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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[[1]](#footnote-2)\*

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| *Summary* |
| This Report highlights states’ obligations to ensure effective access to international protection for trafficked persons, and persons at risk of trafficking. It highlights obligations on states to prevent trafficking in internal displacement and refugee settings, to ensure effective access to asylum, compliance with the principle of non-refoulement. It emphasises the urgency of eliminating statelessness, as an important measure to prevent trafficking in persons, especially children. |
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I. Trafficking in persons, refugee protection, internal displacement and statelessness: Background and Context

A. Background and context

1. Displacement, internally or across borders, heightens 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 at the adoption of legislation and policy measures by states, with a stated aim of preventing trafficking in persons that fail to comply with international law. The increasing use of accelerated refugee status determination procedures, transfer of refugee status determination procedures to third countries, and the phenomenon of ‘push-backs’ following interceptions at sea or at land borders, undermine states’ obligations to identify, assist and protect victims of trafficking, and to comply with the principle of non-refoulement. Expanding safe, regular migration opportunities, providing resettlement opportunities and other complementary pathways for the admission of persons with international protection needs, as well as effective access to asylum and 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 and inequality, and failures in rule of law application, 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, a loss of livelihoods and support networks, a disruption of social norms and controls, displacement into insecure disaster relief camps, and heightened physical and socio-economic precarity.”

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

4. The Special Rapporteur highlights the call in the Global Compact for Refugees for more shared responsibility, and “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]](#footnote-3) The Special Rapporteur notes the significant contribution to refugee protection being made by countries hosting high numbers of refugees. Against the background of increased stress on host communities hosting high numbers of refugees and internally displaced persons, numerous protection challenges arise, including trafficking in persons, especially children.

5. The Special Rapporteur highlights significant developments in the work of the Global Protection Cluster, in strengthening action to combat trafficking in persons through increased prioritisation of such work. Trafficking and trafficking-related protection risks (including for purposes of sexual exploitation, child and forced labour, child and forced marriage, and recruitment and use of children) have been identified by a number of Protection Clusters based on protection monitoring and analysis. In 2022, data from Protection Clusters in 32 countries in conflict or crisis marked by internal displacement show that trafficking is a moderate to extreme risk in 50% of situations.[[3]](#footnote-4) In several Protection Clusters, there is a strong correlation between identified protection risks and the specific risk of trafficking.[[4]](#footnote-5) These include risks linked to: discrimination and stigmatization, denial of resources, limited access to employment or education, services, and/or limitations on humanitarian access, all of which exacerbate risks of trafficking in persons. Where rule of law enforcement may be weak, pre-existing and emerging vulnerabilities are exploited. [[5]](#footnote-6) 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, often linked to armed groups. Such patterns are prevalent where protection risks are identified, including: attacks on civilians and other unlawful killings, and attacks on civilian objects; abduction, kidnapping, enforced disappearance, arbitrary or unlawful arrest and/or detention; forced recruitment and association of children in armed forces and groups; gender-based violence.[[6]](#footnote-7)

6. The Special Rapporteur 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 Child Protection and Gender-Based Violence Areas of Responsibility. This includes engagement with thematic actors such as the Protection from Sexual Exploitation and Abuse (PSEA) Network, and Monitoring, Analysis and Reporting Arrangements (MARA) Working Group. However, gaps in prevention and failures of protection remain, particularly relating 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.

7. The context of conflict and displacement, and large movements of refugees increases risks of trafficking. The conflict in Syria, for example, significantly increased risks of trafficking in persons within Syria and in neighbouring countries, as well as in destination countries, particularly for unaccompanied and separated children. Such risks were exacerbated due to limited access to international protection pathways and a dire humanitarian situation.[[7]](#footnote-8) In 2022, a joint communication to Ethiopia and Eritrea, highlighted concerns relating to trafficking in persons, especially women and girls, for purposes of sexual exploitation, including sexual slavery, in the context of conflict in the Tigray, Amhara and Afar regions, and the particular risks of trafficking faced by internally displaced persons, by Eritrean refugees, women and girls with disabilities, and children.[[8]](#footnote-9) The Special Rapporteur highlights the risk of trafficking in persons that 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. As set out in the 2023 Humanitarian Response Plan for Myanmar, specific consideration will be given to people at heightened risk of trafficking in persons. A range of related human rights risks are highlighted, which are linked to trafficking in persons, including abduction, gender-based violence, arbitrary arrest, forced recruitment and forced labour. The Special Rapporteur has highlighted the obligation to prevent trafficking in persons and protect persons at risk, particularly children, in situations of internal displacement, including disaster related displacement.

8. The Special Rapporteur highlights the high risk of trafficking for purpose of sexual exploitation related to displacement and gender-based violence. Displaced and stateless women and girls are under heightened risk of trafficking for the purpose of sexual exploitation, including as a consequence of the activities of organized criminal groups, forcing people to cross borders in search of international protection.[[9]](#footnote-10)

9. The Special Rapporteur highlights that measures such as the adoption of the ten-year temporary protection status (TPS) for over 1.8 million Venezuelans living in Colombia, and many more entering since 2021, is an important measure that provides regularisation of status, thereby reducing the risks of trafficking.[[10]](#footnote-11) Such measures give effect to the positive protective obligation to prevent trafficking in persons. The Special Rapporteur highlights the continuing risks of trafficking in persons, in the context of 8,163,268 refugees from Ukraine recorded across Europe, and more than five million internally displaced.[[11]](#footnote-12) Of critical importance has been the activation of the Temporary Protection Directive in the European Union, which ensures that a residence permit, access to the labour market and housing, medical assistance, and access to education for children, is provided. The Special Rapporteur has highlighted heightened risks of trafficking in persons faced by internally displaced and stateless persons, particularly displaced children, minorities, survivors of sexual and gender-based violence, older persons, and people with disabilities, especially those in institutional settings. [[12]](#footnote-13)

II. Due Diligence: Obligation of Prevention

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

11. The obligation of due diligence to prevent trafficking in persons, requires states to take measures to prevent and eliminate statelessness, given the credible evidence of heightened risks of trafficking that arise particularly for children who are stateless.

