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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Trafficking in persons, especially women and children

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, in accordance with Human Rights Council resolution [44/4](#).

* [A/78/150](#).



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

**Strengthening accountability for trafficking in persons in
conflict situations**

Summary

Accountability for trafficking in persons in conflict situations remains limited. The consequences of such continued impunity include limited access to justice and remedies for trafficked persons and continuing failures with regard to prevention and protection. In her report, the Special Rapporteur on trafficking in persons, especially women and children identifies and analyses the challenges that result in gaps in accountability for trafficking in conflict situations. She also offers a set of recommendations to States, the United Nations and other international organizations on ways to strengthen accountability, combat impunity and ensure effective access to justice for trafficked persons.

I. Introduction

1. The United Nations Global Plan of Action to Combat Trafficking in Persons contains a call upon States to ensure the liability of all categories of perpetrators of trafficking in persons “in line with relevant international instruments”.¹ However, accountability for trafficking in persons in conflict situations remains limited. The consequences of such continued impunity include limited access to justice and remedies for trafficked persons and continuing failures with regard to prevention and protection. In the present report, the Special Rapporteur on trafficking in persons, especially women and children, analyses the reasons for the limited accountability for trafficking in persons occurring in conflict situations.²

2. The International Criminal Court has not, as yet, prosecuted the crime of trafficking in persons, whether under the crimes against humanity of enslavement or sexual slavery, or under other relevant and related crimes. With few exceptions, investigative and fact-finding mechanisms of the Human Rights Council, which have a key role to play in promoting accountability, have not investigated the prevalence of trafficking in persons, even in situations where significant indicators of trafficking in persons are present. In post-conflict and transitional settings, transitional justice mechanisms have a role to play in ensuring accountability and access to justice for victims of conflict-related trafficking in persons. At the national level, trafficking is prosecuted as either a domestic or a transnational crime, but limited action is taken to recognize trafficking as an international crime.

3. Despite the prevalence of a range of forms of trafficking in conflict situations, including by non-State armed groups, trafficking in persons remains largely invisible in truth recovery and transitional justice accountability processes. Failures to ensure guarantees of non-repetition further undermine processes of peace building, with armed groups and criminal networks frequently engaging in trafficking in persons in post-conflict and transition settings.

4. Accountability gaps may be linked to a range of factors, including challenges in gathering evidence to hold perpetrators accountable for trafficking in the context of conflict. Those challenges include threats to the safety of investigators in ongoing conflicts; the inability of State officials and institutions to contribute to or facilitate investigations; a lack of documentation for victims or witnesses; a lack of trust in investigators on the part of victims or witnesses; issues with regard to relying on intermediaries for evidence-gathering; the varying extent to which the relevant legal regimes adequately address the role of non-State actors in trafficking in persons; ongoing impunity for sexual and gender-based violence in conflict settings, which necessarily frustrates efforts to prevent and address conflict-related trafficking for the purpose of sexual exploitation; the failure to adopt a comprehensive gender-responsive approach to all accountability efforts for trafficking in the context of conflict; and gaps that result from the differing approaches that legal regimes might take to defining trafficking in persons. Another challenge is that certain crimes under international criminal law or international humanitarian law, such as those linked to slavery and the slave trade, conflict-related gender and sexual violence and child recruitment, may be interpreted as containing some elements of the internationally

¹ General Assembly resolution [64/293](#), annex, para. 44.

² In drafting the report, the Special Rapporteur relied on extensive consultations with lawyers, practitioners, civil society, victims and survivors, States and international organizations and drew upon country reports. An expert workshop hosted in The Hague benefited from excellent participation by staff of the International Criminal Court and of Human Rights Council investigative mechanisms. The Special Rapporteur is especially grateful to the International Human Rights Clinic at Duke University for the background research provided for the report and for co-hosting the expert workshop and consultations.

recognized definition of trafficking, but not others. More generally, there is a failure to ensure the effective and full application of the relevant international legal regimes with regard to international humanitarian law, international criminal law, international refugee law and international human rights law.³ That failure occurs not only within each legal regime, but also through the siloing of legal frameworks and an inadequate approach to reading the international legal regimes as being complementary and mutually reinforcing.⁴

5. In the 2021 Political Declaration on the Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons, States expressed deep concern about the increasing links between armed groups, including terrorist groups, and trafficking in persons, involving the coercion of victims, in particular women and girls, into forced marriages, sexual slavery, forced pregnancy, forced labour, domestic servitude and sexual exploitation, and subjecting men and boys to forced labour or act as combatants.⁵ Armed conflicts were recognized among the factors that made people vulnerable to trafficking in persons.⁶ The Special Rapporteur stresses that such vulnerability is a consequence of failures of state responsibility, and, recalling the responsibility to protect under the 2005 World Summit Outcome document,⁷ such vulnerability must be recognized also as a failure of States and of the international community to fulfil obligations to prevent trafficking in persons and to ensure the effective protection of persons at risk, especially children.

6. Trafficking and trafficking-related protection risks, including for the purposes of sexual exploitation, child and forced labour, child and forced marriage and the 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.⁸ The Special Rapporteur notes that trafficking for the purposes of sexual exploitation as a form of sexual violence in conflict situations continues to be widely reported where there is a presence of non-State armed groups and/or criminal groups, the latter being often linked to non-State 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, the forced recruitment to and association of children with armed forces and armed groups and gender-based violence.⁹ The proliferation of arms increases the risks of trafficking and hinders effective investigations and the pursuit of accountability.

³ Office of the United Nations High Commissioner for Human Rights (OHCHR), “Trafficking in persons in conflict situations: the world must strengthen prevention and accountability”, joint statement in observance of the World Day against Trafficking in Persons, 29 July 2022 (“We must ensure that accountability for trafficking in persons in conflict situations is strengthened, including through effective application of international humanitarian law, international criminal law and international human rights law.”).

⁴ See, for example, Committee on the Elimination of Discrimination against Women, general recommendation No. 30 (2013), para. 23 (“Under the Convention, States parties’ obligations to prevent, investigate and punish trafficking and sexual and gender-based violence are reinforced by international criminal law.”).

⁵ General Assembly resolution 76/7, para. 25.

⁶ *Ibid.*, para. 9.

⁷ General Assembly resolution 60/1, paras. 138 and 139.

⁸ Protection clusters in the following countries identified trafficking as a priority protection risk: Colombia, Libya, Mali, Mozambique, Somalia, Syrian Arab Republic, Ukraine and Venezuela (Bolivarian Republic of).

⁹ Specific risks were highlighted in the Democratic Republic of the Congo, Ethiopia, Guatemala, Haiti, Honduras, Somalia and South Sudan.

7. In addition, in a special report,¹⁰ the Secretary-General outlined the specific political, security and humanitarian challenges faced by survivors who become pregnant as a result of conflict-related sexual violence and by their children born of wartime rape. The challenges identified included “heightened vulnerability to conflict-driven trafficking and the perceived association of pregnant women, survivors and their children with the enemy”, which exacerbated stigma and endangered them.¹¹

8. Conflict, displacement and large movements of refugees increase the risks of trafficking, in particular for unaccompanied and separated children. Such risks are exacerbated by limited access to international protection pathways.¹² In 2022, in joint communications addressed to Ethiopia and Eritrea, seven Special Rapporteurs expressed concern about trafficking in persons, especially women and girls, for the purposes of sexual exploitation, including sexual slavery, in the context of the conflict in the Tigray, Amhara and Afar regions of Ethiopia, and the particular risks of trafficking faced by internally displaced persons, Eritrean refugees, women and girls with disabilities and children.¹³ Risks of trafficking in persons have been identified as arising in Myanmar for people displaced by conflict who are particularly vulnerable to trafficking for the purposes of sexual and labour exploitation. A range of human rights risks that may be linked to trafficking in persons were highlighted in the 2023 humanitarian response plan for Myanmar, including abduction, gender-based violence, arbitrary arrest, forced recruitment and forced labour.

