

Mandates of the Special Rapporteur on contemporary forms of slavery and trafficking in persons; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: OL GBR 14/2026

(Please use this reference in your reply)

17 September 2026

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of slavery and trafficking in persons; Special Rapporteur on the human rights of migrants; Special Rapporteur on the sale, sexual exploitation and sexual abuse of children and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 60/25, 61/17, 61/8 and 58/14.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **impact of the Immigration and Asylum Bill, which was introduced in the House of Commons on 30 June 2026 (Bill 105), on the human rights of victims of trafficking in persons and of contemporary forms of slavery, as well as compliance with State's obligations under international law to prevent trafficking in persons, and to assist and protect all victims of trafficking, without discrimination, and to protect the human rights of refugees, asylum seekers, and migrants.**

We note that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("the Palermo Protocol") ratified by Your Excellency's Government on 9 February 2006 aims to: (i) prevent and combat trafficking in persons, paying particular attention to women and children; (ii) protect and assist the victims of such trafficking, with full respect for their human rights; (iii) promote cooperation among States Parties in order to meet those objectives (article 2). We note also article 8 of the International Covenant on Civil and Political Rights, ratified by your Excellency's Government in 1976, which prohibits slavery, the slave trade, servitude and forced labor; article 4 of the European Convention on Human Rights (ECHR), ratified by your Excellency's Government in 1953; and the obligations arising under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), ratified by your Excellency's Government in 2008.

The obligations encapsulated under article 8 (1 and 2) of the ICCPR (prohibition of slavery, slave trade, and servitude) permit no derogation even in times of public emergency threatening the life of the nation (article 4). Likewise, no derogation from article 4 of the ECHR (prohibition of slavery and servitude) is permitted in accordance with article 15 of that convention. Moreover, the prohibition of slavery is recognized as a *jus cogens* norm of international law. Thus, the positive obligations of the State must be upheld in relation to these rights regardless of the potential justification for removing protection.

We note as well the Slavery Convention of 1926 (signed by your Excellency's Government in 1927), which calls for the complete abolition of slavery in all its forms and to article 4 of the Universal Declaration of Human Rights which states that "No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms". We would also like to remind your Excellency's Government of obligations under articles 2 and 6 of the Convention on the Elimination of All Forms of Discrimination against Women, ratified by your Excellency's Government in 1986, which requires States Parties to take all appropriate measures, including legislation, to suppress all forms of trafficking in women.

In the below, we draw attention to concerns in relation to clauses regarding modern slavery related provisions (part 5 of the Bill) of the Immigration and Asylum Bill 2026. While these clauses were considered to have specific and distinct impacts, we note that concerns have also been raised over the implications of a range of other clauses included in the Bill, which are not included in the current communication.

Clause 36 and obligations of identification and protection of victims of trafficking in persons

We wish to express our concerns in relation to measures foreseen in clause 36 of the Immigration and Asylum Bill 2026. These concerns reiterate those previously raised in OL GBR 11.2021, which outlined concerns in relation to the impact of the Nationality and Borders Bill on the human rights of victims of trafficking and contemporary forms of slavery, and the State's obligations under international law to prevent trafficking in persons and to assist and protect all victims of trafficking, without discrimination.

In its current draft, clause 36 of the 2026 Bill inserts a new section 60A into the Nationality and Borders Act 2022 regarding credibility of victims of modern slavery and trafficking in persons in the process of identification (deciding if a person is a victim: credibility). If the provision is enacted, in making a reasonable grounds or conclusive grounds decision regarding a victim of slavery or trafficking in persons, the competent authority must treat identified factors—such as delayed disclosure or submission of evidence, material inaccuracies, inconsistencies or omissions, discrepancies with information provided in other proceedings, and “striking similarities” with another person’s account—as adverse or damaging to the individual's credibility. This requirement does not apply where the authority is satisfied that there are “good reasons” for the delay, inaccuracy, inconsistency, omission, or similarity. However, the clause creates a presumption that these factors are damaging to a victim's credibility, unless there is a satisfactory explanation for those issues.

We are concerned that the list of factors established in clause 36(2) to be taken into consideration as “damaging the person’s credibility” fails to acknowledge the positive obligation of the State to identify victims of trafficking and contemporary forms of slavery and fails to recognize the impact of trauma on the provision of information relating to the status of being a victim.

The trauma suffered by many survivors of trafficking and contemporary forms of slavery is well documented (Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking (2010) at p. 72). It is widely

recognized that victims may not disclose their status as victims or various facts related to their victimization for a range of reasons, including because they may not recognize their situation of exploitation or because they fear reprisals for themselves or their families. A lack of trust or familiarity with public bodies, law enforcement or Government officials, may also hinder the disclosure of information and the establishment of a relationship of trust. Trust in public institutions is often deliberately undermined and manipulated by perpetrators, instilling fear and mistrust among victims to enable and maintain situations of exploitation.

In *S.M. v. Croatia*, the European Court of Human Rights highlighted the specific impact of trauma on victims of trafficking and contemporary forms of slavery, citing the conclusions of the Council of Europe monitoring body, the Group of Experts on Action against Trafficking (GRETA): “[...] it has already been recognized in the work of GRETA and other expert bodies that there may be different reasons why victims of human trafficking and different forms of sexual abuse may be reluctant to cooperate with the authorities and to disclose all the details of the case. Moreover, the possible impact of psychological trauma must be taken into account.” (*S.M. v Croatia* Application No. 60561/14, (Judgment of 25 June 2020), para. 344).