III. Climate and conflict related displacement

12. The Special Rapporteur highlights the combined risks arising due to 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. The Special Rapporteur 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]](#footnote-14) Internal and transnational trafficking is an increased risk in situations of climate related disasters, including tropical cyclones and flooding, frequently combined with ongoing violence and conflict. The Special Rapporteur notes that trafficking is frequently identified by Protection Clusters under gender-based violence risks.[[14]](#footnote-15)

IV. Internal Displacement and Trafficking in Persons

13. In the context of internal displacement, the Special Rapporteur highlights the Guiding Principles on Internally Displaced Persons, which include a specific reference to the State’s obligation of protection against “Slavery or *any contemporary form of slavery,* such as sale into marriage, sexual exploitation or forced labour of children.”[[15]](#footnote-16) (emphasis added). The Special Rapporteur highlights that this is not an exhaustive list of forms of trafficking that may be prevalent in internal displacement settings, and is indicative only. The use of means, such as force or deception, is not required to establish trafficking of children.

14. The Special Rapporteur highlights the obligation on states to ensure the human rights of internally displaced persons, and compliance 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]](#footnote-17)

V. Identification and Assistance in refugee and displaced person settings

15. The Special Rapporteur notes that States hosting the highest 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, specialised training, and procedures to support early identification of trafficked persons or persons at risk of trafficking, are not consistently established. At many border crossings, or in camps, displaced persons settings, hotspots, or reception centres, there are limited or no procedures in place for early identification, and a lack of safe shelters, or specialised services for trafficked persons. The Special Rapporteur highlights concerns raised by the Committee on the Elimination of All Forms of Discrimination Against Women in relation to mixed migration flow hotspots about the lack of, “appropriate and confidential spaces to carry out identification performed by trained staff and interpreters who can promptly assess indicators of vulnerability and provide adequate support.”[[17]](#footnote-18)

16. The Special Rapporteur is concerned that vulnerability screening or assessments in refugee registration and refugee status determination procedures, are not systematically supported by specialised 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.

17. The Special Rapporteur notes, with concern, that there is frequently an absence of protection-sensitive mechanisms at entry points and border crossings. The Special Rapporteur 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.

18. The Special Rapporteur highlights the work of civil society organisations, 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 recognise indicators of conflict -related harms. These screening tools have been instrumental in ensuring assistance and protection for victims of trafficking in refugee settings, providing opportunities for safe disclosure through trauma informed, gender and child sensitive procedures. The adaptation of language and use of diverse terminologies on trafficking in persons, relevant to the contexts and languages of refugee communities, has been critical to this process.[[18]](#footnote-19)

19. The Special Rapporteur highlights the importance of early identification and, “*the possible impact of psychological trauma.*”[[19]](#footnote-20) The Special Rapporteur highlights the positive obligations on states to identify victims of trafficking. 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]](#footnote-21)

20. 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 protection. As is highlighted by Magugliani, “it is necessary to […] overcome the infantilization of femininity and the over-masculinization of agency, both of which are detrimental across the gender spectrum.” [[21]](#footnote-22)

VI. Refugee Status Determination procedures

21. The Special Rapporteur highlights the importance of ensuring 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 refugee status determination procedures, or to screening for protection needs. As CEDAW notes, states are required to ensure that trafficked persons, or potential victims of trafficking, are “informed of and effectively enjoy the right of access to asylum procedures without discrimination or any preconditions.” [[22]](#footnote-23)

22. The Special Rapporteur recalls the complex nature of the harms of human trafficking, highlighting that related asylum claims*,* “are particularly unsuited to accelerated processing and may limit the likelihood of identification of victims*.*” [[23]](#footnote-24) Trafficking-related asylum claims, 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 need for time and appropriate spaces to build relationships of trust, recognising the trauma enduring and continuing risks that may be faced. Referral pathways and memoranda of understanding to provide assistance to victims of trafficking are good practices, where effectively implemented.

23. 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 claim.[[24]](#footnote-25) Such measures fail to acknowledge the positive obligation on the State to identify victims of trafficking, and fails to recognise the impact of trauma on the provision of information relating to the status of being a victim, including for child victims. It is widely recognised that victims may not disclose their status as victims for a range of reasons, including because they may not recognise 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.

24. The Special Rapporteur notes that the [Procedural Standards for Refugee Status Determination under UNHCR's Mandate](https://www.refworld.org/docid/5e870b254.html) include relevant sections on trauma, and torture.[[25]](#footnote-26) The Standards could usefully be expanded 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, and protection against reprisals.

VII. Reception conditions, assistance and protection

25. 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 EU held that the prohibition on expulsion during the recovery and reflection period, applies to transfers to another EU Member State under the procedures established by the Dublin Regulation.[[26]](#footnote-27) 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.

26. 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 refugee status determination procedures, which should progress in a timely way, accompanied by specialised assistance measures.

VIII. The Legal framework for reception of refugees

27. The obligation to provide specialised assistance continues, trafficked persons are seeking asylum or other forms of international protection, are internally displaced or are stateless. [[27]](#footnote-28) 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 recognised, further difficulties arise, as was 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.[[28]](#footnote-29)

28. 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 facilitating 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 regularisation of status, and effective protection of socio-economic rights of refugees.

29. Globally, the majority of refugees reside in temporary, informal camps, or in urban settings.. Concerns have previously been raised in relation to the risks of refugee and displaced persons settings becoming targets for trafficking in persons, for all purposes of exploitation, over a protracted period of time.[[29]](#footnote-30) 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 and domestic servitude, and recruitment and use.

