***Submission to the United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children for the thematic report on the implementation of the non-punishment principle in the context of trafficking in persons***.

**ABOUT REPRIEVE**

Reprieve is a charitable organization registered in the United Kingdom (No. 1114900), and in special consultative status with the United Nations Economic and Social Council (ECOSOC). Reprieve provides free legal and investigative support to individuals who have been subjected to state-sponsored human rights abuses. Our clients belong to some of the most vulnerable populations in the world, as it is in their cases that human rights are most swiftly jettisoned and the rule of law is cast aside. In particular, we protect the rights of those facing the death penalty and deliver justice to victims of arbitrary detention, torture, and extrajudicial execution.

**SUMMARY**

Drawing on empirical research including field reports and qualitative interviews, this submission focuses on the impact of the UK government’s policy toward its trafficked citizens currently detained in North-East Syria (NES)—particularly of citizenship deprivation, refusal to repatriate, and denial of consular assistance. We demonstrate how the UK government’s blatant violation of the non-punishment principle through its actions and omissions has compounded the suffering of its nationals who fell (or may fall) victim to trafficking and exploitation (e.g., sex slavery, forced marriage and domestic servitude) by ISIL. We conclude by offering recommendations on how the UK government can fulfil its domestic and international legal obligations to identify, protect, and support its citizens trafficked by ISIL.

**1. Background**

Investigations by Reprieve suggest that 25 British adults, mostly women, and about 33 British children are detained without charge or trial in NES.[[1]](#footnote-1)[[2]](#footnote-2) Most of these women and children are held in the detention camps, Al-Hol Camp and Camp Roj, which are controlled by Kurdish authorities and hold thousands of families. Reprieve’s investigations have revealed that, alongside those who faced coercion from unknown parties, at least a third of the British women detained in NES may have been coerced into travelling by a male partner or relative.[[3]](#footnote-3) Almost 40% of the women were children at the time of travel.[[4]](#footnote-4) All are potential victims of re-trafficking within Syria. These women and children are now detained by Kurdish authorities in degrading and inhumane conditions.[[5]](#footnote-5)

The UK claims to be leading the global fight against human trafficking and modern slavery,[[6]](#footnote-6) yet has systematically failed to protect actual and potential British trafficking victims currently detained in NES. As a threshold matter, it has arguably failed to correctly or adequately apply the definition of trafficking in persons to those in NES, thereby undermining the principle of non-punishment. It has further adopted a suite of measures, including a blanket policy of citizenship deprivation, refusal to repatriate, and denial of even the most basic humanitarian assistance. In doing so, it has left British women and children to perish in indefinite detention, or face torture, disappearance, and death in Iraq or Assad-controlled Syria. The government’s decision to deny these individuals their basic rights has further penalized and stigmatized them for being victims of human trafficking (VHTs).

**2. The UK government’s use of citizenship deprivation against VHTs violates the non-punishment principle**

The UK government has turned citizenship deprivation from a power that it invoked extremely rarely into a standard operating procedure to punish suspected VHTs for acts they were forced to commit and which arose out of their trafficking.[[7]](#footnote-7)

At least 20 of the 25 British adults detained in NES have been deprived of their citizenship and at least one British child may have been rendered stateless because her mother was deprived while pregnant with her. The UK has justified its decision to deprive these individuals of their citizenship and deny them repatriation on the basis that “*they travelled to Syria of their own volition” and “co-located*” [[8]](#footnote-8) with ISIL when the reality is that many of the individuals Reprieve is assisting appear to have been groomed, coerced or deceived into traveling to Syria.

As this mandate has affirmed, the principle of non-punishment extends beyond a defence to criminal charges, and includes civil, administrative and immigration procedures.[[9]](#footnote-9) In depriving its nationals of their citizenship, the UK has in effect penalised and stigmatised them for their perceived involvement in any unlawful activities which arose out of their trafficking. As such, the UK is in violation of the non-punishment principle under Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT)[[10]](#footnote-10), and Article 8 of the EU Anti Trafficking Directive.[[11]](#footnote-11)

By turning citizenship deprivation into a standard operating procedure, the UK has set a dangerous precedent for other states to use citizenship deprivation to violate the non-punishment principle and undermine international standards protecting VHTs.

**3. The UK government has failed to correctly apply definitions of trafficked persons to those in NES, thereby undermining the non-punishment principle**

For a state to act in accordance with the non-punishment principle, it must first make a determination of whether a person is a VHT.

From the information that Reprieve has accessed, it appears that the UK Government has failed to correctly apply the law when considering a) whether the UK’s legal obligations in respect of human trafficking apply to a potential VHT when they have been trafficked out of the UK and remain abroad; and b) the definition of a VHT, and in particular, whether this extends to individuals who were exploited for ‘terrorism’ purposes.

