

Understanding Trafficking in Persons in the MENA Region:

The Causes, the Forms, the Routes, and the Measures
to Combat a Serious Violation of Human Rights

Training Manual to Combat Trafficking in Persons

The Arab Initiative to Combat Human Trafficking



Understanding Trafficking in Persons in the MENA Region:

The Causes, the Forms, the Routes, and the Measures
to Combat a Serious Violation of Human Rights

Training Manual to Combat Trafficking in Persons

The Arab Initiative to Combat Human Trafficking



The Protection  Project



Copyright 2013

The Protection Project at The Johns Hopkins University Paul H. Nitze
School of Advanced International Studies.

ALL RIGHTS RESERVED

Reproduction or modification for the distribution or replication is
permitted only with prior written consent of The Protection Project.

The Protection Project
1717 Massachusetts Avenue, NW, Suite 501
Washington DC, 20036
Tel: +1 202 663 5896
Fax: +1 202 663 5899
<http://www.protectionproject.org>

Contents

Acknowledgements	1
Preface	3
P.1. Scope of the training manual	3
P.2. Methodology of the training manual	4
Chapter 1. Underlying Causes and Consequences of Trafficking in Persons	5
1.A. Introduction	5
1.B. Recruitment of trafficking victims	5
1.C. Demand and trafficking in persons	6
1.D. Root causes of trafficking in persons	6
1.E. Consequences of trafficking in persons	8
Chapter 2. What Is Trafficking in Persons?	13
2.A. Introduction	13
2.B. Definition of “trafficking in persons” under regional law	22
2.C. Model legislation on trafficking in persons	24
2.D. Definitions of “trafficking in persons” in the countries of the MENA region	25
2.E. Trafficking and slavery	30
2.F. Smuggling of migrants	31
2.G. Routes of trafficking in persons in the MENA region	32
Chapter 3. Combating Trafficking in Persons in the MENA Region: Prevention	40
3.A. Introduction	40
3.B. Measures to prevent trafficking in persons	41
Chapter 4. Combating Trafficking in Persons in the MENA Region: Prosecution	56
4.A. Introduction	56
4.B. Prohibition of trafficking in persons under international law	56
4.C. Regional law prohibiting trafficking in persons	59
4.D. Arab laws prohibiting trafficking in persons: General principles and specific rules	60
4.E. International cooperation	69
4.F. Crimes related to trafficking in persons	70
4.G. Related human rights legislation	73

Chapter 5. Combating Trafficking in Persons in the MENA Region: Protection 79

5.A. Introduction	79
5.B. Identifying the victims of trafficking in persons	80
5.C. A bill of rights for victims of trafficking	85
5.D. Procedural protection of victims of trafficking	96

Chapter 6. Combating Trafficking in Persons in the MENA Region: Participation 106

6.A. Introduction	106
6.B. Models of participation of civil society in government efforts to combat trafficking in persons.	109
6.C. Engaging the five elements of civil society.	111
6.D. Use of new technologies to promote effective partnership	117

ACKNOWLEDGEMENTS

This training manual was prepared by The Protection Project at The Johns Hopkins University, School of Advanced International Studies, and was supported by the Qatar Foundation for Combating Human Trafficking. The effort was led by Dr. Mohamed Mattar, Senior Research Professor of International Law and Executive Director of The Protection Project, with key contributions made by Ms. Elaine Panter, Director of Programs and Planning at The Protection Project, and with editorial support from Ms. Mandy Davis, Ms. Marie-Pier Dupont, and Ms. Virginie Gagnon.

A special thanks goes to Ms. Maryam Al-Maliki, Head of the Qatar Foundation for Combating Human Trafficking, for her relentless commitment to eradicating trafficking in persons in the Middle East and North Africa (MENA) region and for her continual support of the work of The Protection Project. The Protection Project would also like to acknowledge the valuable work of the United Nations Office on Drugs and Crime and the League of Arab States in combating trafficking through the Arab Initiative to Combat Human Trafficking.

For further information regarding The Protection Project, please go to its website at <http://www.protectionproject.org>.

PREFACE

P.1. Scope of the training manual

In today's globalized world in which many principles and traditions are being called into question, few rights, such as the right to freedom and security, enjoy such broad consensus. Trafficking in persons and all forms of enslavement, States around the world agree, must be confronted relentlessly and with all means available.

Since the adoption of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2000, many countries have therefore reformed their legislation to criminalize trafficking in persons within their jurisdictions and have taken concrete steps to eradicate the problem through the engagement of civil society, law enforcement personnel, and the judiciary.

To assist governments and the international community in implementing these new laws, a plethora of excellent training manuals on trafficking in persons has been published by national and international institutions. Some of these manuals are sector specific, some of them focus on a region, and others provide a general overview of the problem of trafficking without a specific regional or functional focus.

Drawing from more than 10 years of experience in providing capacity-building training on trafficking in persons to all levels of society and to the governments in the greater Middle East and North Africa (MENA) region, The Protection Project at The Johns Hopkins University School of Advanced International Studies wrote this training manual with two objectives in mind: first, developing a training manual for practitioners specifically tailored to the forms and routes of trafficking in persons in the MENA region; second, addressing in detail some of the specific and particular issues of the region, including the Islamic law perspective on combating trafficking in persons.

In referring to the MENA region, the manual includes the following: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, the Palestinian Authority, Qatar, Saudi Arabia, Somalia, Syria, Tunisia, the United Arab Emirates, Sudan, and Yemen.

P.2. Methodology of the training manual

The training manual aims at providing the reader with a useful tool for understanding the problem of trafficking in the MENA region through a three-level approach: first, it provides an overview of the forms and routes of trafficking in persons in the MENA region; second, it analyses the measures that either have been taken or that should be taken to address the problem of trafficking in the region through the established four *Ps* approach; and third, it helps the understanding and memorization of the content of each chapter through review questions and practical exercises.

P.2.1. Overview of forms and routes of trafficking in persons

Through best practices, case studies, and victims' stories, the training manual offers useful insights into the problem of trafficking in the MENA region to assist the reader in relating the information in the manual to real-world scenarios.

P.2.2. Prevention, protection, prosecution, and participation: The four *Ps* of trafficking in persons

Following an introductory chapter on the causes and consequences of trafficking in persons, the manual addresses the four main strategies that experts in the field of trafficking in persons have developed to confront and combat the crime: prevention, prosecution, protection, and participation. In addressing these measures, the manual places a special emphasis on the international, regional, and domestic legal frameworks that have come to shape these policies in recent years. When appropriate, the manual also mentions the Islamic law perspective, to encourage the reader to approach each issue in a comprehensive and comparative manner.

P.2.3. Review questions and practical exercises

Each chapter concludes with review questions and practical tasks. The goal of the exercises is to assist readers in memorizing the key concepts presented in the chapter and to develop practical skills to prepare them for becoming active players in the anti-trafficking movement in the MENA region.

Chapter 1. Underlying Causes and Consequences of Trafficking in Persons

1.A. Introduction

1.A.1. A debate on the nature of trafficking in persons

Trafficking in persons is a complex crime that affects many spheres of law and criminal justice. Since the passage in 2000 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime¹ (hereafter U.N. Protocol), international legal experts have been debating to which discipline trafficking in persons belongs.

Today, many experts agree that the human rights approach to trafficking in persons is the most appropriate because it recognizes the trafficked person as a victim entitled to human rights and, as such, entitled to protection and assistance if those human rights have been violated, regardless of the sex, age, or nationality of the victim.

1.A.2. Shifting the focus to the human rights of the victims

The same approach is supported by the Office of the High Commissioner for Human Rights, which prescribes the following in its *Recommended Principles and Guidelines on Human Rights and Trafficking in Persons*:

Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.²

1.B. Recruitment of trafficking victims

Traffickers use a variety of techniques to recruit their victims, ranging from kidnapping to the simple promise of a low-wage job. Traffickers intentionally seek out the weakest and most vulnerable members of society in order to exploit them for personal gain, frequently by taking advantage of conditions of poverty, economic collapse, civil unrest, and social upheaval. Often, the trafficker gains the confidence of the victim through a combination of physiological means. At times, unscrupulous employment agencies deceive workers into entering abusive work situations, and

what first appears as a legitimate job can easily turn into forced labour or sexual exploitation. Women and children are especially vulnerable to trafficking and are often trafficked by their own communities, by their families, and in public places of business and commerce. Promise of an immediate payment may lead families to sell their children to traffickers.

1.C. Demand and trafficking in persons

Discouraging demand for trafficking victims is increasingly at the heart of many anti-trafficking policies focusing on preventing the crime. For instance, article 9(5) of the U.N. Protocol makes it clear that addressing the demand for the services of trafficking victims is an essential part of effectively preventing and combating trafficking in persons. The article states:

States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.³

1.D. Root causes of trafficking in persons

The root causes of trafficking are economic, social, cultural, legal, and political in nature. Populations that are rendered vulnerable by one or more of these factors are more likely to be trafficked. Traffickers intentionally target the weakest and most vulnerable members of society in order to exploit them. Among the major causes of trafficking are poverty and underdevelopment, social and cultural traditions, weak legal institutions, civil war and political unrest, and corruption.

1.D.1. Poverty and underdevelopment

Economic factors are directly addressed in the U.N. Protocol, which mentions poverty, underdevelopment, and lack of equal opportunities as the main root causes of trafficking in persons. Economic vulnerability may also include unemployment and lack of access to opportunities, which make people want to migrate in search of better conditions. Even a normal, legitimate flow of economic migration from a poor country to a richer one provides opportunities for traffickers to victimize immigrants, who are more vulnerable having left their home areas.

1.D.2. Social and cultural traditions

Social exclusion relates to a lack of access to social rights and prevents groups from receiving the benefits and protection to which all citizens should be entitled.

Marginalization from social security derives from complex factors, including gender, ethnicity, and the low status of groups within societies. Such marginalization involves discrimination in education, employment practices, access to legal and medical services, and access to information and social welfare. Social exclusion is particularly important when discussing how to prevent revictimization and re-trafficking. Trafficked persons face considerable obstacles on their return home, including the attitudes and biases within their own communities. Social and cultural practices are sensitive to context and therefore must be considered with special caution to avoid generalization.

For example, cultural practices (such as arranged, early, or forced marriages) and other practices (such as temporary marriages, marriages by catalogue, or mail-order brides)—if they lack consent and they entail an element of exploitation—can all contribute to trafficking in persons. Furthermore, in many societies, cultural norms affect the manner in which women are treated, making gender-based discrimination a contributing factor to women’s vulnerability to trafficking. In addition, women from certain societies who are trafficked into prostitution find it more difficult to reintegrate into their families and communities after being freed from exploitation.

1.D.3. Weak legal institutions

Legal factors are manifested in the lack of access to the criminal justice system, which occurs either because (a) the trafficked person is a foreigner or lacks access to legal representation or (b) the system itself does not offer an appropriate remedy.

In addition, insecurity may be fostered by the “double witness” or “corroborative evidence” rule, which disqualifies the evidence unless a witness’s testimony is corroborated by another witness or other material evidence implicates the accused. A possible consequence of this rule is that victims of trafficking are not given a chance to be heard in court.

1.D.4. Civil war and political unrest

In addition to economic, social, and cultural factors, political instability, war, and conflict may contribute to trafficking in persons. These factors particularly affect transitional societies, where civil unrest, loss of national identity, and political instability may create a favourable environment for organized crime, including trafficking in persons. In such cases, the disruption of traditional community life, along with its protective framework, make people extremely vulnerable to exploitation.

In cases of civil war and ethnic conflicts, often a single, targeted minority group suffers a complete breakdown of social mechanisms, thereby increasing its vulnerability.

Finally, the resulting displacement of people in cases of strife leads to their isolation, thus increasing the ease by which traffickers can victimize them.

1.D.5. Corruption

Corruption is a major contributing factor to the crime of trafficking in persons; it is both an underlying root cause and a facilitating tool. It is important to remember that trafficking in persons may thrive in no small part because of the implicit or explicit participation or inaction by public officials. For example, a border control officer turns a blind eye to people without legal documents crossing the border accompanied by their trafficker. Moreover, cases have been reported in which officials accepted or extorted bribes or sexual services, falsified identity documents, discouraged trafficking victims from reporting their crimes, or tolerated child prostitution and other trafficking-in-persons activities in commercial sex sites.

1.E. Consequences of trafficking in persons

Trafficking is a crime against the human being and against State security that has both long- and short-term effects on the victim and State institutions.

1.E.1. Harm to victims of trafficking

A victim may suffer from both physical and psychological harm. Even if eventually rescued, the trauma suffered by victims of trafficking is long lasting and may never fully dissipate. Victims of trafficking generally work in substandard conditions, under increased risk of injuries or death while on the job because of unregulated and unsafe working conditions or lack of proper health care. Workers in the construction industry may suffer exposure to dust, chemicals, and other hazardous materials that can cause respiratory infections, scabies, tuberculosis, and other diseases associated with overcrowded, unsanitary conditions. Victims of sexual exploitation are more susceptible to contracting HIV/AIDS or other sexually transmitted diseases, but they rarely report these diseases for fear of stigmatization and of retaliation by the traffickers, thus aggravating their health. Among the most common psychological consequences of trafficking are depression, memory loss, dizziness, suicidal thoughts, and many forms of shame, grief, fear, distrust, and self-hatred. Some victims may also experience post-traumatic stress disorder characterized by flashbacks, intrusive thoughts, dissociation, hopelessness, and other symptoms.

1.E.2. Trafficking in persons: A crime against the State

Trafficking in persons also undermines the legitimacy of the State, whose goal is to promote the rule of law and the respect of human rights. Traffickers are often criminals who not only violate the rights of the victims but also commit crimes against

the State, such as violations of immigration, tax, and business laws. In transnational trafficking in persons, the destination country often suffers an unlawful crossing of its borders, and the country of origin suffers an unlawful loss of its people and a disruption to its social fabric.

1.E.3. Economic impact of trafficking in persons

Trafficking in persons is an illegal criminal activity that fuels the black market and encourages money-laundering practices. The lost tax revenue to the government, deriving from tax evasion, and the law enforcement costs of detecting and combating money laundering are just two of the most obvious negative economic impacts of trafficking in persons. In countries with a large number of trafficked children, various reports have proved the long-term negative impact on the economy from the decreased productivity of these children by the time they reach adulthood.⁴

Applying Your Knowledge: Introduction

Exercise A: Review Questions

1. What is a human rights approach to trafficking in persons?

2. What are the main root causes of trafficking in persons?

3. Why, in your opinion, should governments in the MENA region address the issue of demand?

4. What, in your opinion, are the main long-term consequences of trafficking in persons in your country of origin?

Chapter 1 Endnotes

- 1 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, opened for signature 12 December 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (entered into force 25 December 2003), art. 3.
- 2 Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines of Human Rights and Human Trafficking (Geneva: United Nations), Guideline 1, http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf.
- 3 U.N. Protocol, art. 9(5).
- 4 See International Labour Organization, International Programme on the Elimination of Child Labour, Training Manual to Fight Trafficking in Children for Labour, Sexual and Other Forms of Exploitation (Geneva: International Labour Organization, 2009). See also "An Introduction to Human Trafficking: Vulnerability, Impact and Action," background paper, V.07-88925, United Nations Office on Drugs and Crime, Vienna, January 2008.

Chapter 2. What Is Trafficking in Persons?

2.A. Introduction

2.A.1. United Nations definition of “trafficking in persons”

An international consensus was created in December 2000, when countries adopted the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The U.N. Protocol was the first international legal instrument to define trafficking in persons and to provide for a comprehensive approach to combat the problem. Today, it remains the primary reference tool for countries in implementing their national policies to combat trafficking in persons and in developing frameworks of international cooperation in this field. The U.N. Protocol entered into force on 25 December 2003, when 20 countries deposited their instruments of ratification. As of August 2013, 157 countries are parties to the U.N. Protocol.

Article 3(a) of the U.N. Protocol states:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, 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.⁵

2.A.1.1. The elements: The 20-plus formula

From this definition, three elements of the crime can be identified:

- a. **The act (what is done):** The act is the level of interaction a person has with the victim, whether it be on the supply side or the demand side. It can occur on five different levels: recruitment, transportation, transfer, harbouring, and receipt of persons.
- b. **The means (how it is done):** Means is how the trafficker or purchaser of the trafficked person obtains the victim. Eight forms are most commonly recognized: threat, use of force or coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, and the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

“Coercion” may be defined as “threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of law or the legal process.”⁶

- c. The exploitative purpose (why it is done): This element is the demand side of the trafficking market. It includes, at a minimum, seven purposes: exploitation of the prostitution of others, other forms of sexual exploitation, forced labour or services, slavery, practices similar to slavery, servitude, or the removal of organs.

With five acts, eight means, and seven exploitative purposes, the U.N. Protocol’s definition of trafficking can be identified by the so-called 20-plus formula. The “plus” indicates that the list of exploitative purposes is not a closed list and that States may choose to add other forms of exploitation to define more specifically the various forms of trafficking in persons that are to be criminalized within their jurisdictions.

The U.N. Protocol generally requires the crime of trafficking to be defined through a combination of the three constituent elements. In some cases, however, the individual elements will constitute criminal offences independently. For example, the means of abduction or the non-consensual application of force (assault) will likely constitute separate criminal offences under domestic criminal legislation.

2.A.1.2. Consent of the victim

Under the U.N. Protocol, the victim’s consent is linked to the means used. The U.N. Protocol states that the consent of a victim of a crime “shall be irrelevant” only in cases in which illegal means have been used. The U.N. Protocol is broad in defining the means element, which is not limited to force, fraud, or coercion. It suffices that a case of trafficking involves abuse of a position of vulnerability. Article 3(b) states:

The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.⁷

2.A.1.3. Forms of trafficking

Exploitation can take various forms, which may be grouped as follows:

Sex trafficking: Sex trafficking may include exploitation of the prostitution of others or other forms of sexual exploitation, such as pornography, sexually oriented performances, and child sex tourism.

