**Comments by the Special Rapporteur on trafficking in persons, especially women and children, Ms. Siobhán Mullally, to the Draft General Comment No. 25 on Children’s Rights in relation to the Digital Environment**

Trafficking of children for all forms of exploitation is a serious human rights violation. The Digital Environment provides important opportunities for education, access to information, and prevention of child trafficking.

As is noted in the OHCHR *Recommended Principles and Guidelines on Human Rights and Human Trafficking Commentary*:[[1]](#footnote-1)

International law recognizes that, because of their reliance on others for security and well-being, children are vulnerable to trafficking and related exploitation. In recognition of this vulnerability, children are accorded special rights of care and protection.

The definition of trafficking stated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), specifically provides in Article 3:

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

In its General Recommendation no.38 on trafficking in women and girls in the context of global migration, the Committee on the Elimination of All Forms of Discrimination against Women notes that:[[2]](#footnote-2)

Digital technologies have opened new possibilities to bring positive impact on the society. At the same time, they are posing new security challenges at both individual and state levels.

Responding to the call for submissions by the Committee on the Rights of the Child regarding their draft General Comment on Children’s Rights in relation to the Digital Environment, the Special Rapporteur on trafficking in persons, especially women and children, Ms Siobhán Mullally, wishes to make the following comments to the draft text:

**Impact of COVID-19**

* The Special Rapporteur recommends acknowledging the major impact of the current global pandemic to children in a digital environment. The COVID-19 pandemic exacerbates the vulnerabilities of children to exploitation with increased risk due to the economic and social impact of the pandemic. This is particularly significant in the digital environment where children are spending increased time, due to school closures. Since the beginning of the COVID-19 crisis Europol’s law enforcement partners have seen an increase in child sexual abuse cases in comparison to figures from 2019.[[3]](#footnote-3) The COVID-19 pandemic has also seen a growth in recruitment for sexual exploitation online and technology facilitated child trafficking for the purpose of sexual exploitation.[[4]](#footnote-4)

**The right to non-discrimination (art. 2)**

* **Paragraph 12**: The Special Rapporteur suggests making specific reference to trafficked children as well as children in other situations of risk.
* The Committee on the Elimination of Discrimination against Women has defined gender-based violence as impairing or nullifying the enjoyment by women and girls of human rights and fundamental freedoms and constitutes discrimination.[[5]](#footnote-5) Gender-based violence has been acknowledged to include trafficking and exploitation of women and girls. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, recognises girls as being disproportionately represented among victims of sexual exploitation. UNODC has noted the scale of recruitment of girls by terrorist groups as a matter of particular concern, in particular in relation to sexual exploitation.[[6]](#footnote-6)

**The best interests of the child (art. 3, para. 1)**

* The Special Rapporteur recommends referring to the OHCHR Commentary on Recommended Principles and Guidelines on Human Rights and Human Trafficking in relation to the best interests of the child.

**Right to life, survival and development (art. 6)**

* **Paragraph 16**: The Special Rapporteur recommends including “and other forms of coercion” in reference to risks and threats to children in the digital environment. The Special Rapporteur also suggests including child trafficking as a specific listed risk so as to raise greater awareness of such abuse and exploitation, and to highlight states’ positive obligations of due diligence in prevention of child trafficking in the digital environment. The report of the Special Rapporteur on the sale of children, child prostitution and child pornography, presented to the Human Rights Council in 2015, highlights specific forms of exploitation and abuse such as solicitation of children and live streaming of child abuse posed by information technologies.[[7]](#footnote-7) Such online exploitation, and recruitment, may also fall within the definition of the crime and serious human rights violation of trafficking.

**General measures of implementation by States (art. 4)**

1. **Legislation**

* The Special Rapporteur highlights Article 3 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which requires States to ensure that acts related to the sale of children, child prostitution or child abuse material, are covered under criminal or penal law and include acts committed domestically or transnationally on an individual or organised basis.