In the absence of a clear separation between immigration control and other law enforcement entities, crimes such as trafficking or contemporary forms of slavery may not be reported out of fear of immigration detention or return to the victim’s country of origin. In its Third-Party Intervention in *S.M. v Croatia*, GRETA pointed out that: “[...] victims were sometimes afraid or reluctant to make depositions because of threats of revenge from the perpetrators or lack of trust in the effectiveness of the criminal justice system.” (*S.M. v Croatia* Application no. 60561/14, (Judgment of 25 June 2020), para. 260).

CEDAW also highlights the specific obstacles to reporting and disclosure for survivors of trafficking: “Survivors are often reluctant to self-identify and disclose their traffickers for fear of retaliation, due to lack of information on the crime and where to report it, and fear of engaging with authorities, including being detained, prosecuted, punished and deported.” (CEDAW /C / GC/ 38, para. 38).

The difficulties hindering victim disclosures are recognized in the Home Office *Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015)* and *Non-Statutory Guidance for Scotland and Northern Ireland*. The current draft of the Immigration and Asylum Bill of 2026 contradicts this previous guidance issued by the Home Office.

Clause 36 elevates to a statutory requirement matters that are already addressed in the existing statutory guidance developed by the Home Office on credibility assessment. Home Office guidance permits decision-makers to take into account delayed disclosure, while expressly requiring consideration of whether the individual had a safe, secure and appropriate opportunity to disclose relevant information at an earlier stage. Clause 36, however, goes beyond the existing framework by establishing a statutory presumption that specified forms of conduct adversely affect credibility unless the individual demonstrates “good reasons” for the delay, inconsistency or other relevant matter. The effectiveness of this safeguard will depend on its interpretation and application in practice, particularly in circumstances where the reasons for delayed

disclosure or apparent inconsistencies form part of the factual record that is still emerging or being substantiated (and which may not be known by the victims themselves at the time of their deposition). We are concerned that the presumption effectively shifts burden onto victims to prove “good reasons”, when the burden of effective identification, in accordance with international obligations, rests with the State.

In this regard, the European Court of Human Rights has noted that article 4 of the ECHR entails both substantive and procedural obligations, including the obligations to identify victims and to investigate situations of trafficking, slavery, servitude, and forced or compulsory labour. Placing the burden of identification (or self-identification) on victims fails to fulfil the State’s positive obligations arising under article 4 of the ECHR and article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), ratified by Your Excellency’s government on 17 December 2008. Article 10(2) provides: “[e]ach Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of ... (trafficking in human beings) has been completed by the competent authorities ...”.

The obligation on States to identify victims of trafficking is also enshrined in CEDAW general recommendation No. 38, 2020, on trafficking in women and girls in the context of global migration, which specifically states: “International human rights law imposes positive obligations on States to identify victims of trafficking. This duty is placed firmly on States irrespective of the lack of self-identification by a victim”. (CEDAW /C / GC/ 38, para. 38).

Finally, as is noted in the *Chapeau* to guideline 2 of the *OHCHR Principles and Guidelines on Human Rights and Human Trafficking* (E/2002/68/Add. 1): “A failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under an obligation to ensure that such identification can and does take place.”

Overreliance on victims’ statements in situations of trafficking is recognized as one of the reasons for failures to identify victims and to effectively investigate and prosecute crimes of trafficking and contemporary forms of slavery.

In *Rantsev v. Cyprus and Russia* (Application No. [25965/04](#), Judgment of 7 January 2010), the Court highlighted that the obligation of identification and investigation is not dependent on a complaint from a victim, and stated at para. 288: “Like articles 2 and 3, article 4 also entails a procedural obligation to investigate situations of potential trafficking. The requirement to investigate does not depend on a complaint from the victim or next of kin: once the matter has come to the attention of the authorities they must act of their own motion.[...] For an investigation to be effective, it must be independent from those implicated in the events. It must also be capable of leading to the identification and punishment of individuals responsible, an obligation not of result but of means.”

Again, in *S.M v Croatia*, the Court set out the positive obligations placed upon the State, and the importance of not placing responsibility on the victim. In this

connection it is important to stress that, in accordance with their procedural obligation, the authorities must act of their own motion once the matter has come to their attention. In particular, they cannot leave it to the initiative of the victim to take responsibility for the conduct of any investigatory procedures (*S.M. v Croatia* Application No. 60561/14, (Judgment of 25 June 2020), para. 314).

This was reiterated in *V.C.L. and A.N.*, where the European Court of Human Rights held that: “The State cannot, ... rely on any failings by a legal representative or indeed by the failure of a defendant – especially a minor defendant – to tell the police or his legal representative that he was a victim of trafficking. As the 2009 CPS guidance itself states, child victims of trafficking are a particularly vulnerable group who may not be aware that they have been trafficked, or who may be too afraid to disclose this information to the authorities [...]. Consequently, they cannot be required to self-identify or be penalised for failing to do so.” *V.C.L. and A.N. v. U.K.* (applications Nos. 77587/12 and 74603/12), Judgment of 16 February 2021, para. 199).

