to ensure nonregression in the protection of human rights of victims of trafficking.”).

88 *Id.* at 100 (“Again, it is disappointing to see that reduction in the recovery period. It is a regressive measure in terms of current standards and protections, so I would have concerns that it is moving backwards the human rights protections of victims of trafficking. There have been previous examples of regressive measures, in terms of attempts to reduce assistance levels to victims of trafficking. Again, it breaches the principle of non-regression in human rights protections, so I would have concerns around that and the longer-term impact, in terms of ensuring effective protection of victims of trafficking and trying to break the cycle of re-trafficking and vulnerability to exploitation.”).

89 *Id.* at 98, 100.

90 *Syria: British Nationals Abroad Written Question*, UIN 7789 (Nov. 5, 2019), <https://questions-statements.parliament.uk/written-questions/detail/2019-10-30/7789> [https://perma.cc/5RGU-ZSTE] (statement of Dr. Andrew Murrison). See also *Syria: British Nationals Abroad Written Question*, UIN 2774 (Oct. 21, 2019), <https://questions-statements.parliament.uk/written-questions/detail/2019-10-21/2774> [https://perma.cc/QR7S-7EMA] (statement of Dr. Andrew Murrison); *Syria: British Nationals Abroad Written Question*, UIN 1141 (Oct. 16, 2019), <https://questions-statements.parliament.uk/written-questions/detail/2019-10-16/1141> [https://perma.cc/8PXC-6XFX] (statement of Dr. Andrew Murrison).

91 REPRIEVE, TRAFFICKED TO ISIS, *supra* note 11, at 43–47. See generally REPRIEVE, SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, *supra* note 13.

92 Huckerby, *When Human Trafficking and Terrorism Connect*, *supra* note 9; REPRIEVE, TRAFFICKED TO ISIS, *supra* note 11, at 45. See also REPRIEVE, SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, *supra* note 13, at 6 (“Reprieve understands that the UK government has refused to repatriate at least eight British women on the basis that they present a ‘threat to national security,’ without providing any evidence to support this assessment. Instead, it uses identical language in each refusal letter, with no appreciation of individual circumstances of the detainee. Even in cases where clear evidence of trafficking has been shared with the British Foreign, Commonwealth and Development Office (FCDO), the UK government props up the unsubstantiated assertion that each detainee had ‘travelled of her own volition.’” (emphasis in original)).

93 *British Nationality: Written Question*, UIN 139992 (Jan. 27, 2021), <https://questions-statements.parliament.uk/written-questions/detail/2021-01-19/139992/> [https://perma.cc/Z8KZ-H8R2] (statement of Kevin Foster).

94 *Id.*

95 REPRIEVE, TRAFFICKED TO ISIS, *supra* note 11, at 43 (“The UK Government has instead asserted that it does not have an obligation to identify or support potential victims of trafficking who have been trafficked out of the UK and are currently abroad.”); REPRIEVE, SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, *supra* note 13, at 4.

96 See generally *Unconvicted terrorism suspects face indefinite controls under UK bill*, THE GUARDIAN (May 20, 2020), <https://www.theguardian.com/politics/2020/may/20/unconvicted-terrorism-suspects-face-indefinite-controls-under-uk-bill> [https://perma.cc/F3US-Q6FV] (“Tpims are controversial and resource-heavy measures – usually based on secret intelligence – for controlling the risk presented by terrorism suspects at large where criminal prosecution is not an option.”); INST. ON STATELESSNESS AND INCLUSION, THE WORLD’S STATELESS 2020: DEPRIVATION OF NATIONALITY 227 (2020), https://files.institutesi.org/WORLD’S_STATELESS_2020.pdf [https://perma.cc/E26S-GN2C] (noting the absence of “fairness” in proceedings related to deprivation of citizenship); AMNESTY INT’L, DANGEROUSLY DISPROPORTIONATE: THE EVER-EXPANDING NATIONAL SECURITY STATE IN EUROPE 62 (2017), <https://www.amnesty.org/en/documents/eur01/5342/2017/en/> [https://perma.cc/6YPN-HG8Z] (noting the breadth and lack of transparency in stripping individuals of their British nationality because of suspected links to terrorism-related activities); LIBERTY UK, LIBERTY’S SECOND READING BRIEFING ON CLAUSE 60 OF THE IMMIGRATION BILL IN THE HOUSE OF LORDS ¶ 16 (Feb. 2014), <https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/04/Liberty-Second-Reading-Briefing-on-the-Immigration-Bill-in-the-House-of-Lords-Feb-2014.pdf> [https://perma.cc/QT5S-QZHV] (noting that for “those suspected of involvement in terrorist activity, this Government and its predecessor have sought to introduce all manner of exceptional measures from indefinite internment, to the imposition of onerous conditions in the community through endless, fruitless attempts to remove individuals from the country”). See also Tufyal Choudhury, *The Radicalisation of Citizenship Deprivation*, 37 CRITICAL SOC. POL’Y 225, 241 (2017) (“While official statements note that this policy is applied to all forms of terrorism and all forms of extremism, the powers have so far been used almost exclusively against British Muslim men.”).

97 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4. cl. 51(4)(d)(ii).

98 See *supra* notes 68–75.

99 See Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 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.

100 See Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 44, 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.”).

101 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 49–52.

102 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 44, art. 6(4). See also Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 27–35 (addressing children as victims of trafficking by proscribed groups).

103 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 49, 51(2)(b), 52, 53(5)–(6).

104 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 49.

105 *Id.*

106 ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 8, 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 56, 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.”); Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 41 (describing the range of punishments proscribed by the non-punishment principle); Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 53–54 (noting “the central importance of the principle of non-punishment of victims of trafficking”).

107 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 18.

108 *Id.* ¶ 28.

109 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 54.

110 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 8, at 24 (“The starting point for applying this principle is early identification of a situation of human trafficking.”); Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 25 (“Early identification and prompt assessment by trained and qualified individuals is essential to ensuring the effective implementation of States’ obligations of non-punishment.”).

111 See Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 32 (“Ensuring a comprehensive response to human trafficking re-

quires 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.”).

112 *Id.* ¶ 37. See also Special Rapporteur on Trafficking in Persons, Especially Women and Children, *The Importance of Implementing the Non-punishment Provision*, *supra* note 110, ¶ 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.”).

113 See, e.g., Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 53-54; Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 41.

114 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 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)). See also Huckerby, *When Terrorists Traffic Their Recruits*, *supra* note 9 (“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.”).

115 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 41.

116 *Id.* ¶ 43.

117 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 13.

118 See Modern Slavery Act 2015, c. 30, § 45, sched. 4 (2015) (providing a list of crimes to which the statutory defence to crimes committed in the context of one’s status as a trafficking victim does not apply, including terrorism and terrorism-related offences). See also CROWN PROSECUTION SRVS., HUMAN TRAFFICKING, SMUGGLING AND SLAVERY, *supra* note 85 (instructing prosecutors to determine whether a crime is within the Schedule 4 offences when considering prosecution). For critiques of the MSA’s statutory defence and its exemptions, see, e.g., GRP. OF EXPERTS ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS, REPORT CONCERNING THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS BY THE UNITED KINGDOM: SECOND EVALUATION ROUND ¶¶ 284-91 (Oct. 7, 2016), <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806abc&https://perma.cc/7LYP-E6PD>; HUMAN TRAFFICKING RESEARCH NETWORK, QUEEN’S UNIVERSITY BELFAST, HUMAN RIGHTS CENTRE, INPUT FOR THE REPORT ON THE IMPLEMENTATION OF THE NON-PUNISHMENT PRINCIPLE (2021), <https://www.ohchr.org/Documents/Issues/Trafficking/submissions-HRC47/Academia/QueensUniversityBelfastHumanRightsCentreHTRNSubmission.docx> [https://perma.cc/6JL4-DEUW]; DAME SARA THORNTON, THE MODERN SLAVERY ACT 2015 STATUTORY DEFENCE: A CALL FOR EVIDENCE 41 (Oct. 2020), <https://www.antislaverycommissioner.co.uk/media/1480/the-modern-slavery-act-2015-statutory-defence-a-call-for-evidence.pdf> [https://perma.cc/M56L-FMD7]; UNICEF, VICTIM NOT CRIMINAL: TRAFFICKED CHILDREN AND THE NON-PUNISHMENT PRINCIPLE IN THE UK 10 (May 2017), https://www.unicef.org/wp-content/uploads/2017/05/Unicef-UK-Briefing_Victim-Not-Criminal_2017.pdf [https://perma.cc/4AL7-8N5G]; Julia Muraszkiwicz, *Protecting Victims of Human Trafficking from Liability: An Evaluation of Section 45 of the Modern Slavery Act*, 85 J. CRIM. L. 394, 403 (2019); Marija Jovanovic, *The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Question for Rationale and Practical Guidance*, 1 J. TRAFFICKING HUM. EXPLOITATION 41, 65 (2017); Nogah Ofer, *Implementation of the Non-Punishment Principle in England: Why Are Victims of Human Trafficking Not Benefitting from the Protection from Prosecution Provided by International Law?*, 11 J. HUM. RTS. PRACTICE 486, 501-02 (2019).

119 See V.C.L. and A.N. v. the United Kingdom, *supra* note 49, ¶ 200 (finding “that the authorities’ failure to conduct a timely assessment of whether the

applicants had in fact been trafficked amounted to a breach of their positive obligations under Article 4 of the Convention” and that “the lack of such an assessment prevented them from securing evidence which may have constituted a fundamental aspect of their defence”); *id.* at ¶ 202 (finding that the applicants’ guilty pleas “were not made ‘in full awareness of the facts’” given “the absence of any assessment of whether they were trafficked”); *id.* at ¶ 209 (finding that “the proceedings as a whole could not be considered ‘fair’”).

120 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 43. See also *supra* note 90 and accompanying text.

121 See, e.g., REPRIEVE, TRAFFICKED TO ISIS, *supra* note 11, at 41-45, 47-54; REPRIEVE, SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, *supra* note 13, at 2-6. See also Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 41 (“A range of punishments applied to victims or potential victims of trafficking linked to United Nations designated terrorist groups have been highlighted in recent communications to States by several special procedures of the Human Rights Council.”).

122 See *infra* notes 168-184.

123 See, e.g., JRS UK, THE NATIONALITY AND BORDERS BILL, *supra* note 83 (“Clause 51, subsections f-1 contain exclusions for victims of modern slavery from protection and support on grounds connected to criminality. This is troubling because many victims of modern slavery have criminal convictions directly resulting from their exploitation.”); LAW SOCIETY OF SCOTLAND, EVIDENCE TO THE NATIONALITY AND BORDERS BILL PUBLIC BILL COMMITTEE WITH AMENDMENTS TO BE TABLED IN COMMITTEE, *supra* note 74, at 16 (“No one should be disqualified from being a victim of one crime because they may have been a perpetrator of another.”); WOMEN FOR REFUGEE WOMEN, EVIDENCE TO THE NATIONALITY AND BORDERS PUBLIC BILL COMMITTEE, *supra* note 76 (“It is wholly unfair to punish victims for the crimes they were forced to commit.”).

124 See, e.g., Nationality and Borders Bill 2021-22, HC Bill [141] pt. 4 cl. 51(3)(b), (3)(f). On the effects of including the MSA’s schedule 4 offences through cl. 51(3)(b). See generally Muraszkiwicz, *Protecting Victims of Human Trafficking from Liability*, *supra* note 118, at 403 (“[C]ommitting minor crimes may be tolerable but those listed in Schedule 4 interfere with [society’s] ability to accept someone as a victim. The crimes taint the victims and somehow weakens the exploitations these persons experience, and in turn the compulsion.”). See *further supra* note 118.

125 Nationality and Borders Bill 2021-22, HC Bill [141] pt. 4 cl. 51(3)(d) (emphasis added).

126 *Id.* cl. 51(3)(b).

127 See *supra* note 118.

128 Nationality and Borders Bill 2021-22, HC Bill [141] pt. 4 cl. 51(1)(a), (3)(g).

129 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 41.

130 See ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 8, at 24; Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 25.

131 See Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 44 (“It is important to note that the obligation of non-punishment applies extraterritorially to identified or presumed victims of trafficking.”); Maria Grazia Giammarinaro (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report on Trafficking in Persons, Especially Women and Children*, ¶ 28, U.N. Doc A/75/169 (July 17, 2020) (“[T]he principle must be applied irrespective of a previous formal identification of the person as a trafficking victim.”).

132 Under international law, for example, the proper application of the non-punishment principle also requires an assessment of the relationship between the unlawful acts and the fact of a person being trafficked. See, e.g., Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 45 (“A fundamental element of the non-punishment principle relates to the standard and criterion linking the commission of the offence to the trafficked person’s

subjection to trafficking – whether it is understood as a causal link or a duress defence.”).

133 Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(1), (2)(a).

134 *Id.* cl. 51(1), (2)(b).

135 *Id.* cls. 51(1)(a), 52.

136 *Id.* cl. 53.

137 See S.C. Res. 2396, ¶ 31 (Dec. 17, 2021) (“*The Security Council . . . stresses the importance of assisting women and children associated with foreign terrorist fighters who may be victims of terrorism, and to do so taking into account gender and age sensitivities.*” (emphasis in original)).

138 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 44, art. 5; RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 79, at 185 (Principle 12), 247–48 (Guideline 4).

139 RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 79, at 193 (Principle 13).

140 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 40–43.

141 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.”); Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Implementation of the Non-punishment Principle*, *supra* note 77, ¶ 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.”).

142 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 44, art. 14(2).

143 RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 79, at 51 (Principle 1).

144 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 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.

145 *Id.* ¶ 11 (citing *Rantsev v. Cyprus*, App. No. 25965/04, ¶ 307 (Jan. 7, 2010), <http://hudoc.echr.coe.int/eng?i=001-96549> [<https://perma.cc/Q7DE-3MR9>]) (noting this is part of the State’s due diligence obligations).

146 *Id.* ¶ 42.

147 *Id.*

148 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) [hereinafter Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2015)]. See also RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 79, at 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.”).

149 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 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. CCRP/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).

150 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 40–43.

151 See Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cls. 49, 51(2)(a), 51(2)(b), 52, 53(5)–(6). See further Thornton, *Letter to Home Secretary*, *supra* note 24 (“I have grave concerns about [clause 51] because it casts a wide net, with the potential to prevent a considerable number of potential victims of modern slavery from being able to access the recovery and reflection period granted through the NRM. Without such support prosecution witnesses will be unable to provide witness evidence and this will severely limit our ability to convict perpetrators and dismantle organised crime groups.”).

152 Kate Roberts, *Nationality and Borders Bill – Our concerns, and What We Need to See*, ANTI-SLAVERY UK, <https://www.antislavery.org/nationality-and-borders-bill-response/> [<https://perma.cc/46FK-TYFY>].

153 CENTRE FOR SOCIAL JUSTICE, NATIONALITY AND BORDERS BILL BRIEFING, *supra* note 84, at 2 (“Failure to support survivors increases re-trafficking rates and hinders our ability to dismantle the criminal networks responsible because their vital evidence and intelligence is lost.”).

154 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 44, 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 44, 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 44, art. 6.

155 RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 79, at 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.”).

156 See RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 79, 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); Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2014), *supra* note 71, Annex ¶ 1 (“Victims of trafficking, as victims of human rights violations, have the right to an effective remedy for any harm committed against them.”).

157 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2015), *supra* note 148, ¶ 7. See also, e.g., Hum. Rts. Comm., *General Comment No. 31*, *supra* note 149, ¶ 8; Comm. Against Torture, *General Comment No. 2*, *supra* note 149, ¶ 18; Comm. Against Torture, *General Comment No. 3*, *supra* note 149, ¶ 7.

158 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2009), *supra* note 79, ¶ 34.

159 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2014), *supra* note 71, ¶ 34; *id.* Annex ¶ 7(b).

160 See Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(2)(a).

161 *Id.* cls. 49, 51(2)(b), 52, 53(5)–(6).

162 See *supra* notes 104–137.

163 See, e.g., Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 44, art. 14(2).

164 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 43.

165 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.”).

166 See Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 51(2)(a).

167 See, e.g., *id.* cl. 51(3)(g) (defining a “threat to public order” as including a person who has been deprived of their nationality because it is “conducive to the public good”). See also *supra* note 96.

168 Holly Bancroft, *Shamima Begum: Timeline of events since she fled to join ISIS six years ago*, THE INDEPENDENT (Sept. 15, 2021, 10:44 AM), <https://www.independent.co.uk/news/uk/home-news/shamima-begum-timeline-isis-interview-b1920479.html> [https://perma.cc/UJES3-2JWQ]; Kevin Rawlinson & Vikram Dodd, *Shamima Begum: ISIS Briton faces move to revoke citizenship*, THE GUARDIAN (Feb. 19, 2019, 3:55 PM), <https://www.theguardian.com/world/2019/feb/19/isis-briton-shamima-begum-to-have-uk-citizenship-revoked> [https://perma.cc/7X93-Y7MX].

169 R (on the application of Begum) v. Special Immigration Appeals Commission et al. [2021] UKSC 7, <https://www.supremecourt.uk/cases/docs/uksc-2020-0156-judgment.pdf> [https://perma.cc/JD4D-8KQT] (dismissing Begum’s appeal for “leave to enter (LTE),” “her application for judicial review of the LTE decision,” and “her application for judicial review” of the Special Immigration Appeals Commission’s decision).

170 See, e.g., Dan Sabbagh, *Shamima Begum says she wants to prove innocence in UK courts*, THE GUARDIAN (Sept. 15, 2021), <https://www.theguardian.com/uk-news/2021/sep/15/shamima-begum-says-she-wants-to-prove-innocence-in-uk-courts> [https://perma.cc/P42S-UZXS]; *Shamima Begum speaks of grief over deaths of children and regrets of joining IS in new film The Return: Life After ISIS*, ITV (Mar. 18, 2021, 1:20 PM), <https://www.itv.com/news/2021-03-18/shamima-begum-speaks-of-grief-over-deaths-of-children-and-regrets-of-joining-is-in-new-film-the-return-life-after-isis> [https://perma.cc/K9WG-SZM3].

171 *Shamima Begum says she was ‘groomed’ by Islamic State, asks Britain for fair trial*, THE NEW ARAB (Sept. 15, 2021), <https://english.alaraby.co.uk/news/shamima-begum-says-she-was-groomed-islamic-state> [https://perma.cc/Q4XD-99AD].

172 Geraldine McKelvie, *Shamima Begum was groomed and abused like victims in Rotherham, Telford and Rochdale*, MIRROR (Sept. 15, 2021, 4:22 PM), <https://www.mirror.co.uk/news/uk-news/shamima-begum-groomed-abused-like-24992177> [https://perma.cc/3ZAA-TX5T].

173 *Shamima Begum: ‘We should live in Holland’ says IS husband*, BBC NEWS (Mar. 3, 2019), <https://www.bbc.com/news/uk-47431249> [https://perma.cc/5KJK-84PS].

174 Jamie Grierson, *Shamima Begum: how the case developed*, THE GUARDIAN (July 16, 2020, 9:47 AM), <https://www.theguardian.com/uk-news/2020/jul/16/shamima-begum-how-the-case-developed> [https://perma.cc/G4BM-7JW7].

175 Poppy Noor, *Shamima Begum: Dutch husband wants to take teenager to Netherlands*, THE GUARDIAN (Mar. 3, 2019, 6:49 AM), <https://www.theguardian.com/uk-news/2019/mar/03/shamima-begum-dutch-husband-wants-to-take-teenager-to-netherlands> [https://perma.cc/4FF5-3MW9] (“Their daughter, Sarayah, died aged one year and nine months.”).

176 Bancroft, *Shamima Begum: Timeline of events since she fled to join ISIS six years ago*, *supra* note 168 (“She reveals that she had two other children who died of malnutrition.”).

177 Vanessa Romo, *Baby of British ISIS Woman Stripped of Citizenship has Died*, NPR (Mar. 8, 2019, 10:27 PM), <https://www.npr.org/2019/03/08/701789508/ba->

[by-of-british-isis-woman-stripped-of-citizenship-has-died](https://perma.cc/A2VC-L6Z5) [https://perma.cc/A2VC-L6Z5].

178 Huckerby, *When Terrorists Traffic Their Recruits*, *supra* note 9. See also Sarah St. Vincent, *In Shamima Begum Case, UK Supreme Court Dismisses Rights and Overlooks Potential Victimhood*, JUST SECURITY (Feb. 26, 2021), <https://www.justsecurity.org/75016/in-shamima-begum-case-uk-supreme-court-dismisses-rights-and-overlooks-potential-victimhood/> [https://perma.cc/GX52-39QZ]; Lizzie Dearden, *Shamima Begum may have been ‘trafficked to Syria as a child for sexual exploitation’*, court hears, THE INDEPENDENT (June 18, 2021, 6:08 PM), <https://www.independent.co.uk/news/uk/home-news/shamima-begum-isis-citizenship-appeal-trafficking-b1868533.html> [https://perma.cc/NJZ4-P8KC]; Saskia Wishart & Gillian Kane, *Who is a Trafficked Person? The Case of Shamima Begum suggests that ‘Ideal Victim’ Narratives persist, more than 20 years after the Adoption of the Palermo Protocol*, REFUGEE L. INITIATIVE (Mar. 15, 2021), <https://rli.blogs.sas.ac.uk/2021/03/15/who-is-a-trafficked-person-the-case-of-shamima-begum/> [https://perma.cc/K54R-NCNA].

179 Huckerby, *When Terrorists Traffic Their Recruits*, *supra* note 9.

180 *Id.* See also *infra* note 187.

181 See, e.g., Tristan Kirk, *Shamima Begum’s lawyers claim she is a victim of trafficking*, EVENING STANDARD (June 18, 2021), <https://www.standard.co.uk/news/uk/shamima-begum-trafficking-court-citizenship-b941378.html> [https://perma.cc/TH9A-R7UN]. See also Dearden, *Shamima Begum may have been ‘trafficked to Syria as a child for sexual exploitation’*, court hears, *supra* note 178.

182 Kirk, *Shamima Begum’s lawyers claim she is a victim of trafficking*, *supra* note 181.

183 *Operation Sanctuary: Newcastle child sex network convicted*, BBC NEWS (Aug. 9, 2017), <https://www.bbc.com/news/uk-england-40879427> [https://perma.cc/J8BL-GAKR].

184 Begum v. The Secretary of State for the Home Department [2020] Special Immigration Appeals Comm’n, ¶ 139, <https://www.judiciary.uk/wp-content/uploads/2020/02/begum-v-home-secretary-siac-judgment.pdf> [https://perma.cc/VXF6-D96R].

185 See generally Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶¶ 27–35.

186 For child trafficking victims (i.e., those under eighteen years of age), the “means” element is not required. See Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 44, 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”).

187 ORG. FOR SEC. & COOP. IN EUR., TRAFFICKING IN HUMAN BEINGS AND TERRORISM, *supra* note 8, at 33; Huckerby, *When Human Trafficking and Terrorism Connect*, *supra* note 9; Huckerby, *When Terrorists Traffic Their Recruits*, *supra* note 9; Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 27 (“Where a victim is a child, it is not required to show ‘means’ such as deception, use of force or coercion or ‘grooming.’”).

188 See generally U.N. OFF. ON DRUGS AND CRIME, HANDBOOK ON CHILDREN RECRUITED AND EXPLOITED BY TERRORIST AND VIOLENT EXTREMIST GROUPS, *supra* note 56. See also U.N. OFF. ON DRUGS AND CRIME, COUNTERING TRAFFICKING IN PERSONS IN CONFLICT SITUATIONS, *supra* note 55, at 9 (stating 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”).

189 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 28.

190 See, e.g., V.C.L. and A.N. v. the United Kingdom, *supra* note 49, ¶ 219 (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.

191 Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2021), *supra* note 8, ¶ 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.”).

192 See Convention on the Rights of the Child, *supra* note 44, 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.”).

193 See RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, *supra* note 79, at 161 (Principle 10) (specifying protections for child victims of trafficking); Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Report on Trafficking in Persons, Especially Women and Children* (2014), *supra* note 71, 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.”).

194 UNICEF, GUIDELINES ON THE PROTECTION OF CHILD VICTIMS OF TRAFFICKING § 2.1 (Sept. 2006), <https://gdc.unicef.org/media/4531/download> [<https://perma.cc/QDB7-435D>].

195 Statement of Siobhán Mullally, United Nations Special Rapporteur on Trafficking in Persons, *supra* note 48, at 99.

196 ECPAT UK, *Statement on the Nationality and Borders Bill*, *supra* note 5. See also Nationality and Borders Bill (141), Public Bill Committee 120 (Sept. 23, 2021), https://publications.parliament.uk/pa/bills/cbill/58-02/0141/amend/PBC141_Nationality_1st_4th_Compilation_23_09_2021_REV.pdf [<https://perma.cc/LYP2-4NBX>] (statement of Patricia Durr, ECPAT UK).

197 ECPAT UK, *Statement on the Nationality and Borders Bill*, *supra* note 5.

198 See, e.g., Thornton, *Letter to Home Secretary*, *supra* note 24 (“I would highlight the lack of detail on provisions for children. Reforms must put children’s rights and protections first and decisions taken with their best interests as a priority.”).