1. **Comprehensive policy and strategy.**

* Policies and strategies for children’s protection in a digital environment must have special regard for Article 19 of the Convention on the Rights of the Child, which requires appropriate legislative, administrative, social and educational measure to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse and exploitation, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
* The Special Rapporteur recommends that State parties are required to take appropriate national, bilateral and multilateral measures, to prevent exploitative use of children for “pornographic performances and materials,”[[8]](#footnote-8) the abduction, sale of or trafficking in children for any purpose or in any form,[[9]](#footnote-9) particularly given the transnational nature of the digital environment.[[10]](#footnote-10)

1. **Dissemination of information, awareness-raising and training**

* The Special Rapporteur suggests persons listed in paragraphs 33 and 34 should be informed on the risks and offenses related to the production, distribution, offering, selling or possession of child abuse and exploitation materials. Such offenses include child trafficking.

1. **The business sector**

* The Special Rapporteur suggests specifying the requirements of a child-rights impact assessment in accordance with the UN Guiding Principles on Business and Human Rights. These Guidelines specify that human rights due diligence extends beyond the activities of the core company to include harmful activities of affiliates and of business relations, including those down the supply chain.[[11]](#footnote-11) Businesses should identify, prevent, mitigate and account for how they address their impacts on human rights, this requires assessment of actual and potential human rights impact, integrating and acting upon findings, tracking responses and communicating how impacts are addressed.[[12]](#footnote-12) Human rights impact assessments should go beyond traditional strategies in corporate social responsibility such as working conditions in corporations and their suppliers but also include an investigation how workers obtained employment to assess workers’ susceptibility to trafficking.[[13]](#footnote-13)
* States’ obligations of due diligence in prevention, protection and prosecution of child trafficking require positive action in relation to the role of the private sector. The Special Rapporteur recommends that States require businesses and their employees, including internet service providers and financial services, to report suspected online child sexual abuse and exploitation activities and offenses, to law enforcement bodies or another mandated agency.[[14]](#footnote-14)

1. **Commercial advertising and marketing**

* Groups engaged in armed conflict and criminal activities, including those identified as terrorist and violent extremist groups increasingly use tailored approaches such as targeted advertising, enabled by digital environments and social media platforms, to contact children, with heightened risks of exploitation for the purpose of forced criminality, sexual exploitation and other forms of sexual exploitation. [[15]](#footnote-15) The Special Rapporteur recommends that States are required to proactively engage with internet service providers and advertising partners, to prevent such advertising reaching children, and attendant risks of online grooming and recruitment for the purpose of exploitation. Reference should be made to States’ positive obligations of due diligence to prevent all forms of child trafficking.[[16]](#footnote-16)
* Digital technologies and online awareness raising initiatives may play an important positive role, in particular in preventing trafficking for the purpose of forced criminality and online recruitment and grooming, using targeted advertising or counter-narratives. Such prevention methods may be particularly effective when undertaken in co-operation with internet service providers.[[17]](#footnote-17)

1. **Remedies**

* Reference should be made to the Committee’s General Comment No. 5 (2003), that for rights to have meaning, effective remedies must be available to redress violations.[[18]](#footnote-18) Effective access to remedies must be ensured to all child victims of trafficking, including where occurring in the digital environment.
* **Paragraph 45:** The Special Rapporteur recommends reference to States’ obligations to ensure that trafficking of children for all purposes of exploitation including through the use of digital technologies, is subject to effective, proportionate and dissuasive sanctions, recognising the gravity of the offence of child trafficking.[[19]](#footnote-19)
* **Paragraph 46**: The Special Rapporteur recommends the identification of trafficking victims be included in the framework for the referral of child victims to ensure they receive necessary specialised support, follow-up care and long-term social protection.[[20]](#footnote-20) Traditionally, training of professionals is focused on persons interacting with vulnerable populations.[[21]](#footnote-21) However, given the wide range of users in the digital environment training on identification of potential child victims of trafficking should also apply to internet service providers and financial services.
* **Paragraph 47**: Reference should be made to the positive obligations of due diligence, to ensure that where the trafficking is committed or facilitated by a non-State actor, such as a business entity, guarantees of non-recurrence including by reform of policies, partnerships, or methods, should be ensured.
* Article 39 of the Convention on the Rights of the Child requires States to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of, *inter alia*, exploitation, abuse or armed conflicts. The Special Rapporteur recommends the inclusion of reintegration in the discussion of remedies to violations.

