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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Refugee protection, internal displacement and statelessness

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

Summary

In the present report, submitted pursuant to Human Rights Council resolution 44/4, the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, highlights the obligation of States to ensure effective access to international protection for trafficked persons and persons at risk of trafficking. She also highlights States' obligations to prevent trafficking in internal displacement and refugee settings, to ensure effective access to asylum and to comply with the principle of non-refoulement. She emphasizes the urgency of eliminating statelessness, as an important measure to prevent trafficking in persons, especially children.

* The present report was submitted after the deadline so as to include the most recent information.



I. Trafficking in persons, refugee protection, internal displacement and statelessness

A. Background and context

1. Displacement, internally or across borders, heightens the risks of trafficking in persons and engages the responsibilities of States to prevent trafficking and to ensure effective protection of victims or persons at risk of trafficking. Limiting access to asylum and other forms of international protection is likely to increase the risks of trafficking in persons, by forcing people into risky, precarious situations. The Special Rapporteur is particularly concerned about the adoption by States of legislation and policy measures with the stated aim of preventing trafficking in persons, but which fail to comply with international law. The increasing use of accelerated refugee status determination procedures, the transfer of refugee status determination to third countries and the phenomenon of pushbacks following interceptions at sea or at land borders undermine States' obligations to identify, assist and protect victims/survivors of trafficking and to comply with the principle of non-refoulement. Expanding safe, regular migration opportunities and providing resettlement opportunities and other complementary pathways for the admission of persons with international protection needs, as well as effective access to asylum and complementary forms of international protection, are essential to prevent trafficking in persons and to ensure protection of victims.

2. Existing vulnerabilities to exploitation linked to discrimination, weak child protection systems, limited access to social protection, poverty, inequality and failures in the application of the rule of law are exacerbated in situations of displacement and statelessness. Factors that contribute to increased risks of trafficking in the context of displacement include family fragmentation and stress, loss of livelihoods and support networks, disruption of social norms and controls, displacement into insecure disaster relief camps and heightened physical and socioeconomic precarity.¹

B. Responses to trafficking in persons in displacement and refugee settings

3. The Special Rapporteur highlights the call in the Global Compact on Refugees for more shared responsibility and for pathways for the admission of persons with international protection needs to be made available on a more systematic, organized, sustainable and gender-responsive basis.² The Special Rapporteur notes the significant contribution to refugee protection that is being made by countries hosting large numbers of refugees. Against the background of increased stress on communities hosting large numbers of refugees and internally displaced persons, numerous protection challenges arise, including trafficking in persons, especially children.

4. The Special Rapporteur highlights significant developments in the work of the Global Protection Cluster in strengthening action to combat trafficking in persons through increased prioritization of such work. Trafficking and trafficking-related protection risks, including for the purposes of sexual exploitation, child and forced labour, child and forced marriage, and recruitment and use of children by armed groups, have been identified by a number of country-based protection clusters on the basis of protection monitoring and analysis. In 2022, data from protection clusters in 32 countries in conflict or crisis, and marked by internal displacement, showed that trafficking was a moderate to extreme risk in 50 per cent of situations.³ In several protection clusters, there was a strong correlation between identified protection risks and the specific risk of trafficking,⁴ including risks linked to discrimination

¹ Nicole Molinari, "Intensifying insecurities: the impact of climate change on vulnerability to human trafficking in the Indian Sundarbans", *Anti-Trafficking Review*, No. 8 (2017).

² A/73/12 (Part II), para. 94.

³ Protection clusters in the following countries identified trafficking as a priority protection risk: Colombia, Libya, Mali, Mozambique, Somalia, the Syrian Arab Republic, Ukraine and Venezuela (Bolivarian Republic of).

⁴ These risks were identified in Afghanistan, Libya, Nigeria, Pakistan, Somalia, the Syrian Arab Republic and Yemen.

and stigmatization, denial of resources, limited access to employment or education or services and limitations on humanitarian access, all of which exacerbate the risks of trafficking in persons. Where rule of law enforcement is weak, pre-existing and emerging vulnerabilities tend to be exploited.⁵ The Special Rapporteur notes that trafficking for purposes of sexual exploitation as a form of sexual violence in conflict continues to be widely reported where there is a presence of non-State armed groups or criminal groups, which are often linked to armed groups. Such patterns are prevalent where protection risks are identified and include attacks on civilians, unlawful killings, attacks on civilian objects, abduction, kidnapping, enforced disappearance, arbitrary or unlawful arrest and detention, forced recruitment and association of children in armed forces and armed groups, and gender-based violence.⁶

5. The Special Rapporteur also notes that many protection clusters do not have dedicated staff or programmes on prevention of trafficking or protection of trafficked persons. Complementary work is ongoing through the Child protection and the Gender-based violence areas of responsibility, and includes engagement with thematic actors such as the Inter-Agency Standing Committee Protection from Sexual Exploitation and Abuse network, and the Working Group on monitoring, analysis and reporting arrangements. However, gaps in prevention and failures of protection remain, in particular in relation to the range of purposes of exploitation evident in displacement and refugee settings and in the context of statelessness, such as child and forced labour, illegal adoptions, child and forced marriage, and domestic servitude.

6. Conflict, displacement and large movements of refugees increase the risks of trafficking. The conflict in the Syrian Arab Republic, for example, significantly increased the risks of trafficking in persons within that country, in neighbouring countries, as well as in destination countries, particularly for unaccompanied and separated children. Such risks were exacerbated by limited access to international protection pathways and a dire humanitarian situation.⁷ In 2022, joint communications by seven special rapporteurs were sent to Ethiopia and Eritrea expressing concern about trafficking in persons, especially women and girls, for purposes of sexual exploitation, including sexual slavery, in the context of the conflict in the Tigray, Amhara and Afar regions, and the particular risks of trafficking faced by internally displaced persons, Eritrean refugees, women and girls with disabilities, and children.⁸ Risks of trafficking in persons have been identified as arising in Myanmar for people displaced by conflict who are particularly vulnerable to trafficking for purposes of sexual and labour exploitation. In the Humanitarian Response Plan 2023 to address the conflict in Myanmar, specific consideration is given to people who may be at a heightened risk of trafficking in persons. A range of human rights risks have been highlighted, which may be linked to trafficking in persons, including abduction, gender-based violence, arbitrary arrest, forced recruitment and forced labour. The Special Rapporteur emphasizes States' obligations to prevent trafficking in persons and protect persons at risk of trafficking, in particular children, in situations of internal displacement, including disaster-related displacement.

7. The Special Rapporteur highlights the high risk of trafficking for the purpose of sexual exploitation that is related to displacement and gender-based violence. Displaced and stateless women and girls are at a heightened risk of trafficking for the purpose of sexual exploitation, including as a consequence of the activities of organized criminal groups, which force people to cross borders in search of international protection.⁹

8. The Special Rapporteur also highlights the importance of measures that regularize migrant status, thereby reducing the risks of trafficking, such as the 10-year temporary protection status granted to the over 1.8 million Venezuelans living in Colombia as of 2021,

⁵ This was highlighted in Colombia, Ethiopia, Honduras, Libya, Mozambique, Pakistan and Ukraine.

⁶ Specific risks were highlighted in the Democratic Republic of the Congo, Ethiopia, Guatemala, Haiti, Honduras, Somalia and South Sudan.