30. Furthermore, as was noted in *Rantsev v Cyprus and Russia,*[[30]](#footnote-31)a State’s immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking. Where refugees do not have a 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, 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. Transfers of asylum seekers, interceptions at sea: obligations of protection and non-refoulement

31. A good faith duty of cooperation and responsibility-sharing is at the core of the 1951 Convention and 1967 Protocol, reinforced by the fundamental principles of humanity and international solidarity underpinning the Global Refugee Compact (at para.5). 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 arriving irregularly. Measures to shift and transfer responsibility for the reception of asylum seekers and 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.

32. 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 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.[[31]](#footnote-32) Such arrangements may breach the positive obligation on States to put in place an effective system to protect potential or confirmed victims of trafficking, in the absence of an individualised and procedurally fair assessment of the safety and dignity of removals or transfers to other states, and the real risk of a breach of international human rights law in third states, or of onward refoulement or re-trafficking.[[32]](#footnote-33)

33. The Special Rapporteur highlights the obligation of non-refoulement, which is of particular relevance to the protection obligations due to victims of trafficking or persons at risk of trafficking.[[33]](#footnote-34) Measures designed to remove asylum seekers who arrive by irregular 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. The Principle of Non-Refoulement

34. 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.[[34]](#footnote-35) The Special Rapporteur has highlighted the obligation on states to ensure that procedural safeguards are in place that can be “objectively verified”, to protect against the risk of treatment contrary to international human rights law.[[35]](#footnote-36)

35. The Special Rapporteur recalls that trafficking in persons may constitute torture, noting the General Comment of the Committee Against Torture, which provides a non-exhaustive list of s 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 the person was subjected to or would run the risk of being subjected to slavery and forced labour56 or trafficking in human beings.” [[36]](#footnote-37)The obligation to ensure *non-refoulement* applies to risks of trafficking in persons by non-state actors, where the state is unable or unwilling to provide protection. Such protection must include specialised assistance measures for victims of trafficking and persons at risk of trafficking.[[37]](#footnote-38)

36. The Special Rapporteur highlights the Report of the Independent Fact Finding Mission on Libya relating to trafficking in persons, and its specific implications for protection of refugees and displaced persons, in the context of the widespread existence of trafficking networks reported. The Report also concludes that there are, “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 Sabratah during the Mission’s mandate.”[[38]](#footnote-39)

37. The Special Rapporteur highlights the obligations that arise in relation to identification, and protection of victims of trafficking or persons at risk of trafficking, where effective control is exercised by the State, and recalls the power or effective control standard for jurisdiction laid out by the Human Rights Committee, and its application specifically to the operation of the offshore regional processing centres, established by Australia in Papua New Guinea and Nauru. The Human Rights Committee recalled the power or effective control standard for jurisdiction laid out in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the International Covenant on Civil and Political Rights,[[39]](#footnote-40) and concluded 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, amount to such effective control.”[[40]](#footnote-41)

38. The Special Rapporteur recalls that the obligation of non-refoulement applies to and is relevant to arrangements that seek to transfer reception of refugees and refugee status determination outside of the territory of the State, taking into account the obligations to prevent trafficking in persons and 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.”[[41]](#footnote-42)

39. 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 in the context of duties 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 party’s [Australia’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.”[[42]](#footnote-43) The Special Rapporteur highlights the evolving functional concept of jurisdiction, and specifically the, “special relationship of dependency” that may arise in such contexts, and its relevance to determining whether persons “directly affected” by decisions taken by the State, in a manner that was reasonably foreseeable in light of relevant legal obligations, are subject to its jurisdiction.[[43]](#footnote-44)

40. The Special Rapporteur highlights also the obligations arising under the Convention on the Rights of the Child and its Optional Protocols, arising from a State exercising “effective control outside its borders”, including, “in international waters or other transit zones where States put in place migration control mechanisms”, and apply with respect to those children who come under a State’s jurisdiction while attempting to enter its territory.”[[44]](#footnote-45) Further, the Special Rapporteur highlights that in L.H. et al v France, and F.B. et al v France, the Committee held that the State exercised jurisdiction ratione personae because of its, “capability and the power to protect the rights of the children in question”*.*[[45]](#footnote-46)As such, the obligation arising under Article 36 Convention on the Rights of the Child, “to take all appropriate national, bilateral and multilateral measures to prevent […] traffic in children for any purpose or in any form”, applies, and imposes positive obligations on the State of identification, assistance, and protection, and of non-refoulement.

XI. The Principle of Non-Punishment

41. The Special Rapporteur highlights the obligation on the State to ensure that victims of trafficking, are given an effective opportunity to claim asylum, and not penalised for their mode of entry to the State. The principle of non-punishment is included in the specific protection afforded under article 31 of the 1951 Convention relating to the Status of Refugees, which protects refugees from being penalized for illegal entry and presence.[[46]](#footnote-47)

42. The Special Rapporteur highlights the purpose of Article 31(1), *viz* to ensure 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 1951 Refugee Convention. The reference in the text to penalties should be interpreted in light of the object and purpose of the Convention, to refer to, “any criminal or administrative measure imposed by the State on account of irregular entry or presence that is unfavorable to the refugee.”[[47]](#footnote-48) The range of penalties prohibited under Article 31(1) include measures that are, “punitive, discriminatory, retributive or deterrent in character”.[[48]](#footnote-49) As such, measures imposing restrictions on freedom of movement, deprivation of liberty, or restrictions on economic or social rights, such as education, employment and social as well as immigration support services, are prohibited.

43. The Special Rapporteur further highlights that Article 31(1) of the 1951 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.”[[49]](#footnote-50) The Special Rapporteur recalls the Advisory Opinion of the Inter American Court of Human Rights, The institution of asylum, and its recognition as a human right under the Inter-American System of Protection.[[50]](#footnote-51) 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.