We are concerned that clause 36 of the Immigration and Asylum Bill, if enacted, would place a burden of disclosure on victims and effectively penalize non-disclosure with a presumption of damaging credibility, contravening State’s obligations to identify and investigate cases of contemporary forms of slavery and trafficking in persons.

Clause 37: recovery period

Clause 37 of the Immigration and Asylum Bill 2026 proposes an amendment to part 5 of the *Nationality and Borders Act 2022*. If enacted, this provision would significantly alter the duration of the recovery and reflection period afforded to potential victims of modern slavery and trafficking in persons identified in the United Kingdom. Under the revised framework, individuals who receive a positive reasonable grounds decision would be entitled to a recovery period of 30 days. However, this period would terminate immediately upon the issuance of a negative conclusive grounds decision, even where the 30-day period has not yet elapsed.

We wish to express our concerns regarding the reduction in recovery period. These concerns were already raised in our previous communication OL GBR 11.2021. We reiterate our concern about the previous amendment, through the Nationality and Borders Act, which reduced the minimum period of assistance before issuance of a conclusive grounds decision from 45 to 30 days (clause 61). In this regard we already noted that the period of 30 days referred to in ECAT, article 13(1), is a specified minimum, “a recovery and reflection period of at least 30 days”.

In this regard, we wish to bring to the attention of your Excellency’s Government the Explanatory Report to ECAT, which highlights the purpose of the recovery and reflection period “As an important guarantee for victims and serves a number of purposes. One of the purposes of this period is to allow victims to recover and escape the influence of traffickers. Victims’ recovery implies, for example, healing of the wounds and recovery from the physical assault which they have suffered. That also implies that they have recovered a minimum of psychological stability. [...] the period is likely to make the victim a better witness: statements from victims wishing to give evidence to the authorities may well be unreliable if they are still in a state of shock

from their ordeal.” (Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, 2005, para. 174).

In our previous communication, we expressed our concern that the reduction from 45 days to 30 days constituted a regressive measure, lowering the standard of human rights protection afforded to potential victims of trafficking or contemporary forms of slavery provided by the State. As such, it is contrary to the objective and purpose of international law on trafficking in persons and contemporary forms of slavery, to ensure effective protection of the human rights of victims and to ensure non-regression in human rights protection.

In addition, the current proposal introduces a statutory definition of a “negative conclusive grounds decision” as a determination by a competent authority that an individual is not a victim of slavery or trafficking in persons. Regarding the establishment of the “negative conclusive grounds decision” and termination of recovery period, we are concerned at the impact on victims’ and potential victims’ access to support and assistance during any reconsideration process, especially considering the high rate of negative conclusive grounds decisions that are overturned when reconsidered. We refer to your own statistics: “From January to March 2026, 84% of reasonable grounds decisions which were reconsidered received a positive outcome. For conclusive grounds decisions, 88% were positive (data table 49). These outcomes may relate to reconsideration requests made in previous quarters.” (available at <https://www.gov.uk/government/statistics/modern-slavery-nrm-and-dtn-statistics-january-to-march-2026/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-1-2026-january-to-march>).

The early termination of recovery period will have a negative impact on the capacity of victims and potential victims to request reconsideration. In this regard, we bring to your Excellency’s Government’s attention the Home Office opinion regarding negative conclusive grounds decisions which after reconsideration result in positive conclusive grounds decisions: “Reconsideration requests resulting in a positive outcome do not necessarily mean that the original decision was incorrect. In the majority of cases, additional information is provided to the Home Office which was not made available at the time of the original decision.” (available at <https://www.gov.uk/government/statistics/modern-slavery-nrm-and-dtn-statistics-january-to-march-2026/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-1-2026-january-to-march>).

Evidence relevant to determining whether an individual is a victim of trafficking in persons may emerge progressively over time, including when the individual is able to disclose additional information once in a more stable situation, or when medical, medico-legal, or other corroborative evidence becomes available (which constitute the essence of recovery period). We are concerned that clause 37 may be incompatible with positive obligations of protection of victims of trafficking in persons and slavery, as it does not establish sufficient safeguards to ensure protection to which a potential victim of trafficking in persons is entitled between an initial negative conclusive grounds decision and the determination of any reconsideration request, including whether removal is suspended during that period.

Regarding difficulties in requesting reconsideration of negative conclusive grounds decisions, we wish to recall the UK High Court of Justice decision in *AYA and others v Secretary of State for the Home Department* [2026] EWHC 1742 (Admin). In this case, the High Court held unlawful a policy that excluded certain people facing removal to ECAT and ECHR States Parties from requesting reconsideration of negative national referral mechanism (NRM) decisions. The Court considered that while ECAT and the ECHR do not establish specific mechanisms for identification and assistance of victims of trafficking in persons, mechanisms established need to be “robust and effective”. The High Court noted that “ECAT does not, on its face, prescribe any particular arrangements that need to be made by a Contracting State for identifying trafficking victims (save that there is a requirement to establish a procedure which takes into account “the special situation of women and child victims”). Those arrangements must, however, be robust and effective, even if not infallible. This is clear from the Explanatory Report to the Treaty, which is permitted to be taken into account as an aid to construction pursuant to articles 31-33 the Vienna Convention on the Law of Treaties. See paragraphs 71-3 above for relevant extracts from the Explanatory Report to ECAT.” (Para. 115)