Trafficking for non-commercial sex purposes: This form of exploitation may include early marriage (child marriage), forced or servile marriage, arranged marriage, compensation marriage, transactional marriage, and temporary marriage—which lack consent and entail an element of exploitation—or marriage for childbearing. In the Middle East and North Africa (MENA) region, trafficking for the purpose of non-commercial sex most often manifests itself in the form of temporary or forced marriages. Temporary marriages often occur between daughters of poor families from Egypt and wealthy men from the Gulf States. Women in North Africa are sometimes kidnapped under the guise of temporary marriages to force them into prostitution.⁸

Case Study



In Egypt, young girls are increasingly being trafficked through transactional marriages. “Transactional marriage” is a category of marriage in which, most frequently, the woman is married without her consent or against her will. Transactional marriage, by its nature, makes the coerced party, usually the wife, more vulnerable to abuse and exploitation by her spouse and his family.⁹

One common form of transactional marriage is the practice of deceiving young girls from poor rural areas of Egypt into marrying men from the wealthier Persian Gulf States. Often these young married girls end up exploited and abused.¹⁰

The Islamic Law Perspective



Fatwa of the Mufti of the Republic of Egypt in regard to child marriage states:

The phenomenon of child marriage is a social problem. Child marriage, in all its forms and manifestations, is a contradiction of the institution of marriage and of its foundations. Displaying a girl like merchandise so that the man can decide or not to choose her is an act that strips her of her dignity and is dehumanizing. All those involved are aware that this is a form of disguised prostitution and that the girl will be sexually abused and then abandoned. After this, the girl, like many others, will be presented to another man and a new cycle of exploitation will begin. Any honest person would agree that such a marriage constitutes damage to the individual and to society. Islamic law prohibits such marriages and criminalizes any related acts of mediation. Islamic law also denies the father of his mandate over his daughter if he exposes her to such forms of sexual exploitation in return for financial compensation. We consider these incidents a form of sexual exploitation and, under Islamic law, the performer, the parents, the mediator and any other accomplice or facilitator should be punished.¹¹

Labour trafficking: Labour trafficking may include domestic servitude; sweatshop, agricultural, or construction labour; or enforced enrolment in an armed force. Other forms may include use of the trafficked person in criminal activities or begging. By far the most common form of labour trafficking in the Arab world is domestic servitude. Often, domestic servants in the MENA region are forced to work 12- to 16-hour days with little or no pay, very limited time off, and insufficient nutrition. And they are often subject to verbal and physical abuse, including sexual exploitation. Domestic servants often do not complain or report cases of such abuse because they fear imprisonment, deportation, or retaliation by their employers on their return to the household. Domestic servants who do attempt to escape are often returned to their employer by the authorities. Employers often hold the domestic servants' passports and travel documents, thus preventing them from leaving their job for other work and from returning home. Trafficking for domestic service involves primarily people from South and Southeast Asia. Other forms of labour trafficking in the region include begging, forced labour, and recruitment into armed forces. Forced begging is especially found in countries such as Egypt, where street children, a vulnerable population, are often subject to exploitation by human traffickers.

Case Study

In a case in Jordan, the defendant was charged with the crime of human trafficking as defined in article 3 of Jordanian Law No. 9, 2009. The defendant took 265 dinars from the plaintiff in consideration for procuring a domestic worker from Sri Lanka without a residency ID or a work permit. The worker was never paid, and she escaped. The defendant was fined 1,000 dinars.¹²

Case Study

The defendants, a husband and wife, agreed to bring their 12-year-old niece from Morocco to the United States to receive an education in exchange for housework and child care. When the victim arrived in the United States, she was forced to work long days cooking, cleaning, and looking after the child. On the weekends and during the summer, she was forced to work at the defendants' espresso stand. She was initially allowed to attend school, but when she complained about her treatment, the defendants pulled her out of school and made her work longer hours. When the victim's temporary visitor's visa expired, she was threatened with deportation if she did not work harder. The defendants were found guilty of forced labour and concealing and harbouring an alien. The victim received more than US\$65,000 in compensation.¹³

Trafficking for the purpose of organ removal: This form amounts to trafficking that is carried out by means of a commercial transaction without the consent of the donor of the organ. In the MENA region, most organ “donations” originate from Egypt. The most common recipient countries are Saudi Arabia and Oman.

Case Study

The Coalition for Organ Failure Solutions (COFS), a non-profit international health and human rights organization, estimates that there are at least hundreds of Sudanese victims of organ trafficking in Egypt as well as numerous others from Eritrea, Ethiopia, Iraq, Jordan, Somalia, and Syria. The total number of organ trafficking victims in Egypt is estimated to be in the thousands.¹⁴

Case Study

In November 2010, under the authority of the South African National Director of Public Prosecution, Netcare Kwa-Zulu (Pty) Limited entered into an agreement whereby it pleaded guilty to 102 counts of allowing its “employees and facilities to be used to conduct ... illegal kidney transplant operations.” In addition, a number of charges were laid against St. Augustine’s Hospital, the chief executive officer of Netcare, four transplant doctors, a nephrologist, two transplant administrative coordinators, and an interpreter. The scheme involved bringing Israeli citizens in need of kidney transplants to South Africa for transplants performed at St. Augustine’s Hospital.¹⁵

2.A.2. Trafficking in children

2.A.2.1. Special status of children under international law

Trafficking in children must be distinguished from trafficking in adults because the law often grants additional protection to the child victim of trafficking because of his or her high vulnerability. According to the United Nations Children’s Fund (UNICEF), as many as 5.5 million children are victims of forced labour and child trafficking.¹⁶

The U.N. Protocol recognizes the special status of children, in article 6(4), which states:

Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.¹⁷

In providing special protection for children, the U.N. Protocol prescribes that the proof of means is irrelevant when children are trafficked. In these cases, only the act and the exploitative purpose must be proved. Article 3(c) reads, “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.”¹⁸ As a consequence of this provision, a child cannot give consent even if none of the means are used. Therefore, the consent of the child is, in every circumstance, irrelevant.

Certain forms of trafficking relate mainly to children. They include trafficking for the purposes of begging, illegal adoption, child sex tourism, and pornography.

Case Study

The defendant forced the victim, a 14-year-old girl, to beg for money for three months. When the child refused to beg, the defendant physically abused her. The defendant was sentenced to three years’ imprisonment.¹⁹

2.A.2.2. Trafficking for the purpose of illegal adoption

Adoption may be a form of trafficking if the child is exploited. In the absence of exploitation, adoption does not constitute a form of trafficking even if the child is being sold, although adoption in such a case would be illegal. Under article 1(d) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the sale of children is considered slavery through the following:

[A]ny institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view of the exploitation of the child or young person or of his labour.²⁰

Consequently, the sale of children in the name of inter-country adoption may be considered a practice similar to slavery. As stated in the *travaux préparatoires* of the U.N. Protocol, article 3(c), (Interpretative Notes), “Where illegal adoption amounts to a practice similar to slavery, it will fall within the scope of the Protocol.”²¹

Further, in its preamble, the 1993 Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption sets its objective: “To ensure that inter-country adoption takes place in the interest of the child and to prevent abduction, sale of, or traffic in children.”²²

The Islamic Law Perspective

The illicit sale of children for the purpose of inter-country adoption does not constitute a form of trafficking in most countries of the Middle East because Islamic law does not recognize the institution of adoption in accordance with the Qur'an, which states in Surah 33:4-5:

[Nor] has He made your adopted sons your sons. Such is only your manner of speech by your mouths. But God tells you the Truth, and He shows the right way. Call them by (the names of) their fathers: that is more just in the sight of God.²³

Islamic law recognizes kafala as an alternative to adoption. Kafala is a system of fosterage where a child may be placed under the guardianship of a family, but the child continues to retain his lineage. This arrangement explains why many countries of the Middle East that follow Islamic law had reservations regarding article 21 of the 1989 Convention on the Rights of the Child, which recognizes adoption: adoption is inconsistent with Islamic law. Consequently, there is little demand for adopted children in the Middle East.²⁴

2.A.2.3. Child sex tourism

Child sex tourism amounts to trafficking when a person travels to a foreign country for the purpose of engaging in prostitution with children. Child sex tourism is not specifically defined in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Article 2(b) does, however, provide a definition of “child prostitution”: “the use of a child in sexual activities for remuneration or any other form of consideration.”²⁵ Article 10(1) states:

States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.²⁶

Article 10(3) mentions:

States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.²⁷

Cases of child sex tourism in the MENA region have been reported in Comoros, Egypt, Iraq, Morocco, Saudi Arabia, and Yemen.²⁸

2.A.2.4. Pornography

Another possible purpose of exploitation in trafficking is pornography, which can be considered a form of sexual exploitation. As detailed in article 2(a), paragraph ii, of the *travaux préparatoires* of U.N. Protocol (negotiation text), sexual exploitation of a child includes “prostitution, sexual servitude or use of a child in pornography.”²⁹ In addition, article 2(c) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography defines “child pornography” as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”³⁰

Particularly active in the fight for children’s rights is the International Centre for Missing and Exploited Children (ICMEC), an international non-governmental organization based in the United States.³¹ According to ICMEC, child pornography today has become a global crisis. In 2006, ICMEC published *The Child Pornography Model Legislation* in an effort to promote the harmonization of the law on child pornography. The model legislation details seven criminal offence objectives, including incorporating child pornography offences into the penal code; criminalizing the knowing possession of child pornography, regardless of the intent to distribute; criminalizing knowingly downloading or knowingly viewing child pornography images on the Internet and using the Internet to distribute child pornography; penalizing those who make known to others where to find child pornography; criminalizing the actions of parents or legal guardians who acquiesce to their child’s participation in child pornography; criminalizing grooming offences; and punishing attempted crimes.³²

2.A.3. Trafficking in persons under other international legal instruments

A variety of other international legal instruments have addressed trafficking in persons as an element of their provisions. Alongside the U.N. Protocol, these provisions constitute an integral part of the international legal framework on trafficking in persons. These instruments include the following:

2.A.3.1. United Nations Declaration on the Elimination of Violence against Women

The United Nations Declaration on the Elimination of Violence against Women was adopted in 1993 and includes trafficking in persons in the definition of “violence against women.” In particular, article 2 includes in that definition “rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.”³³

Best Practice

In 2008, Jordan passed a law on the protection against family violence that authorizes the competent authorities to issue an injunction to protect a victim of domestic violence and, in case of imminent danger, authorizes the competent authorities to issue an order of restraint to prevent the offender from entering the marital home. The law also establishes family reconciliation committees aimed at assisting the parties involved in resolving the family dispute.³⁴

2.A.3.2. Rome Statute of the International Criminal Court

Adopted in Rome in July 1998 and entered into force in 2002 with the ratification of the 60th State, the Rome Statute of the International Criminal Court represents an important cornerstone in international law because it unambiguously defines trafficking in persons as a crime against humanity, therefore falling under the jurisdiction of the International Criminal Court. Article 7 of the statute includes enslavement in its definition of “crimes against humanity” and defines “enslavement” as follows:

[T]he exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.³⁵

2.A.3.3. International Labour Organization Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

A further international convention that sheds light on the meaning and scope of trafficking in persons is the International Labour Organization (ILO) Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Convention of 1999. The convention includes trafficking in children in the definition of “worst forms of child labour” and states in article 3:

For the purposes of this Convention, the term “the worst forms of child labour” comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.³⁶

This convention has been ratified by all the MENA region countries.

2.A.3.4. World Health Organization Guiding Principles on Human Cell, Tissue, and Organ Transplantation

The World Health Organization was instrumental in including the removal of organs within the forms of trafficking in persons. The Commentary to Principle 5 of the Guiding Principles on Human Cell, Tissue and Organ Transplantation adopted by the World Health Assembly on 21 May 2010 states:

Payment for cells, tissues and organs is likely to take unfair advantage of the poorest and most vulnerable groups, undermines altruistic donation, and leads to profiteering and human trafficking. Such payment conveys the idea that some persons lack dignity, that they are mere objects to be used by others.³⁷

2.A.3.5. ILO Convention Concerning Forced or Compulsory Labour

Article 2 of the ILO Convention Concerning Forced or Compulsory Labour of 1930 defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”³⁸ Article 1 also requires States Parties to “undertake to suppress the use of forced or compulsory labour.”³⁹

2.B. Definition of “trafficking in persons” under regional law

In addition to these international instruments, a number of regional instruments have been developed and serve as important supplements to the international framework. These instruments include the following:

2.B.1. Arab Charter on Human Rights

The Arab Charter on Human Rights adopted by the League of Arab States in 2004 does not give a comprehensive definition of trafficking. However, article 9 prohibits trafficking in human organs and presumably trafficking for the use of “medical experimentation.”⁴⁰ In addition, article 10 prohibits “all forms of slavery and trafficking in human beings.”⁴¹ Article 43 encourages ratifying States to interpret the Arab Charter in congruence with other international and regional human rights conventions, thereby encouraging States to interpret trafficking in persons as defined under the U.N. Protocol. Article 43 reads:

Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set forth in the international and regional human rights

instruments which the States parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities.⁴²

2.B.2. Council of Europe

In 2005, the Council of Europe adopted the Convention on Action against Trafficking in Human Beings, which, similarly to the U.N. Protocol, defines “trafficking” in Article 4 as the following:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, 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.⁴³

2.B.3. European Union

Expanding on the U.N. Protocol’s definition of “trafficking in persons,” Directive 2011/36/EU of the European Parliament and of the Council on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims of 5 April 2011 defines trafficking in article 2 as the following:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.⁴⁴

It is notable that this new definition includes in the act the transfer of control over those persons and explicitly refers to begging and criminal activities as forms of exploitation.

2.C. Model legislation on trafficking in persons

2.C.1 United Nations Model Law against Trafficking in Persons

The United Nations Model Law against Trafficking in Persons was developed by the United Nations Office on Drugs and Crime to assist Member States in implementing the provisions of the U.N. Protocol and to ensure compliance with international human rights standards. The law therefore follows the U.N. Protocol definition but specifies, in the commentary, that it is advisable for States to include definitions that are in line with already-existing definitions provided in domestic law.⁴⁵ The law also encourages States to refer to other international human rights instruments when defining the crime,⁴⁶ thus encouraging States to widen the definition of trafficking in persons in their jurisdictions.

2.C.2. League of Arab States Model Law to Combat the Crime of Trafficking in Persons

The Arab League Model Law to Combat the Crime of Trafficking in Persons uses a definition of “trafficking in persons” that follows the U.N. Protocol’s definition. Article 1 defines trafficking as the following:

Recruitment, transportation, transfer, harbouring or receipt of persons—within the State’s borders or abroad—for the purpose of exploitation by means of threat or use force or other forms of coercion, abduction, fraud, deceit, abuse of power or a situation of vulnerability or need, by offering, promising or accepting payment or benefits to obtain the consent of a person who has authority over another. Exploitation shall include any of these acts that are committed against victims of human trafficking: acts of prostitution, all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, begging, removal of organs, conducting scientific experiments and any other form of exploitation that is legally criminalized.⁴⁷

2.C.3. Model Law to Combat Human Trafficking of the Gulf Cooperation Council

The Model Law to Combat Human Trafficking of the Cooperation Council of the Arab States of the Gulf Cooperation Council (GCC) was adopted in March 2006. Article 1 states:

Trafficking includes using or recruiting or transporting or harbouring or receiving a person with the intention of misusing them by forcing, threatening, deceiving, kidnapping them or abuse of office, or using position or influence or misusing power in any other way that is illegal, whether directly or indirectly or using that person in any way such as prostitution, assault, forced work or servitude or slavery or practices similar to slavery, bondage in slavery or organ removal.⁴⁸

2.D. Definitions of “trafficking in persons” in the countries of the MENA region

Since the passage of the U.N. Protocol in 2000, many countries around the world have adopted comprehensive anti-trafficking laws to combat human trafficking in compliance with the legislative mandate of the U.N. Protocol.

In the Arab world alone, 12 States have adopted comprehensive anti-trafficking laws: Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Mauritania, Oman, Qatar, Saudi Arabia, Syria, and the United Arab Emirates. Algeria and Lebanon have adopted anti-trafficking provisions in their penal codes. The remaining States Members of the Arab League continue to use existing laws to prosecute trafficking cases.

2.D.1. Bahrain

The law of Bahrain adopts an approach similar to that of the U.N. Protocol, especially in regard to the issue of consent. Article 1 of the law makes consent completely irrelevant for cases involving persons younger than 18 years old, stating the following:

- a. For the purpose of implementing the provisions of this Law, trafficking in persons shall mean the recruitment, transportation, transfer, harbouring, or receiving persons, by means of threat or the use of force or other forms of coercion, abduction, fraud, deceit, abuse of power or of position or any other direct or indirect unlawful means. Exploitation shall include the exploitation of such person or the prostitution of others or any other forms of exploitation, sexual assault, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- b. Recruitment, transportation, transfer, harbouring, or receiving of persons who are less than eighteen years of age or who are in a condition or personal state in which their consent or freedom of choice cannot be guaranteed shall be deemed as trafficking in persons if the intent is to exploit them even if such act is not accompanied by any of the means provided for in the preceding paragraph.
- c. The perpetrator shall be presumed to have knowledge of the real age of the victim who is not eighteen years of age.⁴⁹

2.D.2. Djibouti

Article 2 of Law No. 210 of 27 December 2007 on the Fight against Human Trafficking in Djibouti states “Human trafficking shall mean the process by which a person is recruited, transported, transferred, harboured or received within or outside the national borders by one or more persons or institutions by means of threat or other forms of coercion, fraud, deception, abduction, or the abuse of power for the purpose

of exploitation.”⁵⁰ Unlike the U.N. Protocol, the law does not provide a definition of exploitation and limits the definition of potential victims of trafficking to children under 18 years of age, girls and women, and the physically or mentally handicapped.