44. 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 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 countries of origin*.*[[51]](#footnote-52)The risk of refoulementand of trafficking or re-trafficking, increases. Such measures fail to ensure compliance with states’ obligations of non-penalisation of refugees, including of trafficked persons seeking international protection.

45. The Special Rapporteur recalls the Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD), in relation to Thailand, for example, which expressed concern about the prevalence of trafficking in persons and related violations, particularly affecting migrants, refugees, asylum seekers, and expressed concern about the reports of detention of asylum seekers and refugees, including detention of children in cells with adult detainees (art. 5).[[52]](#footnote-53)

XII. Definitional Issues

46. The 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, (UNHCR Trafficking Guidelines)[[53]](#footnote-54) provide an important interpretive guide to the application of the 1951 Convention. 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 forced 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 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 recognise the range of forms of trafficking in persons occurring in diverse contexts, and the related obligations of prevention and protection.

47. The Guidelines continue to state that, “a common characteristic of all forms of trafficking is that victims are treated as merchandise, “owned” by their traffickers, with scant regard for their human rights and dignity.”[[54]](#footnote-55) State practice, and case-law on the scope and application of the legal definition of trafficking recognises a broader concept of trafficking, however. As such, it is important that in examination of trafficking related claims for international protection, the broader view of trafficking is applied. In the *Prosecutor v. Kunarac, Vukovic and Kovac*, 12 June 2002, the International Criminal Tribunal for the Former Yugoslavia observed at para 117:[[55]](#footnote-56) “ ...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”. [[56]](#footnote-57)

48. The wider relevance of gender to trafficking as a form of persecution is not consistently recognised. The UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity, do not contain any reference to trafficking in persons in persons,[[57]](#footnote-58) further reinforcing the limited recognition of particular risks that LGBT persons or persons of diverse gender identities may face. The UNHCR Guidelines on Gender-Related Persecution, include trafficking for the purposes of forced prostitution or sexual exploitation as persecution, referring specifically to the claims of “some trafficked women or minors”.[[58]](#footnote-59) The Guidelines include a brief footnote recognising trafficking for other purposes of exploitation, but do not acknowledge the significance of gender to trafficking for purposes of forced labour or domestic servitude, or other purposes of exploitation. [[59]](#footnote-60)

XIII. Trafficking in Persons as Persecution

49. The Special Rapporteur recalls that trafficking in persons falls within the international law concept of persecution.[[60]](#footnote-61) In its General Recommendation no.38, CEDAW states that trafficking “is part and parcel of gender related persecution,” (para.45). Trafficking of an adult man for purpose of forced criminality has been recognised as giving rise to a claim to asylum, where relevant factors for assessment of the risk of persecution on return, included lack of family support, lack of education and outstanding debt.[[61]](#footnote-62)

50. The Rome Statute for the International Criminal Court recognises that “persecution” refers to the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of a group or collectivity. (Article 7(2)(g)) The crime against humanity of persecution includes trafficking in persons, when a 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 grounds of gender may be established. [[62]](#footnote-63) Regional courts and UN treaty bodies has specifically recognised the prohibition of trafficking in persons as falling within the non-derogable norm of the prohibition of slavery, servitude and forced labour, again further reinforcing the recognition of trafficking in persons as persecution.

51. The UNHCR Trafficking Guidelines provide that asylum claims lodged by victims of trafficking or potential victims of trafficking, “should 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.”[[63]](#footnote-64) The Guidelines continue to recognise that 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.” These, it is noted, will, “generally amount to persecution.”[[64]](#footnote-65)

52. In this analysis, 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 recognised as a “process”, acknowledging that persecution, or the risk of persecution may occur in diverse locations and settings and at different times: : “The continuous and interconnected nature of the range of persecutory acts involved in the context of transnational trafficking should be given due consideration.”[[65]](#footnote-66) The UNHCR Guidelines note that the fact that the main part of the exploitation has not taken place within the country of origin does not preclude the existence of a well-founded fear of persecution in the individual’s own country.

53. It is important to recognise also that a past experience of trafficking in persons may give rise to “compelling reasons” to support a grant of asylum, and is recognised as such. This is the case, where it is considered that the persecution suffered in the experience of trafficking, was, “particularly atrocious”, and continues to impact upon trafficked persons, who may experience, “ongoing traumatic psychological effects, which would render return to the country of origin intolerable.”[[66]](#footnote-67)

54. In the context of trafficking in persons, the risk of persecution on return is particularly acute, and 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 recognised as persecution, though in practice is not always fully interrogated or acknowledged as such.

55. 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, is also recognised as potentially amounting to persecution, where it is ‘severe’, and in particular if aggravated by the trauma suffered during the trafficking process. Where such ostracism or discrimination is less severe, it may nonetheless give rise to a risk of persecution where an absence of support increases risks of destitution, displacement or lack of access to employment and housing, and consequently to increased risk of reprisals, constituting persecution.

56. Specifically in relation to women and children, the UNHCR Trafficking Guidelines state that, “The forcible or deceptive recruitment of women and children for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence, which may constitute persecution.” (para.19). The Special Rapporteur highlights that where the trafficked person, or potential victim of trafficking is a child, it is not necessary to establish the ‘means’ element of the definition of trafficking. The use of force, or deception, therefore, is irrelevant.

57. The UNHCR Gender Guidelines when commenting on trafficking for the purposes of forced prostitution or sexual exploitation as a form of persecution, reference is made to forcible or deceptive recruitment of women or minors for the purposes of forced prostitution or sexual exploitation.[[67]](#footnote-68) Again, it is critical to note that in relation to children, it is not necessary to establish ‘means’ such as force or deception. Failing to clearly acknowledge this specificity 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 bias,”[[68]](#footnote-69) intersecting with discrimination, and structural forms of racism that particularly impact upon asylum seeking and refugee children, and lead to failures of protection.