The High Court also acknowledged the complexities of identification procedures and the need of safeguards: “One can easily imagine a situation where the process of identification involves a comprehensive mechanism for fact-finding, which is not taken at great pace, and which provides the affected person with considerable procedural safeguards, such as the right to see a ‘minded to’ decision and the opportunity to respond to any concerns or doubts expressed by the Contracting State before the trafficking decision is taken. In that scenario, a right to request reconsideration is unlikely to be necessary, as the arrangements are robust and effective without it. Under the Guidance, however, there are no such procedural safeguards: there is no opportunity for the individual to know what conclusion the decision-maker is minded to make or why, and to respond to that provisional conclusion.” (Paras. 118-119).

The High Court noted the risks of misidentification of victims owing to lack of evidence that may only become available after the original decision is made (see paragraphs 121-123). In this regard, the High Court warned that: “Arrangements that deprive the decision-maker of such evidence means that there are bound to be many cases where a victim of trafficking will not be identified. This is supported by the evidence that 79% of reasonable grounds decisions which were reconsidered in 2025 received a positive outcome. As a result, the amendment to the Guidance means that (using the words of Mr. Hobbs in the draft submission) the decision-making process will in many cases lead to identification decisions that are not “accurate and informed by appropriate evidence”. In my judgment, such a decision-making process cannot be regarded as robust and effective, and so could not have been within the contemplation of Parliament when conferring discretion on the Secretary of State to make “arrangements” under section 49(1) of the 2015 Act. As a result, I consider that the amendment to the Guidance was unlawful.” (Para. 124 - 125). This finding underscores the importance of the reconsideration period in fulfilling the State’s obligation of identification, and the potential for this to be undermined by the early termination of assistance and support in this period.

Finally, we also highlight the obligation of the UK authorities to ensure that the specific rights of victims of trafficking or contemporary forms of slavery with disabilities are addressed, taking account of rights to assistance and reasonable accommodation required. Reducing the period of recovery and reflection from 45 to 30 days further reduces the time ensured to victims of trafficking with disabilities, limiting their possibility of recovery, and failing to fulfil their rights to assistance and protection, without discrimination.

Clause 38: Disqualification from protection

In the current draft of the Immigration and Aylum Bill 2026, clause 38 significantly expands the circumstances in which identified or potential victims of modern slavery and trafficking in persons may be disqualified from modern slavery protections in the United Kingdom. We are concerned that, if passed, the amendments would revise section 63 of the Nationality and Borders Act to allow disqualification where the competent authority determines that an individual poses a risk to national security or, constitutes a threat to public order, in contravention of the State's obligations to victims of contemporary forms of slavery and trafficking in persons.

Under clause 38, the concept of national security risk would be broadened to include persons convicted of terrorism-related offences, subject to terrorism prevention measures, suspected of involvement in terrorism-related or foreign power threat activities, or subject to other national security orders. Where such a determination is made, affected individuals would lose protection from removal, any entitlement to leave to remain linked to their victim status, and could result in potential victims losing national referral mechanism(NRM) protection without a sufficiently individual assessment of whether they pose a current public-order threat (as stated in subparagraph (d) of clause 38), and in circumstances where the decision is based on certain potentially overbroad terrorism offense or powers that are not consistent with international standards. In this regard, we refer your Excellency's Government to the international counter-terrorism instruments,¹ the General Assembly's Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004) as well as the 2026 revised model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism provides clear, which provides "best practice" guidance, by identifying conduct that is genuinely terrorist and precisely defining the elements of a terrorist offence (A/HRC/61/52 and A/HRC/16/51, para. 28).

The amendments would also narrow the exception permitting continued protection despite a disqualification finding, requiring proof of an immediate and significant risk of re-trafficking or further exploitation in the United Kingdom.

We are concerned that children are not exempted from public order disqualification unless it concerns children with the right of abode or leave to remain (other than under section 65). While the Government in the Explanatory Notes stated that the exemption was designed to provide "enhanced protection of children within the modern slavery framework", in practice, clause 38 restricts this enhanced protection to children with secure immigration status only.

¹ See https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml.

The Bill would additionally introduce a new section 63A, establishing a separate ground for disqualification based on “bad faith” claims of victimhood. The Secretary of State would be required to disqualify adults found to have claimed to be victims of modern slavery or trafficking in bad faith. Indicative factors of bad faith would include making a trafficking claim when removal is imminent or knowingly providing false or fabricated information. Following such a determination, individuals would lose access to protection from removal, leave to remain provisions, and both reasonable grounds and conclusive grounds decisions under the NRM. In other words, a public-order or bad-faith disqualification could end the victim-identification process before the State has determined whether the person is in fact a confirmed victim. The Bill further empowers the Secretary of State to define additional circumstances constituting bad faith through secondary legislation.