2.D.3. Egypt

Egyptian Law No. 64 of 2010 provides the most comprehensive definition of “trafficking” in the MENA region by expanding the U.N. Protocol definition and including in the forms of exploitation the exploitation of children in prostitution and all other forms of sexual exploitation, exploitation of children in pornography, begging, and removal of tissues or a part thereof. In particular, article 2 reads as follows:

A person who commits the crime of trafficking in persons shall be considered one who deals in any manner in a natural person, including: the sale, offer for sale, purchase, or promise thereof; or the use, transport, delivery, harbouring, reception, or receipt, whether within the country or across its national borders; if this occurred through the use of force, violence, or threat thereof; or through abduction, fraud, deception, abuse of power, or exploitation of a position of vulnerability or need; or through a promise to give or receive payments or benefits in exchange for obtaining the consent of a person to traffic another having control over him; or if the purpose of the transaction was exploitation in any of its forms, including: exploitation of acts of prostitution and all forms of sexual exploitation, exploitation of children in such acts and in pornography, forced labour or services, slavery or practices similar to slavery or servitude, or begging or removal of human organs, tissues or a part thereof.⁵¹

The definition is based on a general conceptualization of trafficking in persons as a transaction in persons. Like the U.N. Protocol, the Egyptian law defines “illegal means” broadly to include exploitation of a position of vulnerability. However, the law explicitly includes both domestic and transnational trafficking. This emphasis by the Egyptian legislature was important in recognizing the prevalence of internal trafficking within the country.

2.D.4. Iraq

Iraqi Law No. 28 of 30 April 2012 expands the U.N. Protocol definition of “trafficking” by including “sale” as a purpose and by making exploitation of human beings for the purpose of medical experimentation a crime of human trafficking. In particular, article 1 specifies:

For purposes of this law, the term “Human Trafficking” shall mean the recruitment, transportation, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of the giving or receiving of payments or benefits to obtain the consent of a person having power or guardianship over another person, for the purpose of sale or exploitation in acts of prostitution or sexual abuse, servitude, forced labour, slavery, begging, trade of human organs or for purposes of medical experimentation.⁵²

2.D.5. Jordan

Jordanian Law No. 9/2009 on Prevention of Human Trafficking provides a definition of “trafficking” that follows the U.N. Protocol in relation to the acts and the illegal means but defines “exploitation” to include exploitation for the purpose of forced labour, servitude, or slavery; removal of organs; or prostitution and other forms of sexual exploitation. Article 3 of the law states:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, exploitation for the purpose of forced labour or servitude, slavery, removal of organs, prostitution or other forms of sexual exploitation.⁵³

2.D.6. Kuwait

Kuwaiti Law No. 91/2013 on Combating Trafficking in Persons and Smuggling follows the U.N. Protocol and defines “trafficking in persons” in article 4 as follows:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, 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.⁵⁴

2.D.7. Mauritania

Law No. 025 of 2003 on Suppression of Trafficking in Persons of Mauritania states, in Article 1:

[T]rafficking in persons shall mean the recruitment, transportation, or transfer of people by means of the threat or use of force or other forms of coercion, abduction, deception, abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, unpaid labour, forced labour or services or similar practices, the removal of organs for financial gain, exploitation of the prostitution of others or other forms of sexual exploitation.⁵⁵

2.D.8. Oman

Oman's Royal Decree Promulgating the Law Combating Trafficking in Persons, follows the U.N. approach and, in article 2, states:

Any individual who intentionally carries out any of the following acts with the purpose of exploitation shall be adjudged as committing the crime of trafficking in persons: (a) To recruit, transport, harbour, or receive a person by instruments of coercion, threat, deceit, blackmail, or misuse of power, influence, or use of authority on that individual, or by any other illegal instrument, either directly or indirectly; (b) To recruit, transport, harbour, or receive a child even without using the instruments cited in the previous paragraph.⁵⁶

Article 1 of the law states that the “[i]llegal exploitation of a person shall include: prostitution, sexual assault, servitude, forced labour, enslavement, practices similar to slavery, subjugation, ... and removal of organs.”⁵⁷

Article 3 also stipulates that the consent of the victim is irrelevant if any threat was used, if the victim is a child, or if any circumstances render it impossible to determine his or her consent.⁵⁸

2.D.9. Qatar

The law of Qatar includes explicitly “exploitation of children for sexual purposes, pornography, and begging.” Thus, it emphasizes the particular problem of trafficking in children. Article 2 provides:

Exploitation shall include acts of prostitution or other forms of sexual exploitation, exploitation of children in such acts and in pornography or begging, servitude, compulsory services, slavery and practices similar to slavery, removal of human organs or tissues or part thereof.⁵⁹

2.D.10 Saudi Arabia

In Saudi Arabia, the Suppression of the Trafficking in Persons Act, promulgated by Royal Decree No. M/40 of 2009 includes “begging” and “subjecting a person to medical tests”⁶⁰ in its definition of “trafficking in persons.”

2.D.11. Syria

The Syrian law, without specifying any form of trafficking, provides for a very general definition of “illegal acts and purposes” in “consideration for material or moral gain or a promise thereof or offer of privileges or attempt to achieve any of these or others.”⁶¹ However, article 5 of the Syrian law states that sexually abusing a child, including using the child in pornography, shall also be considered trafficking in persons.⁶²

2.D.12. United Arab Emirates

Influenced by the Arab League Model Law to Combat the Crime of Trafficking in Persons, the United Arab Emirates passed a human trafficking law in 2006 that was limited to criminalization. In defining the crime of trafficking in persons, the law states:

The recruitment, transportation, transfer, or receipt of persons by means of threat or force or other forms of coercion, abduction, fraud, deception, abuse of power or abuse of a position of vulnerability, or of the giving or receiving of payments or benefits in order to gain the consent of a person having control over another person for the purpose of exploitation.⁶³

2.D.13. Countries with anti-trafficking provisions in their penal codes

In 2009, Algeria amended its penal code to include the definitions of “organ trafficking,” “trafficking in persons,” and “migrant trafficking.” It also added begging to the forms of trafficking in persons. Article 303 states:

“Trafficking in persons” is defined as recruitment, transport, transfer, harbouring or receiving one or many persons by means of threat or use of force or other forms of coercion, abduction, fraud, deceit, abuse of power or a situation of vulnerability, or by offering or accepting payment or benefits to obtain the consent of a person who has authority over another to the end of exploitation. “Exploitation” comprises exploitation of another’s prostitution or any other form of sexual exploitation, exploiting another’s begging, labour or forced services, slavery or practices similar to slavery, servitude or taking of organs.⁶⁴

The Algerian law expands the U.N. definition by including other forms of exploitation, but it is, however, more restrictive than the U.N. Protocol in regard to the issue of consent and provides that consent of the victim is irrelevant only when illegal means are used without making a broader consent exception for children.⁶⁵

Article 586(1) of the Lebanese law defines “exploitation” as entailing forcing a person to participate in one of the following acts: (a) acts punishable by law; (b) prostitution and exploitation of the prostitution of others; (c) sexual exploitation; (d) begging; (e) slavery or practices similar to slavery; (f) forced or compulsory labour, including recruitment, forced or compulsory recruitment of children in armed conflict; (g) forced involvement in terrorist attacks; and (h) removal of human organs or tissues.⁶⁶

2.D.14. Illegal means as a requirement for establishing a crime of trafficking in persons

In determining whether illegal means are necessary to establish a crime of trafficking, Arab trafficking laws take two approaches. One, represented by the Egyptian law, follows the U.N. Protocol in defining “illegal means” broadly to include “exploitation of a position of vulnerability.”⁶⁷ The other, modelled by the Syrian anti-trafficking law, does not require illegal means to establish the crime of trafficking in persons. Article 4(1) of the Syrian law defines the crime by requiring acts and illegal purposes,⁶⁸ whereas article 4(2) states that the criminal nature of the acts mentioned above shall not change whether they were committed by force or threat of force; by resorting to violence or persuasion; by exploitation of ignorance or vulnerability; by deception, fraud, or abuse of office; or by conspiring with or providing assistance to one who has authority over the victim.⁶⁹ Furthermore, Article 4(3) states that “in all cases consent of the victim is irrelevant.”⁷⁰ According to this model, illegal means are not elements in the crime of trafficking but are instead aggravated circumstances that may enhance the penalty.

2.E. Trafficking and slavery

In its comprehensive approach to trafficking, the U.N. Protocol treats slavery as one of the purposes of trafficking. In article 3(a), it states that trafficking in persons occurs “for the purpose of exploitation” and that “[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁷¹ The U.N. Protocol therefore makes trafficking in persons a crime distinct from that of slavery and indicates that slavery or practices similar to slavery are one of the purposes for which victims are trafficked. However, given that slavery and practices similar to slavery constitute one of the exploitative purposes of trafficking, the prohibition of slavery remains an important element in combating trafficking in persons.

The clearest distinctions between slavery and trafficking in persons may be drawn between ownership and control and undue influence and exploitation. A victim of trafficking in persons may not be subject to “ownership,” although he or she may be under the control of the trafficker, such as through physical or psychological coercion, deception or threats, as defined in the U.N. Protocol. Thus, the understanding of what constitutes “illegal means” has shifted in focus from the exercise of the power of ownership as conveyed in the 1926 definition of “slavery” in the Convention to Suppress the Slave Trade and Slavery to the exploitation of a position of vulnerability and the exercise of other forms of control.

Case Study

In the first case in front of the Economic Community of West African States (ECOWAS) Court, a young Nigerian woman was born into a slave class and sold to a man whom she was forced to marry at the age of 12. She was psychologically, physically, and sexually abused; was forced to perform housework and fieldwork; and continually had her movements restricted. She also bore her husband two children. When she was old enough, the husband gave her signed documents freeing her; however, he tried to maintain his control over her. She took the case to a local tribunal, which granted her freedom. The husband appealed, and the ruling was reversed. In the meantime, the victim had married a man of her choosing with her brother’s consent. The victim, her new husband, and her brother were subsequently arrested. The victim took the case to the ECOWAS Court arguing that the State of Niger had failed to follow its own anti-slavery law, thus violating its obligations to the Treaty of ECOWAS, the African Charter on Human and Peoples’ Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women. The ECOWAS Court held that the State of Niger was guilty of violating the victim’s fundamental human rights, because she was treated like a slave and not as the man’s wife, and that by not protecting the victim, the State condoned the practice of slavery. The court held that “there is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment, ... still constitute[s] slavery.” The victim received CFAF 10 million.⁷²

2.F. Smuggling of migrants

The difference between trafficking in persons and smuggling of migrants is not always clear and, even in cases with a great deal of information, may be difficult to discern. Though both practices involve money, movement of people, and often the same routes, the lines between them are sometimes blurred.

According to the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized

Crime, “smuggling of migrants” means “[t]he procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.”⁷³ Bearing in mind this definition, three key differences can be identified between migrant smuggling and trafficking: transnationality, exploitation, and source of profit.

2.F.1. Transnationality

To smuggle a person means to facilitate the person’s illegal border crossing and entry into another country. Trafficking in persons, in contrast, need not involve any border crossing. When it does, the legality or illegality of the border crossing is irrelevant. Thus, although smuggling of migrants is always, by definition, transnational, trafficking need not be.

2.F.2. Exploitation

The relationship between the smuggler and the migrant usually ends once the migrant has crossed the border. Smuggling fees are paid in advance or on arrival. The smuggler has no intention of exploiting the smuggled person after arrival. The smuggler and the migrant are partners, albeit disparate, in a commercial operation that the migrant enters into willingly. Trafficking involves the ongoing exploitation of the victim in some manner to generate illicit profits for the trafficker. The trafficker’s intention is to maintain the relationship with the exploited victim to the final destination. Smuggling can become trafficking, for example, when the smuggler “sells” the migrant or deceives, coerces, or forces the migrant to work off transportation costs under exploitative conditions.

2.F.3. Source of profit

One important distinction between smuggling and trafficking is the means by which the offenders generate income. Smugglers generate their income from fees to move people. Traffickers, in contrast, continue to exert control over their victims in order to garner additional profits through their ongoing exploitation.

2.G. Routes of trafficking in persons in the MENA region

People trafficked for any of the exploitative purposes defined by the U.N. Protocol may travel over international or domestic routes. They may be trafficked by individuals or organized criminal groups. Article 4 of the U.N. Protocol states, except as otherwise stated therein, that the offence of trafficking in persons occurs “where those offences are transnational in nature and involve an organized criminal group.”⁷⁴

According to article 3(2) of the United Nations Convention against Transnational Organized Crime, the parent convention of the U.N. Protocol, international trafficking occurs when “[i]t is committed in more than one State; or is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; or is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or is committed in one State but has substantial effects in another State.”⁷⁵ Moreover, under article 16 (extradition) and article 18 (mutual legal assistance), offences are considered transnational if the person sought is located in the territory of the requested State or if victims, witnesses, proceeds, instrumentalities, or evidence is located in the requested State. Article 2(a) defines “organized criminal group” as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”⁷⁶

Transnationality and the involvement of an organized criminal group are not required for the establishment of the crime of trafficking in persons in national legislation. As article 34(2) of the United Nations Convention against Transnational Organized Crime states:

The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group.⁷⁷

In summary, trafficking routes can be international, regional, and domestic. The following are the main routes in the MENA region:

- Regional trafficking from less affluent countries in North Africa to more affluent countries in the Gulf States
- International trafficking to all Arab countries and especially to the Gulf States, from Eastern Europe, the Caucasus, Central Asia, and South and Southeast Asia
- International trafficking from North Africa to Europe, the United States, and Canada
- Domestic trafficking between rural areas and the main cities in all countries of the MENA region

Applying Your Knowledge: What Is Trafficking in Persons?

Exercise A: Review Questions

1. How does the U.N. Protocol define the role of consent in trafficking in persons?

2. When does marriage become a form of trafficking in persons?

3. What forms of special protection does international law provide to children?

4. What are the three main differences between trafficking in persons and smuggling under international law?

Chapter 2 Endnotes

- 5 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (U.N. Protocol), opened for signature 12 December 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (entered into force 25 December 2003), art. 3(a).
- 6 Trafficking Victims Protection Act (TVPA) of 2000 § 112, 22 U.S.C. § 1591.
- 7 U.N. Protocol, art. 3(b).
- 8 See Looking Back, Thinking Forward: Fourth Report on the Implementation of the Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, Stockholm, Sweden, August 1996 (Bangkok: ECPAT International, 2000).
- 9 U.N. General Assembly, Implementation of General Assembly Resolution 60/251 of 15 March 2006 titled “Human Rights Council.” Written statement submitted by the Global Alliance Against Traffic in Women (GAATW), a non-governmental organization with special consultative status, A/HRC/5/NGO/36, 7 June 2007.
- 10 United States Agency for International Development, “Assessment on the Status of Trafficking in Persons in Egypt: Changing Perceptions and Proposing Appropriate Interventions,” August 2007, 10–11, http://pdf.usaid.gov/pdf_docs/PNADK922.pdf.
- 11 Ali Gomaa, Fatwa of the Grand Mufti of the Arab Republic of Egypt, on the issue of early marriage, Egyptian National Council for Childhood and Motherhood, <http://www.child-trafficking.info/upload/Files/13375926122.pdf>.
- 12 Case No. 2605/2010, Amman Criminal Court of First Instance.
- 13 United States v. Abdenasser Ennassime, 2006, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/united_states_v._abdenasser_ennassime.html?tmpl=old.
- 14 Coalition for Organ Failure Solutions, “Sudanese Victims of Organ Trafficking in Egypt: A Preliminary Evidence-Based, Victim-Centered Report,” 2011, 2, http://www.cofs.org/english_report_summary_dec_11_2011.pdf.
- 15 State v. Netcare-Kwa-Zulu Limited, 2010, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/zaf/2010/state_v._netcare_kwa-zulu_limited.html?tmpl=old.
- 16 United Nations International Children’s Fund, “The End Trafficking Project,” <http://www.unicefusa.org/campaigns/end-trafficking/>.
- 17 U.N. Protocol, art. 6(4).
- 18 Ibid., art. 3(c).
- 19 Republic of Moldova- Dosar nr 1ra, 193/1, 2010, UNODC Human Trafficking Case Law Database. http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/mda/2010/dosar_nr_1ra_-_19310.html?tmpl=old.
- 20 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, opened for signature 7 September 1956 (entered into force 30 April 1957), art. 1(d).
- 21 Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, art. 3(c), http://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf.
- 22 Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption, opened for signature 14 June 1995, Preamble.
- 23 Qur’an, Surah 33:4-5.
- 24 United Nations Department of Economic and Social Affairs, Population Division, Child Adoption: Trends and Policies (New York: United Nations), <http://www.un.org/en/development/desa/population/publications/pdf/policy/child-adoption.pdf>.
- 25 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, opened for signature 25 May 2000 (entered into force 18 January 2002), art. 2(b).
- 26 Ibid., art. 10(1).
- 27 Ibid., art. 10(3).
- 28 The Protection Project, The Johns Hopkins University, School of Advanced International Studies (SAIS), “Review of the U.S. State Department Trafficking in Persons Report 2013,” July 2013, 35, <http://www.protectionproject.org/wp-content/uploads/2013/07/TPP-Review-of-TIP-Report-2013-Final.pdf>.
- 29 Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, art. 2(a).
- 30 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, art. 2(c).