⁷ International Centre for Migration Policy Development, *Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons – A Study of Syria, Turkey, Lebanon, Jordan and Iraq* (Vienna, 2015).

⁸ See communications ERI 2/2022 and ETH 2/2022, available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁹ Office of the United Nations High Commissioner for Refugees (UNHCR), *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs* (March 2010).

with many more entering since.¹⁰ Such measures give effect to States' positive protective obligation to prevent trafficking in persons. The Special Rapporteur further highlights the continuing risks of trafficking in persons in the context of the more than 8 million people forcibly displaced from Ukraine, and the more than 5 million internally displaced Ukrainians.¹¹ The activation of the European Union Temporary Protection Directive, which ensures a residence permit, access to the labour market and housing, medical assistance and access to education for children has been of critical importance. The Special Rapporteur highlights the heightened risks of trafficking in persons faced by internally displaced and stateless persons, in particular displaced children, persons belonging to minorities, survivors of sexual and gender-based violence, older persons and persons with disabilities, especially those in institutional settings.¹²

II. Due diligence: obligation of prevention

9. The Special Rapporteur highlights the obligation of due diligence and its application to the prevention of trafficking in the context of refugee movements, internal displacement and statelessness. Although a State's capacity to prevent trafficking by non-State actors may be limited, in particular in situations of conflict or displacement, the obligation of due diligence is one of conduct and requires that effective action be taken to prevent trafficking in persons, especially women and children, whenever there is credible evidence that risks of trafficking exist. Consequently, obligations of due diligence to prevent trafficking in persons are engaged in the reception and protection of refugees, internally displaced persons and stateless persons.

10. The obligation of due diligence to prevent trafficking in persons requires States to take measures to prevent and eliminate statelessness, especially given the credible evidence of heightened risks of trafficking, in particular for children who are stateless.

III. Climate- and conflict-related displacement

11. The Special Rapporteur highlights the combined risks arising from displacement linked to conflict and to climate change, and recalls, in particular, the gender dimensions of trafficking in persons in the context of climate change and displacement. She notes with concern that, in the Sahel region, the impact of climate change has aggravated conflict over scarce resources and facilitated encroachment by non-State armed groups, further adding to the difficulties of preventing trafficking in persons and ensuring effective protection.¹³ Internal and transnational trafficking is an increased risk in situations of climate-related disasters, including tropical cyclones and flooding, which often are also situations of ongoing violence and conflict. The Special Rapporteur also notes that trafficking is frequently identified by protection clusters as a gender-based violence risk.¹⁴

IV. Internal displacement and trafficking in persons

12. In the context of internal displacement, the Special Rapporteur highlights the Guiding Principles on Internal Displacement, in which specific reference is made to the obligation of States to protect internally displaced persons against slavery or "any contemporary form of

¹⁰ Special Rapporteur on trafficking in persons, especially women and children, statement to the International Migration Review Forum, round table 2, New York, 17 May 2022.

¹¹ Ukraine refugee situation: operational data portal. Available at <https://data.unhcr.org/en/situations/ukraine>.

¹² United Nations Office on Drugs and Crime (UNODC), "Conflict in Ukraine: key evidence on risks of trafficking in persons and smuggling of migrants", UNODC research update, December 2022.

¹³ Office of the United Nations High Commissioner for Human Rights (OHCHR) and Platform on Disaster Displacement, *The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-border Migrants* (2018).

¹⁴ UNHCR, "Gender-based violence safety audit report – Eduardo Mondlane site, Mueda, Cabo Delgado, Mozambique", March 2022. Available at <https://data.unhcr.org/en/documents/details/93562>.

slavery”, such as sale into marriage, sexual exploitation or forced labour of children.¹⁵ The Special Rapporteur highlights that the Guiding Principles do not provide an exhaustive list of reasons for trafficking that may be prevalent in internal displacement settings; the list is indicative only. The use of means, such as force or deception, is not required to establish trafficking of children.

13. The Special Rapporteur also highlights States’ obligations to ensure the human rights of internally displaced persons and to comply with international humanitarian law in the context of internal displacement. These necessarily include the obligation to prevent trafficking in persons and ensure assistance and protection to victims of trafficking and persons at risk of trafficking who are internally displaced.¹⁶

V. Identification and assistance in refugee and displaced person settings

14. The Special Rapporteur notes that States that host the largest numbers of refugees and internally displaced persons have limited capacity to assist and protect trafficked persons or to prevent trafficking in persons. Measures to prevent trafficking in persons and protect victims are not consistently integrated into wider humanitarian settings. In protection clusters, while attention is given to risks of sexual and gender-based violence and to child protection, specialized training and procedures to support early identification of trafficked persons or persons at risk of trafficking are not consistently established. At many border crossings and in camps, displaced person settings, hotspots and reception centres, there are limited or no procedures in place for early identification, and a lack of safe shelters or specialized services for trafficked persons. The Special Rapporteur highlights the concerns raised by the Committee on the Elimination of Discrimination against Women in relation to mixed migration flow hotspots and the lack of appropriate and confidential spaces for trained staff and interpreters, who can promptly assess indicators of vulnerability and provide adequate support, to carry out identification.¹⁷

15. The Special Rapporteur is concerned that vulnerability screening or assessments in refugee registration and refugee status determination procedures are not systematically supported by specialized training on risks of trafficking in persons or on protection needs of trafficked persons. Group determination of refugee status on a prima facie basis is an important measure in ensuring access to international protection and should be supported by measures to assist and protect refugees who are victims of trafficking or at risk of trafficking.

16. The Special Rapporteur notes with concern that there is frequently an absence of protection-sensitive mechanisms at entry points and border crossings. She highlights the obligation to act with due diligence in identifying victims of trafficking, who are often traumatized and may be unable to report precisely their experiences or to recount details of travel.

17. The Special Rapporteur highlights the work of civil society organizations, such as the Refugee Law Project in Uganda, on the integration of procedures to identify trafficked persons and persons at risk of trafficking, through processes that seek to recognize indicators of conflict-related harms. These screening tools have been instrumental in ensuring assistance and protection for victims of trafficking in refugee settings and providing opportunities for safe disclosure through trauma-informed, gender- and child-sensitive procedures. The adaptation of language and the use of diverse terminologies on trafficking

¹⁵ Guiding Principles on Internal Displacement, principle 11 (2) (b).

¹⁶ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

¹⁷ Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020), para. 38.

in persons that are relevant to the contexts and languages of refugee communities have been critical to this process.¹⁸

18. The Special Rapporteur highlights the importance of early identification and the possible impact of psychological trauma.¹⁹ She also highlights the positive obligation on States to identify victims of trafficking and emphasizes that this duty is not dependant on self-identification by a victim of trafficking. An unreasonable delay in identification of a victim is a failure to discharge the positive protective obligation on States.²⁰

19. The Special Rapporteur highlights the constraints arising from long-established notions of ideal victimhood that limit the identification of victims of trafficking and access to international protection. It is essential to move beyond such damaging stereotypes that lead to failures in protection and to overcome the infantilization of femininity and the over-masculinization of agency, both of which are detrimental across the gender spectrum.²¹

VI. Procedures for refugee status determination

20. The Special Rapporteur highlights the importance of ensuring that all necessary measures are in place in refugee status determination procedures to ensure early identification of trafficked persons or persons at risk of trafficking and referral for protection. Currently, in guidance on refugee status determination procedures, attention to the obligation to identify victims of trafficking is not consistent. While references are made to trauma-informed approaches to refugee status determination or to victims of torture, guidance on indicators of trafficking are not routinely integrated into the procedures for refugee status determination or to screening for protection needs. States are required to ensure that trafficked persons or potential victims of trafficking are informed of and effectively enjoy the right of access to clear asylum procedures without discrimination or any preconditions.²²

21. The Special Rapporteur recalls the complex nature of the harms of trafficking in persons and highlights that trafficking-related asylum claims are particularly unsuited to accelerated processing and may limit the likelihood of identification of victims.²³ Trafficking-related asylum claims, more specifically those related to trafficking for purposes other than sexual exploitation, may not emerge during first instance refugee status determination interviews or screening processes. This is due to several factors, including lack of targeted and accessible information and counselling, and the need for time and appropriate spaces to build relationships of trust, recognizing the trauma and the continuing risks that may be faced. Referral pathways and memorandums of understanding to provide assistance to victims of trafficking are good practices, where effectively implemented.