Consequential amendments would ensure that persons disqualified under either national security/public order grounds (section 63) or bad faith grounds (section 63A) are excluded from recovery periods, leave-to-remain provisions, and statutory assistance and support otherwise available to potential victims of slavery and human trafficking.

As raised in previous communications to your Excellency’s Government, we are concerned that clause 38 is in violation of the State’s obligation to identify victims of trafficking or contemporary forms of slavery and note that this obligation applies in all situations of trafficking and exploitation, and in respect of all victims, without exception.

In this regard, article 10 of ECAT imposes a duty on States Parties to identify victims of trafficking, an obligation that does not permit any exceptions.

As exposed above (under concerns in relation to clause 36), the obligation to identify victims of trafficking or contemporary forms of slavery is a positive obligation of the State. No exception to this obligation of identification is permitted, even in times of war or public emergency (ECHR, article 15). We note that the obligation to identify victims of trafficking or contemporary forms of slavery does not impose an “impossible burden” on the State, and, as such, comes within the scope of protective operational measures that must be taken by States to meet their obligations under the procedural limb of article 4 of the ECHR.

If passed, clause 38 of the Immigration and Asylum Bill will remove the obligation to make a conclusive grounds decision where the claim is made in “bad faith”. We note that the procedures already in place for identifying victims of trafficking or contemporary forms of slavery can ensure that unfounded claims are not recognized. We are concerned that if delays in disclosure and/or difficulties in providing a full and consistent account of the trafficking or slavery experience are considered as evidencing bad faith, there is a serious risk that victims will not be identified and will be denied assistance and protection. The potential treatment of such instances as indicators of “bad faith” fails to reflect the impacts of the experiences of trafficking in persons and contemporary forms of slavery on the ways that victims and survivors may interact with public authorities, including what, when, and how they may disclose relevant details of their experience (discussed above in relation to clause 36).

Regarding the risk of removal under clause 38 we wish to highlight the State's obligation of non-refoulement, a principle of customary international law, and the obligations accepted under the Palermo Protocol, specifically article 14, which states: "1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein. 2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination."

We remind your Excellency's Government of the obligation to ensure that the return of a victim of trafficking is safe, and preferably voluntary, and as stated in article 16(2) of ECAT: "[...] with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim".

Furthermore, we are also concerned that Clause 38 is in violation of the State's obligation to ensure non-punishment of victims of trafficking or contemporary forms of slavery for any unlawful acts committed as a direct consequence of trafficking. We are particularly concerned by the incompatibility of language added in subparagraph (f) with international human rights obligations. The text establishes that "(2B) For the purposes of this section, the circumstances in which a person poses a risk to the national security of the United Kingdom include, in particular, where— (c) there are reasonable grounds to suspect that the person is or has been involved in terrorism-related activity within the meaning given by section 4 of that Act (whether or not the terrorism-related activity is attributable to the person being, or having been, a victim of slavery or human trafficking)." The incorporation of this language would constitute an explicit violation of the principle of non-punishment, and be based on overbroad terrorism categories that are not consistent with international standards (see A/HRC/61/52 and A/HRC/16/51, para. 28).

We recall that the non-punishment principle is a general principle of law, recognized in international and regional legal instruments, including ECAT, article 26, as well as in domestic legislation and in case law of regional and domestic courts. As a principle, it is essential to the object and purpose of the Palermo Protocol, namely, to protect and assist victims of trafficking with full respect for their human rights, and without discrimination. It is also set out in full in the Principles and Guidelines for Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (OHCHR). As stated by the Special Rapporteur on trafficking in persons in her report to the Human Rights Council in 2021, A/HRC/47/34, States should ensure that the principle of non-punishment is applied by all relevant domestic authorities, including the police, immigration and border officials, labour inspectorates and any other law enforcement agency or official, as soon as there are reasonable grounds to believe that a person has been trafficked, and for any unlawful activity carried out by a trafficked person as a direct consequence of their trafficking

situation, regardless of the gravity or seriousness of the offence committed (para 55 and 57).

We recall your Excellency's Government, that the obligation of non-punishment arises also under article 4 of the ECHR, and is essential to the right to a fair trial (article 6 ECHR), as recognized by the European Court of Human Rights in *V.C.L. and A.N. v United Kingdom*, Applications Nos. 77587/12 and 74603/12, Judgement 16 February 2021). In this case, the European Court considered "that the prosecution of victims, or potential victims, of trafficking may, in certain circumstances, be at odds with the State's duty to take operational measures to protect them where they are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual has been trafficked. In the Court's view, the duty to take operational measures under article 4 of the Convention has two principal aims: to protect the victim of trafficking from further harm; and to facilitate his or her recovery. It is axiomatic that the prosecution of victims of trafficking would be injurious to their physical, psychological and social recovery and could potentially leave them vulnerable to being re-trafficked in future. Not only would they have to go through the ordeal of a criminal prosecution, but a criminal conviction could create an obstacle to their subsequent integration into society. In addition, incarceration may impede their access to the support and services that were envisaged by the Anti-Trafficking Convention" (par. 159).