- 31 International Centre for Missing and Exploited Children, http://www.icmec.org/missingkids/servlet/PublicHomeServlet?LanguageCountry=en_X1&.
- 32 International Centre for Missing and Exploited Children, *The Child Pornography Model Legislation and Global Review*, 6th ed. (Alexandria, VA: ICMEC, 2010).
- 33 U.N. General Assembly, 85th plenary meeting, "Declaration on the Elimination of Violence against Women," 20 December 1993, A/RES/48/104, art. 2.
- 34 Law of 16 March 2008 [on domestic violence] (Jordan), <http://www.hsph.harvard.edu/population/domesticviolence/domesticviolence.htm>.
- 35 Rome Statute of the International Criminal Court, A/CONF. 183/9, opened for signature 17 July 1998 (entered into force 1 July 2002), art. 7.
- 36 International Labour Organization (ILO) Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, C182, opened for signature 17 June 1999 (entered into force 19 November 2000), art. 3.
- 37 Guiding Principles on Human Cell, Tissue and Organ Transplantation, adopted by the World Health Assembly on 21 May 2010, Commentary to Principle 5.
- 38 ILO Convention Concerning Forced or Compulsory Labour, opened for signature 28 June 1930 (entered into force 1 May 1932), art. 2.
- 39 *Ibid.*, art. 1.
- 40 Arab Charter on Human Rights, League of Arab States, 22 May 2004, (entered into force 15 March 2008), art. 9; reprinted in *International Human Rights Report*, vol. 12, 893.
- 41 Arab Charter on Human Rights, art. 10.
- 42 Arab Charter on Human Rights, art. 43. See also Dr. Mohamed Mattar, "Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards," *Harvard Human Rights Journal*, vol. 26 (Spring 2013), http://www.protectionproject.org/wp-content/uploads/2013/07/Article-43-of-the-Arab-Charter-on-Human-Rights_Dr.-Mohamed-Mattar_HHRJ_Spring-2013.pdf.
- 43 Council of Europe Convention on Action against Trafficking in Human Beings, 2005, art. 4.
- 44 Directive 2011/36/EU of the European Parliament and of the Council on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims of 5 April 2011, art. 2.
- 45 United Nations Model Law against Trafficking in Persons, art. 5, Commentary.
- 46 *Ibid.*
- 47 Arab League Model Law on Combating Human Trafficking of 2012, art. 1.
- 48 Gulf Cooperation Council Model Law to Combat Human Trafficking (prepared by the Expert Committee Meeting at the General Secretariat, Riyadh, Saudi Arabia, 19-21 March 2006), art. 1.
- 49 Law No. 1 of 9 January 2008 (Law with Respect to Trafficking in Persons) (Bahrain), art. 1.
- 50 Law No. 210 of 27 December 2007 (Djibouti), art. 2, http://www.protectionproject.org/wp-content/uploads/2010/09/Djibouti_TIP-Law_2007.pdf.
- 51 Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), Al-Jarida Al-Rasmiyya, May 2010 (Egypt), art. 1, http://www.protectionproject.org/wp-content/uploads/2010/09/Law_regarding_Combating_Human_Trafficking_FINAL1.pdf.
- 52 Law No. 28 of April 2012 on Combating Human Trafficking (Iraq), <http://www.protectionproject.org/wp-content/uploads/2010/09/- - - -2012-Official-TIP-Law.pdf>.
- 53 Law No. 9 of 3 March 2009 on Prevention of Human Trafficking (Jordan), art. 3, <http://www.protectionproject.org/wp-content/uploads/2010/09/Jordan-Anti-Trafficking-Legislation-2009-and-TIP-Law-2008.pdf>.
- 54 Law No. 91/2013 on Combating Trafficking in Persons and Smuggling (Kuwait), art. 4, http://www.protectionproject.org/wp-content/uploads/2010/09/Kuwait_TIP-Law_20131.pdf.
- 55 Law No. 025 of 17 July 2003 on Suppression of Trafficking in Persons (Mauritania), art. 1, http://www.protectionproject.org/wp-content/uploads/2010/09/Mauritania_TraffickingLaw_2003-French.pdf.
- 56 Royal Decree 126/2008 Promulgating the Law Combating Trafficking in Persons, 23 November 2008 (Oman), art. 2.
- 57 *Ibid.*, art. 1.
- 58 *Ibid.*, art. 3.
- 59 Law No. 15 of 2011 (Regarding Combating Human Trafficking) (Qatar), art. 2, http://www.protectionproject.org/wp-content/uploads/2010/09/Qatar_TIP-Law_2011-Ar.pdf.

- 60 Royal Decree No. M/40 of 2009 (Suppression of the Trafficking in Persons Act), Um Al-Quaran, 7 August 2009 (Saudi Arabia), art. 2, http://www.protectionproject.org/wp-content/uploads/2010/09/Saudi-Arabia_TIP-Law_2009_Combined.pdf.
- 61 Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons) (Syria), art. 4, http://www.protectionproject.org/wp-content/uploads/2010/09/Syria_Trafficking-Law_2010-arabic.pdf.
- 62 *Ibid.*, art. 5.
- 63 Law No. 51 of 9 November 2006 (Combating Human Trafficking Crimes) (United Arab Emirates), art. 1, http://www.protectionproject.org/wp-content/uploads/2010/09/United-Arab-Emirates_Trafficking-Law_2006-Ar+En.pdf.
- 64 Law No. 09-01 (Modifying and Completing the Penal Code Enacted by Order No. 66-156 of 8 June 1966) (Algeria), art. 303, http://www.protectionproject.org/wp-content/uploads/2010/09/Algeria_TIP-Law_2009-Fr-Ar.pdf.
- 65 *Ibid.*, art. 303.
- 66 Law 164 of 24 August 2011 (Punishment of Crimes of Trafficking in Persons) (Lebanon), art. 586(1), http://www.protectionproject.org/wp-content/uploads/2010/09/Lebanon_TIP-Law_2011-Ar.pdf.
- 67 Law No. 64 of 2010 (Egypt), art. 1.
- 68 Legislative Decree No. 3 of 2010 (Syria), art. 4(1).
- 69 *Ibid.*, art. 4(2).
- 70 *Ibid.*, art. 4(3).
- 71 U.N. Protocol, art. 3(a).
- 72 H.M. v. Republic of Niger, 2008, UNDOC Human Trafficking Case Law Database, https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/ner/2008/h.m._v._republic_of_niger.html?tmpl=old.
- 73 Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organized Crime, art. 3(a).
- 74 U.N. Protocol, art. 4.
- 75 United Nations Convention against Transnational Organized Crime (UNTOC), G.A. Res. 55/25, U.N. Doc. A/Res/55/25 (8 January 2001), art. 3(2).
- 76 *Ibid.*, art. 2(a).
- 77 *Ibid.*, art. 34(2).

Chapter 3. Combating Trafficking in Persons in the MENA Region: Prevention

3.A. Introduction

3.A.1. Prevention: The first *P* of the four *Ps* approach to combating trafficking in persons

Combating trafficking in persons in the Middle East and North Africa (MENA) region is a challenging task that requires a holistic approach and constant commitment by all sectors of the government and civil society. Although measures to combat trafficking may differ, four main strategies can be identified: prevention, prosecution, protection, and participation.

The first of the four strategies, prevention, is a broad category that refers to the different potential measures that may be undertaken to keep trafficking in persons from occurring. Although some measures may be on the international level (for example, agreements to increase the patrol of remote land borders), others may occur at the local level (such as outreach efforts by schools, public interest groups, and businesses).

3.A.2. Strengthening prevention measures and procedures: A main goal of the Arab Strategy

The need to prevent the crime is one of the main goals of the Comprehensive Arab Strategy for Combating Trafficking in Human Beings of the League of Arab States [hereafter the Arab Strategy].⁷⁸ The Arab Strategy lists eight focus areas, and for each area it identifies various strategic goals. The third focus area is dedicated to strengthening prevention measures and procedures. In particular, it calls on Member States to undertake the following measures:

1. Draft policies, programs and other comprehensive measures to prevent and combat trafficking in persons and to prevent re-victimization;
2. Adopt programs that aim to prevent recidivism among [trafficking in persons] offenders;
3. Ensure that public policies on preventing trafficking in persons are in harmony with related policies and programs in the fields of migration, crime prevention, education, employment, health, security, non-discrimination, economic development, human rights protection, child protection and gender equality;
4. Focus on ensuring that the policies, programs and measures which are adopted include cooperation with non-governmental organizations (NGOs), with other related organizations and with all civil society actors.⁷⁹

3.A.3. Six main categories of preventative measures to combat trafficking in persons

According to the Arab Strategy and other international best practices, preventive measures can be divided into the following categories:

- Research and collection of data on trafficking in persons
- Monitoring of the status of trafficking in persons
- Organization of public awareness campaigns on trafficking in persons
- Reform of school education to include trafficking in persons in the curriculum
- Alleviation of factors that render people vulnerable to trafficking
- Discouragement of demand for victims of trafficking in persons

3.B. Measures to prevent trafficking in persons

3.B.1 Research and collection of data on trafficking in persons

Research is an important component of prevention, because an accurate understanding of trafficking in persons and its changing dynamics serves to inform policy development, making policies more effective in eradicating the problem. Research is also an important tool in galvanizing momentum to address trafficking in persons, because accurate statistics draw attention to the phenomenon's scope. Data collection is also crucial to setting baselines against which progress in anti-trafficking measures can be monitored and assessed. Systematic data collection, analysis, and dissemination are also needed to ensure that policies are evidence based. Data should be, at a minimum, disaggregated by age, gender, national origin, and forms of exploitation and standardized across countries.

Best Practice

In October 2011, the United Nations Office on Drugs and Crime (UNODC) launched the UNODC Human Trafficking in Persons Case Law Database. The database provides immediate public access to officially documented instances of trafficking. It contains details on the nationalities of the victims and of the perpetrators, the trafficking routes, the verdicts, and other information related to prosecuted cases from around the world. As such, it provides not only statistics on the number of prosecutions and convictions but also the real-life stories of trafficked persons as documented by the courts. The database is aimed at assisting judges, prosecutors, policy makers, media researchers, and other interested parties by making available details of real cases with examples of how the respective national laws in place can be used to prosecute human trafficking.⁸⁰

The need to prevent the crime through data collection is also one of the main goals of the Arab Strategy. Among its measures, it lists (a) encourage and assist Arab States to establish unified national databases to monitor the types and characteristics of cases of trafficking in persons, the legislation in force regarding these cases, as well as the data required by criminal justice agencies—in particular statistics on indictments, trials, and convictions; (b) gather information and compile statistics that help identify the obstacles and challenges to combating trafficking in persons; (c) encourage scientific research and specialized field studies to examine and analyse trafficking in persons, explore the reasons behind this phenomenon, and clarify its nature, forms, patterns, methods, and routes; and (d) provide for the development of scientific research methods in advanced fields at both the governmental and non-governmental levels.

3.B.2. Monitoring and reporting on the status of trafficking in persons

Related to the collection of data is the monitoring of the status of trafficking in persons in the country. The ultimate goal of monitoring and reporting on government anti-trafficking policies and actions is to obtain the necessary information to develop accurate policies to prevent the crime and to create an effective mechanism for ensuring that promises materialize into action and that the corresponding legal and administrative provisions are implemented.

3.B.2.1. Reporting models

There are three main models of monitoring and reporting: the national rapporteur, the parliamentary committees and hearings, and the inter-ministerial task forces.⁸¹

National rapporteur: Appointing a national rapporteur on trafficking in persons is one method of holding the government accountable to its implementation of anti-trafficking policies. Frequently, this model involves the choice of one national ministry to serve as the rapporteur, to collect relevant information from all concerned agencies, and to present such information to the appropriate oversight body in the legislature. National rapporteurs can be independent entities or national ministries.

Best Practice

In April 2000, the Dutch government established a position called the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children. The main task of the Rapporteur is to report on the nature and extent of human trafficking in the Netherlands and on the effects of the anti-trafficking policy pursued.⁸²

Parliamentary committees: Reports may be made both to and by parliamentary committees that are charged with oversight of the government's performance in combating trafficking in persons and that are authorized to investigate government action in this regard. Such committees may be specific to trafficking in persons or broader in scope, such as committees addressing foreign policy, human rights, women's and children's rights, or other related topics.

Best Practice

The United States monitors and reports on human trafficking by means of holding congressional hearings on the subject. Conducting investigative and legislative hearings is one facet of congressional oversight. Hearings on trafficking in persons and on the implementation of the legislative mandate in the United States and abroad are held regularly and represent an opportunity for the government and representatives of civil society to publicly assess the status of the government's compliance with national legislation and to discuss possible amendments to the law.⁸³

Inter-ministerial task forces: In this model, the reporting and monitoring function is entrusted to multi-agency anti-trafficking task forces. Many of these special task forces undertake research and report on the status of trafficking in human beings and government action to combat the phenomenon.

Best Practice

Each year, the U.S. Annual Report on Trafficking in Persons (TIP Report) is published by the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons. The report documents the compliance of countries around the world, including the United States, with the minimum standards set forth in the U.S. Trafficking Victims Protection Act of 2000 and the subsequent reauthorizations of 2003, 2005, 2008, and 2013.⁸⁴

3.B.2.2. Reporting on trafficking in persons in the MENA region

The U.N. Protocol does not provide for a periodic monitoring mechanism whereby States Parties to the Protocol may be held accountable and liable for failures to comply with its provisions. However, other enforcement mechanisms may be used to report on the status of trafficking in persons within a State and to monitor its compliance with standards set in the U.N. Protocol and other international legal instruments.

For example, article 18 of the United Nations Convention on the Eliminations of All Forms of Discrimination against Women (CEDAW) calls on States to report on the progress of their government in implementing each of the rights enshrined in the convention. Article 18 states:

States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect: (a) Within one year after the entry into force for the State concerned; and (b) Thereafter at least every four years and further whenever the Committee so requests. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.⁸⁵

The progress reports include State efforts to combat human trafficking that is prohibited under article 6 of the convention, which provides that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”⁸⁶

Best Practice

In its report submitted to the CEDAW Committee in 2008, Lebanon states that its current national law criminalizes clandestine prostitution and the exploitation of prostitution. Lebanon also reports that in 2005 it “drafted measures to prevent and combat trafficking.”⁸⁷ According to the report, “Lebanese authorities have suspended the granting of new licenses for the establishment of brothels and maisons de rendez-vous.”⁸⁸ It also notes a slight decrease in cases of prostitution and mentions its efforts to prevent and protect victims of trafficking and prostitution, namely, cooperation between embassies and the opening of an International Organization for Migration office.⁸⁹

Similarly, States Parties to the 1989 Convention on the Rights of the Child, under articles 44 and 45, are requested to report on the progress made in their compliance with the rights and duties enshrined in the convention, including their obligations under article 35 to “[t]ake all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”⁹⁰

Best Practice

In 2006, the Syrian government submitted a report addressing concerns raised by the United Nations Committee on the Rights of the Child regarding practices incongruent with article 35 of the Convention on the Rights of the Child. Concern was raised over a lack of implementation in legal codes prohibiting child pornography and child trafficking. The government responded with the assertion that it was made “perfectly clear” that the sale or exploitation of children for the purposes of pornography is classified as an offence. As of 2005, the government noted that a national commission, by Decree No. 5114, had been created with the responsibility of drafting fully inclusive legislation to contest violations involving trafficking in persons and “proposing the establishment of reception centres and labour standards to be observed by them.”⁹¹

Reporting is an important element of the Arab Charter on Human Rights, which imposes on States, under article 48, a duty to “[s]ubmit reports to the Secretary General of the League of Arab States on the measures they have taken to give effects to the rights and freedoms recognized in the Charter.”⁹² As previously mentioned, articles 9 and 10 of the Arab Charter prohibit trafficking in persons, thus imposing on States a duty to report on the efforts undertaken to confront the crime.

Following the duty imposed on signatory States by the Arab Charter, the Arab Strategy also calls on States to report annually on the status of trafficking and encourages Arab States to issue an annual report monitoring and analysing trafficking in persons, indicating the size of the phenomenon and its various characteristics. Such a report shall also show the progress achieved in efforts to prevent and combat trafficking in persons, as well as progress in international cooperation and victim protection.⁹³

The inter-ministerial task force is the most prevalent form of monitoring and reporting mechanism in the Arab world. For instance, Egypt established the National Coordinating Committee to Combat and Prevent Trafficking in Persons in 2007. It is a consultative body for the authorities and other national institutions that provides recommendations to the Council of Ministers. Similarly, the National Committee to Combat Human Trafficking in the United Arab Emirates has a dual mandate: (a) to coordinate between the federal ministries and departments working to eliminate crimes related to trafficking in persons and (b) to strictly monitor the enforcement of the anti-human trafficking law. The committee has also been authorized to prepare reports on national efforts to fight human trafficking.

3.B.3. Organization of public awareness campaigns on trafficking in persons

Public awareness serves not only as an important tool to inform the public about the dangers of trafficking in persons and the signs to help recognize it but also as an instrument that is helpful in rescuing those who may have already fallen victim to it, particularly among those persons who may come into contact with potential victims of trafficking, as well as the general public.