22. The Special Rapporteur has highlighted the difficulties that arise where States view the late provision of status information as damaging to credibility in the context of an asylum

¹⁸ Gillian Kane and the Refugee Law Project, “Input for the UN Special Rapporteur on trafficking in persons, especially women and children’s 2023 Report to the UN Human Rights Council” (Uganda, 2023). Available at www.ohchr.org/en/special-procedures/sr-trafficking-in-persons.

¹⁹ European Court of Human Rights, *S.M. v. Croatia*, Application No. 60561/14, Judgment, 25 June 2020, para. 344.

²⁰ European Court of Human Rights, *L.E. v. Greece*, Application No. 71545/12, Judgment, 21 January 2016, para. 97.

²¹ Noemi Magugliani, “Trafficked adult males as (un)gendered protection seekers: between presumption of invulnerability and exclusion from membership of a particular social group,” *International Journal of Refugee Law*, vol. 34, Nos. 3–4 (2022).

²² Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020), para. 88.

²³ Group of Experts on Action against Trafficking in Human Beings (GRETA), “Fifth general report on GRETA’s activities, covering the period from 1 October 2014 to 31 December 2015” (Council of Europe, 2016), para.116; and “Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection (Council of Europe, 2020), para. 38, which states that “early legal counselling and specialised assistance in accordance with Article 12 of the Convention is essential if victims of trafficking are to be enabled to present an asylum claim effectively”.

claim.²⁴ Such measures fail to acknowledge the positive obligation on States to identify victims of trafficking, and fail to recognize the impact of trauma on the provision of information relating to the status of being a victim, including for child victims. It is widely recognized that victims may not disclose their status as victims for a range of reasons, including because they may not recognize their situation of exploitation or because they fear reprisals for themselves or their families. A lack of trust or familiarity with public bodies, law enforcement or government officials may also hinder the disclosure of information and the establishment of a relationship of trust.

23. The Special Rapporteur notes that the UNHCR *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* contain a section on torture and trauma.

VII. Reception conditions, assistance and protection

24. The protection of the rights of trafficked persons or presumed victims of trafficking has evolved to include entitlement to a recovery and reflection period, during which expulsion from the State is not permitted. The Special Rapporteur highlights an important development, whereby the Court of Justice of the European Union held that the prohibition on expulsion during the recovery and reflection period applies to transfers to another European Union member State under the procedures established by the Dublin Regulation.²⁵ In itself, this development provides a snapshot of how the additional rights protections for trafficked persons may serve as a bulwark (albeit limited) against the erosion of the rights afforded to asylum-seekers.

25. The Special Rapporteur notes that the implementation of procedures for the identification and assistance of victims of trafficking or persons at risk of trafficking should not result in a delay or suspension of procedures for refugee status determination, which should progress in a timely manner, accompanied by specialized assistance measures.

VIII. Legal framework for reception of refugees

26. The obligation to provide specialized assistance continues for trafficked persons who are seeking asylum or other forms of international protection or are internally displaced or are stateless.²⁶ Where the rights of refugees to freedom of movement, to work, to access education or training are limited, the risks of exploitation increase. Where the status of refugees is not recognized, further difficulties arise as highlighted by the Special Rapporteur in relation to Rohingya refugees, for example, who are not granted refugee status in several States in the region, and many of whom are also stateless.²⁷

27. The Special Rapporteur highlights the positive obligation on States to provide practical and effective protection to victims of trafficking and persons at risk of trafficking. Maintaining refugees in a protracted situation without refugee status and without rights to work, to freedom of movement or to access education or financial services, may encourage and facilitate trafficking in persons. Where there is consistent, credible evidence of trafficking in persons occurring, the positive obligation to take effective operational measures to prevent trafficking in persons and protect victims of trafficking arises, and such measures should include regularization of status, and effective protection of the socioeconomic rights of refugees.

²⁴ See communication GBR 11/2021, available at <https://spcommreports.ohchr.org/TmSearch/Results>.

²⁵ European Parliament and Council of the European Union, Regulation (EU) No 604/2013 of 26 June 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

²⁶ Inter-American Commission on Human Rights, "Inter-American principles on the human rights of all migrants, refugees, stateless persons and victims of human trafficking" (resolution 04/19), 7 December 2019, principle 42; see also Association of Southeast Asian Nations (ASEAN) Convention against Trafficking in Persons, especially Women and Children, art. 14 (10).

²⁷ A/HRC/53/28/Add.1, para. 58.

28. Globally, the majority of refugees live in temporary informal camps or in urban settings. Concerns have previously been raised in relation to the risks of refugee and displaced person settings becoming targets for trafficking in persons for all purposes of exploitation, over a protracted period of time.²⁸ Refugee, internally displaced and stateless children, in particular unaccompanied and separated children and children of women-headed households, are targeted for purposes of sexual exploitation, child marriage, child labour, domestic servitude, and recruitment and use by armed groups.

29. Furthermore, as was noted in *Rantsev v. Cyprus and Russia*,²⁹ a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking. Where refugees do not have the right to work and do not have a legal pathway to citizenship or are ineligible for State assistance, the resulting dependency on aid and humanitarian organizations for food, shelter and safety may increase risks of exploitation, including trafficking in persons. Such situations of dependency, which are created by restrictive laws and policies, may also lead to increased risks of complicity or direct involvement in trafficking by government officials, law enforcement bodies or humanitarian actors.

IX. Transfer of asylum-seekers and interceptions at sea: protection and non-refoulement obligations

30. A good-faith duty of cooperation and responsibility-sharing is at the core of the Convention relating to the Status of Refugees and the Protocol thereto, and is reinforced by the fundamental principles of humanity and international solidarity underpinning the Global Compact on Refugees. The obligation to prevent trafficking in persons and protect victims of trafficking is undermined by measures that restrict access to asylum or that impose punitive measures on asylum-seekers entering a country irregularly. Measures to shift and transfer responsibility for the reception of asylum-seekers and the determination of asylum claims raise many serious human rights concerns and questions of compatibility with international law, including obligations to identify, assist and protect victims of trafficking or persons at risk of trafficking who are seeking asylum.