XIV. Agents of Persecution and Availability of Protection

58. 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, or recruitment agencies / 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, to exercise due diligence in prevention, protection and in ensuring 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,”[[69]](#footnote-70) 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 of assistance and protection are assessed, in accordance with requirements of the Palermo Protocol, 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, psycho-social and 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 places at risk the cornerstone of international protection, the principle of non-refoulement”.[[70]](#footnote-71)

59. The Special Rapporteur highlights that the assessment of an internal protection alternative must include as assessment not only of a 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 specialised assistance, recognising 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 Non-Governmental Organizations operating in the area; it must be practical and effective.

XV. Nexus with a Convention Ground

60. Although it is recognised that the required causal link with a Convention ground may be established on any one or a combination of grounds,[[71]](#footnote-72) in practice, it is the particular social group ground that is most often claimed and recognised 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.

61. Men, who are former victims of trafficking and at risk of re-trafficking may also form a particular social group, though there are fewer examples of such practice. In XXX, the applicant was able to demonstrate that he was forced to work as a drug dealer in a situation of debt bondage. The well-founded fear of persecution was linked to the applicant’s membership of a particular social group, namely trafficked men ‘lacking significant family networks, uneducated, unemployed and homeless, who are easy prey for criminal groups’. [[72]](#footnote-73)

62. Trafficking in persons is a form of persecution 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.”[[73]](#footnote-74) As such, it may linked to several Convention grounds The Special Rapporteur highlights that resistance to trafficking in persons may be a political opinion, and further that individuals may be targeted and subject to trafficking because of their political opinion.[[74]](#footnote-75) A male human rights activist’s resistance to human trafficking was recognised as a political opinion for the purpose of establishing a causal link with a Convention ground.[[75]](#footnote-76) As has been seen also in relation to gender related asylum claims, however, the political dimension of resistance to persecution, by women and girls, is often not recognised.

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

XVI. Child Trafficking, asylum and non refoulement

64. The Special Rapporteur highlights the particular risk of trafficking of unaccompanied and separated children, affecting the rights of children to life, survival and development.[[76]](#footnote-77) The ensure fulfilment of states’ positive protective obligations to prevent trafficking of children, articles 34 to 36 of the Convention on the Rights of the Child, must be read in conjunction with special protection and assistance obligations required under article 20, and the general obligation of non-discrimination.

65. Trafficking of children is a serious violation of human rights, and constitutes persecution. [[77]](#footnote-78) The Special Rapporteur highlights the significance of race, ethnicity and nationality to child asylum claims in many contexts, including where arising from experiences or risks of trafficking. As is recognised, “systematic targeting of girls belonging to ethnic minorities for rape, trafficking, or recruitment into armed forces or groups”,[[78]](#footnote-79) is a form of persecution linked to the race ground, as well as other Convention grounds. The Special Rapporteur highlights that targeting of boys from minority groups, indigenous peoples or migrant communities, should also be specifically recognised, as persecution linked to race, and other Convention grounds.

66. Trafficking of children for purposes of purposes of forced criminality or sexual exploitation by armed groups is a form of persecution, and particularly affects children, who are lacking protection or who are otherwise marginalized by states. Further, children who have been released from armed groups and return to their countries of origin may be at risk of re-trafficking, or other serious human rights violations.[[79]](#footnote-80) The Special Rapporteur highlights the importance of a child rights analysis in assessment of refoulement risks, noting, in particular, the risk of reprisals, including from family members, as well as social exclusion, ostracism and/or discrimination against a child victim of trafficking who is returned to his/her home.[[80]](#footnote-81)

67. The Special Rapporteur is concerned that adolescent refugee children, are often not given equal protection by States, and highlights the obligation under the Convention on the Rights of the Child (CRC), to respect and ensure the rights of all children without discrimination of any kind. (Article 2). The protection of child rights in the context of any removal or transfer proceedings must be ensured. The CRC 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.”[[81]](#footnote-82)

XVII. Rights of Persons with Disabilities

68. 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. Recalling the Convention on the Rights of Persons with Disabilities (Article 1), the Special Rapporteur recalls that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, and 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 also ensuring that specialised assistance is provided for trafficked persons or persons at risk of trafficking, with disabilities, 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 recognised in individualised assessments of asylum claims andrefoulement determination procedures.[[82]](#footnote-83) Recalling Security Council Resolution 2475 (2019), the Special Rapporteur has highlighted that 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 in all assistance and protection measures. [[83]](#footnote-84)

XVIII. Rights of Lesbian Gay Bisexual and Trans (LGBT) persons and persons of diverse gender identities

69. The Special Rapporteur highlights the specific risks of trafficking in persons, faced by LGBT persons, and persons of diverse gender identities. Such risks may give rise to a claim to asylum, and are linked specifically to discrimination, violence and stigma. Prevailing stereotypes, hyper sexualisation of trans persons, and discrimination in provision of services by States and non-state actors, including law enforcement bodies, may increase the risks of becoming victim to trafficking and lead to failures of protection.[[84]](#footnote-85) Risks of trafficking may also occur in countries of destination, where there is criminalisation of same sex relationships or conduct, or stigma and violence against LGBT persons and persons of diverse gender identities. As such, refugee reception arrangements and refugee status determination procedures must take account of such risks and ensure assistance and protection.