Firstly, the UK government has adopted the position that it does not have an obligation to identify or support VHTs who have been trafficked out of the UK and are currently abroad. This is evident from Parliamentary statements[[12]](#footnote-12) as well as correspondence on cases where trafficking concerns have been raised. However, this position is plainly in contravention of the Palermo Protocol which expressly contemplates transnational trafficking, and whose key provisions (such as repatriation of VHTs, and investigation and prosecution of offences) would be rendered meaningless if a state party did not have obligations towards those who are trafficked out of its jurisdiction.[[13]](#footnote-13)

Secondly, it appears that the UK government was using an erroneous definition of trafficking when it made the decisions to strip women detained in NES of their citizenship and/or refuse to repatriate them in November and December 2019.[[14]](#footnote-14) In at least three of these cases, the UK government had been made aware of evidence and concerns that the women may have been VHTs.

In December 2020, it was revealed during the course of UK High Court proceedings in the case of *FR* (the child of the claimant) that during the period of December 2019 to August 2020, Home Office officials were working under "*a misunderstanding of the law and the definition of human trafficking*"[[15]](#footnote-15) pursuant to an “*unpublished policy*” that they "*do not consider that terrorism or potential acts of terrorism fall under the definition of modern slavery*”.[[16]](#footnote-16) Specifically the HO decided there were no reasonable grounds to believe that the child in issue was a VHT because "*forced labour for the purposes of terrorism does not constitute “forced labour” for the purposes of the “exploitation””.*[[17]](#footnote-17)

This is a misapprehension of the law, as no such exemption for “terrorism” exists in the “exploitation” element of the definition of human trafficking either in domestic or international law.

This raises concerns that the UK has failed to consider and/or apply the correct legal standards for identifying VHTs when making decisions to deprive women of their citizenship and refuse to repatriate them. As a result, it may have failed to identify women and girls exploited by ISIL in need of protection and support, and entitled to the application of the non-punishment principle.

**4. The UK government’s blanket refusal of repatriation, consular and humanitarian assistance to its nationals in NES undermines the non-punishment principle**

*4.1. The UK government’s blanket refusal of repatriation and consular assistance to its nationals in NES undermines the non-punishment principle*

An effective investigation of all facts must be carried out in order for a meaningful and individualised assessment[[18]](#footnote-18) to be made as to whether someone is a VHT. This is a prerequisite to the effective application of the non-punishment principle: an individual must be identified as a VHT in order to ensure they are not penalised or stigmatised for activities in which they have been compelled to engage.[[19]](#footnote-19) In order to effectively assess and investigate their status as potential VHTs, the UK government must provide its nationals with the necessary protection, including consular assistance and repatriation.

Yet, the UK has refused to provide repatriation and consular assistance to the British families detained in NES on the basis that they have “*co-located*” with ISIL.[[20]](#footnote-20) By the government’s own admission, “*the UK has no consular presence within Syria from which to assess the needs of or provide assistance*”[[21]](#footnote-21) to British women and children. Despite the impossibility of assessing their status as VHTs whilst they remain in NES, in conditions that have been found by a UK court to be in breach of Art 3 of the ECHR,[[22]](#footnote-22) the UK government has adopted a policy of non-repatriation of any British adult who travelled to Syria and “*co-located*” with ISIL,[[23]](#footnote-23) agreeing only to consider repatriating children, provided the children “*do not pose a security threat*”.[[24]](#footnote-24) The Government has gone as far as to say that “*Judgements should not be made about the national security risk someone poses based on their gender and age*", in a decision about providing assistance to a toddler.[[25]](#footnote-25)

To Reprieve’s knowledge, the UK government has conducted no meaningful assessments of the circumstances of the British women and children who went to or were taken to Syria. This is despite receiving evidence from Reprieve and legal representatives that sets out details of coercion and grooming, as well as the exploitation of these women and girls for the purpose of sexual slavery, forced marriage and domestic servitude.

Reprieve understands that the UK government has refused to repatriate at least eight British women on the basis that they present a “*threat to national security*,” without providing any evidence to support this assessment. Instead, it uses identical language in each refusal letter, with no appreciation of individual circumstances of the detainee. Even in cases where clear evidence of trafficking has been shared with the British Foreign, Commonwealth and Development Office (FCDO), the UK government props up the unsubstantiated assertion that each detainee had “*travelled of her own volition*”.[[26]](#footnote-26) As detailed in Section 3, similar language and reasoning is used in notices of citizenship deprivation.