31. The Special Rapporteur has highlighted specific concerns in relation to arrangements to transfer asylum-seekers to third States. Such practices may not comply with States' obligations to identify, assist and protect victims of trafficking or persons at risk of trafficking or to ensure effective protection against refoulement. The Special Rapporteur has also highlighted that such arrangements may breach obligations arising under international human rights law to investigate trafficking in persons without delay and to take operational measures to protect potential victims, where there are sufficient indicators available of circumstances which give rise to a credible suspicion of a real risk of trafficking.³⁰ Such arrangements may breach the positive obligation on States to put in place an effective system to protect potential or confirmed victims of trafficking, if they are carried out in the absence of individualized and procedurally fair assessments of (a) the safety and dignity of removals or transfers to other States, and (b) the real risk of a breach of international human rights law in third States or of onward refoulement or re-trafficking.³¹

32. The Special Rapporteur highlights the obligation of non-refoulement, which is of particular relevance to States' protection obligations towards victims of trafficking or persons at risk of trafficking.³² Measures designed to remove asylum-seekers who enter by irregular

²⁸ For example, in relation to the Dzaleka refugee camp in Malawi, see www.unodc.org/unodc/en/human-trafficking/Webstories2022/refugees-at-risk_-unodc-uncovers-human-trafficking-at-camp-in-malawi.html.

²⁹ European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Application No. 25965/04, Judgment, 7 January 2010, para. 284.

³⁰ *Ibid.*, paras. 286 and 296.

³¹ *Ibid.*, paras. 285 and 287; see also European Court of Human Rights, *Chowdury and Others v. Greece*, Application No. 21884/15, Judgment, 30 March 2017, para. 87.

³² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 9 (1) (b).

means to a third State, without taking measures to identify possible victims of trafficking and ensuring compliance with the principle of non-refoulement, breach this obligation. The obligation to identify victims of trafficking does not impose an impossible or disproportionate burden on States.

X. Principle of non-refoulement

33. The principle of non-refoulement under international human rights law continues to apply and to engage the responsibility of States in the context of arrangements for transfer of refugee reception and refugee status determination procedures.³³ The Special Rapporteur has highlighted the obligation on States to ensure that procedural safeguards that can be objectively verified are in place to protect against the risk of treatment contrary to international human rights law.³⁴

34. The Special Rapporteur recalls that trafficking in persons may constitute torture, and notes the Committee against Torture general comment No. 4 (2017), which provides a non-exhaustive list of human rights situations that may constitute an indication of risk of torture, to which the principle of non-refoulement should be applied. This includes whether the person concerned would be deported to a State where he or she was subjected to or would run the risk of being subjected to slavery and forced labour or trafficking in human beings (para. 29 (n)). The obligation to uphold the principle of non-refoulement applies to risks of trafficking in persons by non-State actors (para. 30), where the State is unable or unwilling to provide protection. Such protection must include specialized assistance measures for victims of trafficking and persons at risk of trafficking.

35. The Special Rapporteur refers to the report of the Independent Fact-finding Mission on Libya in relation to trafficking in persons and its specific implications for the protection of refugees and displaced persons, in the context of the reported widespread existence of trafficking networks. The Mission carried out a holistic assessment of all evidence collected and found reasonable grounds to believe that the crime against humanity of sexual slavery, previously unreported by the Mission, had been committed in the trafficking hubs of Bani Walid and Sabratabh during its mandate.³⁵

36. The Special Rapporteur highlights the obligations that arise in relation to identification and protection of victims of trafficking or persons at risk of trafficking, for which the State exercises effective control. She recalls the power or effective control standard for jurisdiction laid out by the Human Rights Committee,³⁶ and its application to the operation of the offshore regional processing centres established by Australia in Papua New Guinea and Nauru. The Human Rights Committee considered that the significant levels of control and influence exercised by the State party over the operation of the offshore regional processing centres, including over their establishment, funding and service provided therein, amounted to such effective control.³⁷

37. The Special Rapporteur recalls that the obligation of non-refoulement applies and is relevant to arrangements that seek to transfer the reception of refugees and determination of refugee status outside of the territory of the State, taking into account the obligations to prevent trafficking in persons and to ensure protection to victims or potential victims. States must ensure that the non-refoulement principle is secured in law and strictly adhered to in practice, and that all asylum-seekers, regardless of their mode of arrival, have access to fair and efficient refugee status determination procedures and non-refoulement determinations.³⁸

³³ European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, Judgment, 23 February 2012, para. 146.

³⁴ European Court of Human Rights, *Othman (Abu Qatada) v. the United Kingdom*, Application No. 8139/09, Judgment, 17 January 2012, para. 189.

³⁵ A/HRC/52/83, para. 41.

³⁶ Human Rights Committee, general comment No. 31 (2004), para. 10; see also general comment No. 36 (2018), para. 63.

³⁷ CCPR/C/AUS/CO/6, para. 35.

³⁸ *Ibid.*, para. 34.

38. The positive obligations on the State to identify and protect victims of trafficking or persons at risk of trafficking arise also in the context of interceptions at sea and the duty to rescue persons in distress at sea. The Special Rapporteur recalls the recommendation of the Human Rights Committee to review the policy and practices during interceptions at sea, including on-water assessments, to ensure that all persons under the State's jurisdiction who are in need of international protection have access to fair and efficient asylum procedures within the territory of the State, including access to legal representation, where appropriate, and to legal remedies.³⁹ The Special Rapporteur highlights the evolving functional concept of jurisdiction, and more specifically the special relationship of dependency that may arise in such contexts, and its relevance in determining whether persons directly affected by decisions taken by the State, in a manner that was reasonably foreseeable in the light of relevant legal obligations, are subject to its jurisdiction.⁴⁰

39. The Special Rapporteur also highlights the obligations arising under the Convention on the Rights of the Child and its Optional Protocols with regard to effective control exercised by a State outside of its borders, including in international waters or other transit zones where States put in place migration control mechanisms, which must be applied with respect to children who come under the State's jurisdiction, including while attempting to enter its territory.⁴¹ The Special Rapporteur further highlights the findings of the Committee on the Rights of the Child, which held that the State exercised jurisdiction *ratione personae* over the children who were the subject of the communication under consideration, and had the capability and the power to protect the rights of the children in question.⁴² As such, the obligation arising under article 35 of the Convention on the Rights of the Child, to take all appropriate national, bilateral and multilateral measures to prevent, inter alia, the traffic in children for any purpose or in any form, applies and imposes positive obligations on the State to ensure identification, assistance and protection and non-refoulement.

XI. Principle of non-punishment

40. The Special Rapporteur highlights the State's obligation to ensure that victims of trafficking are given an effective opportunity to claim asylum, and that they are not penalized for their mode of entry into the State. The principle of non-punishment is included in the specific protection afforded under article 31 of the Convention relating to the Status of Refugees, which protects refugees from being penalized for illegal entry and presence in a country.⁴³

41. The Special Rapporteur also highlights the purpose of article 31 (1) of the Convention, which is to ensure that refugees can gain access to international protection without being penalized for breaches of immigration and other laws, and its centrality to the object and purpose of the Convention. The reference to penalties should be interpreted in the light of the object and purpose of the Convention as meaning any criminal or administrative measure imposed by the State on account of irregular entry or presence that is unfavourable to the refugee. The range of penalties prohibited under article 31 (1) of the Convention include

³⁹ Ibid., para 34 (b).

⁴⁰ Human Rights Committee, *A.S. et al. v. Italy* (CCPR/C/130/D/3042/2017); Aphrodite Papachristodoulou, "The ban-opticon of migration: technologies at maritime borders and extraterritorial jurisdiction" (2022).