We recall, as well, obligations arising from article 26 of ECAT on non-punishment. Furthermore, that the non-punishment principle is an intrinsic and inherent part of State investigative and operational obligations is made clear by the scope of exploitative purposes within the trafficking definition, which include forced criminal activities. Art. 4(a) of ECAT includes "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"; but also the "exploitation of criminal activities" and "unlawful activities" (*VCL* Para. 106, 113) and the "[r]ecruitment of foreign national girls and boys under the age of 18 to be affiliated with ISIS, including for the purposes of forced marriage (e.g., through madafas) or for combat", domestic servitude or a combination of these exploitative purposes (see the Joint Study by the Special Representative of the Secretary-General for Children and Armed Conflict, Child trafficking and armed conflict, 2023). In a third-party intervention to the ECHR in *Shamima Begum v. UK*, the Special Rapporteur on trafficking in persons, especially women and children considered it important to "[r]ecognis[e] these forms of exploitation, and the processes through which individuals are recruited to leave for the territory of Syria." "The United Nations Security Council (UNSC) has repeatedly called on states not to penalise or stigmatise victims of trafficking for their involvement in any unlawful activities." (*Shamima Begum v United Kingdom* (Application No. 36427/24)).

The application of the non-punishment principle should follow a full assessment of the individual situation of the victim of trafficking. As the Court held in *VCL*, "an individual's status as a victim of trafficking may affect whether there is sufficient evidence to prosecute and whether it is in the public interest to do so" which is "particularly important where children are concerned" (para. 161). Once that trafficking assessment is made, it must be taken into account in any subsequent prosecutorial decision (para. 162). Finally, as the European Court of Human Rights upheld, article 4

of the ECHR permits “no ... exceptions [or] derogation ... under [art 15(2)] even in the event of a public emergency threatening the life of the nation.” (*Rantsev* para. 283).

We also recall UN Security Council S/RES/2396 (2017) which “stresses the importance of assisting women and children associated with foreign terrorist fighters who may be victims of terrorism, and to do so taking into account gender and age sensitivities” (A/HRC/41/33, para. 31). States must proactively identify them, investigate and individually assess whether they are trafficking victims, rather than solely as security threats, and take measures to address their rehabilitation and reintegration needs and facilitate their return.

We wish also to bring to your Excellency’s Government’s attention the relevance of article 14 of the ECHR, read in conjunction with article 4. As recognized by the Court in *FM v Russia*, “a general policy that has disproportionately prejudicial effects on a particular group may be considered to constitute discrimination, even where it is not specifically aimed at that group and there is no discriminatory intent. Discrimination that is contrary to the Convention may also result from a de facto situation.” (Para. 341) Inaction on the part of a respondent State in honouring its positive obligations under article 4 can amount to condoning trafficking and reflect a discriminatory attitude.

In addition, we recall our previous concern expressed in OL GBR 11.2021 regarding the introduction of a “reasonable grounds to suspect” ground, which further lowers the human rights protection provided to victims, and fails to ensure effective protection to victims of trafficking for the purpose of forced criminality.

We are also concerned at the incompatibility of the text with obligations in relation to prevent re-victimization, as enshrined in article 9(1)(b) of the Palermo Protocol. We are concerned that the proposed threshold may result in certain victims of trafficking, including those who remain vulnerable to re-trafficking, being denied protection notwithstanding the existence of credible indicators of ongoing risk. We note that the current statutory guidance requires decision-makers to assess whether there is a “credible suspicion of a real and immediate risk of re-trafficking” (Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland 14.287). In this regard, clause 38 appears to introduce a more restrictive standard by providing that public-order disqualification will be precluded only where an individual is at an “immediate and significant risk” of trafficking or re-trafficking in the United Kingdom.

In this regard, we are concerned that the replacement of the existing threshold of a “credible suspicion of a real and immediate risk” with a requirement to demonstrate an “immediate and significant risk” may narrow access to protection for victims who continue to face vulnerabilities to re-exploitation, but who may be unable to satisfy this heightened evidentiary threshold. The proposed approach risks excluding individuals for whom preventive protection measures remain necessary and may be inconsistent with international obligations regarding protection, assistance and prevention of re-victimization.

We would also like to note the GRETA Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection:

“The Convention recognises that trafficked people may have international protection needs, and it requires Parties to duly assess such protection needs. The essence of international protection is to provide relief from a potential future danger. Accordingly, the duty of international protection applies not only to victims of trafficking, but also to those at risk of being trafficked, should they return to their country of origin. Any removal of a person to a territory where they are at risk of being trafficked will constitute a violation of the principle of non-refoulement.” (GRETA, Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection, 2020, para. 15).

We also remind your Excellency’s Government that article 40(4) of ECAT specifically provides: “Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement contained therein.”

Finally, we are concerned that terminating the victim identification process prior to a conclusive grounds decision may deprive potential victims of trafficking and contemporary forms of slavery of effective access to justice and remedies to which they may be entitled under international and regional human rights law.

Premature termination of the identification process may prevent victims from obtaining formal recognition of their trafficking status, thereby hindering their access to protection, assistance, compensation, legal redress, and participation in related proceedings. In this regard, we recall that article 4 of the ECHR—which as interpreted by the European Court of Human Rights, requires States to establish an effective framework for the identification and protection of trafficking victims—must be read in conjunction with article 13 guaranteeing the right to an effective remedy. Furthermore, ECAT requires States to ensure access to compensation and legal redress (article 15). The Palermo Protocol likewise requires States to facilitate victims’ ability to obtain compensation and other remedies (article 6).