The denial of these basic rights makes it impossible to identify possible VHTs detained in NES and thereby to uphold the non-punishment principle, as it penalises and stigmatizes them *en* *masse* for their perceived involvement in any unlawful activities arising out of their trafficking.[[27]](#footnote-27)

*4.2. The UK government’s revocation of humanitarian assistance to its nationals in NES undermines the application of the non-punishment principle*

In November 2020, officials from the FCDO indicated to Reprieve that they would no longer take action on behalf of individuals from Britain detained in the camps, such as basic welfare and “proof of life” checks, despite having coordinated this before.[[28]](#footnote-28) The UK has since refused to provide humanitarian aid to women and children in NES detention, including the provision of medical aid to a seriously ill British woman and a baby girl at risk of respiratory failure.[[29]](#footnote-29) The overcrowding, unsanitary conditions, and lack of access to medical facilities has exposed all detainees to a dramatic risk of mortality.[[30]](#footnote-30)

By denying crucial humanitarian assistance to its nationals in NES, the UK cannot fulfil its obligations to proactively identify VHTs, a key prerequisite for the application of the non-punishment principle. Research also indicates that detention may heighten the trauma and vulnerability of VHTs, thereby increasing their risk of re-trafficking.[[31]](#footnote-31)

The refusal to provide humanitarian assistance therefore serves to undermine and frustrate the non-punishment principle by leaving women and children vulnerable to re-trafficking, which in turn exposes them to further risk of forced criminality.

**5. Recommendations**

Reprieve believes the UK has failed to comply with its legal obligations to identify, protect, and support women and girls trafficked from the UK by ISIL for the purpose of exploitation.

Reprieve recommends that the UK government:

1. **Repatriates families back to the UK:** Facilitate the repatriation of all British families detained in NES including in order to effectively assess and investigate their status as VHTs and to provide them with the necessary protection and assistance, in line with the UK’s domestic and international law obligations. Repatriation is key to effectuating the UK’s anti-trafficking and human rights obligations, including to provide restitution to victims of human trafficking and determine the scope and application of the non-punishment principle.
2. **Identifies VHTs:** Conduct individualised assessments of every suspected victim of trafficking. This requires potential victims who have been trafficked *out* of the UK and whilst abroad to be afforded equivalent rights, protections and support mechanisms as those presently available to victims identified within the UK. Repatriation of families as a unit is key to ensuring full and accurate identification that is gender and age sensitive.
3. **Revokes citizenship deprivations:** Reinstate the British citizenship of all suspected VHTs in line with the UK’s domestic and international legal obligations, including not to punish victims of trafficking for acts that arose out of their trafficking and exploitation.
4. **Holds an independent inquiry into the failure to protect vulnerable individuals:** Conduct an independent inquiry into the failings of public authorities to protect at-risk persons from being trafficked by ISIL for the purpose of exploitation, including sexual exploitation.
1. The Egmont Institute, “From Bad to Worse: The fate of European Foreign Fighters and families detained in Syria, one year after the Turkish offensive”, Thomas Renard, Rik Coolsaet, 28 October 2020, available at: <https://www.egmontinstitute.be/from-bad-to-worse-the-fate-of-european-foreign-fighters-and-families-detained-in-syria/> [↑](#footnote-ref-1)
2. The Egmont Institute, “From Bad to Worse: The fate of European Foreign Fighters and families detained in Syria, one year after the Turkish offensive”, Thomas Renard, Rik Coolsaet, 28 October 2020, available at: <https://www.egmontinstitute.be/from-bad-to-worse-the-fate-of-european-foreign-fighters-and-families-detained-in-syria/> and additional information held on file at Reprieve. [↑](#footnote-ref-2)
3. Six women and/or their families reported being coerced into travelling by a male partner on relative, information held on file at Reprieve. As documented by the UN High Commissioner for Human Rights, many of these individuals have been trafficked*or otherwise forced into marriage, sexual slavery and exploitation by UN-listed terrorist groups*.In addition to the common recruitment route of online grooming and psychological manipulation, many women and children were trafficked to Syria by a coercive male relative or partner. As in many instances of trafficking for sexual exploitation,close relationships were often used to exploit and control women and girls and romantic partners groomed women into travelling to ISIL territories. [↑](#footnote-ref-3)
4. One man and six women were under the age of 18 when they travelled, this is based on information obtained through factual investigation and direct interviews with women detained in NES and their families, information held on file at Reprieve. [↑](#footnote-ref-4)
5. See, e.g., *Shamima Begum v Home Secretary,* Special Immigration Appeals Commission, 7 February 2020, available at: <https://www.judiciary.uk/wp-content/uploads/2020/02/begum-v-home-secretary-siac-judgment.pdf> [↑](#footnote-ref-5)
6. UK Government Modern Slavery Statement, 18 March 2020, Pg. 1, available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875800/UK_Government_Modern_Slavery_Statement.pdf> [↑](#footnote-ref-6)
7. Based on statistics compiled by Free Movement, available at <https://www.freemovement.org.uk/british-nationals-citizenship-deprivation/> [↑](#footnote-ref-7)
8. Communication on file with Reprieve. [↑](#footnote-ref-8)
9. Mandate of the Special Rapporteur on trafficking in persons, especially women and children, “The importance of implementing the non-punishment provision: the obligation to protect victims,” 30 July 2020 at 41, available at: <https://www.ohchr.org/Documents/Issues/Trafficking/Non-Punishment-Paper.pdf> [↑](#footnote-ref-9)
10. Article 26, Council of Europe Convention on Action against Trafficking in Human Beings, 2005, available here: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236093/8414.pdf> [↑](#footnote-ref-10)
11. Article 8, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036&from=EN> [↑](#footnote-ref-11)
12. <https://questions-statements.parliament.uk/written-questions/detail/2021-01-19/139992> and correspondence on file with Reprieve. [↑](#footnote-ref-12)
13. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against **Transnational** Organized Crime (“Palermo Protocol”), see Articles 4 and 8. [↑](#footnote-ref-13)
14. Correspondence held on file at Reprieve [↑](#footnote-ref-14)
15. *FR (a child by his litigation friend, L) v Secretary of State for the Home Department*, High Court Admin Division CO/1074/2020. [↑](#footnote-ref-15)
16. Information on file with Reprieve. [↑](#footnote-ref-16)
17. Information on file with Reprieve. [↑](#footnote-ref-17)
18. UN Security Council Resolution 2388 (2017), Adopted by the Security Council at its 8111th meeting, on