⁴¹ Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families / No. 22 (2017) of the Committee on the Rights of the Child, para. 12.

⁴² Committee on the Rights of the Child, *S.B. et al. v. France* (CRC/C/89/D/77/2019-CRC/C/89/D/79/2019-CRC/C/89/D/109/2019), paras. 1.4, 3.9 and 6.4.

⁴³ See communication GBR 11/2021, available at <https://spcommreports.ohchr.org/TmSearch/Results>; Convention relating to the Status of Refugees, art. 31; A/HRC/47/34, para. 35; also Cathryn Costello and Yulia Ioffe, "Chapter 51: Non-penalization and non-criminalization of refugees and other migrants for illegal entry and stay", *Oxford Handbook of International Refugee Law*, Cathryn Costello, Michelle Foster and Jane McAdam, eds. (Oxford, Oxford University Press, 2021), pp. 920–925.

measures that are punitive, discriminatory, retributive or deterrent in character.⁴⁴ Therefore, measures imposing restrictions on freedom of movement, deprivation of liberty or restrictions on economic or social rights, such as education, employment, and social and immigration support services are prohibited.

42. The Special Rapporteur further highlights that article 31 (1) of the Convention should be interpreted as prohibiting any discriminatory treatment or procedural detriment to the refugee, including denial, obstruction, delay or limits on access to the territory or asylum procedure or applying limitations on due process guarantees and limiting duration of status, or a decision to declare an application for international protection inadmissible for the sole reason of the applicant's irregular entry or presence.⁴⁵ The Special Rapporteur recalls the Advisory Opinion of the Inter-American Court of Human Rights on the institution of asylum and its recognition as a human right in the Inter-American System of Protection.⁴⁶ The right to seek and receive asylum imposes certain specific duties on States, including the obligation not to penalize or sanction for irregular entry or presence.

43. The Special Rapporteur is concerned that victims of trafficking seeking international protection may be subject to immigration-related detention and are not provided with assistance or protection as trafficked persons. The Special Rapporteur is also concerned that, in several countries, including in the Sahel region, victims of trafficking seeking international protection may be arrested and detained for immigration-related offences and may risk being forcibly removed and returned to their countries of origin.⁴⁷ The risk of refoulement and of trafficking or re-trafficking increases in such circumstances, and such measures fail to ensure compliance with States' obligation not to penalize refugees, including trafficked persons seeking international protection.

44. The Special Rapporteur recalls the concluding observations of the Committee on the Elimination of Racial Discrimination in relation to Thailand, for example, in which the Committee expressed concern about the prevalence of trafficking in persons and related violations, particularly affecting migrants, refugees and asylum-seekers, and expressed concern about the reports of detention of asylum-seekers and refugees, including detention of children in cells with adult detainees.⁴⁸

XII. Definitional issues

45. The Special Rapporteur highlights the wider and more inclusive definition of refugees in the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), which recognizes the risks arising from external aggression, occupation, foreign domination or events seriously disturbing public order (art. 1 (2)). She also highlights the Cartagena Declaration on Refugees, which calls on States to consider enlarging the concept of a refugee to include, in addition to the elements in the Convention relating to the Status of Refugees and the Protocol thereto, "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order" (conclusion III.3). UNHCR Guidelines on International Protection No. 7 (2006)⁴⁹ are an important interpretive guide for the application

⁴⁴ UNHCR, "Legal Observations on the illegal migration bill", updated (2 May 2023), para. 96.

⁴⁵ Ibid.

⁴⁶ Inter-American Court of Human Rights, Advisory opinion OC-25/18, requested by the Republic of Ecuador, "The institution of asylum and its recognition as a human right in the Inter-American System of Protection (interpretation and scope of articles 5, 22.7 and 22.8 in relation to article 1 (1) of the American Convention on Human Rights)", 30 May 2018, para. 99.

⁴⁷ UNHCR, "Mapping of protection services for victims of trafficking and other vulnerable people on the move in the Sahel and East Africa" (June 2021). Available at www.unhcr.org/media/39373.

⁴⁸ CERD/C/THA/CO/4-8, para. 33.

⁴⁹ UNHCR, Guidelines on International Protection No. 7: The application of article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (HCR/GIP/06/07), 7 April 2006. Other relevant UNHCR guidelines on international protection, include, in particular, Guidelines on International Protection No. 1:

of the Convention relating to the Status of Refugees. However, the Special Rapporteur notes that there have been significant developments in international law relating to trafficking in persons that are not fully reflected in the Guidelines, in particular in relation to trafficking for purposes of child and forced marriage, recruitment and use of children by armed forces or armed groups or trafficking for purposes of illegal adoption. The presentation of trafficking in persons as linked to the pursuit of profit may fail to engage fully with the range of forms of trafficking that is prevalent in conflict and humanitarian settings. While the Guidelines acknowledge that trafficking in persons is not confined to the sex trade or to women, the framing of the discussion is one that is reflected in a wider failing in State practice, in accountability processes and, until recently, in the practice of many States and humanitarian actors to effectively recognize the range of forms of trafficking in persons occurring in diverse contexts and the related obligations of prevention and protection.

46. A common characteristic of all forms of trafficking is that victims are treated as merchandise and “owned” by their traffickers, with scant regard for their human rights and dignity.⁵⁰ However, State practice and case law on the scope and application of the legal definition of trafficking recognize a broader concept of trafficking. Therefore, it is important that the broader view of trafficking is applied in the examination of trafficking-related claims for international protection. As pointed out by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia, the traditional concept of slavery, as defined in the 1926 Slavery Convention and often referred to as “chattel slavery”, has evolved to encompass various contemporary forms of slavery.⁵¹

47. The wider relevance of gender to trafficking as a form of persecution is not consistently recognized. UNHCR Guidelines on International Protection No. 9 (2012) do not contain any reference to trafficking in persons,⁵² which further reinforces the limited recognition of particular risks that lesbian, gay, bisexual and transgender persons or persons of diverse gender identities may face. However, in its Guidelines on International Protection No. 1 (2002), UNHCR considers trafficking for the purposes of forced prostitution or sexual exploitation as persecution. Therefore being trafficked for those purposes could be the basis for a refugee claim, and some trafficked women or minors may have valid claims under the Convention relating to the Status of Refugees.⁵³ The Guidelines include a footnote recognizing that trafficking for other purposes could amount to persecution, depending on the circumstances, but do not acknowledge the significance of gender in trafficking for purposes of forced labour or domestic servitude or other purposes of exploitation.⁵⁴

XIII. Trafficking in persons as persecution

48. Trafficking in persons falls within the international law concept of persecution.⁵⁵ The Committee on the Elimination of Discrimination against Women recommends that States

Gender-related persecution within the context of article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/01), 7 May 2002; and Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions (HCR/GIP/16/12), 2 December 2016.

⁵⁰ UNHCR, Guidelines on International Protection No. 7, para. 3.

⁵¹ International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, *Prosecutor v. Kunarac, Kovac and Vukovic*, Case No. IT-96-23 and IT-96-23/1-A, Judgment, 12 June 2002, para. 117.

⁵² UNHCR, Guidelines on International Protection No. 9: Claims to refugee status based on sexual orientation and/or gender identity within the context of article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/12/01), 23 October 2012.

⁵³ UNHCR, Guidelines on International Protection No. 1, para. 18.