XIX. Statelessness and Trafficking in Persons

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

71. The link between statelessness and trafficking in persons has been recognised by treaty bodies. The Committee on the Elimination of Discrimination against Women recommended that Thailand address the root causes of trafficking, “including poverty, lack of economic opportunities and statelessness”.[[85]](#footnote-86) The Human Rights Committee called on Thailand to “strengthen its efforts to effectively combat trafficking in persons”[[86]](#footnote-87) and recommended to Thailand, “to ensure the promotion and protection of rights of stateless persons and provide primary education to children and protection against trafficking.”[[87]](#footnote-88) The increased vulnerabilities arising as a consequence of statelessness are also recognised in the Inter American Principles*,* and specifically linked to situations of discrimination and structural exclusion.[[88]](#footnote-89)

72. 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 statelessness determination procedures may increase the risk of trafficking due to the enforced legal vulnerability. Stateless persons, in particular, stateless children of minority or migrant communities, may be at greater risk of exploitation due to multiple factors, including lack of access to documentation, fear of punishment where irregularly present within a state, or lack of awareness about specific forms of exploitation (e.g., forced begging, forced criminality).

73. Stateless persons fleeing persecution, because of 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 pathways to regularise their status.[[89]](#footnote-90) The condition of statelessness forces many Rohingya to travel across borders by irregular means, through networks of brokers, 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 sectors, and have limited access to education. This condition of intergenerational denial of rights and structural discrimination, heightens vulnerability to trafficking in persons.

74. The Special Rapporteur highlights the situation of women and children in N.E. Syria, specifically the situation of children born to non-Syrian mothers currently held in camps for internally displaced persons in territory under the control of Kurdish-led authorities, and women who have been deprived of their citizenship, who are stateless, or de factostateless, and are at high risk of trafficking.[[90]](#footnote-91) The Special Rapporteur has highlighted concerns in relation to such risks, and the failure to facilitate identify, assist and protect victims of trafficking and persons at risk of trafficking, including through facilitation of repatriation and provision of consular assistance.[[91]](#footnote-92)

XX. Conclusion and Recommendations

75. 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.

76. **The Special Rapporteur recommends that States:**

(a) **Ratify and fully implement the 1951 Convention Relating to the Status of Refugees, and the 1967 Protocol**

(b) **Ratify and implement the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and take all necessary measures to end statelessness**

(c) **Ratify and implement the Palermo Protocol**

(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) **Recognising the special obligations of assistance and protection arising under the Convention on the Rights of the Child, states must ensure the best interests of children seeking asylum, including timely appointment of a guardian and legal representative for unaccompanied and separated children, and a protective environment**

(h) **Implement the UN Guiding Principles on Internal Displacement, and the UN Secretary General’s Action Agenda on Internal Displacement**

(i) **Take measures to prevent trafficking in persons by expanding resettlement opportunities, and complementary pathways to admission, including through humanitarian visas, and family reunification, and ensuring the right to access to international protection**

(j) **Ensure the prevention of trafficking in persons in all actions to achieve realization of Sustainable Development Goal target 10.7.**

(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 trafficking persons with disabilities, and persons with disabilities at risk of trafficking**

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

77. **Recommendations to UN entities, humanitarian and protection actors:**

(a) **Recognising the particular risk of trafficking of children in situations of conflict and violence, ensure that prevention of trafficking and assistance and protection of child victims of trafficking are integrated into humanitarian and protection action;**

(b) **Ensure that prevention of trafficking in persons and protection of victims of trafficking for all purposes of exploitation are integrated into humanitarian and protection action.**