21 November 2017, at 70, available at: <https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2388%282017%29> [↑](#footnote-ref-18)
19. United Nations Security Council, Statement by the President of the Security Council, 16 December 2015, at pg. 2 available at: <https://undocs.org/S/PRST/2015/25> [↑](#footnote-ref-19)
20. Information on file with Reprieve. [↑](#footnote-ref-20)
21. Written Question “Syria: British Nationals Abroad” UIN 7789, tabled on 30 October 2019, answered on 5 November 2019, available at: <https://questions-statements.parliament.uk/written-questions/detail/2019-10-30/7789> [↑](#footnote-ref-21)
22. *Shamima Begum v Home Secretary,* Special Immigration Appeals Commission, 7 February 2020, available at: <https://www.judiciary.uk/wp-content/uploads/2020/02/begum-v-home-secretary-siac-judgment.pdf> [↑](#footnote-ref-22)
23. Information held on file at Reprieve [↑](#footnote-ref-23)
24. New York Times, “UK takes back children from former ISIS territory”, 22 November 2019, available at: <https://www.nytimes.com/2019/11/22/world/europe/britain-isis-children-syria.html> [↑](#footnote-ref-24)
25. The Times, “Foreign Office denies medical aid to British woman and baby in Isis camp”, 4 December 2020, available at: <https://www.thetimes.co.uk/article/foreign-office-denies-medical-aid-to-british-woman-and-baby-in-isis-camp-z8d0lw8rq?--xx-meta=denied_for_visit%3D0%26visit_number%3D0%26visit_remaining%3D0%26visit_used%3D0&--xx-mvt-opted-out=false&--xx-uuid=78fbd5de525321023c51d3353a4fa18d&ni-statuscode=acsaz-307>. This approach is in contravention of the principle that the non-punishment obligation should be respected with special care in the case of children: OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, “Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking”, available at https://www.osce.org/files/f/documents/6/6/101002.pdf [↑](#footnote-ref-25)
26. Communication on file with Reprieve. [↑](#footnote-ref-26)
27. *Shamima Begum v Home Secretary,* Special Immigration Appeals Commission, 7 February 2020, available at: <https://www.judiciary.uk/wp-content/uploads/2020/02/begum-v-home-secretary-siac-judgment.pdf> [↑](#footnote-ref-27)
28. Communication on file with Reprieve. [↑](#footnote-ref-28)
29. The Times, “Foreign Office denies medical aid to British woman and baby in Isis camp”, 4 December 2020, available at: <https://www.thetimes.co.uk/article/foreign-office-denies-medical-aid-to-british-woman-and-baby-in-isis-camp-z8d0lw8rq> [↑](#footnote-ref-29)
30. International Crisis Group, ‘Virus Fears Spread at Camps for ISIS Families in Syria’s North East’, 7 April 2020, available at: <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/virus-fears-spread-camps-isis-families-syrias-north-east>. [↑](#footnote-ref-30)
31. OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in partnership with the Ludwig Boltzmann Institute of Human Rights and the Helen Bamber Foundation, “Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-treatment”, June 2013 at pg. 117 available at: <https://www.refworld.org/pdfid/51d4158d4.pdf> [↑](#footnote-ref-31)