The discontinuation of the identification process before a final determination of victim status may undermine the practical and effective enjoyment of these rights and weaken safeguards intended to prevent further exploitation and ensure accountability for trafficking-related abuses.

Clause 39: Removal of duty to grant leave to remain to assist recovery

Under the current established framework, following a positive conclusive grounds decision within the National Referral Mechanism (NRM), victims of trafficking who are not British nationals must be granted Temporary Permission to Stay (TPS) where this is necessary for their recovery and protection, to enable cooperation with criminal investigations or proceedings, or to pursue compensation claims (section 65 of the Nationality and Borders Act).

However, clause 39 of the Immigration and Asylum Bill 2026 removes the duty to grant permission to stay where it is necessary to support a survivor's physical or

psychological recovery, limiting access to immigration status primarily to circumstances linked to criminal justice cooperation or compensation proceedings.

This denial of leave to remain could therefore result in denial of the right of protection and assistance to a victim of trafficking in persons, as per international obligations, as established for instance in article 6 of the Palermo Protocol and articles 10 to 14 of the Council of Europe Convention, and as established by the European Court of Human Rights in relation to obligations under article 4 of the ECHR.

We would like to reiterate the obligations emanating from article 6 of the Palermo Protocol, concerning assistance to, and protection of, victims of trafficking in persons, including implementation of measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations. We also wish to bring to your attention obligations under article 7, which specifically calls States to: “1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. 2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.” Article 7 of the Palermo Protocol precisely calls on States to grant temporary or permanent resident status in the circumstances clause 39 intends to eliminate, “where it is necessary to support a survivor's physical or psychological recovery”.

We further note that under article 14 of ECAT, States Parties are called to issue a renewable residence permit to victims, when the competent authority considers that their stay is necessary owing to their personal situation. The Explanatory Report to ECAT clarifies “the personal situation requirement takes in a range of situations, depending on whether it is the victim’s safety, state of health, family situation or some other factor which has to be taken into account”.

We would also like to bring to your attention the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, and in particular Principle 8 which recalls that “States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings”.

By eliminating paragraph (a) of subsection 2 of section 65 of the Nationality and Borders Act 2022, the proposed clause 39 of the Immigration and Asylum Bill 2026 virtually conditions residence permits to the victim’s cooperation in legal proceedings (the two remaining options left in section 65, subsection 2). This contravenes article 14 of ECAT and recommendations made by OHCHR, as well as the Special Rapporteur on trafficking in persons, especially women and children in numerous reports (see for example A/HRC/44/45, A/HRC/41/46). These legal changes are not only inconsistent with the protective obligations of ECAT, but also with States' positive obligations to safeguard individuals from contemporary forms of slavery and trafficking in persons under article 4 of the ECHR.

Furthermore, we would like to bring the attention of your Excellency's Government to article 16 of ECAT, which explicitly calls on States to have regard for victims' rights in returns: "When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary."

Stable immigration status is often a precondition for effective recovery and reintegration. Survivors of trafficking frequently require long-term access to healthcare, trauma-informed support services, safe housing, education and employment opportunities. Removing recovery as a ground for permission to stay risks leaving survivors in prolonged insecurity, undermining their ability to rebuild their lives and increasing vulnerability to homelessness, destitution, exploitation and re-trafficking.

We are especially concerned about the impact these measures will have, if passed, on the rights of children. In this regard, we wish to bring the attention of your Excellency's Government to the obligation under the Convention on the Rights of the Child (CRC), to respect and ensure the rights set forth in the CRC to each child within their jurisdiction without discrimination of any kind. (article 2).

We highlight the State's obligations under ECAT to ensure that: "Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child." (article 16(7)).

In addition, article 14(2) of ECAT requires residence permits for child victims to be issued in accordance with their best interests. The Convention on the Rights of the Child (CRC), including articles 3, 20, 22, 35 and 39, requires States to ensure that the best interests of the child are a primary consideration and to support the recovery and reintegration of child victims of exploitation and abuse. Article 39 also specifically states that recovery and reintegration shall take place in an environment that fosters the child's health, self-respect and dignity. These obligations require that child protection and recovery needs be assessed independently of immigration enforcement considerations. In this regard, uncertainty regarding immigration status, or the prospect of return before recovery and reintegration have been secured, may undermine the stable and protective environment required for the child's rehabilitation and long-term well-being.