**Civil rights and freedoms**

1. **Access to information**

* **Paragraph** 52: The Special Rapporteur recommends the creation of child-friendly, age appropriate content for children including the provision of information on the risk of trafficking for all forms of exploitation, grooming and abuse, in the digital environment.

**Violence against children**

* Technological advances such as electronic currencies, social media and the dark web, pose new security threats, particularly as they facilitate child trafficking, by allowing perpetrators to easily access children, while remaining anonymous.[[22]](#footnote-22)
* Protection of children against violence requires acts of violence against children be investigated, punished and compensation provided to the victims, including child victims of trafficking. States should be required to ensure that domestic law criminalises all forms of online trafficking of children, and that gaps in protection due to limitations in domestic criminal law provisions and enforcement for online exploitation and abuse, do not arise.[[23]](#footnote-23)
* Digital technologies may also play an important role in effective investigations of child trafficking including through enhanced tracing abilities through transactions and GPS location.[[24]](#footnote-24) Digital technologies can also assist authorities through the collection and analysis of data, facilitating investigation and prosecution of traffickers.[[25]](#footnote-25) Reference should be made the important role of digital technologies in supporting states’ positive obligations of international cooperation to combat child trafficking and in supporting cooperation in the search for missing children who may be victims of trafficking.[[26]](#footnote-26)
* **Paragraph 86:** The Special Rapporteur recommends including reference to the non-punishment principle with respect to victims of trafficking, including specifically with respect to children who have been trafficked for the purpose of forced criminality or other forms of exploitation.[[27]](#footnote-27)
* **Paragraph 87:** The Special Rapporteur suggests highlighting States’ positive obligations to investigate, prosecute and punish trafficking in persons, including its component acts and related conduct, whether committed by governmental or non-State actors as per the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking.[[28]](#footnote-28)

**Children with disabilities**

* **Paragraph 100**: The Special Rapporteur recommends including trafficking and exploitation as specific online risks encountered by children with disabilities who may be targeted for all forms of exploitation.

**Education**

* **Paragraph 113**: The Special Rapporteur recommends including trafficking and grooming as other forms of violence.
* The Special Rapporteur recommends reference to the importance of education to teenagers about the risks of taking, or allowing others to take, intimate images, and that the dissemination of such images is a form of gender-based violence. Further reference should be made to the importance of ensuring that children learn about safety on social media platforms and the Internet, and how to protect their own privacy online.[[29]](#footnote-29)

**Special protection measures**

1. **Protection from economic, sexual and other forms of exploitation**

* **Paragraph 121**: The Special Rapporteur suggests including references to the Palermo Protocol and the OHCHR’s Recommended Principles and Guidelines on Human Rights and Human Trafficking.
* Children are subjected to trafficking for purposes of forced labour, forced begging, forced criminal activities and domestic servitude.[[30]](#footnote-30) Girls are more likely to be victims of trafficking for the purposes of sexual exploitation, however this form of trafficking also effects boys.[[31]](#footnote-31) Sexualised images of women and girls may be used as a tactic of control and coercion by traffickers.[[32]](#footnote-32)
* The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking require States to effectively investigate, prosecute and adjudicate trafficking and its component acts and conduct whether committed by State or non-State actors.
* **Paragraph 123:** Fraud and identity theft can facilitate the trafficking or grooming of children. The Special Rapporteur recommends dissemination of information and awareness building, among children and their parents, on the risks of trafficking and exploitation in the digital environment.
* The Special Rapporteur while acknowledging the increased risk of exploitation facing children in an online environment, recognises the importance of technology in effectively combatting such exploitation. As outlined above (paras 12 and 13) technology companies can use instruments employed by traffickers to provide a counter-narrative to traffickers and recruitment for violent extremist groups. The Special Rapporteur also notes the potential for businesses to combat trafficking online by actively engaging in child rights impact assessments which analyse actions within their own corporation and business practices.