⁵⁴ *Ibid.*, para. 18, footnote 9.

⁵⁵ France, Cour Nationale du Droit d’Asile, Decision No. 11026228 concerning *Mlle SZ*, 12 July 2012. The Australian Refugee Review Tribunal has accepted that the severity of abuse endured by trafficked women is tantamount to persecution (See Jean-Pierre Gauci, “Protecting trafficked persons through refugee protection”, *Social Sciences*, vol. 11, No. 7 (2022)).

recognize that trafficking is part and parcel of gender-related persecution.⁵⁶ The Upper Tribunal of the United Kingdom of Great Britain and Northern Ireland, which deals with immigration and asylum matters, recognized that the trafficking of an adult man for the purpose of forced criminality gave rise to his claim for asylum, in which relevant factors for assessment of the risk of persecution on return, included lack of family support, lack of education and outstanding debt.⁵⁷

49. The Rome Statute of the International Criminal Court defines persecution as the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of a group or collectivity (art. 7 (2) (g)). Therefore, trafficking in persons can be considered as persecution when a particular group is targeted, for example, for reasons of gender or race or ethnicity. Given the prevalence of trafficking of women and girls in conflict settings, the crime against humanity of persecution on the grounds of gender may be established.⁵⁸ Regional courts and United Nations treaty bodies have specifically recognized the prohibition of trafficking in persons as falling within the non-derogable norm of the prohibition of slavery, servitude and forced labour, which further reinforces the recognition of trafficking in persons as persecution.

50. In its Guidelines on International Protection No. 7 (2006), UNHCR recommends that asylum claims lodged by victims of trafficking or potential victims of trafficking be examined in detail to establish whether the harm feared as a result of the trafficking experience, or as a result of its anticipation, amounts to persecution in the individual case (para. 15). Serious violations of human rights are inherent to the trafficking experience, including, such forms of severe exploitation as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, the deprivation of medical treatment; they will generally amount to persecution (ibid.).

51. In that part of the Guidelines, trafficking in persons is presented as a series of distinct acts that may constitute persecution in and of themselves. Elsewhere in the Guidelines, trafficking is recognized as a process, and persecution or the risk of persecution may occur in diverse locations and settings and at different times. Therefore, the continuous and interconnected nature of the range of persecutory acts involved in the context of transnational trafficking should be given due consideration (para. 27). It has been noted that the fact that the exploitation may not have taken place mainly within the country of origin does not preclude the existence of a well-founded fear of persecution in the individual's own country.

52. It is important to recognize also that a past experience of trafficking in persons may give rise to compelling reasons to support the granting of asylum. This would be the case where the persecution suffered during the experience of trafficking was particularly atrocious and the trafficked person may still be experiencing traumatic psychological effects which would render return to the country of origin intolerable (para. 16).

53. In the context of trafficking in persons, the risk of persecution on return is particularly acute; it may arise from risks of reprisals by those involved in trafficking and from risks of re-trafficking, including by family and community members, armed groups or criminal networks. The risk of reprisals against family members may be recognized as persecution, although, in practice, it is not always fully interrogated or acknowledged as such.

54. Gender plays a central role in determining and shaping the incidence, risk and severity of persecution. The risk of ostracism, discrimination or punishment of a trafficked person on return to a country of origin may also be recognized as potentially amounting to persecution, where it is severe, and in particular, if aggravated by the trauma suffered during the trafficking process. Where ostracism or discrimination is less severe, it may still give rise to a risk of persecution as absence of support increases the risks of destitution, displacement or

⁵⁶ Committee on the Elimination of Discrimination against Women, general recommendation No. 32 (2014), para. 45.

⁵⁷ United Kingdom, Upper Tribunal, *Secretary of State for the Home Department v. Tan*, Appeal No. PA/04075/2017, Decision, 31 January 2018.

⁵⁸ Valerie Oosterveld, "Gender, persecution, and the International Criminal Court: refugee law's relevance to the crime against humanity of gender-based persecution," *Duke Journal of Comparative and International Law*, vol. 17, No. 1 (Fall 2006).

lack of access to employment and housing and, consequently, to increased risk of reprisal, which constitutes persecution.

55. UNHCR notes that the forcible or deceptive recruitment of women and children for purposes of forced prostitution or sexual exploitation is a form of gender-related violence, which may constitute persecution.⁵⁹ The Special Rapporteur highlights that, when the trafficked person or potential victim of trafficking is a child, it is not necessary to establish the means of trafficking. The use of force or deception is therefore irrelevant.

56. Failing to clearly acknowledge that the means of trafficking is irrelevant in relation to the international law definition of trafficking as it applies to child victims further compounds the difficulties encountered by refugee children, particularly adolescents, in establishing the credibility of their claims. Such difficulties are linked to “adultification” bias⁶⁰ intersecting with discrimination and structural forms of racism that have an impact on asylum-seeking and refugee children in particular and lead to protection failures.

XIV. Agents of persecution and availability of protection

57. The Special Rapporteur highlights that, in the context of trafficking in persons, the agents of persecution are most frequently non-State actors, and may include family and community members, armed groups, criminal networks, recruitment agencies or intermediaries. States may also be responsible, either directly, where agents of the State are involved in trafficking in persons, or indirectly, through failure to take action, exercise due diligence in prevention and protection or ensure effective investigations. Where persecution, including trafficking in persons, is knowingly tolerated by the authorities or if the authorities refuse or prove unable to offer effective protection,⁶¹ a failure of State protection is established. For trafficked persons or potential victims of trafficking, it is essential that the State’s capacity to fulfil its positive obligations to provide assistance and protection are assessed, in accordance with requirements of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and international human rights law. These include effective protection of the privacy and identity of trafficked persons, access to remedies and guarantees of non-recurrence, as well as medical and psychosocial support, legal assistance, social inclusion and protection against reprisals or re-trafficking. In situations of conflict, where power structures shift rapidly, decision makers must carefully evaluate a State’s ability and willingness to offer effective protection in word and in deed. To do otherwise would place the principle of non-refoulement – the cornerstone of international protection – at risk.⁶²

58. The Special Rapporteur highlights that the assessment of an internal protection alternative must include an assessment not only of the risk of re-trafficking, but also the availability of effective and durable protection, including from potential retaliation and threats of re-trafficking in the proposed area of relocation as well as availability of safe accommodation and specialized assistance, recognizing the gender dimension of risks of stigma and ostracism. The existence of an internal protection alternative requires more than the existence of national anti-trafficking legislation or the presence of non-governmental organizations operating in the area; it must be practical and effective.

⁵⁹ UNHCR, Guidelines on International Protection No. 7, para. 19; and Guidelines on International Protection No. 1, para. 18.

⁶⁰ Jahnine Davis, “Adultification bias within child protection and safeguarding” (United Kingdom, Her Majesty’s Inspectorate of Probation, Academic Insights 2022/06).

⁶¹ UNHCR, Guidelines on International Protection No. 7, para. 21.

⁶² UNHCR, “UNHCR intervention before the United States Court of Appeals for the First Circuit in the case of *Dimbil Noor Hassan v. Jefferson B. Sessions, III, Attorney General*, No. 17-1894 (A209-760-181)”, 20 November 2017.