1. \* The present report was submitted after the deadline in order to reflect the most recent information. [↑](#footnote-ref-2)
2. Global Compact on Refugees, UN, New York (2018) para.94. [↑](#footnote-ref-3)
3. Protection Clusters in the following countries identified trafficking as a priority protection risk (listed alphabetically): Colombia, Libya, Mali, Mozambique, Somalia, Syria, Ukraine, Venezuela. [↑](#footnote-ref-4)
4. Such risks were identified in Somalia, Syria, Afghanistan, Libya, Nigeria, Yemen, Pakistan. [↑](#footnote-ref-5)
5. These risks were highlighted in Libya, Colombia, Mozambique, Honduras, Pakistan, Ukraine, Ethiopia. [↑](#footnote-ref-6)
6. Specific risks were highlighted in Haiti, Somalia, Democratic Republic of the Congo, Ethiopia, South Sudan, Honduras, Guatemala. [↑](#footnote-ref-7)
7. ICMPD (2015). 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: ICMPD. [↑](#footnote-ref-8)
8. JAL ETH 2/2022. [↑](#footnote-ref-9)
9. See: UN High Commissioner for Refugees (UNHCR), Guidance Note on Refugee Claims Relating to Victims of Organized Gangs, 31 March 2010. [↑](#footnote-ref-10)
10. Statement of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, delivered at International Migration Review Forum (Round Table 2), New York, United Nations, May 17 2022. [↑](#footnote-ref-11)
11. Ukraine situation update: https://data.unhcr.org/en/situations/ukraine. [↑](#footnote-ref-12)
12. UNODC, Conflict in Ukraine: Key Evidence on Risks of Trafficking in Persons and Smuggling of Migrants, Update December 2022. [↑](#footnote-ref-13)
13. See: OHCHR and PDD, The Slow onset effects of climate change, and human rights protection of cross-border migrants. (2018) <https://www.ohchr.org/en/documents/tools-and-resources/slow-onset-effects-climate-change-and-human-rights-protection-cross>. [↑](#footnote-ref-14)
14. See: UNHCR, (2022) Gender Based Violence Safety Audit Report – Eduardo Mondlane IDP Site, Mueda, Mozambique, <https://data.unhcr.org/en/documents/details/93562>. [↑](#footnote-ref-15)
15. Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), Principle 11(2)(b). [↑](#footnote-ref-16)
16. See: African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. [↑](#footnote-ref-17)
17. Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), General Recommendation no.38, (2020) on trafficking in women and girls in the context of global migration, (CEDAW\C\GC\38), para.38. [↑](#footnote-ref-18)
18. Refugee Law Project and Kane, G, Input for the UN Special Rapporteur on Trafficking in Persons, especially women and children’s 2023 Report to the UN Human Rights Council, available at: <https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons>. [↑](#footnote-ref-19)
19. S.M. v Croatia, Application no. 60561/14 para.344. [↑](#footnote-ref-20)
20. L.E. v Greece, Application No. 71545/12, 21 January 2016, para.97. [↑](#footnote-ref-21)
21. Magugliani, N “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, 2023, <https://doi.org/10.1093/ijrl/eeac030> p.25. [↑](#footnote-ref-22)
22. CEDAW General Recommendation no.38, para.88. [↑](#footnote-ref-23)
23. Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) Fifth General Report (para.116); and Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection (2020) 062 states: “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.” (para.38). [↑](#footnote-ref-24)
24. JOL GBR 11/2021. [↑](#footnote-ref-25)
25. UN High Commissioner for Refugees (UNHCR), 26 August 2020. [↑](#footnote-ref-26)
26. Regulation (EU) No 604/2013 of the European Parliament and of the Council 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 (recast). [↑](#footnote-ref-27)
27. See: Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless persons and Victims of Human Trafficking, Principle 42. Resolution 04/19 approved by the Commission on December 7, 2019. See also Article 14 (10) ASEAN Convention on Action against Trafficking in Persons, especially Women and Children. [↑](#footnote-ref-28)
28. A/HRC/53/28/Add.1, (24 April 2023), para.58. [↑](#footnote-ref-29)
29. See, for example, in relation to Dzaleka refugee camp in Malawi at: <https://www.unodc.org/unodc/en/human-trafficking/Webstories2022/refugees-at-risk_-unodc-uncovers-human-trafficking-at-camp-in-malawi.html>. [↑](#footnote-ref-30)
30. Rantsev v. Cyprus and Russia, Application no. 25965/04, para. 284. [↑](#footnote-ref-31)
31. Ibid. paras 286 and 296. [↑](#footnote-ref-32)
32. Rantsev v Cyprus and Russia, para.287, Chowdury & Ors v. Greece, App. No. 21884/15, judgment 30 March 2017 para.87). [↑](#footnote-ref-33)
33. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (Palermo Protocol), Article 9(1) (b). [↑](#footnote-ref-34)
34. Case of Hirsi Jamaa and Others v. Italy, Application no. 27765/09, para. 146. [↑](#footnote-ref-35)
35. Othman (Abu Qatada v United Kingdom), Application no. 8139/09, para.189. [↑](#footnote-ref-36)
36. Committee against Torture. General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 29(n). [↑](#footnote-ref-37)
37. Ibid. para. 30. [↑](#footnote-ref-38)
38. A/HRC/52/83 (3 March 2023), para.41. [↑](#footnote-ref-39)
39. Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para.63. See also General Comment No. 36 (2018) on the right to life, CCPR/C/GC/36, para.63. [↑](#footnote-ref-40)
40. CCPR/C/AUS/CO/6, para.35. [↑](#footnote-ref-41)
41. Ibid. para.34. [↑](#footnote-ref-42)
42. Ibid. para 36(b). [↑](#footnote-ref-43)
43. A.S. and others v Italy (CCPR). CCPR/C/130/D/3042/2017 (28 April 2021) See: Papachristodoulou, A. (2022) The Ban-Opticon of Migration: Technologies at Maritime Borders and Extraterritorial Jurisdiction. Available at: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2022/05/ban-opticon>. [↑](#footnote-ref-44)
44. Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child.