1. **Administration of child justice**

* In administering child justice *States* must ensure the early application of the non-punishment principle to victims of child trafficking.[[33]](#footnote-33) While the non-punishment principle must apply to trafficking victims, research has found rehabilitation and restorative justice can be effective to facilitate reintegration of children previously associated with violent extremist groups.[[34]](#footnote-34)
* Children may also be involved in the recruitment or trafficking of children through the internet and social media.[[35]](#footnote-35) States should recognise such children may too be victims of trafficking, otherwise States should look to alternatives to criminal justice focusing on measures to prevent re-offending.

1. **Protection of children in armed conflict, migration and other vulnerable situations**

* While forcible recruitment of children often involves abduction or coercion recruiters also appeal to socio-economic factors and notions of martyrdom. The internet, particularly social media, has been used by violent extremist groups to recruit children from middle class families from Western countries through deception and exploitation of their vulnerability.[[36]](#footnote-36)
* As highlighted above, terrorist and violent extremist groups are using increasingly sophisticated targeted advertising to recruit and exploit children.

**International and regional cooperation**

* **Paragraph 128:** The Special Rapporteur suggests the provision of international and regional evidence collection and sharing in addition to mutual legal assistance to ensure the protection of children’s rights online.
* Member States, United Nations entities, international and non-governmental organizations and civil society organizations should continue to raise awareness about risks of human trafficking and exploitation online among children, their parents and persons working with children through the use of the Internet and targeted social-media-based campaigns.

**Right to Privacy**

* The Special Rapporteur recommends that reference is included to the importance of the right to privacy in the digital environment. The Trafficking in Persons Protocol focuses on privacy and the protection of identity in the specific context of legal proceedings (art. 6 (1)). The Council of Europe Convention on Action against Trafficking in Human Beings recognizes that: “it would be particularly harmful for th[e] identity [of trafficked children] to be disclosed by the media or by other means” and requires States parties to:

[…] adopt measures to ensure, in particular, that the identity, or details allowing the dentification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child (art. 11 (2)).