XV. Nexus with a Convention ground

59. Although it is recognized that the required causal link with a Convention ground may be established on any one ground or a combination of grounds,⁶³ in practice, it is the membership of a particular social group ground that is most often claimed and recognized in status determination procedures. The Special Rapporteur notes that narrow, restrictive definitions of the particular social group may limit access to international protection for trafficked persons or persons at risk of trafficking.

60. Men who are former victims of trafficking and at risk of re-trafficking may also form a particular social group, although there are fewer examples of such practice. The Tribunal of Bologna recognized a situation of trafficking for purposes of forced criminality of an adult man as demonstrating a nexus with the Convention ground of membership of a particular social group, namely, trafficked men lacking significant family networks, uneducated, unemployed and homeless, who are easy prey for criminal groups.⁶⁴

61. Trafficking in persons is a form of persecution that is prevalent in many situations of armed conflict and violence, and frequently forms part of a deliberate military or political strategy to debase, humiliate, terrorize or destroy civilian populations in pursuit of broader goals or rooted in gender-related and other forms of discrimination.⁶⁵ As such, it may be linked to several Convention grounds. The Special Rapporteur highlights that resistance to trafficking in persons may be a political opinion; she also highlights that individuals may be targeted and subject to trafficking because of their political opinions.⁶⁶ A male human rights activist's resistance to trafficking in persons was considered as a political opinion for the purpose of establishing a causal link with a Convention ground.⁶⁷ However, as has also been seen in relation to gender-related asylum claims, the political dimension of resistance to persecution by women and girls is often not recognized.

62. The Special Rapporteur further highlights the potential nexus with the Convention ground of race, given that discrimination based on race or ethnicity heightens risks of trafficking and protection failures.

XVI. Child trafficking, asylum and non-refoulement

63. The Special Rapporteur highlights the particular risk of trafficking of unaccompanied and separated children, which affects the rights of children to life, survival and development.⁶⁸ To ensure fulfilment of the positive obligation of States to prevent trafficking of children, articles 34, 35 and 36 of the Convention on the Rights of the Child must be read in conjunction with article 20, which provides for special protection and assistance by the State, and taking into account the general obligation of non-discrimination.

64. Trafficking of children is a serious violation of human rights and constitutes persecution.⁶⁹ The Special Rapporteur highlights the significance of race, ethnicity and nationality to asylum claims by children in many contexts, including when arising from experiences or risks of trafficking. Systematic targeting of girls belonging to ethnic minorities

⁶³ UNHCR Guidelines on International Protection No. 7, para. 33.

⁶⁴ See Alessandro Fiorini (ed.), "La protezione internazionale davanti al giudice: uno studio sui decreti del Tribunale di Bologna" (International protection in the courts: a study of the judgments of the Tribunal of Bologna) (Asilo in Europa, 2019) (in Italian).

⁶⁵ UNHCR, Guidelines on International Protection No. 12, para. 26.

⁶⁶ UNHCR, Guidelines on International Protection No. 7, para. 40.

⁶⁷ See New Zealand, Refugee Status Appeals Authority, Refugee Appeal Nos. 76,478, 76,479, 76,480 and 76,481, 11 June 2010, paras. 53 and 88, cited in Catherine Briddick and Vladislava Stoyanova, "Chapter 30: Human trafficking and refugees", in *The Oxford Handbook of International Refugee Law*, Cathryn Costello, Michelle Foster and Jane McAdam, eds.

⁶⁸ Committee on the Rights of the Child, general comment No. 6 (2005), para. 23.

⁶⁹ UNHCR, Executive Committee of the High Commissioner's Programme, Conclusion on Children at Risk No. 107 (LVIII), 5 October 2007, para. (g) (viii); Canada, Federal Court, *Li and Others v. The Minister of Citizenship and Immigration*, Docket No. IMM-932-00, 11 December 2000.

for rape, trafficking or recruitment into armed forces or groups,⁷⁰ is recognized as a form of persecution linked to race, as well as other Convention grounds. The Special Rapporteur highlights that targeting boys belonging to minority groups, Indigenous Peoples or migrant communities should also be specifically recognized as persecution linked to race and other Convention grounds.

65. Trafficking of children for purposes of forced criminality or sexual exploitation by armed groups is a form of persecution that particularly affects children who lack protection or who are otherwise marginalized by States. Furthermore, children who have been released from armed groups and who return to their countries of origin may be at risk of re-trafficking or other serious human rights violations.⁷¹ The Special Rapporteur highlights the importance of a child rights analysis in assessing refoulement risks, noting in particular the risk of reprisals, including from family members, as well as social exclusion, ostracism and discrimination against a child victim of trafficking who is returned to his or her home.⁷²

66. The Special Rapporteur is concerned that adolescent refugee children are often not given equal protection by States; she highlights the obligation under article 2 of the Convention on the Rights of the Child to respect and ensure the rights of all children without discrimination of any kind. The protection of child rights in the context of any removal or transfer proceedings must be ensured. The Convention provides that non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of States parties' action or inaction.⁷³

XVII. Rights of persons with disabilities

67. The Special Rapporteur highlights the obligation on States to ensure that information and procedures for trafficked persons with disabilities are accessible, meet the obligations of reasonable accommodation and comply with international human rights law. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments.⁷⁴ The Special Rapporteur highlights the obligation of States to ensure equality before the law, including taking measures to provide access by persons with disabilities to the support required in exercising legal capacity. This requires ensuring that specialized assistance is provided for persons with disabilities who are trafficked or at risk of trafficking, and who are presenting asylum claims or other claims for international protection. The particular risks of trafficking that may be faced by persons with disabilities for all purposes of exploitation should be recognized in individualized assessments of asylum claims and refoulement determination procedures.⁷⁵ Recalling Security Council resolution 2475 (2019), all responses to risks of trafficking in persons must be disability inclusive and ensure the rights of persons with disabilities, including in provision of information, access to safe and accessible accommodation, transportation and all assistance and protection measures.⁷⁶

⁷⁰ UNHCR Guidelines on International Protection No. 8: Child asylum claims under articles 1 (A) 2 and 1 (F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (HCR/GIP/09/08), 22 December 2009, para. 41.

⁷¹ [A/HRC/47/34](#).

⁷² *Ibid.*, paras. 27 and 28.

⁷³ Joint general comment No. 3/No. 22 (2017, paras. 19 and 46

⁷⁴ Convention on the Rights of Persons with Disabilities, art. 1.

⁷⁵ Irish Centre for Human Rights and the Centre for Disability Law and Policy at the School of Law, University of Galway, joint submission for the draft general comment of the Committee on the Rights of Persons with Disabilities on persons with disabilities in situations of risk and humanitarian emergencies. Available from www.ohchr.org/en/calls-for-input/2023/day-general-discussion-and-call-written-submissions-article-11-convention.

⁷⁶ See OHCHR, "Ukraine: Armed conflict and displacement heightens risks of all forms of sexual violence including trafficking in persons, says UN experts", press release, 16 March 2022. Available at www.ohchr.org/en/press-releases/2022/03/ukraine-armed-conflict-and-displacement-heightens-risks-all-forms-sexual.