Best Practice

Slavery: A 21st-Century Evil is a series of documentaries broadcast by Al Jazeera to report on the striking rise in slavery and trafficking in persons worldwide. In each episode, journalist Rageh Omaar embarks on a worldwide journey to uncover the truth about the reality of modern slavery and to explain the reasons slavery continues to persist. Episodes include “Sex Slaves,” “Food Chain Slaves,” “Bonded Slaves,” “Child Slaves,” “Bridal Slaves,” “Charcoal Slaves,” and “Prison Slaves.”⁹⁴

3.B.3.1. The role of civil society in raising awareness

The United Nations Global Plan of Action of August 2010 champions the importance of public awareness campaigns when it calls for civil society engagement in raising awareness among persons vulnerable to trafficking. In particular, section 18 calls for the following:

Promote awareness-raising campaigns aimed at persons at risk of being trafficked and at the general public through education and the effective involvement of the mass media, non-governmental organizations, the private sector and community leaders with a view to discouraging the demand that fosters the exploitation of persons, especially women and children, and that leads to trafficking, and collect and disseminate best practices on the implementation of those campaigns.⁹⁵

3.B.3.2. The role of religious leaders in raising awareness

The Arab Strategy emphasizes the important role of religious leaders in raising awareness when it urges states to do the following:

Increase the role of religious institutions in raising awareness about the dangers of trafficking in persons and its various dimensions, while highlighting the role of divine law (Shari’a) in prohibiting it.⁹⁶

3.B.3.3. The role of the arts in raising awareness

Of special note is the Egyptian National Action Plan against Trafficking in Persons (January 2011–January 2013). Implemented by the National Coordinating

Committee on Preventing and Combating Human Trafficking, the plan encourages Egyptian states to develop public awareness materials and information, including multimedia materials, and to establish a National Day against Human Trafficking by using the arts.⁹⁷

3.B.4. Reform of school education to include trafficking in persons in the curricula

Akin to public awareness and research, education is another important tool in the prevention of trafficking in persons. Educational programs should aim at teaching young people about the modus operandi and dangers presented by trafficking crimes, the opportunities for legal migration and foreign employment, and the grave risks involved in irregular migration.

The need to include trafficking in persons in academic curricula was among the recommendations issued during the Doha Foundation Forum, which was organized by the Qatar Foundation for Combating Human Trafficking in March 2010. In particular, the forum participants emphasized the importance of including the concept of combating human trafficking in educational curricula in schools and universities and encouraging research and specialized studies in the field of human trafficking.

Similarly, the Brussels Declaration on Preventing and Combating Trafficking in Human Beings, which was adopted on 29 November 2002, explicitly states:

Closer links should be developed with educators and Ministries of Education with a view to elaborating and including relevant and realistic teaching modules in school and college curricula and to informing pupils and students of human rights and gender issues.⁹⁸

States can use different ways to ensure that trafficking in persons becomes a part of the academic curricula and that the educational system is also used to inform students about this phenomenon. In States with ample academic independence, educational institutions are also free to promote the awareness of trafficking in persons among their student bodies, regardless of State action.

Best Practice

In 2007, The Protection Project at The Johns Hopkins University School of Advanced International Studies in Washington, DC, launched an initiative called the Association of Scholars of Trafficking in Persons. The initiative is aimed at promoting the teaching of trafficking in persons at the university level across the United States and Europe and at targeted universities in the Arab world, including Alexandria University in Egypt, Beirut Arab University in Lebanon, the University of Jordan in Jordan, Naïf Arab University for Security Sciences in Saudi Arabia, and the Royal Police Academy in Bahrain.⁹⁹

3.B.5. Alleviation of factors that render people vulnerable to trafficking

An additional measure to prevent trafficking in persons in the Arab world is to address its root causes and especially the economic, social, cultural, legal, and political factors that render people vulnerable to trafficking.

3.B.5.1. Economic insecurity

Economic insecurity is addressed directly in the U.N. Protocol, which mentions poverty, underdevelopment, and lack of equal opportunities as being among the root causes of trafficking in persons. Economic insecurity may also be extended to include unemployment and lack of access to basic health care, education, and social welfare.

Best Practice

Islamic Relief is an international relief and development charity that envisages a caring world where people unite to respond to the suffering of others, thereby empowering those individuals to fulfill their potential. Islamic Relief works in more than 25 countries to promote sustainable economic and social development. It works with local communities to eradicate poverty, illiteracy, and disease. Islamic Relief supports more than 27,000 orphans in more than 20 countries worldwide. These orphans, who lost their parents to conflict, famine, and disease, benefit from a sponsorship program, which ensures that they finish school and have enough money for food, health care, and household necessities. In addition to the one-to-one sponsorship, Islamic Relief supports orphans through housing projects, summer school, and vocational training.¹⁰⁰

3.B.5.2. Social and cultural insecurity

Social insecurity is related to a lack of access to social rights. Marginalization resulting from social insecurity derives from complex factors, including gender discrimination, ethnic divides, and stigmatization of certain groups within societies. Such marginalization often translates into discrimination in education, employment practices, access to legal and medical services, and access to information. Similarly, certain cultural practices, such as forced marriages and temporary marriages, increase the vulnerability of certain groups, thereby contributing to the trafficking infrastructure. Many trafficked victims have also contracted HIV/AIDS or other sexually transmitted diseases, the reporting of which can be considered shameful in some societies, thus compounding victims' vulnerability.

3.B.5.3. Legal insecurity

Legal insecurity is manifested in lack of access to the criminal justice system, which occurs because the trafficked person is a foreigner, because he or she lacks access

to legal representation, or because the system itself does not offer an appropriate remedy. In addition, the insecurity may be fostered by the double witness rule or the corroborative evidence rule, because the criminal procedures of many countries still include these rules. The double witness rule does not allow victims of trafficking to be treated as credible witnesses, because it prohibits the admission of evidence of only one witness unless his or her testimony is corroborated by another witness or by other material evidence implicating the accused. As a result of that rule, trafficked persons are not heard in court.

3.B.5.4. Political insecurity

In addition to economic, social, and cultural insecurity, political insecurity may be a reason behind trafficking in persons. Political insecurity arises particularly in transitional societies where civil unrest, loss of national identity, and political instability may create a favourable environment in which corruption and organized crime, including trafficking in persons, flourish.

3.B.5.5. Special attention to the youth

In the Arab world, youth are particularly affected by these. To address the problem, the Arab Strategy includes, within its strategic goals and obligations on States, the following:

Attach special importance to the key, urgent needs of youth and treatment of the problems and challenges which this key segment faces in numerous areas, foremost of which are unemployment, lack of opportunities for university and graduate level education, and the weak participation of young people in the political and development process.¹⁰¹

Best Practice

In 2009, the International Organization for Migration and the Ministries of Internal Affairs and Education in Baku, Azerbaijan, offered courses in international trafficking in persons in 16 high schools. The effort was part of the Importance of Secondary School Education in Prevention of Human Trafficking in Azerbaijan project. The courses aimed at deepening the knowledge of high school students, ages 15 to 17, on the issues of trafficking in persons, illegal migration, and preventive initiatives. At the same time, public awareness measures and roundtables were conducted for parents and for 800 teachers from 50 high schools, who also received training on how to incorporate the subject of trafficking in persons in the school curricula.¹⁰²

3.B.6. Discouragement of demand for victims of trafficking in persons

In the field of economics, “demand” is defined as the consumer’s desire and willingness to pay a price for a specific good or service. Similarly, “demand” in the field of trafficking in persons refers to demand for labour that is exploitative or services that breach the human rights of the person delivering them. Such demand is shaped by social, cultural, political, economic, and legal factors that facilitate the trafficking process.

3.B.6.1. The employer, the consumer, and the third party

It is often difficult to differentiate between demand for labour and services that are legal and acceptable (and a natural element of productive markets) and those that are not. The employer of labour or the consumer of services may not be aware that a person who has been trafficked is providing the labour or services. Analysis of demand for trafficked persons is thus best undertaken in the context of a wider analysis of certain types of labour or services in which trafficked persons could be exploited. Three levels of demand related to trafficking in persons may therefore be identified: employer demand (employers, owners, managers, or subcontractors), consumer demand (clients in the sex industry, corporate buyers in manufacturing, and household members demanding domestic work); and third parties involved in the process (recruiters, agents, transporters, and others who participate knowingly in the movement of persons for the purposes of exploitation).

3.B.6.2. The U.N.’s approach to discouraging demand

Discouraging demand is increasingly considered an essential element in the prevention of trafficking. Article 9(5) of the U.N. Protocol states:

States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.¹⁰³

3.B.6.3. Prosecuting demand for victims of trafficking

A different approach was taken by the Council of Europe through article 19 of the Council of Europe Convention on Action against Trafficking in Human Beings, which encourages States to criminalize demand and stipulates the following:

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal

law, the use of services which are the object of exploitation as referred to in Article 4 (a) of this Convention, with the knowledge that the person is a victim of trafficking in human beings.¹⁰⁴

Worthy of notice is article 9 of the anti-trafficking Syrian law, which criminalizes demand for victims of trafficking as follows:

Anyone who gains benefit, whether material or moral, from services provided by the victim, with knowledge of the act of trafficking, shall be punished with imprisonment from 6 months to 2 years and a fine between 100,000 and 200,000 Syrian Liras.¹⁰⁵

Applying Your Knowledge: Combating Trafficking in Persons in the MENA Region: Prevention

Exercise A: Review Questions

1. What are the four main reporting models available and what are the advantages and disadvantages of using each model?

2. Explain how your government reports on the status of trafficking in persons.

3. How does the U.N. Protocol on trafficking address demand? Does the Council of Europe adopt a different approach to combat demand?

Chapter 3 Endnotes

- 78 Comprehensive Arab Strategy for Combating Trafficking in Human Beings of the League of Arab States (Arab Strategy), adopted by the Council of Arab Ministers of Justice, Resolution No. 879-27 of 15 February 2012.
- 79 Arab Strategy, 15.
- 80 United Nations Office on Drugs and Crime (UNODC) Human Trafficking Case Law Database, <https://www.unodc.org/cld/index.aspx>.
- 81 UNODC and Inter-Parliamentary Union, *Combating Trafficking in Persons: A Handbook for Parliamentarians* (Vienna: UNODC, 2009), 28.
- 82 National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, <http://www.dutchrapporteur.nl/about/>.
- 83 U.S. Congressional Hearings, <http://www.loc.gov/law/find/hearings.php>.
- 84 U.S. Department of State Office to Monitor and Combat Trafficking in Persons, <http://www.state.gov/j/tip/>.
- 85 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), opened for signature 18 December 1979 (entered into force 3 September 1981), art. 18.
- 86 *Ibid.*, art. 6.
- 87 CEDAW, Country Report, Lebanon, Third Periodic Report, 40th Session, 2008, 43.
- 88 *Ibid.*, 44.
- 89 *Ibid.*
- 90 Convention on the Rights of the Child, opened for signature 20 November 1989 (entered into force 2 September 1990), art. 35.
- 91 “Written Replies by the Government of the Syrian Arab Republic to the List of Issues (Crc/C/Opsc/Syr/Q/1) to Be Taken Up in Connection with the Consideration of the Initial Report of the Syrian Arab Republic Submitted under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Crc/C/Opsc/Syr/1),” Committee on the Rights of the Child, 43rd Session, September 2006, 5.
- 92 Arab Charter on Human Rights, League of Arab States, 22 May 2004, (entered into force 15 March 2008), art. 48; reprinted in *International Human Rights Report*, vol. 12, 893.
- 93 Arab Strategy.
- 94 Al Jazeera, *Slavery: A 21st Century Evil*, documentary series, <http://www.aljazeera.com/programmes/slaverya21stcenturyevil/2011/10/20111010152040468529.html>.
- 95 United Nations Global Plan of Action of August 2010, sec. 18.
- 96 Arab Strategy.
- 97 National Coordinating Committee on Preventing and Combating Human Trafficking, *Egyptian National Action Plan against Trafficking in Persons*, January 2011–January 2013.
- 98 Brussels Declaration on Preventing and Combating Trafficking in Human Beings.
- 99 The Protection Project Association of Scholars in Trafficking in Persons, <http://www.protectionproject.org/get-involved/association-of-scholars/>.
- 100 Islamic Relief Worldwide, <http://www.islamic-relief.com/whatwedo/7-5-orphans.aspx>.
- 101 Arab Strategy.
- 102 The Protection Project, The Johns Hopkins University, School of Advanced International Studies (SAIS), *100 Best Practices in Combating Trafficking in Persons: The Role of Civil Society, A Series of 100 Best Practices*, vol. 1, 85, http://www.protectionproject.org/wp-content/uploads/2012/07/100-Best-Practices-in-Combating-TIP_Final-Doc1.pdf.
- 103 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, opened for signature 12 December 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (entered into force 25 December 2003), art. 9(5).
- 104 Council of Europe Convention on Action against Trafficking in Human Beings, art. 19.
- 105 Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons) (Syria), art. 9, http://www.protectionproject.org/wp-content/uploads/2010/09/Syria_Trafficking-Law_2010-arabic.pdf.

Chapter 4. Combating Trafficking in Persons in the MENA Region: Prosecution

4.A. Introduction

The second of the four strategies to combat trafficking in persons in the Middle East and North Africa (MENA) region is to prosecute the crime by adopting and implementing anti-trafficking legislation and related laws. This chapter looks at relevant international, regional, and domestic legislation which criminalize trafficking in persons and highlight the most important challenges to prosecuting trafficking in persons in the MENA region.

4.B. Prohibition of trafficking in persons under international law

4.B.1. U.N. Protocol

As previously mentioned, the U.N. Protocol is the first international convention that comprehensively addresses trafficking in persons; as such, it is the primary reference in regard to criminalizing human trafficking. Article 5 of the U.N. Protocol calls on States to criminalize any offence committed intentionally under article 3. The article also mandates that States should criminalize attempts to commit the crime and participation as an accomplice in the commission of the crime. Article 5 reads:

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - a. Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this Article;
 - b. Participating as an accomplice in an offence established in accordance with paragraph 1 of this Article; and
 - c. Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this Article.¹⁰⁶

For assistance in complying with article 5, reference must be made to the United Nations Code of Conduct for Law Enforcement Officials of 1979, which comprises eight articles:

Article 1. Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2. In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3. Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4. Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5. No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6. Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7. Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8. Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.¹⁰⁷

4.B.2. Other international instruments

The prohibition of trafficking under the U.N. Protocol is complemented by other international instruments, which together with the U.N. Protocol constitute the international legal framework against trafficking in persons.

4.B.2.1. Universal Declaration of Human Rights: A prohibition against slavery

The primary document prohibiting trafficking in persons is the Universal Declaration of Human Rights (1948), which, in article 4, states that “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in

all their forms.”¹⁰⁸ Although the Universal Declaration does not mention the word “trafficking” its legislative history indicates that the term “slavery” was meant to include trafficking in persons.

4.B.2.2. 1949 Convention: Asserting the dangers of prostitution

In 1949, the United Nations adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Article 1 of the convention stipulates that “[t]he Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; and (2) Exploits the prostitution of another person, even with the consent of that person.”¹⁰⁹ The ethical imperative underlining the convention is clearly stated in the Preamble:

Prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.¹¹⁰

4.B.2.3. ICCPR: Prohibition against slavery, servitude, or forced labour

Article 8 of the International Covenant on Civil and Political Rights of 1966 further criminalizes all forms of slavery that may be considered trafficking and mandates: “1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude. 3. (a) No one shall be required to perform forced or compulsory labour.”¹¹¹

4.B.2.4. CEDAW: Suppression of trafficking in women

A special protection warranted to women was recognized in the United Nations Convention on the Elimination of All Forms of Discrimination against Women of 1979, which, in article 6, calls on States to take legislative and other measures to suppress all forms of trafficking in women and exploitation of prostitution of women.¹¹²

4.B.2.5. CRC: Call for prevention of trafficking in children

The Convention on the Rights of the Child of 1989 grants protection for children from trafficking in article 35:

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.¹¹³

4.B.2.6. Migrant Workers Convention: Prohibition against slavery, servitude, or forced labour

The protection of migrant workers from exploitation is provided for in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 in article 11, which states:

(1) No migrant worker or member of his or her family shall be held in slavery or servitude; (2) No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.¹¹⁴

4.B.2.7. ILO Convention No. 189: Decent Work for Domestic Workers

In June 2011, the International Labour Organization adopted Convention No. 189 concerning decent work for domestic workers. The convention is revolutionary in that it grants domestic workers status equal to other workers. Specifically, article 3 provides:

Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour.¹¹⁵

4.C. Regional law prohibiting trafficking in persons

4.C.1. Arab Charter on Human Rights

Articles 9 and 10 of the 2004 Arab Charter on Human Rights clearly prohibit trafficking in persons. In particular, article 9 states:

No one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each State Party. Trafficking in human organs is prohibited in all circumstances.¹¹⁶

Article 10 of the Arab Charter states:

1. All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances.
2. Forced labour, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any

other form of exploitation or the exploitation of children in armed conflict are prohibited.¹¹⁷

4.C.1.1. Distinction between slavery and trafficking

It is important to notice that the Arab Charter distinguishes between slavery and trafficking in human beings but prohibits both. Although slavery requires exercising the right of ownership over another, trafficking is about control or undue influence rather than buying and selling. Trafficking is therefore conventionally viewed as a form of modern-day slavery.

4.C.1.2. Prohibition of prostitution and exploitation of the prostitution of others

The Arab Charter also distinguishes between prostitution and exploitation of the prostitution of others, prohibiting both forms of trafficking. Prostitution is prohibited by the domestic law of Arab countries. Unlike the Arab Charter, the U.N. Protocol prohibits only exploitation of the prostitution of others.

4.C.1.3. Prohibition of all forms of trafficking including forced labour

Although Article 10(b) of the Arab Charter does not explicitly use the term “labour trafficking,” it makes it clear that “all forms of trafficking” are prohibited, including “forced labour.”¹¹⁸

4.C.1.4. Abolition of specific forms of trafficking

The Arab Charter highlights specific forms of trafficking, including the exploitation of children in armed conflict, trafficking in human organs, and medical or scientific experimentation.¹¹⁹ In doing so, the Arab Charter recognizes the significance of these forms of exploitation and establishes that they all must be abolished.

4.D. Arab laws prohibiting trafficking in persons: General principles and specific rules

The countries of the Arab world can be divided into three groups on the basis of the status of their trafficking laws. The first group encompasses those countries that have already enacted comprehensive anti-trafficking legislation: Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Mauritania, Oman, Qatar, Saudi Arabia, Syria, and the United Arab Emirates. The countries that enacted provisions in penal codes to prosecute cases of trafficking in persons are Algeria and Lebanon. Comoros, Libya, Morocco, the Palestinian Authority, Somalia, Sudan, Tunisia, and Yemen use existing legislation to prosecute cases of trafficking.