    (CMW/C/GC/3-CRC/C.GC/22), para.12. [↑](#footnote-ref-45)
45. CRC/C/86/D/R.77/2019 at para.9. [↑](#footnote-ref-46)
46. See: Joint Other Letter to the United Kingdom, JOL GBR 11/2021, concerning Nationality and Borders Bill 2022. Convention relating to the Status of Refugees (adopted 28 July 1951; entered into force 22 April 1954), art. 31. See: Report of the Special Rapporteur on trafficking in persons, especially women and children, Implementaiton of the Principle of Non-Punishment (2021) A/HRC/47/34, para 35. See also, Cathryn Costello and Yulia Ioffe, “Chapter 51: Non-penalization and non- criminalization”, in Oxford Handbook of International Refugee Law Cathryn Costello, Michelle Foster and Jane McAdam, eds. (Oxford, Oxford University Press, 2021), pp. 920–925. [↑](#footnote-ref-47)
47. UNHCR Legal Observations on the Illegal Migration Bill 22 MARCH 2023, para.96 [↑](#footnote-ref-48)
48. Ibid. [↑](#footnote-ref-49)
49. Ibid. [↑](#footnote-ref-50)
50. The institution of asylum, and its recognition as a human right under 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) I/A Court H.R.,Advisory Opinion OC-25/18 of May 30, 2018, Series A No. 25, para. 99. [↑](#footnote-ref-51)
51. UNHCR (2021) Mapping of protection services for victims of trafficking and other vulnerable people on the move in the Sahel and East Africa, <https://www.unhcr.org/media/39373>. [↑](#footnote-ref-52)
52. CERD/C/THA/CO/4-8, para.33. [↑](#footnote-ref-53)
53. 7 April 2006, HCR/GIP/06/07. Available at: <https://www.refworld.org/docid/443679fa4.html>. Other relevant UNHCR Guidelines on International Protection, include, in particular, those addressing gender related persecution, UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 1: 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, 7 May 2002, HCR/GIP/02/01, (Gender Guidelines) available at: <https://www.refworld.org/docid/3d36f1c64.html> 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, 2 December 2016, HCR/GIP/16/12 [↑](#footnote-ref-54)
54. UNHCR Trafficking Guidelines, para.3. [↑](#footnote-ref-55)
55. Prosecutor v. Kunarac (Judgement) IT-96-23 and IT-96-23/1-A (12 June 2002). [↑](#footnote-ref-56)
56. Ibid. para.119. [↑](#footnote-ref-57)
57. UN High Commissioner for Refugees (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, 23 October 2012, HCR/GIP/12/01, available at: https://www.refworld.org/docid/50348afc2.html. [↑](#footnote-ref-58)
58. UNHCR Gender Guidelines para.18. [↑](#footnote-ref-59)
59. Ibid. footnote 9. [↑](#footnote-ref-60)
60. See: Cour Nationale du Droit d’Asile, Décision No. 11026228, Cour Nationale du Droit d’Asile, 12 Juillet 2012 ; Australian Refugee Review Tribunal, Case No V01/13868 [2002] RRTA 799 , which recognised that Albanian women who are, trafficked and forced into prostitution do suffer harm or mistreatment of sufficient severity such as to constitute persecution. (6 September 2002) 11, cited in Gauci, Jean-Pierre. 2022, Protecting Trafficked Persons through Refugee Protection. Social Sciences 11: 294. [↑](#footnote-ref-61)
61. SSHD v TAN [2017] UKUT PA/04075/2017. [↑](#footnote-ref-62)
62. See: Oosterveld, V., “Gender, Persecution, and the International Criminal Court: Refugee Law’s Relevance to the Crimes Against Humanity of Gender-Based Persecution,” Duke Journal of Comparative & International Law, Vol. 17 (2006), 49, pp. 50-51. [↑](#footnote-ref-63)
63. UNHCR Trafficking Guidelines, para.15. [↑](#footnote-ref-64)
64. Ibid. para.15. [↑](#footnote-ref-65)
65. Ibid. para.27. [↑](#footnote-ref-66)
66. Ibid. para.16. [↑](#footnote-ref-67)
67. UNHCR Gender Guidelines, para.18. [↑](#footnote-ref-68)
68. See: Davis Jahnine, Adultification bias within child protection and safeguarding HM Inspectorate of Probation, Academic Insights 2022/06. [↑](#footnote-ref-69)
69. UNHCR Trafficking Guidelines, para.21. [↑](#footnote-ref-70)
70. 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, 20 November 2017, NO. 17-1894 (A209-760-181), available at: https://www.refworld.org/docid/5a159e404.html. [↑](#footnote-ref-71)
71. UNHCR Guidelines para.33. [↑](#footnote-ref-72)
72. 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) 36–37, cited in Maguglian N (2023) above n.20, p.8. [↑](#footnote-ref-73)
73. 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, 2 December 2016, HCR/GIP/16/12 para.26. [↑](#footnote-ref-74)
74. UNHCR Trafficking Guidelines para.40. [↑](#footnote-ref-75)
75. In Refugee Appeal Nos. 76,478, 76,479, 76,480 and 76,481 (RSAA 11 June 2010) paras.53, 88 (cited in Briddick, Catherine and Stoyanova, Vladislava (2021) Human trafficking and refugees. In: Costello, Cathryn and Foster, Michelle and McAdam, Jane, (eds.) The Oxford Handbook of International Refugee Law. Oxford Academic, 553, p.563. [↑](#footnote-ref-76)
76. General Comment no.6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, para.23. [↑](#footnote-ref-77)
77. ExCom, Conclusion No. 107, para. (g)(viii). Li and Others v. Minister of Citizenship and Immigration, IMM-932-00, Canada, Federal Court, 11 Dec. 2000, http://www.unhcr.org/refworld/docid/4b18d3682.html. [↑](#footnote-ref-78)
78. 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, 22 December 2009, HCR/GIP/09/08, para.41. [↑](#footnote-ref-79)
79. On the risk of punishment of children associated with armed conflict and failure to identify as victims of trafficking, see: A/HRC/47/34: Report on implementation of the non-punishment principle. [↑](#footnote-ref-80)
80. Ibid. paras.27-28. [↑](#footnote-ref-81)
81. CMW/C/GC/3-CRC/C/GC/22, para 46, 19. [↑](#footnote-ref-82)
82. See: Keelin Barry, Irish Centre for Human Rights, Submission on Draft General Comment on Persons with Disabilities in Situations of Risk and Humanitarian Emergencies (Article 11 of the Convention on the Rights of Persons with Disabilities (2023), available at: <https://www.ohchr.org/en/calls-for-input/2023/day-general-discussion-and-call-written-submissions-article-11-convention> . [↑](#footnote-ref-83)
83. Joint Statement: “Ukraine: Armed conflict and displacement heightens risks of all forms of sexual violence including trafficking in persons” 16 March 2022, <https://www.ohchr.org/en/press-releases/2022/03/ukraine-armed-conflict-and-displacement-heightens-risks-all-forms-sexual>. [↑](#footnote-ref-84)
84. See S.P.Shah (ed) Special Issue – Migration, Sexuality, and Gender Identity, Anti Trafficking Review Issue 19, (September 2022). [↑](#footnote-ref-85)
85. CEDAW/C/THA/CO/6-7, para.24(a). [↑](#footnote-ref-86)
86. CCPR/C/THA/CO/2. [↑](#footnote-ref-87)
87. Ibid. para.42(b). [↑](#footnote-ref-88)
88. Above note 26, Principle 16. [↑](#footnote-ref-89)
89. A/HRC/53/28/Add.1, para.58. [↑](#footnote-ref-90)
90. Concluding observations on the fifth periodic report of the Syrian Arab Republic by the Committee on the Rights of the Child (6 March 2019) CRC/C/SYR/CO/5 para.49(f). [↑](#footnote-ref-91)
91. A/HRC/47/34. See: Submission by the UN 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, and Submission in the case of Shamima Begum v Secretary of the State for the Home Department (Special Immigration Appeals Commission) , available at: <https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons/submissions-courts-and-other-bodies>. [↑](#footnote-ref-92)