9. Children are at particular risk of trafficking in conflict situations. Such risks are heightened owing to displacement, the closure of schools, family separation and weak child protection systems. In his 2023 report on children and armed conflict,¹⁴ the Secretary-General stated that the highest numbers of grave violations had been verified in the Democratic Republic of the Congo, Israel and the State of Palestine, Somalia, the Syrian Arab Republic, Ukraine, Afghanistan and Yemen. In 2022, children continued to be disproportionately affected by armed conflict, and the number of children verified as having been affected by grave violations had increased as compared with 2021. Those verified grave violations included conduct that might constitute trafficking in persons, specifically the recruitment and use of 7,622 children and the abduction of 3,985 children. The detention of 2,496 children for actual or alleged association with armed groups, including those designated as terrorist groups by the United Nations, or for national security reasons, indicated a failure to comply with the principle of non-punishment of victims of trafficking, which continues to apply in conflict situations.

10. Conflict-related trafficking in persons as a form of sexual violence in conflict situations is observed in several countries, including the Central African Republic, the Democratic Republic of the Congo, Libya, Mozambique, Somalia, South Sudan and Ukraine.¹⁵ Forms of trafficking include abductions of women and girls for the purposes of sexual slavery, child and forced marriage and extortion. Those responsible include non-State armed groups, criminal networks and United Nations-designated terrorist groups. In many conflict situations, although the form of violence reported clearly meets the legal definition of trafficking in persons, it is not consistently reported or identified as trafficking in persons, leading to continued

¹⁰ [S/2022/77](#).

¹¹ [S/2022/740](#), para. 41.

¹² Claire Healy, *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, International Centre for Migration Policy Development, 2015).

¹³ OHCHR, communications dated 11 May 2022 addressed to the Governments of Ethiopia and Eritrea (ERI 2/2022 and ETH 2/2022).

¹⁴ [A/77/895-S/2023/363](#).

¹⁵ [S/2023/413](#), paras. 15 and 16.

impunity, a lack of accountability and a failure to ensure access to justice and to effective remedies for victims. Patterns of violence against men and boys that may constitute trafficking in persons, including for the purposes of sexual exploitation or sexual slavery, are underreported and are more likely to be identified as torture or other inhumane acts, given the continuing stigma and obstacles associated with the reporting of sexual violence against men and boys, including in conflict situations.

11. The Special Rapporteur has highlighted that, in its resolution 2331 (2016), the Security Council recognized that trafficking in persons entailed the violation or abuse of human rights and underscored that certain acts or offences associated with trafficking in persons in the context of armed conflict might constitute war crimes. She has also recalled that, in the same resolution, the Council recognized that trafficking in persons in areas affected by armed conflict and post-conflict situations could be for the purpose of various forms of exploitation.¹⁶ Nevertheless, limited progress has been made in promoting accountability and access to justice for victims of trafficking in conflict situations.

II. Trends in and forms of trafficking in conflict situations: purposes of exploitation

A. Trafficking for the purposes of sexual exploitation and sexual slavery

12. The prevalence of trafficking of women and girls as a form of sexual violence in conflict situations is well documented. There are also specific gendered vulnerabilities in conflict-related contexts that increase the risk of trafficking for women and girls. Conflict-related sexual violence has also been linked with abductions for the purpose of trafficking, including trafficking for sexual exploitation, in displaced persons camps. Conflict-related sexual violence can also overlap with other forms of gender-based violence in the context of trafficking. For example, forced marriage can be both the means and the end purpose of sexual exploitation. Trafficking for the purposes of sexual exploitation takes “specific forms” in the context of armed conflict, including exploitation of those displaced by conflict, as well as exploitation “as part of the generalized sexual and gender-based violence that characterizes conflict areas” and trafficking “associated with the increased demand for sexual services that often emerges in conflict areas”.¹⁷ Furthermore, “many cases of sexual abuse and violence” documented in conflict situations can “amount to sexual slavery”.¹⁸

B. Trafficking for the purposes of forced labour

13. Trafficking for the purposes of forced labour in conflict contexts occurs in many situations, including for domestic servitude in Nigeria,¹⁹ construction, cleaning and agriculture in Iraq,²⁰ and “construction, manufacturing and agriculture, as well as in

¹⁶ See A/71/303 and A/76/263.

¹⁷ *Trafficking in Persons in the Context of Armed Conflict 2018* (United Nations publication, 2018), p. 9.

¹⁸ *Ibid.*

¹⁹ A/HRC/41/46/Add.1, para. 15.

²⁰ James Cockayne and Summer Walker, *Fighting Human Trafficking in Conflict: 10 Ideas for Action by the United Nations Security Council*, workshop report (New York, United Nations University, 2016), pp. 7 and 8. Available at http://collections.unu.edu/eserv/UNU:5780/UNURreport_Pages.pdf?utm_source=UNU%20Campaign%20page&utm_medium=Web&utm_campaign=Human%20Trafficking.

the illegal production of counterfeit tobacco products” in Ukraine.²¹ The means by which individuals are trafficked into conflict zones for the purposes of forced labour include deceptive recruitment practices,²² false promises.²³ Factors that contribute to labour trafficking in conflict include the fact that “conflict disrupts or depletes the regular workforce”, thus affecting “the demand for exploitative labour and services”,²⁴ and that some armed groups use forced labour “to generate illicit income or sustain military operations”.²⁵ Trafficking for labour exploitation can also coincide with other forms of exploitation, including sexual exploitation, as seen in the context of Da’esh, for example.²⁶ Furthermore, trafficking for labour exploitation includes both internal trafficking, including in Ethiopia,²⁷ Myanmar,²⁸ Nigeria,²⁹ the Syrian Arab Republic³⁰ and Ukraine,³¹ as well as trafficking across borders in same context.³²

14. The trafficking of persons for use in combat or combat support roles also occurs in conflict areas. While States are generally permitted to conscript their adult citizens for military service, there are certain scenarios in which such practices may violate international law, including when soldiers are given an “extreme ultimatum”, such as being killed or tortured for refusing to serve.³³ The trafficking and recruitment of children for use in armed conflict is a particular concern that raises distinct legal issues from the conscription of adults. As the means through which a child is brought into a trafficking situation, including their consent, is irrelevant, all cases of child recruitment for military roles can be considered to be illegal trafficking.³⁴

C. Illegal adoption

15. In a joint statement, the Special Rapporteur and other special procedure mandate holders and treaty body representatives, highlighted that “illegal adoptions occur through a wide variety of illegal acts or illicit practices, such as abduction and sale of

²¹ Suzanne Hoff and Eefje de Volder, “Preventing human trafficking of refugees from Ukraine: a rapid assessment of risks and gaps in the anti-trafficking response” (Amsterdam, La Strada International; London, The Freedom Fund, 2022), p. 7 (noting that between 2014 and 24 February 2022, Ukrainians (adults and children) had been exploited “within Ukraine and across borders, including being trafficked for sexual exploitation and labour exploitation”).

²² United Nations Office on Drugs and Crime (UNODC), *Countering Trafficking in Persons in Conflict Situations* (Vienna, 2018), p. 15.

²³ [A/HRC/41/46/Add.1](#), para. 11.

²⁴ UNODC, *Countering Trafficking in Persons in Conflict Situations*, p. xiii.

²⁵ *Trafficking in Persons in the Context of Armed Conflict 2018*, p. 13.

²⁶ OHCHR, submission of the Special Rapporteur in the case of *Shamima Begum v Secretary of State for the Home Department*, 30 June 2022. See also Jayne Huckerby, “When terrorists traffic their recruits”, *Just Security*, 15 March 2021.