Various legal principles characterize these laws and offer a valuable comparative prospective of the current status of anti-trafficking legislation in the Arab world.

These principles are the non-punishment of the victim, the statute of limitations, the prosecution of demand, the aggravating circumstances, and the issue of extraterritoriality.

4.D.1. Principle of non-punishment of the victim

4.D.1.1. Principle of non-punishment

Recognition of trafficked persons as victims requires the application of the principle of non-criminalization, according to which the law must excuse such persons from criminal liability for acts committed as a result of being trafficked, including illegal entry, falsification of travel documents, or prostitution, if criminalized in the country.

Although the U.N. Protocol treats the trafficked person as a victim, it does not specifically provide for the principle of non-criminalization. Similarly, many domestic laws are silent on the issue, thus denying victims protection from liability for crimes committed as a consequence of being trafficked.

States should ensure that trafficked persons are not prosecuted for immigration law violations or for their involvement in activities that are a direct result of being a trafficked person. States must ensure, in particular, that legislation prevents trafficked persons from being prosecuted, detained, or punished for the illegality of their entry or residence or for their involvement in activities that are a direct result of that situation. Non-liability provisions ensure that victims of trafficking are not prosecuted or punished for offences they commit.

The Islamic Law Perspective



The Qur'anic legislation is the first law to recognize the principle of non-punishment of the victim of a crime, especially when linked to trafficking for the purpose of sexual exploitation. In accordance with the Qur'an, Surah 24:33, "But force not your maids to prostitution when they desire chastity.... But if anyone compels them, yet, after such compulsion, is Allah, Oft-Forgiving, Most Merciful [to them]." ¹²⁰

4.D.1.2 Two models of non-punishment: Duress and causation

Countries follow two main models when establishing the principle of non-punishment of the illegal acts committed by victims of trafficking: the duress model and the causation model. In the duress model, the person is obliged to prove that he or she was compelled to commit the offences. In the causation model, the principle applies when the individual can prove that the offence was directly connected or related to being trafficked.

Duress model: This model is followed by the criminal code of Lebanon, which provides, in article 586(8), that “a victim shall be exempt from punishment if (s)he was compelled to commit acts punishable by law or if (s)he violated the conditions of residency or work.”¹²¹

Causation model: An example of this model is present in the Egyptian anti-trafficking law, according to which a victim of trafficking in persons is not punishable for the commission of any crime that is the direct result of having been trafficked. In particular, article 21 states:

The victim shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was directly related to being a victim.¹²²

4.D.1.3 Principle of non-punishment in Arab legislation

The Arab Model Law on Combating Human Trafficking of 2012 provides for the principle of non-punishment in Article 27 by stating that “the victim shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was directly related to being a victim.”¹²³ Article 28 also stipulates that victims “shall be exempt from all the penalties stipulated in the laws regarding violations of immigration, nationality and residency as long as they are directly related to their status as victims.”¹²⁴ At the domestic level, only four laws in the Arab world explicitly specify that a victim of trafficking should not be punished. This principle is expressed in several ways and is sometimes referred to as a principle of non-criminalization, immunity, excuse, non-liability, or (more accurately) non-punishment.

4.D.1.3.1. Egypt

The Egyptian law provides for the principle of non-punishment of a victim in article 21, by stating that “[t]he victim shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was directly related to being a victim.”¹²⁵

4.D.1.3.2. Qatar

An identical provision appears in article 4 of the Qatari law.¹²⁶ Additionally, article 25 of the Qatari law specifically exempts a victim from all penalties stipulated in Law No. 4 of 2009 regarding violations of entry, residency, and kafala laws (sponsorship rule laws) by aliens.¹²⁷

4.D.1.3.3. Lebanon

Article 586(8) of the criminal code of Lebanon provides that “a victim shall be exempt from punishment if (s)he was compelled to commit acts punishable by law or if (s)he violated the conditions of residency or work.”¹²⁸

4.D.1.3.4. Jordan

Similarly, the Jordanian law gives public prosecutors the authority not to pursue investigation or prosecution of a victim of trafficking for any of the crimes stipulated in the trafficking law. However, it must be noted that the authority is discretionary, and the law does not provide any guidance on when it should be exercised.¹²⁹

Case Study

In a case decided on January 24, 2011, the defendants recruited a number of victims for the purpose of inducing them to sell their kidneys. One of the victims sold his kidney for US\$6,000, of which US\$1,000 was given to the defendant. The court convicted the victim for selling a part of his body in return for a material benefit, violating Law No. 23 of 1977 in regard to human organs, and was sentenced to one year in prison. The court also sentenced the defendants to six months imprisonment in accordance with article 8 of the law on combating human trafficking.¹³⁰

4.D.2. Statute of limitations

In many States, a statute of limitations or prescription period sets forth the maximum time within which legal proceedings may be initiated with respect to certain events. This limitation is often an obstacle to filing a lawsuit in cases of human trafficking in the Arab world.

For example, in Algeria, the crime of human trafficking is a misdemeanor.¹³¹ Consequently, and in accordance with article 8 of the Law of Criminal Procedures, the limitation period is three years. Although article 8 provides for exceptions in the application of the statute—“the public action shall not be extinguished by passage of time in cases of felonies and misdemeanours that are qualified as terrorist or destructive acts, as transnational organized crimes, as corruption, or as embezzlement of public funds”¹³²—trafficking in persons is not among the qualifying crimes that warrant the exception.

Contrary to the Algerian law, however, article 19 of the Arab League Model Law on Combating Human Trafficking provides that “criminal activities involving crimes of human trafficking that are mentioned in this law shall not be subject to a limitation.”¹³³

Recognizing the obstacle that such a limitation poses to prosecuting cases of trafficking, the United Nations Convention against Transnational Organized Crime (UNTOC) requires the following:

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.¹³⁴

States may also consider specifying that no statute of limitations or prescription period applies to such crimes. Together with severe penalties commensurate with the gravity of the crime of trafficking, such a provision may serve as a strong message of deterrence. This notion is embedded in the Rome Statute of the International Criminal Court, which states that the crimes under the jurisdiction of the court, which include trafficking in persons, “shall not be subject to any statute of limitations.”¹³⁵

The Islamic Law Perspective

Islamic law abolishes the statute of limitations in cases of trafficking in accordance with the tradition of the Prophet that “a right of a Muslim shall not be extinguished by passage of time.”¹³⁶

4.D.3. Aggravating circumstances

Broadly speaking, aggravating circumstances can be divided into three groups, depending on whether they refer to the trafficking offender, the victim of trafficking, or the act of trafficking itself.

The Gulf Cooperation Council Model Law to Combat Human Trafficking includes all three groups and, in article 4, provides for enhanced penalties for the following aggravating circumstances:

- If the perpetrator establishes, forms, organizes, or manages an organized criminal group that aims to commit crimes of human trafficking
- If the crime is committed against children, women, or people with special needs
- If the crime is accompanied by duress or deception or abuse of office
- If the perpetrator is carrying a weapon or threatening to use one

- If the perpetrator is the spouse of the victim; is his descendant, ascendant, or guardian; has authority over the victim; is a public official entrusted with the application of the law; seeks the assistance of others
- If the crime is committed by more than one person
- If the crime is committed by an organized criminal group
- If the crime is of an international or transnational nature¹³⁷

4.D.3.1. Aggravating circumstances regarding the offender

The aggravating circumstances related to the offender vary greatly across the Arab region. At times, enhanced penalties are prescribed when the offence was committed within the framework of a criminal organization. Such is the case of article 2 of the anti-trafficking law of the United Arab Emirates, which states:

Temporary confinement shall be sentenced onto those committing the crime of human trafficking stipulated in Article 1 of this law, for a period of not less than five years. The sentence of life in prison shall be passed for any of the following: if the perpetrator has organized, planned or operated an organized criminal group, or assumed leadership or called for others to join the group.¹³⁸

In other instances, the penalty is increased when the offender is a parent, sibling, guardian, spouse, partner, or person who exercises authority over the trafficked individual. Such is the case of the Algerian criminal code. The code specifies in article 303(4) that “[t]rafficking in persons is punishable by an imprisonment for three (3) to ten (10) years and a fine of 300,000 DA to 1,000,000 DA.”¹³⁹ However, article 303(5) states:

Trafficking in persons is punishable by imprisonment for ten (10) to twenty (20) years and a fine of 1,000,000 DA to 2,000,000 DA if the infraction is committed under one of the following circumstances: when the perpetrator is a victim’s spouse, relative, legal guardian, has authority over the victim or is public official whose position has facilitated the perpetration of the crime.¹⁴⁰

Enhanced penalties will also be imposed if the offence is committed by a public official, as in article 6(4) of the Egyptian law, which provides for “life imprisonment and a fine not less than 100,000 pounds and not to exceed 500,000 pounds.... If the perpetrator was a public official or was assigned to carry out a public service and committed the crime by exploiting the office or public service.”¹⁴¹

4.D.3.2. Aggravating circumstances regarding the victim

Among Arab legislators, there is no consensus as to which victim warrants an enhanced penalty for the perpetrator. Some Arab anti-trafficking laws state that a penalty may be enhanced if the crime is committed against a child, a woman, or a person with special needs.¹⁴²

Article 4 of the Saudi Arabian law enhances the penalty “if the crime is committed against a woman or people of special needs” or “if the crime is committed against a child, even if the perpetrator is not aware that the victim is a child.”¹⁴³ Article 8 of the Syrian law specifies that a penalty shall be enhanced “if the crime is committed against women or children or person[s] with special needs.”¹⁴⁴ Article 4 of Bahrain’s law stipulates that aggravating circumstances in a crime of trafficking in persons include any victim who is “below fifteen years of age, a female or a person with special needs.”¹⁴⁵

The law in Jordan states in article 7(b)(2) that a penalty for the crime of human trafficking shall be enhanced “if the victim is a female, a minor, or a person with a disability.”¹⁴⁶ Similarly, article 15 of the Qatari law enhances the penalty “if the victim is a female, a child, a person with a disability, or incapacitated.”¹⁴⁷ Other laws are similar to the Egyptian law, which does not consider trafficking in women an aggravated circumstance but enhances the penalty to life imprisonment “if the victim was a child, was incapacitated or was a person with disabilities.”¹⁴⁸

Case Study



On May 5, 2010, a Giza Criminal Court issued a sentence in the case known as the “marriage of a minor with a view to sexual exploitation.” The accused, Suleiman bin Abdul Rahman, a 76-year-old man of Saudi nationality, was sentenced to 10 years of rigorous imprisonment and fined 100,000 pounds for marrying and sexually exploiting a 14-year-old Egyptian girl. The court also sentenced the marriage broker, the lawyer who created the marriage contract, and the parents of the girl for exploiting her and delivering her to the defendant in return for money.¹⁴⁹

Article 9 of the law of Oman does not consider trafficking in females to be an aggravated circumstance. But if the victim is a child or a person with special needs, it enhances the standard penalty of 3 to 7 years with a sentence of imprisonment lasting no fewer than 7 years nor exceeding 15 years, plus an increased fine. The Lebanese law considers a pregnant woman a vulnerable victim and enhances the penalty only in such cases.

One may consider enhancing the penalty in trafficking cases that involve a female as an example of positive discrimination that is allowed under article 3 of the

Arab Charter on Human Rights.¹⁵⁰ However, this proposition runs counter to the established principles in comparative models that focus on the conditions of vulnerability of females and males rather than gender as grounds for enhancing the penalty.

4.D.3.3. Aggravating circumstances regarding the crime

Various circumstances regarding the nature of the crime also warrant enhanced penalties. If the crime was committed using weapons or threatening to use weapons, the law of Jordan enhances the penalty from imprisonment of no fewer than six months or a fine of no less than 1,000 dinars or not to exceed 5,000 dinars, or both of these punishments, to a punishment of hard labour not to exceed 10 years or a fine of no less than 5,000 dinars and not to exceed 20,000 dinars.¹⁵¹

The Bahraini law enhances the penalty “[i]f the crime is of a non-national nature,”¹⁵² or in other words, if it is cross-border in nature. Similarly, article 15(g) of the law of Qatar states that the penalty will be imprisonment not to exceed 15 years and a fine not to exceed 300,000 riyals if the crime “is transnational in nature.”¹⁵³

Finally, some countries impose strict sentences if the victim suffers serious injury or death as a consequence of being trafficked. Such is the case of the law of Bahrain, which enhances the penalty when “the victim suffers an incurable disease as a result of committing the crime.”¹⁵⁴ The law of Djibouti talks about actions that “caused the victim any type of medically proven physical, moral or mental harm.”¹⁵⁵ A sentence of life imprisonment and a fine of not less than 100,000 pounds and not to exceed 500,000 pounds are provided under the Egyptian law when “the crime resulted in the death of the victim or caused him to suffer a permanent disability or an incurable disease.”¹⁵⁶ However, the most severe of all penalties is prescribed by the recently passed Iraqi anti-trafficking law of 23 February 2012, which, in article 8, states, “If the act of human trafficking leads to death of the victim, the sentence shall be capital punishment.”¹⁵⁷

4.D.4. Extraterritoriality

A majority of the Arab anti-trafficking laws apply to a national who commits the crime of trafficking within a State’s territory. However, some exceptions are worth noting. For example, the Egyptian law extends its jurisdiction to non-nationals who commit the act of trafficking abroad if (a) the crime was committed on any means of transportation that was registered in Egypt; (b) one of the victims was Egyptian; (c) the preparation for the crime or its planning, direction, supervision, or financing occurred in Egypt; (d) the crime was committed by an organized criminal group engaged in criminal activities in more than one State, including Egypt; (e) the crime caused harm to any citizen or resident or to the security or any of the interests of

Egypt within the country or abroad; or (f) the perpetrator of the crime in Egypt was found after the crime was committed and was not extradited.¹⁵⁸

4.D.5. When the perpetrator of the crime is a corporation

According to article 10 of the United Nations Convention against Transnational Organized Crime, a corporation may be held liable for an organized crime, including participation in an organized criminal group, laundering of proceeds of a crime, corruption, and obstruction of justice. Corporate liability may be civil, criminal, or administrative provided that the sanctions are effective, proportionate, and dissuasive, and it may be established without prejudice to the criminal liability of a natural person. Sanctions may include a fine, forfeiture, confiscation, restitution, or closure of the legal entity. Other sanctions that are designed to influence corporate behaviour are disincentives, including suspension of a right or prohibition of a certain activity. However, liability of a corporation is subject to the legal principles that apply to a legal person in a particular national system.

The Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime provide the justification for establishing liability of legal persons:

Serious and sophisticated crime is frequently committed through or under the cover of legal entities, such as companies or charitable organizations. Complex corporate structures can effectively hide the true ownership, clients or particular transactions related to crimes ranging from smuggling to money-laundering and corrupt practices. Individual executives may reside outside the country where the offence was committed and responsibility for specific individuals may be difficult to prove. Thus, the view has been gaining ground that the only way to remove this instrument and shield of transnational organized crime is to introduce liability for legal entities.¹⁵⁹

Case Study

Daoud & Partners is a Jordanian corporation that entered into a number of contracts with the United States for the provision of services at military bases, including Al Asad Air Base in Iraq. The defendants “willfully and intentionally formed an enterprise with the goal of procuring cheap labor and increasing profits.” More than 25 Nepalese men were held in Jordan by Daoud and agents of Daoud, and all of the men were required to turn over their passports. While the men were being transported from Jordan to Iraq, some were captured by the Ansar al-Sunna Army. The group beheaded one of the men, and shot the other 11 in the back of their heads. The defendant was charged with human trafficking.¹⁶⁰

Case Study

More than 50 undocumented immigrant janitors working for Wal-Mart claimed that they were forced to work long hours without appropriate pay and benefits. The victims also claimed that they were denied sick leave, meals, and breaks and were threatened with deportation, locked in the stores during their shifts, and physically beaten. The court denied the victims' claims of involuntary servitude; the case is still pending regarding violation of civil and labour rights.¹⁶¹

Case Study

A Moldovan woman was recruited by Cape Dance Academy International (Pty) Ltd. and House of Rasputin Properties (Pty) Ltd. to work as an exotic dancer. She was forced to surrender her passport and pay back all travel and rental fees incurred. After several months, she secured a plane ticket home from the Consul General of Russia. The employers learned of her plan to return to Moldova and applied for a warrant from the Magistrate Court to have her arrested on the grounds that she was about to flee the country permanently to escape payment of the debt. She spent 15 days in jail.¹⁶²

Case Study

The defendant, Chin Well Fasteners Co., recruited 52 Indian men through a recruiting agency to work as general labourers. The defendant signed contracts stipulating an agreed-on salary; however, the workers never signed the contracts and were made to pay their own way to Malaysia. When the victims arrived, the defendant confiscated their remaining money and paid them significantly less than they had agreed on. The workers complained and found that their time sheets were gone. They were told that if they wanted to continue working for the company, they would need to sign new contracts in accordance with the lower-wage standards. The defendant was found liable for breach of contract and was ordered to pay all 52 workers an amount equal to their benefits, the airfare to and from Malaysia, and overtime.¹⁶³

4.E. International cooperation

When trafficking occurs as a transnational activity, cooperation between countries of origin, transit, and destination is necessary to confront the problem. Hence, bilateral treaties on mutual assistance in criminal matters must be a part of any transnational legal response. Apprehension of traffickers, investigation of cases of trafficking,

and prosecution of traffickers require cooperation, especially in matters related to requests for assistance; searches and seizures; attachment and surrender of property; measures for securing assets; service of judicial decisions, judgments, and verdicts; appearance of witnesses and expert witnesses; and transmittal of information and records.