XVIII. Rights of lesbian, gay, bisexual and transgender persons and persons of diverse gender identities

68. The Special Rapporteur highlights the specific risks of trafficking in persons faced by lesbian, gay, bisexual and transgender persons and persons of diverse gender identities. Such risks may give rise to asylum claims and are linked specifically to discrimination, violence and stigmatization. Prevailing stereotypes, hypersexualization of transgender persons and discrimination in the provision of services by State and non-State actors, including law enforcement bodies, may increase the risks of those persons becoming victim to trafficking and may lead to protection failures.⁷⁷ Risks of trafficking may also occur in countries of destination, where there is criminalization of same-sex relationships or conduct or stigmatization of and violence against lesbian, gay, bisexual and transgender persons and persons of diverse gender identities. Therefore, refugee reception arrangements and refugee status determination procedures must take into account such risks and ensure assistance and protection.

XIX. Statelessness and trafficking in persons

69. The Special Rapporteur notes the limited progress made in ending statelessness. She notes the increased risks of trafficking in persons linked to the precarious legal status of persons deprived of their right to a nationality, and the consequential violations resulting from limited access to civil documentation, education, employment and social protection and restrictions on freedom of movement. The heightened risk of trafficking of children is particularly urgent.

70. The link between statelessness and trafficking in persons has been recognized by various treaty bodies. The Committee on the Elimination of Discrimination against Women was particularly concerned about and recommended that a State party address the root causes of trafficking, including poverty, lack of economic opportunities and statelessness.⁷⁸ The Human Rights Committee called upon a State party to strengthen its efforts to effectively combat trafficking in persons and recommended that it ensure the promotion and protection of rights of stateless persons and provide primary education to children and protection against trafficking.⁷⁹ The increased vulnerabilities arising as a consequence of statelessness have also been recognized by the Inter-American Commission on Human Rights, and specifically linked to situations of discrimination and structural exclusion.⁸⁰

71. Statelessness may result in a lack of access to assistance and protection for trafficked persons and persons at risk of trafficking. In particular, the absence of procedures for determining statelessness may increase the risk of trafficking owing to enforced legal vulnerability. Stateless persons, in particular stateless children belonging to minority or migrant communities, may be at greater risk of exploitation owing to multiple factors, including lack of access to documentation, fear of punishment – if irregularly present in a State – or lack of awareness about specific forms of exploitation (e.g. forced begging, forced criminality).

72. Stateless persons fleeing persecution owing to lack of documentation often resort to smugglers for assistance and are at heightened risk of trafficking. The Special Rapporteur has highlighted the situation of Rohingya refugees who remain stateless and without refugee status in several host States or without pathways to regularize their status.⁸¹ The condition of statelessness forces many Rohingya to travel across borders by irregular means, using networks of brokers and at high risk of trafficking for purposes of sexual exploitation, child marriage and forced labour. As stateless persons, they are more likely to work in informal

⁷⁷ See Svati P. Shah, ed., *Anti-trafficking Review*, Issue 19, *Special Issue – Migration, Sexuality, and Gender Identity* (September 2022).

⁷⁸ CEDAW/C/THA/CO/6-7, paras. 24 (a) and 25 (a).

⁷⁹ CCPR/C/THA/CO/2, paras. 24 and 42 (b).

⁸⁰ Inter-American Commission on Human Rights, “Inter-American principles on the human rights of all migrants, refugees, stateless persons and victims of human trafficking”, principle 16.

⁸¹ A/HRC/53/28/Add.1, para. 58.

sectors and have limited access to education. This condition of intergenerational denial of rights and structural discrimination heightens vulnerability to trafficking in persons.

73. The Special Rapporteur highlights the situation of women and children in northeastern Syrian Arab Republic, specifically the situation of children born to non-Syrian mothers, who are currently held in camps for internally displaced persons in territory under the control of Kurdish-led authorities,⁸² and women who have been deprived of their citizenship and are therefore stateless or de facto stateless, and at high risk of trafficking. The Special Rapporteur has highlighted concerns in relation to such risks and about the failure to facilitate identification of, assistance for and protection of victims of trafficking and persons at risk of trafficking, including through repatriation and the provision of consular assistance.⁸³

XX. Conclusion and recommendations

74. Protecting the rights of refugees, internally displaced persons and stateless persons is essential to the prevention of trafficking in persons and ensuring protection of the human rights of trafficked persons and persons at risk of trafficking.

75. The Special Rapporteur recommends that States:

(a) Ratify and fully implement the Convention relating to the Status of Refugees and the Protocol thereto;

(b) Ratify and implement the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, and take all measures necessary to end statelessness;

(c) Ratify and implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

(d) Ensure effective access to the right to seek and to enjoy asylum, without discrimination;

(e) Ensure effective implementation of the principle of non-refoulement, including during interceptions at sea, and at border crossings;

(f) Identify, assist and protect victims of trafficking and persons at risk of trafficking at borders and in refugee status determination procedures;

(g) Recognizing the special obligations of assistance and protection arising under the Convention on the Rights of the Child, ensure the best interests of children seeking asylum, including the timely appointment of a guardian and legal representative for unaccompanied and separated children a protective environment, access to justice and non-discrimination;

(h) Implement the Guiding Principles on Internal Displacement and the Secretary-General's Action Agenda on Internal Displacement;

(i) Take measures to prevent trafficking in persons by expanding resettlement opportunities and complementary pathways, including through humanitarian visas and family reunification, education and work, and ensuring effective access to asylum, and recalling the solidarity and responsibility-sharing objectives of the Global Compact for Refugees, contribute to a multi-stakeholder pledge on prevention of trafficking in persons at the Global Refugee Forum;

⁸² CRC/C/SYR/CO/5, para. 49 (f).

⁸³ A/HRC/47/34; see also "Submission by the Special Rapporteur on trafficking in persons, especially women and children, in the cases of *H.F. and M.F. v. France* (App. No. 24384/19) and *J.D. and A.D. v. France* (App. No. 44234/20) before the European Court of Human Rights" (5 July 2021); and "Submission in the case of *Shamima Begum v. Secretary of the State for the Home Department* before the United Kingdom Special Immigration Appeals Commission" (30 June 2022). Available from www.ohchr.org/en/special-procedures/sr-trafficking-in-persons/submissions-courts-and-other-bodies.

(j) Ensure the prevention of trafficking in persons in all actions undertaken to achieve Sustainable Development Goal target 10.7, and effective access to protection, and in programming for related Goals 5, 8 and 16;

(k) Ratify and implement the Convention on the Rights of Persons with Disabilities, ensuring that all measures to combat trafficking in persons effectively protect the rights of persons with disabilities who are trafficked and at risk of trafficking;

(l) Ensure that measures to identify, assist and protect victims/survivors of trafficking and persons at risk of trafficking are fully implemented in reception and protection arrangements for refugees and internally displaced persons.

76. The Special Rapporteur recommends that United Nations entities, humanitarian and protection actors:

(a) Recognizing the particular risk of trafficking of children in situations of conflict and violence, and recalling the Committee on the Rights of the Child general comment No. 6 (2005), ensure that the prevention of trafficking and the provision of assistance to and protection of child victims of trafficking are integrated into humanitarian and protection action, in particular for unaccompanied and separated children;

(b) Ensure that prevention of trafficking in persons, access to justice and protection of victims/survivors of trafficking for all purposes of exploitation are integrated into humanitarian and protection action, and into development programming, integrating commitments to achieve the Sustainable Development Goals by 2030;

(c) Revise and expand UNHCR guidelines on international protection and standards to include guidance on procedural standards for early identification and practical and effective protection for trafficked persons or persons at risk of trafficking, including through engagement with referral pathways, effective access to justice and protection against reprisals.