²⁷ OHCHR, communication to Ethiopia (ETH 2/2022).

²⁸ International Labour Organization (ILO), *Closing the Migration-Trafficking Protection Gap: Policy Coherence in Myanmar* (Geneva, 2020), p. 11.

²⁹ [A/HRC/41/46/Add.1](#), para. 4 (noting that internal trafficking from rural to urban areas is “rampant”, mainly affecting “women and girls for the purpose of domestic servitude and sexual exploitation and men and boys for the purpose of child begging, and labour exploitation in street vending, mining and stone quarrying, agriculture and textile manufacturing”).

³⁰ Healy, *Targeting Vulnerabilities*, p. 178.

³¹ Hoff and Volder, “Preventing human trafficking of refugees from Ukraine”.

³² OHCHR, communication to Ethiopia (ETH 2/2022); ILO, *Closing the Migration-Trafficking Protection Gap*, p. 10; [A/HRC/41/46/Add.1](#), para. 11; Healy, *Targeting Vulnerabilities*, p. 178; and Hoff and Volder, “Preventing human trafficking of refugees from Ukraine”, p. 7.

³³ Syria Justice and Accountability Centre, “Forced conscription under international law”, chap. in *Documentation Training Guide* (2022), p. 23. See also ILO, “What is forced labour, modern slavery and human trafficking” (23 October 2022); and [A/HRC/26/45](#), paras. 69–76 (in which the conscription practices of Eritrea are described as forced labour).

³⁴ See, for example, Huckerby, “When terrorists traffic their recruits”.

and trafficking in children, enforced disappearance and wrongful removal of children in the context of enforced disappearance”.³⁵ In conflict settings, certain factors can present risks of trafficking for the purpose of illegal adoption.³⁶ For example, in the Syrian Arab Republic this includes a “significant number of unaccompanied refugee children and unregistered new births”.³⁷ In the context of an “emergency situation” such in as Ukraine, it can be nearly impossible to ensure that intercountry adoptions conform to international standards and principles, which can escalate “the risk of child abduction, sale or trafficking and of illegal adoptions”.³⁸

D. Organ removal

16. Research has suggested that conflicts may create enhanced opportunities for this form of trafficking, through the creation of vulnerable populations.³⁹

E. Forcible transfers of civilians

17. Conflicts can involve forced deportation, transfers and/or displacement of civilian populations with the intent to exploit (e.g. forced labour) or where an exploitative situation results or is maintained.⁴⁰ For example, in the context of Ukraine, the alleged forcible transfers of children, now the subject of an indictment by the International Criminal Court, if for the purposes of exploitation, may constitute trafficking of children.

III. International criminal law

18. The Rome Statute of the International Criminal Court contains the explicit stipulation that trafficking can amount to an international crime in the form of enslavement and sexual slavery, as crimes against humanity, and/or sexual slavery as a war crime.⁴¹ In the context of an attack on a civilian population, or an armed conflict, the Statute expressly permits and foresees the prosecution of trafficking in persons. Enslavement is defined in the Statute as “the exercise of any or all of the powers attaching to the right of ownership over a person” and includes “the exercise of such power in the course of trafficking in persons, in particular women and children”.⁴² As set out in *Elements of Crimes*, the crime against humanity of enslavement includes the following element: “The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.”⁴³ An explanatory footnote provides the

³⁵ OHCHR, “Joint statement on illegal intercountry adoptions”, 29 September 2022, para. 2.

³⁶ A/72/164, paras. 31 and 81 (a).

³⁷ Healy, *Targeting Vulnerabilities*, p. 196.

³⁸ United Nations Children’s Fund, “Guidance for protecting displaced and refugee children in and outside of Ukraine”, 1 November 2022.

³⁹ See, for example, Nancy Scheper-Hughes, “Organ trafficking during times of war and political conflict”, *International Affairs Forum*, 17 November 2016.

⁴⁰ See, for example, Etienne Henry, “The prohibition of deportation and forcible transfer of civilian populations in the Fourth Geneva Convention and beyond”, chap. in *Revisiting the Geneva Conventions: 1949–2019*, Md. Jahid Hossain Bhuiyan and Borhan Uddin Khan, eds. (Leiden, Kingdom of the Netherlands, Brill Nijhoff, 2020), pp. 75, 77, 83 and 91 (citing deportations for the purposes of forced labour and exploitation during the First and Second World Wars).

⁴¹ Rome Statute, arts. 7 (1) (c) and (g) and 8 (2) (b) (xxii) and (e) (vi).

⁴² *Ibid.*, art. 7 (2) (c).

⁴³ International Criminal Court, *Elements of Crimes* (The Hague, Kingdom of the Netherlands, 2011), p. 4.

following: “It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.”⁴⁴ The same explanatory footnote is included in the elements of the crimes of sexual slavery as a crime against humanity and of sexual slavery as a war crime, both in international armed conflict and in non-international armed conflict.⁴⁵ Despite the explicit references to trafficking in the Statute and in *Elements of Crimes*, there has been limited attention given to international law on trafficking in persons by the Court or in other international courts and tribunals.⁴⁶ In the case of *Prosecutor v. Kunarac, Vukovic and Kovac*, on 12 June 2002, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 concluded as follows:

The question whether a particular phenomenon is a form of enslavement will depend on the operation of the factors or indicia of enslavement [including] the “control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour”. Consequently, it is not possible exhaustively to enumerate all of the contemporary forms of slavery which are comprehended in the expansion of the original idea.⁴⁷

19. This definition of “enslavement” as a crime against humanity is also reflected in the draft articles on prevention and punishment of crimes against humanity adopted in 2019 by the International Law Commission,⁴⁸ most recently discussed in October 2022 by the Sixth Committee (Legal) of the General Assembly, in its concluding debate on a proposed convention on the prevention and punishment of crimes against humanity.⁴⁹ Although trafficking in persons is not directly addressed in the proposed treaty, the treaty may contribute to accountability efforts for gendered violations in conflict settings.

20. In addition to the crimes of enslavement and sexual slavery, the International Criminal Court has jurisdiction over a range of acts that have a nexus to and/or may constitute trafficking in persons. In its resolution [75/158](#) on trafficking in women and girls, the General Assembly acknowledged the inclusion of gender-related crimes in the Rome Statute. Specifically, crimes against humanity include “sexual slavery, enforced prostitution, forced pregnancy” or “any other form of sexual violence of comparable gravity”, “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender” or “other grounds”, and “other inhumane acts”.⁵⁰ The International Tribunal for the Former Yugoslavia has interpreted other inhumane acts to include forcible transfer, forced disappearance and forced prostitution, while the International Criminal Court has included charges

⁴⁴ Ibid., fn. 11.

⁴⁵ Ibid., fn. 66.

⁴⁶ Paul Bradfield, “Policy brief: international criminal accountability for trafficking in persons”, Human Trafficking Law Working Paper Series, Siobhán Mullally and Chris Dolan, eds. (Galway, Ireland, Irish Centre for Human Rights, 2021).

⁴⁷ International Tribunal for the Former Yugoslavia, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Case No. IT-96-23 and IT-96-23/1, Judgment, 12 June 2002, para. 119.

⁴⁸ [A/74/10](#), chap. IV, sect. E, art. 2 (2) (c).

⁴⁹ See [A/C.6/77/SR.11](#).

⁵⁰ Rome Statute, arts. 7 (1) (g), (h) and (k). See also M. Cherif Bassiouni, “Enslavement: slavery, slave-related practices and trafficking in persons for sexual exploitation”, in *International Criminal Law: Sources, Subjects, and Contents*, 3rd ed. vol. 1, M. Cherif Bassiouni, ed. (Leiden, Martinus Nijhoff Publishers, 2008), pp. 535, 593 and 594.

related to forced pregnancy and forced marriage as inhumane acts.⁵¹ War crimes, “in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes” in both international and non-international armed conflict, include acts comprising “outrages upon personal dignity, in particular humiliating and degrading treatment”, as well as “sexual slavery, enforced prostitution, forced pregnancy” or any other form of sexual violence also constituting a grave breach of the Geneva Conventions of 12 August 1949.⁵² The Security Council has recognized the international criminal nature of trafficking in persons, stating that trafficking in persons entailed the violation or abuse of human rights, and underscoring that certain acts or offences associated with trafficking in persons in the context of armed conflict might constitute war crimes.⁵³

21. In addition, several acts referenced throughout the Rome Statute, including “deportation or forcible transfer of population”, “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities”, “enforced disappearance of persons”, forcibly transferring children from a specific national, ethnic, racial or religious group to another group and “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”, can also overlap with the acts, means and/or exploitative purpose of trafficking in persons and should be examined further in that light.⁵⁴

22. In assessing how trafficking in persons can be addressed as an international crime, the Special Rapporteur has also drawn attention to the trafficking of children, noting that “the recruitment and use of children for varying purposes of exploitation, including sexual slavery, forced marriage, forced labour, forced pregnancy and forced criminality, can be characterized as coming within the scope of the crime of trafficking”.⁵⁵ In its policy on children, the Office of the Prosecutor of the International Criminal Court also makes numerous references to child trafficking, including in a specific section addressing the trafficking of children as a form of enslavement.⁵⁶

A. Persecution

23. In article 7 (2) (3) of the Rome Statute, persecution is defined as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of a group or collectivity”. Trafficking in persons can therefore be considered 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 grounds of gender

⁵¹ See, for example, International Tribunal for the Former Yugoslavia, *Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlađo Radić, Zoran Žigić and Dragoljub Prcać*, Case No. IT-98-30/1, Judgement, 2 November 2001, para. 208; and International Criminal Court, *The Prosecutor v Dominic Ongwen*, Case No. ICC-02/04-01/15, Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016.

⁵² Rome Statute, arts. 8 (1) and (2) (b) (xxi) and (xxii), (c) (ii) and (e) (vi).

⁵³ Security Council resolution 2331 (2016), seventh preambular paragraph.

⁵⁴ See, for example, Rome Statute, arts. 6, 7 (1) (d) and (i) and 8 (2) (b) (xxvi), (c) (i) and (e) (vii). With regard to the forcible transfer of children, see also Convention on the Prevention and Punishment of the Crime of Genocide, art. II.

⁵⁵ International Criminal Court, *The Prosecutor v Dominic Ongwen*, Case No. ICC-02/04-01/15 A A2, Observations on the crimes of sexual slavery, enslavement and trafficking in persons, and on the grounds for excluding criminal responsibility: defences of duress, mental defect or disease and the non-punishment principle, 21 January 2022, para. 8.

⁵⁶ International Criminal Court, Office of the Prosecutor, “Policy on children”, November 2016, sect. II. (c).

may be established.⁵⁷ The Special Rapporteur has highlighted the intersections of race and ethnicity with heightened risks of trafficking in persons, constituting persecution. Systematic targeting of girls belonging to ethnic minorities for rape, trafficking or recruitment into armed forces or groups has been recognized as a form of persecution linked to race.⁵⁸ Targeting boys belonging to minority groups, Indigenous Peoples or migrant communities should also be specifically recognized as persecution linked to race.

24. The Committee on the Elimination of Discrimination against Women recommends that States recognize trafficking as being part and parcel of gender-related persecution.⁵⁹ 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, when the necessary chapeau elements of the crime against humanity are present.⁶⁰ 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. In its “Guidelines on international protection No. 7”, the Office of the United Nations High Commissioner for Refugees recommended 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, amounted to persecution in the individual case.⁶¹ It is also recognized that gender plays a central role in determining and shaping the incidence, risk and severity of persecution.

B. Crimes against migrants

25. Another nexus between international criminal law and trafficking in persons is in respect of crimes against migrants, referenced in statements of the Office of the Prosecutor of the International Criminal Court. In one statement, the Prosecutor referenced such arrests in the context of the attention given by the International Criminal Court to “crimes against migrants”, noting that such crimes might “constitute crimes against humanity and war crimes”.⁶² In paragraph 25 of his twenty-third report to the Security Council pursuant to resolution 1970 (2011), the Prosecutor lists a number of crimes allegedly committed against migrants and refugees in Libya, including “arbitrary detention, unlawful killing, enforced disappearance, torture, sexual and gender-based violence, abduction for ransom, extortion, and forced labour”, adding that his Office’s preliminary assessment was that those crimes might constitute crimes against humanity and war crimes.

⁵⁷ 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).

⁵⁸ Office of the United Nations High Commissioner for Refugees (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”, document HCR/GIP/09/08.

⁵⁹ General recommendation No. 32 (2014), para. 45.

⁶⁰ Valerie Oosterveld, “Gender, persecution, and the International Criminal Court”.

⁶¹ 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”, document HCR/GIP/06/07, para. 15.

⁶² International Criminal Court, Office of the Prosecutor, “Statement of ICC Prosecutor Karim A.A. Khan KC on arrest and extradition of suspects in relation to crimes against victims of trafficking in Libya”, 21 October 2022.

C. Genocide

26. A link may also arise to the crime of genocide, and may be especially pertinent in relation to the treatment of minorities targeted for human trafficking. The Independent Commission of Inquiry for Syria has declared that the genocide committed against the Yazidis had “not primarily been accomplished through killings”, although “mass killings of men and women” did occur. Rather, the alleged genocide has included acts such as sexual slavery, enslavement, forcible transfer and forced conversions.⁶³

27. Human trafficking is criminalized in article 28J, entitled “Trafficking in persons”, of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights. Article 28J replicates the definition of trafficking set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. However, the distinguishing feature is that, rather than States being obliged to criminalize trafficking, they are assigned international criminal responsibility for trafficking, opening up a potentially significant route to accountability within the region.⁶⁴

IV. International humanitarian law

28. International humanitarian law likewise does not contain provisions specifically addressing trafficking in persons as a stand-alone offense. However, there is scope for addressing trafficking in persons, including because international humanitarian instruments “have been interpreted in accordance with evolving human rights norms and standards through the jurisprudence of the international tribunals”.⁶⁵ A key challenge in applying international humanitarian law protections to trafficked persons and persons at risk of trafficking will be to carefully delineate the extent to which the protections are general or specific, as well as their application in different conflict settings. In addition, it will be crucial to emphasize the complementary protections provided under international humanitarian law to victims of trafficking and persons at risk of trafficking, and the application of both bodies of law in the context of armed conflict.⁶⁶

29. In joint communications addressed to Eritrea and Ethiopia, the Special Rapporteur and other mandate holders highlighted applicable treaty and customary norms of international humanitarian law relevant to the allegations of trafficking in persons in conflict situations, relating in particular to children, internally displaced persons and refugees and women.

30. There is a range of applicable treaty and customary norms under international humanitarian law that are relevant to trafficking in persons and that should be further explored in order to address the current failure to apply existing norms to trafficking of persons in conflict situations. Especially relevant protections include a prohibition

⁶³ Coman Kenny and Nikita Malik, “Trafficking terror and sexual violence: accountability for human trafficking and sexual and gender-based violence by terrorist groups under the Rome Statute”, *Vanderbilt Journal of Transnational Law*, vol. 52, No. 1 (January 2019).

⁶⁴ Gillian Kane, “Effective protection? A comparative analysis of the role of international law in preventing and tackling human trafficking among refugees and asylum seekers in Africa and Europe”, PhD thesis, Queen’s University Belfast, 2022.

⁶⁵ [A/HRC/32/41](#) and [A/HRC/32/41/Corr.1](#), para. 47.

⁶⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 136; and Committee on the Elimination of Discrimination against Women, General recommendation No. 38 (2020), para. 13.

on enforced disappearances,⁶⁷ including for missing migrants. As noted by the International Committee of the Red Cross (ICRC), those obligations are “of relevance for migrants that live, or are in transit, in the territory of a State in which there is an armed conflict”.⁶⁸ According to ICRC, the trafficking nexus is as follows: trafficked migrants often go missing, either because they cannot establish contact with their families or because they are killed or because they die as a result of suffering severe abuses and their bodies are never retrieved or identified. In some cases, trafficked migrants may prefer not to establish contact with family members, in order to shield them from the risk of intimidation and extortion by those holding them. Furthermore, in some countries affected by armed conflict or other situations of violence from which migrants may flee or through which they may transit, State forces and armed groups may directly or indirectly support migrant trafficking or smuggling networks as a means of financing.⁶⁹

31. International humanitarian law protections against enforced disappearances can also be relevant for addressing other practices linked to trafficking, including illegal intercountry adoptions.⁷⁰ Also of relevance is the obligation to prevent the recruitment or participation of children in hostilities, including prohibitions, under Protocols I and II Additional to the Geneva Conventions of 1949 and the Convention on the Rights of the Child, on parties to conflicts recruiting children under the age of 15 years into their armed forces and a requirement to ensure that they do not take a direct part in hostilities.⁷¹ Under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the minimum age is 18.⁷² For the purposes of the Trafficking in Persons Protocol, a child is defined as any person under the age of 18.⁷³

32. Of particular relevance is the prohibition on slavery and the slave trade in all its forms as a fundamental guarantee for civilians and persons *hors de combat*.⁷⁴ The prohibition of several acts that are often perpetrated against victims of trafficking is relevant, including torture, cruel or inhuman treatment and outrage upon personal

⁶⁷ See, for example, International Committee of the Red Cross (ICRC), “Rule 98: enforced disappearance”, Customary International Humanitarian Law database, available at <https://ihl-databases.icrc.org/en/customary-ihl/v1> (10 November 2022).

⁶⁸ OHCHR, “ICRC contribution to the general comment on enforced disappearances in the context of migration”, 29 June 2022, p. 1.

⁶⁹ *Ibid.*, p. 3.

⁷⁰ OHCHR, “Joint statement on illegal intercountry adoptions”, para. 2.

⁷¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 77 (2); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 4 (3) (c); and Convention on the Rights of the Child, art. 38. See also ICRC, “Rule 136: recruitment of child soldiers”, Customary International Humanitarian Law database.

⁷² Optional Protocol on the involvement of children in armed conflict, arts. 1 and 2.

⁷³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 3 (d).

⁷⁴ Geneva Conventions of 12 August 1949, common art. 3 (1) (c); Protocol I Additional to the Geneva Conventions of 1949, art. 75 (2) (b); Protocol II Additional to the Geneva Conventions of 1949, art. 4 (2) (f); and ICRC, “Rule 94: slavery and slave trade”, Customary International Humanitarian Law database.

dignity;⁷⁵ uncompensated or abusive labour;⁷⁶ and arbitrary deprivation of liberty.⁷⁷ Lastly, the prohibition on rape and other forms of sexual violence, including enforced prostitution or any other form of indecent assault, is also of relevance.⁷⁸ More broadly, in relation to women and children affected by armed conflict, several legal provisions are relevant to the obligation to ensure the protection of children in war,⁷⁹ as are general and special protections of the rights of women affected by armed conflict,⁸⁰ which support the obligation to ensure a protective environment for children, and age- and gender-sensitive responses to protection needs that can facilitate a holistic gender- and child-sensitive approach to trafficking in persons in conflict settings. The protections provided for refugees and internally displaced persons include general protections of civilians that, if observed, prevent displacement; explicitly prohibit population displacements;⁸¹ govern the treatment of displaced populations;⁸² and ensure a guarantee of non-refoulement.⁸³

V. International human rights law

33. International Human Rights Law continues to apply in conflict situations. The obligations on States to identify, assist and protect victims of trafficking, therefore, continue to apply. States' obligations include the obligation to undertake effective investigations; to act with due diligence to investigate trafficking in persons; and to

⁷⁵ 1949 Geneva Conventions, common art. 3; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), art. 12 (“torture”); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), art. 12 (“torture”); Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), arts. 17 (“physical or mental torture”), 87 (“torture or cruelty”) and 89 (“inhuman, brutal or dangerous” disciplinary punishment); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 32 (“torture” and “other measures of brutality”); Protocol I Additional to the Geneva Conventions of 1949, art. 75 (2); Protocol II Additional to the Geneva Conventions of 1949, art. 4 (2); and ICRC, “Rule 90: torture and cruel, inhuman or degrading treatment”, Customary International Humanitarian Law database.

⁷⁶ Third Geneva Convention, arts. 49–57; Fourth Geneva Convention, arts. 40, 51 and 95; and ICRC, “Rule 95: forced labour”, Customary International Humanitarian Law database.

⁷⁷ ICRC, “Rule 99: deprivation of liberty”, Customary International Humanitarian Law database.

⁷⁸ 1949 Geneva Conventions, common art. 3 (while not explicitly prohibiting rape or sexual violence, the article prohibits “violence to life and person”, including cruel treatment and torture and “outrages upon personal dignity”); Third Geneva Convention, art. 14; Fourth Geneva Convention, art. 27; Protocol I Additional to the Geneva Conventions of 1949, arts. 75 (2), 76 and 77; Protocol II Additional to the Geneva Conventions of 1949, art. 4 (2); and ICRC, “Rule 93: rape and other forms of sexual violence”, Customary International Humanitarian Law database.

⁷⁹ Fourth Geneva Convention, arts. 14, 17, 23, 24, 38, 50, 76, 82, 89, 94 and 132; Protocol I Additional to the Geneva Conventions of 1949, arts. 70, 77 and 78; Protocol II Additional to the Geneva Conventions of 1949, art. 4 (3); and ICRC, “Rule 135: children”, “Rule 136: recruitment of child soldiers” and “Rule 137: participation of child soldiers in hostilities”, Customary International Humanitarian Law database.

⁸⁰ First Geneva Convention, art. 12; Second Geneva Convention, art. 12; Third Geneva Convention, arts. 14, 25, 29, 88, 97 and 108; Fourth Geneva Convention, arts. 14, 16, 21–27, 38, 50, 76, 85, 89, 91, 97, 124, 127 and 132; Protocol I Additional to the Geneva Conventions of 1949, arts. 70, 75 and 76; Protocol II Additional to the Geneva Conventions of 1949, arts. 5 (2) and 6 (4); and ICRC, “Rule 134: women”, Customary International Humanitarian Law database.

⁸¹ Fourth Geneva Convention, art. 49; Protocol II Additional to the Geneva Conventions of 1949, art. 17; and ICRC, “Rule 129: the act of displacement”, Customary International Humanitarian Law database.

⁸² Fourth Geneva Convention, art. 49; Protocol II Additional to the Geneva Conventions of 1949, arts. 4 (3) (b) and 17 (1); and ICRC, “Rule 131: treatment of displaced persons”, Customary International Humanitarian Law database.

⁸³ Fourth Geneva Convention, art. 45.

prosecute and punish those responsible, ensuring access to justice and effective remedies for victims. These obligations apply, including where the alleged perpetrators are non-State armed groups. The Special Rapporteur recalls that, in paragraph 15 of its general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, the Committee on the Elimination of Discrimination against Women states that “obligations flowing to non-State actors to respect the prohibition of trafficking also arise from the peremptory norm (*jus cogens*) prohibiting slavery, the slave trade and torture” and notes that, in certain cases, “trafficking in women and girls may amount to such rights violations”.

VI. Role of non-State armed groups

34. A key challenge for the pursuit of accountability for trafficking in persons in conflict situations is the proliferation of non-State armed groups and their responsibility for trafficking in persons for all purposes of exploitation. Urgent action is needed to address this accountability gap, as well as the related failures and lack of capacity to prevent trafficking by armed groups, and to protect trafficked persons. It has been the experience of the Special Rapporteur in country visits that non-State armed groups are heavily engaged in trafficking in persons, in both conflict and post-conflict settings, and that they operate with impunity, thus limiting access to justice for victims.

35. According to the International Criminal Court, the policy to commit such a widespread and systematic attack “requires that the State or organization actively promote or encourage such an attack against a civilian population”.⁸⁴ The Court’s Pre-Trial Chamber II confirmed that non-State actors may qualify as an organization for the purpose of article 7 (2) (a) of the Rome Statute. ICRC has highlighted that the proliferation of non-State armed groups is a central feature of the changing geopolitical landscape of the past decade and, in particular in non-international armed conflicts. The size, structure and capabilities of such groups vary widely, and many are involved in human trafficking for a range of purposes of exploitation. Accountability for trafficking by non-State armed groups is limited and poses particular challenges: “While large groups with centralized and well-defined command and control structures continue to arise and exist, other groups are decentralized in structure and operate in fluid alliances. The motivation for violence of these myriad armed actors is an overlay of political, religious, economic and other interests.”⁸⁵

VII. Fact-finding missions and investigative mechanisms

36. The Special Rapporteur highlights the potentially important role of United Nations fact-finding and other investigative mandates in strengthening accountability for trafficking in persons in conflicts. However, with limited exceptions, the accountability mechanisms established by the Human Rights Council and by other United Nations entities such as the Security Council, do not investigate trafficking in persons in conflict situations, although fact patterns and indicators of trafficking are consistently reported and documented. For example, in its final report,⁸⁶ the Independent Fact-Finding Mission on Libya provides information relating 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

⁸⁴ International Criminal Court, *Elements of Crimes*, p. 5.

⁸⁵ ICRC, “ICRC engagement with non-State armed groups: why, how, for what purpose, and other salient issues”, ICRC position paper, 4 March 2021, p. 4.

⁸⁶ [A/HRC/52/83](#).

found reasonable grounds to believe that the crime against humanity of sexual slavery, previously unreported by the Mission, had been committed in Libya during its mandate, in the trafficking hubs of Bani Walid and Sabratah.⁸⁷ In the report on her country visit to South Sudan,⁸⁸ the Special Rapporteur highlighted that conflict-related sexual violence against women and girls had been recorded and documented in the work of the Commission on Human Rights in South Sudan, as well as by other United Nations entities and by civil society. The conduct described includes conduct that falls within the definition of trafficking in persons and that may amount to sexual slavery or enslavement.

37. The Special Rapporteur is concerned about the lack of consistency in investigating and reporting on trafficking in persons by United Nations fact-finding, investigative and inquiry mechanisms. That lack of consistency and attention to conflict-related trafficking in persons for all purposes of exploitation limits accountability and access to justice for victims. In particular, evidence of trafficking of children and young people in conflict situations is not given sufficient attention. The gender dimension of trafficking in persons for the purposes of sexual exploitation as a form of conflict-related sexual violence is not consistently investigated or documented, in particular where it consists of internal trafficking and/or it occurs in the context non-international armed conflicts.

VIII. Business and human rights in conflict situations

38. The Guiding Principles on Business and Human Rights provide that business enterprises should respect the standards of international humanitarian law in situations of armed conflict. International humanitarian law binds State and non-State actors, including businesses, and applies to international and to internal armed conflicts. It should be noted that international human rights law applies in times of peace and conflict. The prohibition of trafficking in persons falls within the non-derogable prohibition of slavery, servitude and forced labour and as noted, is also prohibited by international humanitarian law.

IX. Digital technologies and the use of social media in conflict situations

39. The Special Rapporteur highlights that the Guiding Principles on Business and Human Rights apply equally to all businesses in all sectors, including technology companies. Risks related to the use of social media and other online platforms with respect to trafficking in the context of conflict include social media platforms being used “to traffic people into and within areas affected by conflict”.⁸⁹ The relevant actors in this space include social media companies and non-State armed groups.⁹⁰

X. Rights of persons with disabilities

40. The Convention on the Rights of Persons with Disabilities applies at all times and does not allow for the derogation or suspension of its provisions during national

⁸⁷ Ibid., para. 41.

⁸⁸ See [A/HRC/53/28/Add.2](#).

⁸⁹ UNODC, *Countering Trafficking in Persons in Conflict Situations*, p. 63.

⁹⁰ [A/71/303](#), para. 51 (noting “the use of the Internet and social media for the deception, recruitment, indoctrination and sale of potential and actual victims of trafficking, especially women and children, by extremist non-State armed groups”); and [A/HRC/32/41](#) and [A/HRC/32/41/Corr.1](#), para. 28.

emergencies, foreign occupation, natural disasters or armed conflict. The Convention continues to apply, therefore, in conflict situations. The limited attention given in international criminal law to crimes against persons with disabilities has been criticized. That limited attention is also evident in the failure to ensure accountability in the context of trafficking in persons with disabilities. Recognizing the intersecting axes of discrimination, the Special Rapporteur has emphasized the importance of a disability-inclusive approach to considering trafficking in persons within the framework of international criminal law, including in the context of “forced criminality”, and the application of the non-punishment principle.⁹¹ Disability can affect vulnerability to trafficking, such as in Ethiopia, where women and girls with disabilities may have been trafficked for the purposes of sexual exploitation,⁹² as well as in Iraq⁹³ and the Syrian Arab Republic.⁹⁴

XI. Intersectional risks of trafficking in persons

41. Ensuring accountability for trafficking in persons requires moving beyond the stereotypes associated with identifying victims of trafficking and recognizing the intersecting and overlapping risks of discrimination that lead to trafficking in persons in conflict situations. Owing to discrimination, structural inequalities and failures of protection, certain groups, including women, children, stateless persons and refugees, are especially vulnerable to trafficking in the context of conflict. For example, those heightened risks of discrimination and exploitation can be seen in the context of Ukraine, where risks of trafficking in persons are higher for certain groups.⁹⁵ Such groups may include non-Ukrainians, including undocumented and stateless people; Ukrainian Roma people; lesbian, gay, bisexual, transgender persons and persons of diverse gender identities; older persons; and persons with disabilities. The heightened risks of trafficking of lesbian, gay, bisexual, transgender persons and persons of diverse gender identities can be seen in Lebanon⁹⁶ and Ukraine.⁹⁷ Increased risks of trafficking and failures of prevention and protection based on age is also relevant, affecting children, including in Colombia, Ethiopia,⁹⁸ Ukraine⁹⁹ and Yemen. Older persons may also be especially at risk in conflict situations.¹⁰⁰ Internally displaced

⁹¹ A/HRC/47/34, para. 27.

⁹² OHCHR, communication to Ethiopia (ETH 2/2022), p. 2.

⁹³ Healy, *Targeting Vulnerabilities*, p. 59 (Traffickers identified in Iraq “recruited women with mental disabilities for sexual exploitation, taking advantage of their situation of vulnerability”).

⁹⁴ *Ibid.*, p. 183 (noting the lack of evidence to determine “whether the reportedly growing number of women, children and people with disabilities observed begging in regime and opposition-controlled areas inside Syria are trafficked and exploited or engage in begging as a negative coping mechanism on an individual or family basis”).

⁹⁵ UNODC, “Conflict in Ukraine: key evidence on risks of trafficking in persons and smuggling of migrants” (2022), p. 4.

⁹⁶ Healy, *Targeting Vulnerabilities*, p. 150 (noting that, in Lebanon, “it is common for homosexual men and transgender women in prostitution to work from a shared room or flat, making it easier for pimps to get in touch with many men and transgender women at once, in order to potentially exploit them”).

⁹⁷ OHCHR, “Ukraine: protection of LGBTI and gender-diverse refugees remains critical – UN expert”, press release, 22 March 2022.

⁹⁸ OHCHR, communication to Ethiopia (ETH 2/2022), p. 2 (noting that “children, particularly in the Tigray region, may have been victims of trafficking for purposes of sexual exploitation by armed groups and armed forces”).

⁹⁹ European Union Agency for Law Enforcement Cooperation, “War in Ukraine – refugees arriving to the EU from Ukraine at risk of exploitation as part of THB”, early warning notification, March 2022, p. 2 (“Children may be targeted for sexual exploitation, for illegal adoption schemes, or may be forced by criminals into begging and criminality”).

¹⁰⁰ *Ibid.* (“Elderly and other vulnerable categories are also at risk of falling into the hands of exploiters, forced to beg or used in benefit fraud schemes”).

persons and refugees, are often at particular risk, as has been witnessed in the context of conflicts in Ethiopia,¹⁰¹ South Sudan,¹⁰² the Syrian Arab Republic,¹⁰³ Yemen¹⁰⁴ and elsewhere. Statelessness can also create increased risks, as seen in Myanmar.¹⁰⁵ Displacement and limited access to asylum and to complementary pathways to international protection, such as resettlement and family reunification, as well as to safe regular migration routes for persons displaced by conflict, increase the risks of trafficking in persons.¹⁰⁶

XII. Rights of victims and access to justice

42. Access to justice for victims of trafficking in conflict settings remains limited, not least owing to limited legal aid and assistance. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law include the duty to “provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice”, irrespective of who might “ultimately be the bearer of responsibility for the violation”. The five pillars of transitional justice (truth, justice, reparation, memorialization and guarantees of non-recurrence) likewise apply to conflict-related trafficking in persons and impose obligations on States in transitional and post-conflict settings to ensure that trafficking in persons is addressed in transitional justice processes and in justice sector and security sector reforms. The current failure to address conflict-related trafficking contributes to a cycle of impunity.

XIII. Women and peace and security agenda

43. Despite repeated recognition of the gender dimensions of trafficking in conflict and post-conflict settings, both the women and peace and security agenda and national action plans have limited engagement with policies and action plans on combating trafficking in persons for all purposes of exploitation. That gap contributes to failures in accountability and failures with regard to effective prevention and protection of trafficked persons and persons at risk of trafficking, including by non-State armed groups.

XIV. Military, peacekeeping, humanitarian and other international personnel

44. As is highlighted in the commentary issued by the Office of the United Nations High Commissioner for Human Rights on its Recommended Principles and Guidelines on Human Rights and Human Trafficking, a range of factors can combine to create a climate of impunity – a legal and procedural vacuum in which international

¹⁰¹ OHCHR, communication to Ethiopia (ETH 2/2022), p. 2 (“It is reported that internally displaced women and girls and refugee women and girls in the Tigray, Afar and Amhara regions have been particularly at risk of trafficking for purposes of sexual exploitation by armed groups and armed forces”).

¹⁰² See [A/HRC/53/28/Add.2](#).

¹⁰³ UNODC, *Countering Trafficking in Persons in Conflict Situations*, p. 15 (“Syrian refugees fleeing conflict have been trafficked into labour in agriculture, industry, manufacturing, catering and other sectors in States neighbouring” the Syrian Arab Republic).

¹⁰⁴ OHCHR, communication dated 3 October 2022 from five Special Rapporteurs and two Working Groups addressed to Mr. Hisham Sharaf and the de facto authorities in Yemen (OTH 94/2022).

¹⁰⁵ [A/77/494](#), para. 78.

¹⁰⁶ See [A/HRC/53/28](#).

personnel involved in criminal exploitation and trafficking are not investigated, apprehended or prosecuted.¹⁰⁷ The challenges of investigation and ensuring accountability are increased by the trends towards the privatization of conflict and the involvement of mercenary groups and private military and security companies in conflicts, which exacerbate problems of attribution, responsibility and control.¹⁰⁸ The role of processes and mechanisms for protection from sexual exploitation and abuse and that of the Office of the Victims' Rights Advocate are critical to the prevention of trafficking in persons in conflict settings involving United Nations personnel and to ensuring access to justice for victims.

XV. Effective investigations, mutual legal assistance and international cooperation

45. Challenges to investigating conflict-related trafficking include non-cooperation from authorities in the territory in which the crimes occurred. Other challenges include ensuring the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. Crimes involving children further add to those challenges, especially in the absence of protection services or child-friendly procedures. A range of factors hinders effective investigations, including underreporting or non-reporting “because of societal, cultural, or religious factors; stigma for victims; paucity of evidence due to limited domestic investigations; the absence of support services at the domestic level; and the absence of forensic or other documentary evidence where there is a passage of time”.¹⁰⁹

46. The recently adopted Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes specifically includes trafficking in persons within the crime of enslavement and sets out the key obligations of States to strengthen international cooperation and mutual legal assistance to promote accountability. Trafficking in persons may also come within the scope of the crime of torture or other listed crimes within the scope of the Convention. As noted in the preamble to the Convention, observing that investigating and prosecuting these international crimes often “involves suspects, witnesses, evidence or assets located outside the territory of the State that is conducting the investigation or prosecution”. Effective investigation and prosecution therefore require enhanced international cooperation, in accordance with international obligations and domestic law, as a “cornerstone of continued efforts by States in their fight against impunity”, and “the continuation and reinforcement of such efforts at all levels” was therefore encouraged.

XVI. Jurisdiction

47. Given that trafficking in persons may frequently involve movements across borders and of both victims and perpetrators, it is critical to ensure that jurisdiction can be exercised, so as to combat impunity, and to engage the range of possible principles of jurisdiction that may be invoked. The currently limited application of possible principles of jurisdiction and the requirements of double criminality in some jurisdictions, as well as the limited application of universal jurisdictions, hinder accountability and effective investigations and prosecutions at the national level.

¹⁰⁷ *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary* (United Nations publication, 2010), p. 123.

¹⁰⁸ Marta Bautista Forcada, “The privatization of war: a new challenge for the women, peace and security agenda”, IPI Global Observatory, 24 October 2019.

¹⁰⁹ Kenny and Malik, “Trafficking terror and sexual violence”.

During the discussion on universal jurisdiction in the Sixth Committee of the General Assembly, several States reported establishing human trafficking as a crime over which they had universal jurisdiction.

XVII. Protection of victims and witnesses

48. States must ensure that investigations of conflict-related trafficking are trauma informed, gender sensitive and ensure access to justice for persons with disabilities. Child-friendly justice procedures are essential in all investigations and prosecutions of crimes of trafficking of children. It is important to note that inconsistencies in victim testimony may arise from a wide range of reasons, including “lapses in memory, confusion about the chain of events or traumatic reactions”.¹¹⁰ In addition, victims may fear reprisals against themselves or their families. A lack of trust may also hinder the disclosure of experiences of trafficking. It is therefore essential that the impact of trauma be recognized in assessing victim testimony. In *S.M. v. Croatia*, a case involving trafficking for the purposes of sexual exploitation, the Grand Chamber of the European Court of Human Rights noted that “an excessive burden is placed on victims both before and during criminal proceedings”.¹¹¹ Moreover, “the possible impact of psychological trauma must be taken into account”.¹¹² This necessity and the risks of retraumatization of victims is well recognized in the context of international criminal law.¹¹³

XVIII. Conclusions and recommendations

49. **Despite increased documentation and acknowledgement of the complex linkages between trafficking and conflict settings, “accountability for conflict-related trafficking for all purposes of exploitation remains limited, and prevention measures are ineffective”.**¹¹⁴

50. **The Assembly of States Parties to the Rome Statute of the International Criminal Court should consider amending the Statute to include a stand-alone offence of trafficking in persons.**

51. **The Victims Trust Fund based at the International Criminal Court should support victims of trafficking in persons for all purposes of exploitation, especially children, ensuring long-term and unconditional assistance and protection, including guarantees of non-repetition, and should include victims of trafficking by non-State armed groups.**

52. **Relevant policies of the Office of the Prosecutor of the International Criminal Court should be updated and revised to address trafficking in persons for all purposes of exploitation, including as a form of conflict-related sexual violence, and to address the specific obligations arising under international law in relation to protection of child victims of trafficking. Such policies should incorporate relevant obligations arising under international human rights law concerning trafficking in persons and the rights of victims.**

¹¹⁰ UNODC, *Evidential Issues in Trafficking in Persons Cases: Case Digest* (Vienna, 2017), p. 12.

¹¹¹ European Court of Human Rights, *S.M. v. Croatia*, Application No. 60561/14, Judgment, 25 June 2020.

¹¹² *Ibid.*, para. 344; see also paras. 138, 171, 206 and 260.

¹¹³ Paul Bradfield, “Preserving vulnerable evidence at the International Criminal Court: the article 56 milestone in *Ongwen*”, *International Criminal Law Review*, vol. 19, No. 3 (May 2019).

¹¹⁴ OHCHR, “Trafficking in persons in conflict situations”.

53. States should:

(a) Ensure the comprehensive application of international humanitarian law, international criminal law, international human rights law and international refugee law to trafficking in persons in conflict situations for all purposes of exploitation, and to both internal and cross-border trafficking in persons, in order to ensure accountability, combat impunity and ensure effective access to justice for trafficked persons;

(b) Ensure the investigation and prosecution of individual members of non-State armed groups responsible for trafficking in persons, under international human rights law, international humanitarian law and international criminal law, when applicable, and ensure effective remedies to victims of trafficking by non-State armed groups;

(c) Ensure the investigation and prosecution of members of private military and security contractors and mercenaries involved in trafficking in persons for all purposes of exploitation, including forced recruitment, and ensure access to remedies for victims;

(d) Strengthen international cooperation and mutual legal assistance to ensure effective investigations, including through bilateral agreements and multilateral cooperation and the ratification and implementation of the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes;

(e) Recognizing the significant risks of reprisals against victims and witnesses in conflict situations, adopt the necessary measures to provide effective and appropriate protection to victims, witnesses and members of their families, when necessary (given that the families themselves are sometimes involved in the trafficking), in all investigations of trafficking in persons;

(f) Provide a protective environment for all child victims of trafficking in conflict situations, without discrimination, to ensure the rights and best interests of the child, as required under the Convention on the Rights of the Child, including the child's right to access to justice;

(g) Strengthen capacity for effective investigations and international cooperation in relation to technology-facilitated trafficking, while respecting international law and ensuring the rights of victims to assistance, protection and effective remedies;

(h) Provide training and specialized personnel to ensure capacity and skills to collect and handle electronic evidence and for the storage of digital evidence, complying with international human rights law and ensuring secure forms of electronic cooperation in international cooperation and joint investigations;

(i) Ensure that investigations into missing persons and enforced disappearances also investigate the related risks of trafficking in persons to ensure accountability and access to justice for victims;

(j) Advance the adoption of a convention on crimes against humanity and specifically enumerate trafficking in persons among the list of acts falling within the definition of crimes against humanity, and not only under the act of enslavement;

(k) Ensure that transitional justice processes include trafficking in persons for all purposes of exploitation within the scope of truth recovery,

reparations, memorialization, justice and guarantees of non-recurrence, and provide training and specialized personnel for the investigation and reporting of trafficking in persons, especially children;

(l) Adopt legislation providing for the application of all relevant principles of jurisdiction to trafficking in persons, removing any requirement of double criminality and providing for universal jurisdiction for crimes of trafficking in persons;

(m) Provide training to police, prosecutors and the judiciary in national and international courts and tribunals to build capacity to ensure the consistent application of international humanitarian law, international criminal law and international human rights law to conflict-related trafficking in persons;

(n) Strengthen access to justice for trafficked persons, through gender-sensitive, trauma-informed and child-friendly justice procedures on the investigation and prosecution of conflict-related trafficking crimes and through early access to legal assistance;

(o) Recognize children detained for association with armed groups as victims of grave violations of international law, prioritizing recovery, reintegration and family reunification, and ensure the timely handover of children associated with armed conflict or armed groups to civilian child-protection actors.

(p) Recalling the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, ensure that victims of conflict-related trafficking in persons are ensured:

(i) Equal and effective access to justice;

(ii) Adequate, effective and prompt reparation for harm suffered;

(iii) Access to relevant information concerning violations and reparation mechanisms.

54. States, international courts and tribunals and transitional justice processes:

(a) Must take all appropriate steps to ensure non-discrimination on the basis of disability and to ensure the provision of procedural and age-appropriate accommodations, in order to facilitate effective access to justice and the participation of trafficked persons with disabilities in all legal proceedings, including identification procedures and at the investigative and other preliminary stages;

(b) Should strengthen accountability for trafficking in persons by non-State armed groups, including by establishing trust funds to ensure remedies and reparations for victims of trafficking, especially children.

55. United Nations investigative mandates and fact-finding bodies should consistently investigate trafficking in persons for all purposes of exploitation, including by non-State armed actors, paying particular attention to the gender dimensions of trafficking in persons and to the trafficking of children.

56. Regarding women and peace and security, the Special Rapporteur agrees with and strongly supports the recommendation in the 2022 report of the Secretary-General on women and peace and security that action plans should be more streamlined with other plans, policies and strategies that address peace and security and women's human rights (S/2022/740, para. 71) and highlights the joint communiqué in which the 91-member Women and Peace and Security Focal

Points Network recognized the need to establish synergy with plans and strategies that address issues of trafficking, the gendered impacts of small arms and light weapons and gender-responsive early-warning systems.

57. States, United Nations agencies and programmes, international organizations and humanitarian actors should:

(a) Establish mechanisms for the systematic investigation of trafficking by international personnel, ensuring accountability and effective access to justice for victims;

(b) Take proactive measures to train personnel to identify, assist and protect trafficked persons and persons at risk of trafficking from the outset of conflict, for all purposes of exploitation;

(c) Include rights-based anti-trafficking measures in protection clusters for humanitarian action and referral pathways and standard operating procedures for reporting and for accessing protection services;

(d) Ensure that monitoring and reporting procedures on grave violations against children in armed conflict incorporates related incidents of trafficking, and contribute to investigations into conflict-related trafficking to strengthen accountability.

58. States contributing personnel to peacekeeping operations should ensure the investigation and prosecution of peacekeepers for involvement in trafficking, and prosecute perpetrators without delay, waiving any immunities and ensuring effective protection for whistle-blowers.

59. States, peacekeeping operations and humanitarian actors should ensure the provision of protection services for trafficked persons in conflict and post-conflict situations including legal aid.

60. Businesses should:

(a) Engage in heightened human rights due diligence that incorporates tools from atrocity prevention and conflict prevention to augment their existing due diligence frameworks, in order to prevent trafficking in persons for all purposes of exploitation and to ensure accountability and access to remedies for victims;

(b) Actively participate in truth and reconciliation processes and provide reparations and guarantees of non-repetition as part of their commitment to building peace and ensuring accountability.