4.E.1. UNODC International Framework for Action to Implement the Trafficking in Persons Protocol

As highlighted in the United Nations Office on Drugs and Crime (UNODC) “International Framework for Action to Implement the Trafficking in Persons Protocol” (hereafter the U.N. Framework), the crime of trafficking frequently occurs across borders, and Member States are often unable to address the problem effectively because international mechanisms or structures for international cooperation are either non-existent or inadequate. This limitation is why the U.N. Framework, in promoting the implementation of the U.N. Protocol, urges Member States to “[c]reate the legal basis for international cooperation, including the promotion of cooperation agreements.”¹⁶⁴

4.E.2. Need for international cooperation agreements

To promote international cooperation, the U.N. Framework proposed the adoption of cooperation agreements between bordering States that establish the criteria for mutual legal assistance in the investigation and prosecution of cases, pursuant to article 18 of the UNTOC. Cooperation agreements should also include joint regulations to coordinate the transfer of sentenced persons and the confiscation of the proceeds and property of the crime.¹⁶⁵

4.E.3. Code of conduct for U.N. peacekeeping missions

Another important aspect of international cooperation is the regulation of the behaviour of police forces in multilateral operations. Rule 4 of Annex E of Selection Standards and Training Guidelines for United Nations Civilian Police states that U.N. peacekeepers should “not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff, especially women and children.”¹⁶⁶

4.F. Crimes related to trafficking in persons

As prescribed in the United National Model Law against Trafficking in Persons, it is essential, while establishing trafficking offences, to ensure that national legislation adequately criminalizes other related crimes, such as participation in organized criminal groups, obstruction of justice, corruption, and money laundering.

4.F.1. Participation in an organized criminal group

The UNTOC, the parent convention of the U.N. Protocol, imposes on ratifying States an obligation to criminalize certain offences when committed internationally and in participation with an organized criminal group. In particular, article 5, paragraph 1, of the UNTOC urges States to criminalize the following acts:

- (a)(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
- (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
 - a. Criminal activities of the organized criminal group;
 - b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
- (b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.¹⁶⁷

4.F.2. Obstruction of justice

Article 23 of the UNTOC prohibits the obstruction of justice when committed intentionally and defines it as the following:

- (a) [T]he use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention; (b) the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention.¹⁶⁸

4.F.3. Corruption

Corruption is also prohibited under the UNTOC. Article 8 calls on States to criminalize corruption and defines it as the following:

(a) [T]he promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; and (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.¹⁶⁹

Case Study

Three politicians, along with four other defendants, were found guilty of trafficking more than 100 Chinese nationals. Four visas were solicited for Chinese citizens to work on a rice-planting project that did not exist. Eleven visas for Chinese citizens, ages 18 to 20, were solicited to work in Bolivia under the pretext of making investments that, in fact, did not exist. One defendant solicited the entry of more than 116 Chinese citizens under the guise of a supposed agreement between the indigenous communities of San Javier and Concepción and the Association of Fujian Chinese Residents. When contacted, the authorities of these communities disavowed any knowledge of such an agreement and stated that no Chinese migrants had arrived in their community.¹⁷⁰

Case Study

The petitioners, the Bangladesh Society for the Enforcement of Human Rights and several other non-governmental organizations, filed a claim following an incident leading to the alleged illegal, forcible, and violent ousting of sex workers from their residence by the local administration and the police. The petitioners asserted that the protection and fundamental rights of citizens, including women in prostitution, were violated. The petitioners stated that at night and in the early morning while residents were asleep, the police raided the dwelling; barged into the residents' rooms; and, without giving them any opportunity to change, dragged them out, beat them, and pushed them and their children onto waiting buses. The victims were subsequently held in detention contrary to the provision of the Vagrancy Act of 1950. The court ordered the respondents to release the victims, thus enabling the victims to leave of their own accord and guaranteeing their fundamental rights as stipulated in the Constitution.¹⁷¹

4.F.4. Money laundering

Another trafficking-related crime under the UNTOC is money laundering. In particular, article 6, paragraph 1, prohibits the following:

(a)(i) the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) subject to the basic concepts of its legal system:

(i) the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.¹⁷²

4.G. Related human rights legislation

In addition to criminalizing trafficking-related crimes, important human rights legislation must be in place to allow the effective integration of anti-trafficking laws into the national legislation. Such legislation includes media laws, child protection laws, laws against violence against women, laws guaranteeing access to justice for vulnerable sectors of society, laws on freedom of information, and labour legislation.

Applying Your Knowledge: Combating Trafficking in Persons in the MENA Region: Prosecution

Exercise A: Review Questions

1. How does a law on combating trafficking in persons address the related crime of corruption?

2. Should the criminal justice system prosecute demand or combat it only through prevention?

3. Should the criminal law enhance the penalty if the trafficked victim is a woman?

4. Is a statute of limitations appropriate in cases of trafficking in persons?

Chapter 4 Endnotes

- 106 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, opened for signature 12 December 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (entered into force 25 December 2003), art. 5.
- 107 U.N. General Assembly, Code of Conduct for Law Enforcement Officials, adopted by Resolution 34/169, 17 December 1979, <http://www.unrol.org/files/CODEOF~1.PDF>.
- 108 U.N. General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art. 4, <http://www.un.org/en/documents/udhr/>.
- 109 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, opened for signature 2 December 1949 (entered into force 25 July 1951), art. 1.
- 110 *Ibid.*, Preamble.
- 111 International Covenant on Civil and Political Rights, opened for signature 16 December 1966 (entered into force 23 March 1976), art. 8.
- 112 Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979 (entered into force 3 September 1981), art. 6.
- 113 Convention on the Rights of the Child, opened for signature 20 November 1989 (entered into force 2 September 1990), art. 35.
- 114 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, date of adoption 18 December 1990 (entered into force 28 January 28, 2004), art. 11.
- 115 International Labour Organization Convention No. 189: Decent Work for Domestic Workers, date of adoption 6 June 2011, art. 3.
- 116 Arab Charter on Human Rights, League of Arab States, 22 May 2004 (entered into force 15 March 2008), art. 9; reprinted in *International Human Rights Report*, vol. 12, 893.
- 117 *Ibid.*, art. 10.
- 118 *Ibid.*, art. 10(b).
- 119 *Ibid.*, art. 9–10.
- 120 Qur'an, Surah 24:33.
- 121 Law 164 of 24 August 2011 (Punishment of Crimes of Trafficking in Persons) (Lebanon), art. 586(8), http://www.protectionproject.org/wp-content/uploads/2010/09/Lebanon_TIP-Law_2011-Ar.pdf.
- 122 Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), Al-Jarida Al-Rasmiyya, May 2010 (Egypt), art. 21, http://www.protectionproject.org/wp-content/uploads/2010/09/Law_regarding_Combating_Human_Trafficking_FINAL1.pdf.
- 123 Arab League Model Law on Combating Human Trafficking of 2012, art. 27.
- 124 *Ibid.*, art. 28.
- 125 Law No. 64 of 2010 (Egypt), art. 21
- 126 Law No. 15 of 2011 (Regarding Combating Human Trafficking) (Qatar), art. 4, http://www.protectionproject.org/wp-content/uploads/2010/09/Qatar_TIP-Law_2011-Ar.pdf.
- 127 *Ibid.*, art. 25.
- 128 Law 164 of 24 August 2011 (Punishment of Crimes of Trafficking in Persons) (Lebanon), art. 586(8), http://www.protectionproject.org/wp-content/uploads/2010/09/Lebanon_TIP-Law_2011-Ar.pdf.
- 129 Law No. 9 of 3 March 2009 on Prevention of Human Trafficking (Jordan), <http://www.protectionproject.org/wp-content/uploads/2010/09/Jordan-Anti-Trafficking-Legislation-2009-and-TIP-Law-2008.pdf>.
- 130 Case No. 104/2011, Amman (Jordan) Criminal Court of First Instance.
- 131 Law No. 09-01 (Modifying and Completing the Penal Code Enacted by Order No. 66-156 of 8 June 1966) (Algeria), sec. V(1), http://www.protectionproject.org/wp-content/uploads/2010/09/Algeria_TIP-Law_2009-Fr-Ar.pdf.
- 132 *Ibid.*, art. 11(5).
- 133 Arab League Model Law on Combating Human Trafficking of 2012, art. 19.
- 134 United Nations Convention against Transnational Organized Crime (UNTOC), G.A. Res. 55/25, U.N. Doc. A/Res/55/25 (8 January 2001), art. 11(5), http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf.
- 135 Rome Statute of the International Criminal Court, A/CONF. 183/9, opened for signature 17 July 1998 (entered into force 1 July 2002), art. 29.

- 136 United Nations Office on Drugs and Crime, "Combating Trafficking in Persons in Accordance With the Principles of Islamic Law" United Nations, New York, 2010, 46.
- 137 Gulf Cooperation Council Model Law to Combat Human Trafficking (prepared by the Expert Committee Meeting at the General Secretariat, Riyadh, Saudi Arabia, 19-21 March 2006), art. 4.
- 138 Law No. 51 of 9 November 2006 (Combating Human Trafficking Crimes) (United Arab Emirates), art. 2, http://www.protectionproject.org/wp-content/uploads/2010/09/United-Arab-Emirates_Trafficking-Law_2006-Ar+En.pdf.
- 139 Law No. 09-01 (Algeria), art. 303(4).
- 140 *Ibid.*, art. 303(5).
- 141 Law No. 64 of 2010 (Egypt), art. 6(4).
- 142 Mohamed Y. Mattar, "Human Rights Legislation in the Arab World: The Case of Human Trafficking," *Michigan Journal of International Law* 33 (2011): 120.
- 143 Royal Decree No. M/40 of 2009 (Suppression of the Trafficking in Persons Act), Um Al-Quaran, 7 August 2009 (Saudi Arabia), art. 4, http://www.protectionproject.org/wp-content/uploads/2010/09/Saudi-Arabia_TIP-Law_2009_Combined.pdf.
- 144 Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons) (Syria), art. 8, http://www.protectionproject.org/wp-content/uploads/2010/09/Syria_Trafficking-Law_2010-arabic.pdf.
- 145 Law No. 1 of 9 January 2008 (Law with Respect to Trafficking in Persons) (Bahrain), art. 4.
- 146 Law No. 9 of 3 March 2009 on Prevention of Human Trafficking (Jordan), art. 7(b)(2), <http://www.protectionproject.org/wp-content/uploads/2010/09/Jordan-Anti-Trafficking-Legislation-2009-and-TIP-Law-2008.pdf>.
- 147 Law No. 15 of 2011 (Qatar), art. 15.
- 148 Law No. 64 of 2010 (Egypt), art. 6(6).
- 149 Case No. 1658 of 2010, Giza Criminal Court.
- 150 Arab Charter on Human Rights, art. 3.
- 151 Law No. 9 of 3 March 2009 (Jordan).
- 152 Law No. 1 of 9 January 2008 (Bahrain), art. 4(3).
- 153 Law No. 15 of 2011 (Qatar), art. 15(g).
- 154 Law No. 1 of 9 January 2008 (Bahrain), art. 4(5).
- 155 Law No. 210 of 27 December 2007 (Djibouti), http://www.protectionproject.org/wp-content/uploads/2010/09/Djibouti_TIP-Law_2007.pdf.
- 156 Law No. 64 of 2010 (Egypt), art. 6(5).
- 157 Iraq Anti-Trafficking Law, 23 February 2012, art. 8.
- 158 Law No. 64 of 2010 (Egypt), art. 16.
- 159 Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocol Thereto, Section B. Liability of legal persons, "Article 10: Liability of legal persons," comm. 240, 116, http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf.
- 160 Adhikari et al. v. Daoud & Partners et al., 2009, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/2009/adhikari_et_al._v._daoud_partners_et_al.html?tmpl=old.
- 161 V. Z. v. Wal-Mart Stores, 2011, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/2011/v.z._v._wal-mart_stores.html?tmpl=old.
- 162 Tatiana Malachi, 2011, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/zaf/2010/tatiana_malachi.html?tmpl=old.
- 163 Malaysia-Sampath Kumar Vellingiri & 78 Yang Lain v. Chin Well Fasteners & Co Sdn Bhd, 2003, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/mys/2003/_sampath_kumar_vellingiri_78_yang_lain_v_chin_well_fasteners_co_sdn_bhd.html?tmpl=old.
- 164 United Nations Office on Drugs and Crime, "International Framework for Action to Implement the Trafficking in Persons Protocol," United Nations, New York, 2009, 12.
- 165 UNTOC, art. 5.
- 166 United Nations Civilian Police (UNCIVPOL), Selection Standards and Training Guidelines for United Nations Civilian Police (New York: United Nations, 1997), ann. E., 79.
- 167 UNTOC, art. 5.
- 168 *Ibid.*, art. 23.

169 Ibid., art. 8.

170 Auto Supremo 200/2007–Bin Xin Zhang Zhang et al., 2007, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/bol/2007/_auto_supremo_2002007_-_bin_xin_zhang_zhang_et_al.html?tmpl=old.

171 Bangladesh Society for the Enforcement of Human Rights (BSEHR) and Ors v. Government of Bangladesh and Ors, 2000, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/bgd/2000/bangladesh_society_for_the_enforcement_of_human_rights_bsehr_and_ors_v_government_of_bangladesh_and_ors.html?tmpl=old.

172 UNTOC, art. 6.

Chapter 5. Combating Trafficking in Persons in the MENA Region: Protection

5.A. Introduction

Trafficking in persons is unique: it is the only business that specializes in humans as merchandise. Thus, a large part of combating trafficking is the treatment of and aid for the victims. The victims must be protected from retaliation by their traffickers, from prosecution or deportation under the country's legal system, and from harm while they are recovering from their trauma.

In addition, victims must be given support in pursuing justice, recovering, and reintegrating into society. Such support would entail providing victims with legal assistance in the prosecution of the traffickers and on matters related to their immigration status. Victims also have a right to be informed of their rights and to be treated as victims rather than criminals, despite any illegal activity in which they may have participated while they were being trafficked.

Finally, various procedural law principles must be in place to ensure that the rights of the victims and of their families are duly guaranteed.

The Islamic Law Perspective

Respect for the individual is the central precept of Islam—the warning against persecution of individuals is repeated 299 times in the Qur'an, and the phrase “justice and equality” appears at least 16 times. It may also be argued that equal protection is likewise a basic premise in Islamic legal theory. For example, the Prophet Muhammad declared in the Great Pilgrimage that “[a]ll Moslems are brothers unto one another” and that “[t]here is no superiority of an Arab over a non-Arab except as his devotion is concerned.”¹⁷³

5.A.1. Principle of non-discrimination

The principle of non-discrimination toward trafficking victims is an internationally accepted standard. Victims are often stigmatized within their communities for actions they committed while being trafficked. The U.N. Protocol states in article 14.2 that “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.”¹⁷⁴

Article 3 of the Council of Europe Convention on Action against Trafficking in Human Beings states that “the implementation of the provisions of this Convention

by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religions, political or other opinion, national or social origin, associated with a national minority, property, birth or other status.”¹⁷⁵

The United Nations Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police states that law enforcement officials should be familiar with all the legal requirements of non-discrimination. In particular, law enforcement should adhere to, among others, the following principles: “Law enforcement officials shall at all times fulfill the duty imposed on them by law, by serving the community and by protecting all persons against illegal acts” and “it shall not be considered unlawfully discriminatory for police to enforce certain special measures designed to address the special status and needs of women (including pregnant women and new mothers), juveniles, the sick, the elderly, and others requiring special treatment in accordance with international human rights standards.”¹⁷⁶

5.B. Identifying the victims of trafficking in persons

There is no distinguishable “face” of a trafficked victim. However, trafficked persons are always people who, because of poverty, war, natural disasters, gender, ethnic origins, and other factors pertaining to their status or to specific circumstances, are susceptible to exploitation.

5.B.1. Types of victims

Often, victims of trafficking do not readily identify themselves as such. For example, individuals tricked into forced labour through the imposition of extortive “fees” may require education, or those who are psychologically attached to a sex trafficker as a “boyfriend” may require counselling before they understand that they are being exploited and their human rights are being violated.

Under international, regional, and national legislation, different types of victims of trafficking can be identified. Broadly, victims can be divided into five main categories: victim, derivative victim, potential victim, vulnerable victim, and presumed victim. An individual often falls under more than one of these categories.

5.B.1.1. Victim

The term “victims of crime” has been defined in article A(1) of the United Nations Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power as “[p]ersons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States.”¹⁷⁷

Likewise, article 1(a) of the Council of Europe Framework Decision on the Standing of Victims in Criminal Proceedings defines a victim as “[a] natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.”¹⁷⁸

A similar definition of “victim” is present in article 1 of the Egyptian anti-trafficking law, which defines a victim of trafficking as “a natural person who suffered any material or moral harm, in particular bodily, psychological or mental harm; or economic loss if the harm or loss was caused directly by one of the crimes stipulated in this law.”¹⁷⁹

A reference to this type of victim is included in article 1 of the Iraqi law, which states, “The victim means the person who suffered from material or moral damage caused by one of the crimes stipulated in this law.”¹⁸⁰

Article 586(1) of the Lebanese law states:

For the purpose of this law, a victim of trafficking means any natural person who is subject to trafficking in persons or who is reasonably considered as such by the competent authorities irrespective of whether the perpetrator of the crime was identified or arrested or tried or charged.¹⁸¹

Article 1 of the Syria’s law also defines “victim”:

A victim of trafficking is a person against whom the act of trafficking was committed or was subject thereto.¹⁸²

5.B.1.2. Derivative victim

Article A(2) of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power includes in the definition of “victim,” when appropriate, the family members of the victim. It states:

The term “victim” includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered to assist victims in distress or to prevent victimization.¹⁸³

5.B.1.3. Potential victim

A potential victim is a person who is part of a risk group and is vulnerable to becoming a victim of trafficking. Common examples of potential victims in the Middle East and North Africa (MENA) region are street children in Egypt. Traffickers often target this risk group because of its vulnerability, which is caused by lack of economic opportunities and limited access to information and social services.