1. OHCHR *Recommended Principles and Guidelines on Human Rights and Human Trafficking Commentary* (2010) p. 112 [↑](#footnote-ref-1)
2. UN Doc. CEDAW/C/GC/38, para. 36 (6 November 2020). [↑](#footnote-ref-2)
3. Europol [*Exploiting Isolation: Offenders and victims of online child sexual abuse during the COVID-19 Pandemic*](https://www.europol.europa.eu/publications-documents/exploiting-isolation-offenders-and-victims-of-online-child-sexual-abuse-during-covid-19-pandemic)(2020), p.7. [↑](#footnote-ref-3)
4. Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. [CEDAW/C/GC/38](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/38&Lang=en), 6 November 2020, para 37. [↑](#footnote-ref-4)
5. Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. [CEDAW/C/GC/38](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/38&Lang=en), 6 November 2020, para 10; Committee on the Elimination of Discrimination against Women, [General Recommendation No. 19](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf) (1992), para 4; Committee on the Elimination of Discrimination General Recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, UN Doc. [CEDAW/G/GC/35](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf), para 10. [↑](#footnote-ref-5)
6. United Nations Office on Drugs and Crime [*Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*](https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf) (2017), p.14 [↑](#footnote-ref-6)
7. Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, UN Doc. [A/HRC/28/56](https://undocs.org/A/HRC/28/56), 22 December 2014, paras. 38 and 42. [↑](#footnote-ref-7)
8. Convention on the Rights of the Child, adopted on 20 November 1989, article 34. [↑](#footnote-ref-8)
9. Convention on the Rights of the Child, adopted on 20 November 1989, article 35. [↑](#footnote-ref-9)
10. See 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, article 18. [↑](#footnote-ref-10)
11. United Nations Guiding Principles on Business and Human Rights (2011), principle 17 and commentary. [↑](#footnote-ref-11)
12. Ibid, principles 15(b), 17. [↑](#footnote-ref-12)
13. Report of the Special Rapporteur on trafficking in persons, especially women and children, UN Doc. [A/70/260](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/241/37/PDF/N1524137.pdf?OpenElement), 3 August 2015, para 42. [↑](#footnote-ref-13)
14. International Centre for Missing and Exploited Children [*Child Pornography: Model Legislation & Global Review*](https://www.icmec.org/wp-content/uploads/2016/02/Child-Pornography-Model-Law-8th-Ed-Final-linked.pdf) (2016), p.5. [↑](#footnote-ref-14)
15. United Nations Office on Drugs and Crime [*Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*](https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf) (2017), p.13. [↑](#footnote-ref-15)
16. Report of the Special Rapporteur on Trafficking in Persons, especially women and children (2015) *Due diligence and trafficking in persons* UN Doc. A/70/260 [↑](#footnote-ref-16)
17. See for example Google’s Redirect Method available at: <https://redirectmethod.org/>. [↑](#footnote-ref-17)
18. Committee on the Rights of the Child General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child, UN Doc. [CRC/GC/2003/5](https://www.refworld.org/docid/4538834f11.html), 27 November 2003, para 24. [↑](#footnote-ref-18)
19. Articles 23(1) and 24, Council of Europe Convention on Action Against Trafficking in Human Beings, Council of Europe Treaty Series - No. 197 [↑](#footnote-ref-19)
20. See: Report of the UN Special Rapporteur on Trafficking in Persons, especially women and girls (2019) *Innovative and transformative models of social inclusion of survivors of trafficking in persons into societies*, UN Doc. A/HRC/41/46 [↑](#footnote-ref-20)
21. Report of the Secretary-General on trafficking in persons in armed conflict, UN Doc. [S/2017/939](https://undocs.org/S/2017/939), 10 November 2017, para 22. [↑](#footnote-ref-21)
22. Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. [CEDAW/C/GC/38](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/38&Lang=en), para 36. [↑](#footnote-ref-22)
23. Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective, UN Doc. [A/HRC/38/47](https://undocs.org/en/A/HRC/38/47), 18 June 2018, para 82 [↑](#footnote-ref-23)
24. Report of the Secretary-General on Trafficking in women and girls, UN Doc. [A/73/263](https://undocs.org/en/A/73/263), 27 July 2018, Para 28 [↑](#footnote-ref-24)
25. Ibid. [↑](#footnote-ref-25)
26. See: Council of Europe Convention on Action against Trafficking in Human Beings, Article 33(2). [↑](#footnote-ref-26)
27. Office of the High Commissioner on Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), principles 7, 4.5. See also UN Special Rapporteur on Trafficking in Persons, especially women and children (2020) *The importance of implementing the non-punishment provision: the obligation to protect victims.* [↑](#footnote-ref-27)
28. Office of the High Commissioner on Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), principle 13. [↑](#footnote-ref-28)
29. Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective, UN Doc. [A/HRC/38/47](https://undocs.org/en/A/HRC/38/47), 18 June 2018, para 111. [↑](#footnote-ref-29)
30. Group of Experts on Action against Trafficking in Human Beings, [*6th General Report on GRETA’S Activities*](https://rm.coe.int/1680706a42)(2017)*,* para 83. [↑](#footnote-ref-30)
31. Ibid. [↑](#footnote-ref-31)
32. Report of the Secretary-General on Trafficking in women and girl, UN Doc. [A/73/263](https://undocs.org/en/A/73/263), 27 July 2018, para 27. [↑](#footnote-ref-32)
33. Office of the High Commissioner on Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), principles 7, 4.5. [↑](#footnote-ref-33)
34. Office of the Special Representative of the Secretary-General on Violence Against Children [*Solutions for Children Previously Affiliated With Extremist Groups: An Evidence Base to Inform Repatriation, Rehabilitation and Reintegration*](https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/2020/reports_extremism/un_hq_osrsg_solutions_for_children_previously_affiliated_with_extremist_groups_20-01153_lo-res.pdf)(2020), p.21. [↑](#footnote-ref-34)
35. Report of the Special Rapporteur on trafficking in persons, especially women and children, UN Doc. [A/71/303](https://undocs.org/A/71/303), 5 August 2016, para 31. [↑](#footnote-ref-35)
36. Ibid, para 30. [↑](#footnote-ref-36)