Children with insecure immigration status face heightened risks to trafficking in persons. Restricting immigration protections for child trafficking victims, as clause 39 intends, raises serious questions as to its consistency with these obligations. As the Special Rapporteur on trafficking in persons, especially women and children expressed in her report to the HRC 63rd session: "For child victims of trafficking in an irregular migration situation, unconditional access to long-term residence, permanent residence and a pathway to citizenship must be provided where this is in a child's best interests. Lack of certainty or delays in ensuring regularization of migration status may result in child victims "ageing out" without timely resolution of their migration status. Such uncertainties add further to the trauma experienced, and the vulnerability, risks of reprisals and re-trafficking faced, by trafficked children and young people. They also hinder access to assistance and protection services, education, training and social

inclusion and seriously undermine the process of recovery. It is essential to ensure effective access to international protection, including asylum, with provision for pathways to permanent residence and citizenship, recognizing that child trafficking is a form of persecution and a serious human rights violation frequently linked to one of the grounds set out in the Convention relating to the Status of Refugees.” (A/HRC/62/41, para. 35)

The Special Rapporteur on the sale, sexual exploitation and sexual abuse of children has repeatedly emphasized that child victims and survivors are entitled to recovery, rehabilitation and reintegration measures that are child-centred, rights-based, trauma-informed and tailored to their individual needs. In her report, the Special Rapporteur stressed the importance of ensuring access to remedies and measures that support recovery, reintegration and long-term well-being, taking into account the child's views and best interests (A/HRC/52/31; A/81/132). In this regard, conditioning immigration protection on cooperation with criminal investigations or proceedings risks depriving child victims of the stability and security necessary for their recovery and social reintegration. Child victims may be unwilling or unable to cooperate with law enforcement authorities because of trauma, fear, age, coercion by traffickers or concerns for their own safety and that of their families. Restricting residence permits needed for recovery and protection may therefore impede children's rehabilitation and reintegration, expose them to further trauma and insecurity and increase their vulnerability to renewed exploitation, abuse and re-trafficking.

More broadly, the measure raises concerns regarding the principle of non-discrimination under article 26 of the International Covenant on Civil and Political Rights (ICCPR) and article 14 of the ECHR, as it creates differential access to recovery and protection measures for trafficking survivors based on immigration status.

Clause 43: Assistance and support for potential victims

The amendment proposed in clause 43 of the Immigration and Asylum Bill intends to modify section 50A of the UK Modern Slavery Act 2015 concerning assistance and support for individuals who have received a positive reasonable grounds decision as potential victims of trafficking or modern slavery.

In particular, the proposed amendment, if passed, would remove the duty of the Secretary of State to secure necessary assistance and support for certain categories of potential victims of trafficking and slavery. Specifically, the duty would no longer apply to child victims and potential victims whose support has been withdrawn following alleged non-compliance with requirements attached to slavery or trafficking support services or alternative assistance arrangements.

We are concerned that these provisions may be incompatible with the United Kingdom's obligations under article 6 of the Palermo Protocol and ECAT, in particular article 12, which requires States to provide assistance necessary for the physical, psychological and social recovery of victims of trafficking and to ensure access to support on the basis of their needs and protection requirements.

In the particular case of children, while we note the explanation that the removal of the Secretary of State's duty in relation to children is intended to reflect existing

operational arrangements whereby support is generally provided through local authorities. However, we are concerned that the amendment could weaken statutory guarantees of assistance for child victims of trafficking.

In practice, there are persistent shortcomings in the identification and support of child victims, with some children not receiving the assistance and protection to which they are entitled. The Special Rapporteur on the sale, sexual exploitation and sexual abuse of children has highlighted that children affected by migration frequently encounter barriers in accessing protection and support services and may be particularly vulnerable where gaps exist in protection frameworks (A/81/132, para. 54). The proposed amendment therefore risks creating protection gaps and increasing legal uncertainty regarding responsibility for the provision of support. Particular concern arises in relation to children approaching adulthood, as well as age-disputed children, who may face an abrupt interruption of support and heightened vulnerability during transition periods. The Special Rapporteur has further emphasized that child protection responses should move away from approaches that place responsibility on child victims and instead ensure that children are treated first and foremost as rights-holders entitled to protection, recovery and reparation (A/81/132, para. 38).

We are also concerned that the removal of support from survivors on the basis of non-compliance with service requirements may be inconsistent with a victim-centred and trauma-informed approach to trafficking. Trafficking survivors frequently experience severe psychological trauma, post-traumatic stress, mental health difficulties, and other consequences of exploitation that may affect their ability to engage consistently with support services and which may not be identified as “attributable to any physical, psychological or social harm which arose from the conduct which resulted in the positive reasonable grounds decision”.

In addition, the language of clause 43 establishes a threshold that may be incompatible with the application of the non-punishment principle. It is especially concerning that neither the draft legislation nor the accompanying Explanatory Notes appear to specify the grounds upon which the Secretary of State may depart from or override the assessment of an authorized person that assistance and support are necessary. Nor do Explanatory Notes or draft legislation clarify the evidentiary threshold to be applied, the factors to be taken into account in reaching such a decision, or whether the potential victim, their legal representative, or support provider would be informed of the reasons for the decision and afforded an opportunity to submit further information or evidence. This raises concerns regarding transparency, procedural fairness and accountability in decisions that may have significant consequences for the safety, recovery and well-being of potential victims of trafficking.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please provide detailed information on how your Excellency's Government intends to proceed with this pending legislation and how its

provisions comply with United Kingdom's obligations under the international legal framework of human rights law relating to trafficking in persons and contemporary forms of slavery.

3. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by human rights bodies, referred to above.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Katarina Schwarz

Special Rapporteur on contemporary forms of slavery and trafficking in persons

Gehad Madi

Special Rapporteur on the human rights of migrants

Ai Kihara-Hunt

Special Rapporteur on the sale, sexual exploitation and sexual abuse of children

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism