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

CONTACT

For questions about this submission please contact Clinical Professor of Law Jayne Huckerby (Director) (huckerby@law.duke.edu) and Clinical Professor of Law (Teaching) Aya Fujimura-Fanselow (Supervising Attorney) (fujimura-fanselow@law.duke.edu).
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)]—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 “threats 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 [cl. 49, 52], and statutory leave to remain [cl. 53(5)–(6)], the Bill depriv es 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.
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, 2021—complies with international anti-trafficking and human rights law. 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”13 that it seeks to implement emphasise the goal of protecting victims of modern slavery while policing false claims, including by those alleged to pose national security risks.14 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.”15 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.”16

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 fundraise.7 It has also “long been a tool for involuntary recruit-

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” decision 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.” The bill does not define “bad faith.” It does enumerate certain non-exhaustive—and broad—grounds on which individuals will be considered a “threat to public order.” 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.” 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 offence; or
- is “a foreign criminal within the meaning given by section 32(1) of the UK Borders Act 2007.”
- has been “convicted of a terrorist offence.” The latter is defined broadly in the Bill to include a terrorist offence under certain statutes, as well as offences determined to have a “terrorist connection.” Offences outside of the United Kingdom are also captured; 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” 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”;
- has not been convicted of an offence, but has been subject to a Terrorism Prevention and Investigation Measures (TPIM) notice, temporary exclusion order (TEO), or deprivation of nationality because it is “conducive to the public good”;
- 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)”;
- more generally and nebulously “otherwise poses a risk to the national security of the United Kingdom.”

8. The determination that a person is a public order threat 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, a person who has a section 51(1) determination made about them is excluded from assistance and support during the 30-day recovery period. 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.

9. The United Kingdom is bound by several regional and international anti-trafficking and human rights instruments with which the Bill must comply. The Home Office has assessed that the bill is consistent with the United Kingdom’s obligations under the European Convention on Human Rights (ECHR) and the Council of Europe Convention on Action Against Trafficking in Human Beings, as well as undertaken a positive Equality Impact Assessment. However, Part 4 (Modern Slavery) is not in compliance with these obligations in a number of ways. 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 criminality—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 to criminalise trafficking and identify victims, including to ensure that the definition captures trafficking for exploitation by terrorist or violent extremist groups. This definition must be applied consistent with States’ other human rights obligations, including non-discrimination and the rights of the child.

11. Under international law, the definition of trafficking in per-
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. For child victims only the “act” and the exploitative purpose are required. 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.” This includes exploitation for forced labour, sexual exploitation, criminal activities, “terrorist or other purposes,” as combatants, and/or forced marriage. For adults trafficked by proscribed groups, the “means” used can be overtly coercive (e.g., kidnapping) or not—a person can still be a victim if proscribed actors use subtle means such as deception or abuse of vulnerability 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. And trafficking can also occur as a result of “changed circumstances,” 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.”

12. By excluding those (including children) who have received a “reasonable grounds” decision from the right to receive a “conclusive grounds” decision because they are a “threat to public order” and centring this exclusion on terrorism or terrorism-related offences—the Bill violates this obligation to apply the definition of trafficking to terrorism. 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 4 or when someone is a “foreign criminal.” By centring exclusion on a range of national security grounds, the Bill seeks not just to “divide victims into worthy and unworthy victims,” 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.

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. The obligation to identify trafficked persons is a positive one and belongs to the State, meaning that it does not rely on victims, particularly minors, to self-identify. 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. Early and timely identification of presumed or identified victims of trafficking by terrorist groups is particularly key for applying the non-punishment principle. Lack of identification also impacts the ability of law enforcement to pursue the prosecution of traffickers.

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, the raised threshold for a “reasonable grounds” decision in clause 48, the reduction in the recovery period and its protections in clauses 49, 50, and 53, and its failure to distinguish between child and adult victims of trafficking. These measures, specifically the changed threshold in clause 48 and the reduced recovery period, 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.

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” and others—have necessarily frustrated the ability to identify and support potential trafficking victims, including on a case-by-case basis. Indeed, earlier this year, the U.K. government failed to confirm whether it assesses if those it has stripped of citizenship are trafficked. 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). It suggested that its obligations do not encompass those trafficked from the United Kingdom and who are presently abroad. 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. 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. Third, as noted above, the effect of clause 51(2)(a) is to preclude full identification of those trafficked in connection with terrorism. 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. Obligations to repatriate trafficking victims also continue to apply to those linked to proscribed groups. Under international law, such protection and assistance should be tailored, including on the basis of gender and the particular needs of children. 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.

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). 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.” Under international law, the non-punishment principle continues to apply when victims of trafficking commit terrorist offences as a consequence of having been trafficked. Proper application of the non-punishment principle “is critical to the recognition of trafficking in persons as a serious human rights violation” and to ensuring that States’ obligations of assistance and protection toward those trafficked for forced criminality are fully realised. 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.”

18. The non-punishment principle requires States to identify victims—including those linked to terrorism—as early as possible. The guarantee of non-punishment covers a range of unlawful acts and applies irrespective of the “gravity or seriousness of the offence committed” including terrorism. 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.

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. 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.” Indeed, “rather than being recognized as victims, with corresponding rights, those who are linked to proscribed groups can be wrongly criminalized and stigmatized.”

20. As it currently stands, the U.K. government’s existing general statutory approach to trafficking in persons falls short of international law’s full guarantee of non-punishment. 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 victims) or violates it (for example, stripping persons of their citizenship and refusing to repatriate them without assessing whether they are victims of trafficking forced into acts linked to terrorism).

21. Against this backdrop, the Bill further compounds these violations of the non-punishment principle under interna-
tional law as follows, particularly (but not exclusively) 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”). It also uses inter alia terrorism and terrorism-related offence exemptions to the MSA’s statutory defence to determine a “threat to public order,” where the MSA’s scheme has itself been much critiqued, including for non-compliance with the non-punishment principle. 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.” Yet, citizenship-stripping of trafficking victims linked to terrorism has been characterized as a violation of the non-punishment guarantee.

- 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. 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. The Bill as presently drafted directly violates the non-punishment principle by automatically 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.”

- 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 Kingdom; 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 period; 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. 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.

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

22. The United Kingdom has an obligation to criminalise trafficking in persons and “effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.” This obligation to criminalise and investigate trafficking in persons continues to apply to trafficking by terrorist groups. Failure to identify and support victims, as well as the non-application of the non-punishment principle, necessarily frustrates the ability to punish traffickers.

23. States also have a responsibility to undertake prevention measures that centre the “human rights of trafficked persons” in prevention efforts, including to prevent trafficking to proscribed groups. This specifically includes preventing (and investigating) the recruitment component of trafficking in the country of origin in instances of transnational trafficking. 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).”

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. This derives from States’ positive obligations of due diligence to protect individuals against human rights abuses by private actors. These due diligence obligations apply to trafficking by proscribed groups such as terrorist actors.
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, 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” and hinder efforts “to gather the intelligence necessary to dismantle trafficking networks.”

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, including for the failure to prevent, investigate, and punish trafficking by non-State actors such as proscribed groups. 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. 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.” The full guarantee of the right to remedy—including rehabilitation and reintegration of victims—is contingent on other State obligations, including to identify trafficking victims.

27. By disqualifying those who are a “threat to public order” or make claims in “bad faith” from being identified as trafficking victims and precluding victims from protection and assistance—including by failing to fully apply the non-punishment principle—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 measures 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.” Violations of non-discrimination guarantees can lead to those trafficked by terrorist groups not being recognised as victims. By disqualifying those who are a “threat to public order” or make claims in “bad faith” from being identified as trafficking victims, the de facto result is that the Bill improperly discriminates 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).

29. One prominent example of this is the case of Shamima Begum, who was stripped of her British citizenship by then-Hom Sec Sajid Javid in February 2019. 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, and is presently in al-Roj, a camp in Syria. 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 advantage of and manipulated into’ travelling to Syria” by those “who convinced her that by joining them she’d ‘get married, have children and lead a pure Islamic life.’” On arrival in Syria, Begum was put in a “women’s centre” and married an adult Dutch fighter. A child bride, she was pregnant the next year with a daughter who later died. A second child would die in 2018 and a third in 2019.

30. From a legal perspective, “this is not a very difficult case” for establishing that Begum is a trafficking victim of ISIS. If ISIS recruited and/or transported Begum with the specific purpose to exploit her (including for forced marriage), this means that she was trafficked. 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.” Indeed, Begum’s lawyers have argued that there is “overwhelming evidence” she was trafficked “when she left” the United Kingdom 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.” Parallel 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.” 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.”

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. A key obligation is to properly apply the definition of child trafficking under international law. 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. Indeed, children are often targeted for recruitment and exploitation by terrorist groups. 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. 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.

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.” 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 generally as well as child victims of trafficking in particular. 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.”

33. However, the Bill’s identification—and protection provisions—adversely impact both adult and child victims, 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.” The Bill’s failure to address the “additional vulnerabilities and barriers” that children face due to their age and its “lack of detail on provisions for children,” 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.


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.”).


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://justsecurity.org/75343/when-terrorists-traffic-their-recruits/ [https://perma.cc/N7AQ-CENW]; Jayne Huckerby, When Human Trafficking and Terrorism Connect: Dangers and Dilemmas, Just Security (Feb. 22, 2019), https://www.justsecurity.org/62658/humantrafficking-terrorism-connection-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 territor-ry, this appears not to be a key source of revenue for terrorist groups, especially considering the erosion of the territory held by terrorist groups.”).


14. Id.


16. Id. cl. 46(2).

17. Id. cl. 47.


21. Id. cl. 50.

22. Id. cl. 51(2a).

23. Id. cl. 51(1).

24. See, e.g., Dame Sarah Thornton, Letter to Home Secretary: The Nationality and Borders Bill, OFF. OF THE IND. ANTI-SLAVEY COMM’R (Sept. 7, 2021), http://www.antislaverycommissioner.co.uk/media/1668/iasc-letter-to-the-r-t-hon-pri-ti-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 Rejection 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.”).


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)(i).

35 Id. cl. 51(4)(d)(ii).


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/2019-02-02/debates/4DEC2589-7212-48A0-B507-9D38C0DEC42A/DeprivationOfCitizenshipStatus [https://perma.cc/W7VQ-G2WX] (statement of Sajid Javid, Secretary of State for the Home Dept)("in response to a question on the U.K. government’s “use of the power to deprive a person of citizenship status,” stating that “"this 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").


40 Home Office, NATIONALITY AND BORDERS BILL: EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM, supra note 19, at 1.

41 Id. at 24–25.


43 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.”).


45 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, supra note 44, art. 3(a) (“[t]rafficking 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., Chowdry 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-YEUI] (noting that “prior consent” did not “exclude the characterisation of work as forced labour,” with “exploitation through work . . . constitutes[ng] an aspect of human trafficking.”). See also, 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 52–51, 53.


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

48 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-B6T2] (“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.


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).


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 (noting 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_4thCompilation_23_09_2021_REV.pdf [https://perma.cc/LYP2-AN8K] (statement of Patrick Durr, EPCAT) (“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_4thCompilation_23_09_2021_REV.pdf [https://perma.cc/A9Y7-DLH] (statement of Dame Sarah 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. NATIONITY 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”).


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 REPREVE, TRAFFICKED TO ISIS, supra note 11, at 49.


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.”).


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 effectivity 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/N8B007.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-4800-A20D-CD1E7AD937E/NationalityAndBordersBill [https://perma.cc/69LB-L59G] (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 lain 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 rece[iving] the support they need”); CENTRE FOR SOCIAL JUSTICE, NATIONALITY AND BORDERS BILL BRIEFING 1 (July 2021), https://www.centrefor社交justice.org.uk/library/nationality-and-borders-bill-briefing [https://perma.cc/2PFW-68ZU] (“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 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 could 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 nonrecession 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-recession 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.
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.”).


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, Women and Children (2021), supra note 8, ¶¶ 27–35 (addressing children as victims of trafficking by proscribed groups).


105 Id.

106 O.R. 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”).


108 Id. ¶ 28.


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 O.R. 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.”).


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-repartition; 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-repartition, these are sanctions that violate the non-punishment guarantee for ISIS recruits who were trafficked.”).


116 Id. ¶ 43.


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–I 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 victim 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)(e), (3)(g).


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 Giammariano (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...
subject 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. cl. 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).


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. (142).

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.


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.").


151 See Nationality and Borders Bill 2021–22, HC Bill [141] pt. 4 cl. 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.").


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 "]to 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.


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).


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)(x) (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.


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-BKQT] (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).


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/QAXD-99AD].


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-


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-7RUN]. 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.


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 ‘traffic 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.”).


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 take 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.”).


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.”).