The Islamic Law Perspective

The holy Qur'an lays out certain regulations and mechanisms to lend additional support to women and children, especially orphans, who are considered more vulnerable than other groups, and states that believers are to do good to parents, kinfolk, orphans, the needy, neighbours, strangers, wayfarers, and slaves. Women and children are granted special protection by Islam, and believers are required to provide assistance to the needy and those in distress. Some contend that the failure to do so is a sin because of a generally accepted principle of Islamic law: "whoever neglects an obligation is legally liable for the consequences of that neglect." This protection is granted to all, as the Qur'an 5:32 states: "If anyone kills a person, it would be as if one has killed all of humanity; if anyone saves a person, it would be as if one has saved all of humanity."¹⁸⁴

5.B.1.4. Vulnerable victim

The definition of "vulnerable victim" takes into account the fact that a victim of trafficking is, most frequently, vulnerable. The travaux préparatoires to the U.N. Protocol state that "[t]he reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved."¹⁸⁵

This qualification of a vulnerable victim is relevant when establishing guidelines for the status of a victim of trafficking and the types of benefits he or she may receive from the State. It is crucial to understand that victims of trafficking, as vulnerable victims, are in a situation in which they have no choice but to submit to exploitation and, therefore, cannot be held liable for criminal acts that may be committed under duress or as a result of their being trafficked.

Best Practice

In *United States v. Veerapol*, the court applied the vulnerable victim enhancement doctrine, which affirms that crimes committed against a susceptible victim warrant an enhanced penalty for the offender. The court stated that a person from a foreign country coming to the United States who does not know the language or the culture is a vulnerable person. In this case, the wife of the Thai ambassador recruited girls from Thailand to work in her house and in the restaurant she owned in Los Angeles. She was convicted of trafficking and given an enhanced penalty because the victims were deemed to be vulnerable persons.¹⁸⁶

5.B.1.5. Presumed victim

A presumed victim is a person who has already been trafficked but has not been identified as a victim of trafficking. Such a person falls outside the protection of the legal system.

5.B.1.6. When the victim is a child

Some basic considerations must be made when the victim is a child. Article 6.4 of the U.N. Protocol states that “[e]ach State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.”¹⁸⁷ In addition, according to the U.N. First Aid Kit for use by Law Enforcement First Responders in Addressing Human Trafficking, first responders must “[a]ssume that a child’s needs and capacities are different from those of adults and that it is unlikely that children can make informed decisions. If children agree to certain actions and decisions, it may simply be because they feel overwhelmed” and “[e]ven if your legislation indicates otherwise, you should assume that all persons below the age of 18 are children, especially if the child in question is not from your country, as that is the international standard.”¹⁸⁸

Best Practice

Acknowledging the various typologies of victims and the difficulties that law enforcement officers can face in identifying victims of trafficking among various populations of vulnerable groups, the Jordanian National Strategy for the Prevention of Trafficking in Persons, adopted in December 2012, urges the State to formulate and implement training programs for law enforcement personnel and members of civil society on methods for identifying both victims and those negatively affected by the crime.¹⁸⁹

5.B.2. Indicators of victims of trafficking

5.B.2.1. Physical and other indicators of victims of trafficking

Victims of human trafficking may have been physically beaten or treated poorly. As a result, physical indicators may exist that can assist law enforcement officials in identifying potential victims. These indicators may include (a) visible marks, scratches, and bruises from physical abuse; (b) torture scars, such as cigarette burns; (c) a sickly appearance as a result of malnutrition; and (d) brands and tattoos depicting ownership of the victim.

There are additional signs that law enforcement officials should look for to assess whether a person is a victim of trafficking. For example, they should consider whether someone is trying to speak on behalf of the victim; whether the victim is in possession of his or her personal or travel documents, money, or other personal property; and whether the potential victim appears to be sleeping and working in the same location.¹⁹⁰ Other useful clues are the potential victim’s ability to leave the work premises freely; his or her terms of employment (including the number of working hours, vacations, and sick days); and the existence of appropriate safety measures and sanitation in the workplace.

Best Practice

The U.S. Department of Homeland Security's Blue Campaign initiative provides indicators that law enforcement officials should look for in determining if a person is a victim of trafficking:

- Is the victim in possession of his or her identification and travel documents?
- Was the victim coached on what to say to law enforcement and immigration officials?
- Was the victim recruited for one purpose and then forced to engage in another job?
- Is the victim's salary taken away to pay off a smuggling or transportation fee?
- Was the victim forced to perform sexual acts?
- Does the victim have freedom of movement?
- Has the victim or his or her family been threatened with harm if the victim attempts to escape?
- Has the victim been threatened with deportation or law enforcement action?
- Has the victim been harmed or deprived of food, water, sleep, or medical care?
- Can the victim freely contact family and friends?
- Is the victim a juvenile engaged in commercial sex?
- Is the victim allowed to socialize or attend religious service?¹⁹¹

5.B.2.2 Indicators of child victims of trafficking

Law enforcement should be aware of certain signs of trafficking that are typical of child victims, such as (a) having no access to their parents or guardians, (b) looking intimidated and behaving in a way that does not correspond with behaviour typical of children their age, (c) having no friends of their own age outside of work, (d) having no access to education, (e) having no time for playing, (f) living apart from other children and in substandard accommodations, (g) eating apart from other members of the "family," (h) receiving only leftovers to eat, (i) being engaged in work that is not suitable for children, (j) travelling unaccompanied by adults, and (k) travelling in groups with people who are not relatives.¹⁹²

5.B.3. Understanding the victim's state of mind

All victims have undergone some form of trauma as result of their trafficking. Victims may be repeatedly told by the trafficker that law enforcement is not to be trusted; therefore, victims may initially be suspicious of those trying to help them. Because many trafficking victims are in the country illegally, they are often reluctant to come forward for fear of being arrested and deported. Despite being a victim of trafficking, they sometimes believe that their present situation is better than where they came from. Additionally, many also fear for their families back home, because

their traffickers have threatened to hurt their family members if they try to escape or cooperate with law enforcement. Nearly all victims are unaware of their rights. Furthermore, some victims do not self-identify with being a victim. For instance, if the perpetrator provides them with shelter, food, and “stable employment,” the victims may not realize that they have been trafficked.

5.B.4. Effective communication with victims of trafficking

Trafficking victims may initially be hesitant to cooperate with law enforcement officials. For this reason, it is imperative that police officers be particularly sensitive when communicating with victims. It is important to convey to the victim that first and foremost they are safe now, and no one will hurt them. Police officers must also help victims understand that they are in fact victims and not criminals. Finally, because most victims are unaware of their rights, law enforcement officers must explain what rights victims have, what assistance they are entitled to, and how they may receive such assistance.¹⁹³

5.C. A bill of rights for victims of trafficking

Once a victim has been identified, he or she must be protected from further harm. Arab countries, to varying extents, have recognized a range of victims’ rights in their anti-trafficking laws.

For example, article 23 of the Egyptian trafficking law guarantees the following rights for victims of trafficking: the right to safety, the right to protection of one’s inviolability and identity, the right to information, the right to be heard in court, the right to legal assistance, the right to personal security, the right to return to one’s homeland, and the right of an Egyptian victim of trafficking abroad to be returned to Egypt.¹⁹⁴ Also, article 22 of the Egyptian law explicitly stipulates the following:

The State shall guarantee the protection of the victim and shall work to create the appropriate conditions for his assistance, health, psychological, educational, and social care; and rehabilitation and reintegration into the society, within the framework of liberty and human dignity.¹⁹⁵

Bahrain’s trafficking law provides a number of protective measures for trafficking victims that must be considered during investigations or court proceedings. These measures include the right to information, or to be informed of one’s legal rights in a language one understands, and the right to medical and psychiatric care. In addition, Article 5 of the law explicitly states that “the victim shall be examined by a specialist physician if he so requests or if it transpires that he is in need of medical or psychiatric care” and that “[a]dmitting the victim into a medical or psychiatric centre or a welfare centre if it transpires that his medical or psychological condition or age so requires” shall occur in the stage of investigation or court proceedings with respect to a crime of trafficking in persons.¹⁹⁶

The Syrian law also provides that victims of trafficking should be entitled to receive information regarding their legal rights “in a language that they understand.”¹⁹⁷ The Syrian law states that victims of trafficking have the right to privacy, including the right to withhold their name, location where they are receiving care, or any other information that may reveal their identities.¹⁹⁸ Similar laws guaranteeing rights for victims of trafficking are found in Saudi Arabia and Oman.

On the basis of these laws and international standards, the rights of victims can be summarized as follows:

- The right to safety
- The right to privacy
- The right to information
- The right to legal representation
- The right to be heard in court
- The right to compensation for damages
- The right to assistance
- The right to seek residence
- The right to recovery and reflection period
- The right to safe return to country of origin

These rights entitle victims of trafficking to benefits that should be granted regardless of their immigration status or their willingness to testify in court.

5.C.1. Right to safety

The right to safety is especially relevant in States where the law requires the victim of trafficking to testify against the traffickers or to cooperate in other ways with the authorities in the prosecution of trafficking cases.

In such circumstances, the victim should be provided with protection from possible reprisals from traffickers as a prerequisite to coming forward and testifying. Derivative victims are likewise to be considered in these cases, because family members of traffickers’ victims may also be targeted as part of any such reprisals.

In this regard, article 6 of the U.N. Protocol provides that “[e]ach State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.”¹⁹⁹

Likewise, the Office of the High Commissioner for Human Rights (OHCHR) “Recommended Principles and Guidelines on Human Rights and Human Trafficking” provides that States should ensure the following:

[T]rafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard” (Guideline 6).²⁰⁰

5.C.2. Right to privacy

Victims of trafficking should be entitled to the right to privacy. Article 6(1) of the U.N. Protocol provides that States Parties “shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.”²⁰¹ States should ensure that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

The Islamic Law Perspective



Illicit sale of children for the purpose of intercountry adoption does not constitute a form of trafficking in most countries of the Middle East because Islamic law does not recognize the institution of adoption in accordance with the Qur’an, which states in Surah XXXIII: 4-5:

“...[N or] has He made your adopted sons your sons. Such is only your manner of speech by your mouths. But God tells you the Truth, and He shows the right way. Call them by (the names of) their fathers: that is juster in the sight of God.”¹⁶

Islamic law recognizes Kafala, as an alternative to adoption. Kafala is a system of fosterage where a child may be placed under the guardianship of a family, but the child continues to retain his lineage. This explains why many countries of the Middle East that follow Islamic law had reservations regarding Article 21 of the 1989 Convention on the Rights of the Child, which recognizes adoption, because it is inconsistent with Islamic law. Unlike other regions where baby trafficking is prevalent, there is no demand for adopted children in the Middle East.

The right to privacy is provided for in Islamic law. It is explicitly provided for in the Qur’an and applies both to residential privacy (“Enter not houses other than yours until ye have asked permission and saluted those in them. If ye find no one is in the house, enter it not until permission is given to you. If ye are asked to go back, go back.”) and communication privacy (“and spy not on each other behind their backs”). These mandates to respect privacy may be applied to victims of trafficking, for whom the breach of confidentiality can be dangerous.²⁰²

5.C.3. Right to information

Victims of trafficking have the right to information. Accordingly, articles 6(2)(a) and 6(3)(b) of the U.N. Protocol provide that States Parties should make available to victims of trafficking “information on relevant court and administrative proceedings” and “information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand.”²⁰³

5.C.4. Right to legal representation

Victims of trafficking must be granted the right to legal representation. Guideline 6(5) of the OHCHR’s “Recommended Principles and Guidelines on Human Rights and Human Trafficking” recommends “providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters.”²⁰⁴

5.C.5. Right to be heard in court

A victim of human trafficking should be entitled to be heard during all stages of criminal and civil proceedings. The U.N. Protocol provides in article 6(2)(b) that the States Parties should provide victims of trafficking in persons with “assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders.”²⁰⁵ Moreover, victims of trafficking should be provided with “information on relevant court and administrative proceedings.”²⁰⁶

Under Egyptian law, implementation of the right to be heard in court requires that the victim’s views should be considered and that he or she has “[t]he right to legal assistance, in particular the right to counsel.”²⁰⁷ The court or public prosecutor may assign a lawyer in accordance with the rules prescribed in the criminal procedures law and should take the necessary measures to protect the victim’s safety, as well as the safety of any witness testifying on the victim’s behalf. This law also requires informing the victim of his or her rights in accordance with the relevant administrative, legal, and judicial regulations.²⁰⁸

5.C.6. Right to compensation for damages

Victims of trafficking in persons have a right to compensation for the trauma and exploitation that they have suffered as a result of their being trafficked.

In regard to compensation, article 6(6) of the U.N. Protocol states that “[e]ach State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”²⁰⁹

Article 14(2) of the United Nations Convention against Transnational Organized Crime states:

When acting on the request made by another State Party in accordance with Article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.²¹⁰

States around the world have addressed such obligations by developing five basic models of civil compensation of victims:

5.C.6.1. Mandatory restitution

Some legal systems grant victims of trafficking the right to receive restitution for their losses.

5.C.6.2. Confiscation of assets

Some anti-trafficking laws provide for forfeiture of assets in addition to imprisonment as the appropriate criminal sanction imposed on a trafficker. These laws thus provide that damages to victims of trafficking are to be paid out of the traffickers' property.

5.C.6.3. State fund

In some legal systems, compensation to victims of trafficking is paid out of specially created State funds. An early draft of the law of Bahrain provided that “a government fund shall be established” to provide for the necessary funding for implementing policies specified in the law. However, this provision was deleted in its entirety in the final version of the law. The Egyptian law provides for the establishment of a State fund “to assist victims of human trafficking” and “to provide financial assistance to the victims who have suffered harm resulting from any of the crimes stipulated in this law.”²¹¹ It is significant to note that in addition to “[t]he proceeds of the fines sentenced for the crimes stipulated in this law, as well as the properties, objects, and means of transportation forfeited [which] shall be allocated directly to the fund,” the law allows the fund to “accept contributions, grants, and donations from national and foreign entities.”²¹²

5.C.6.4. Civil action

Other legal systems recognize the right of a victim of trafficking to seek damages in a civil court. For instance, the law of Jordan provides that a person “injured because of one of the crimes stipulated in this law may seek compensation in accordance with the general principles in the laws in force.”²¹³ The law of Oman—in an attempt to enhance a victim's access to justice—provides that a victim of trafficking shall be exempted from the fees of a civil action that he or she files asking for compensation for the harm resulting from the exploitation.²¹⁴

General rules regarding compensation may also apply to victims of trafficking. For example, article 3 of the Algerian Code of Criminal Procedure gives crime victims the right to file a civil action, and article 239 states that anyone who wants to use the right conferred by Article 3, and who claims to be a victim of a crime or misdemeanour, can file the civil action in the same session as the criminal proceeding already in progress.²¹⁵ In addition, a person who suffers harm as a result of a crime may file a separate civil action asking for compensation in accordance with article 124 of the Algerian Civil Code, which provides that any act that causes harm to another gives rise to compensation.²¹⁶ The law of Qatar provides in article 10 that the criminal court with jurisdiction to decide a case of human trafficking shall also have jurisdiction to decide a civil action that may arise as a result of the criminal action.²¹⁷

5.C.6.5. Punitive damages

In some legal systems, victims are awarded not only damages to compensate for their losses or moral damage but also punitive damages, whose purpose is to reform or deter the perpetrator whose conduct damaged the victim.

The Islamic Law Perspective



Islamic law also recognizes the right of a victim of a crime to compensation in accordance with the Islamic tradition of the Prophet, *la darar wa la dirar*, or “no injury and no inflicting of injury.” According to this tradition, a person who causes harm should repair such harm—the basis for providing compensation for damage. As stated in the *Majallah-el Ahkam-i-Adliya*, “[A] person who does an act shall be held responsible if such act causes harm to another. The purpose of the principle of no injury or repaired harm is to achieve justice, a basic principle under Islamic law.”²¹⁸

Case Study



Two victims, Cameroonian minors, were led to believe that in exchange for light housework they would be able to attend school in the United States. On arrival in the United States, the victims were forced to work as domestic servants and nannies. The victims were threatened with deportation and physically and sexually abused to ensure their compliance. They did not receive compensation and were not allowed to attend school. They were awarded more than US\$1 million in restitution by each of the four perpetrators.²¹⁹

Case Study

A 14-year-old Haitian girl was smuggled into the United States and forced to work as a domestic servant. She was subject to physical and verbal abuse, and she worked 15-hour days cooking, cleaning, and performing yard work. The victim was often threatened with deportation. She was awarded US\$160,000 in restitution.²²⁰

Case Study

Several Indian nationals were victims of forced labour. On their arrival in the United States, the defendant confiscated their passports, return plane tickets, and visas. The victims' movements, privacy, religious worship, and access to health care were restricted. The victims worked under hostile conditions, including abusive language and discrimination based on their nationality. They lived in substandard conditions and were threatened with death if they tried to escape. They received more than US\$1.2 million in restitution for damages.²²¹

5.C.7. Right to provision of services

Victims of trafficking should be entitled to assistance in the form of medical, psychological, legal, and social aid. In this regard, article 6(3) of the U.N. Protocol states:

3. Each State Party shall consider implementing 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, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.²²²

The right to “appropriate housing” is closely related to the right to security, and it imposes on States a duty to consider providing shelters for victims, operating them either directly or in cooperation with non-governmental organizations (NGOs) and international organizations. Within the shelters, various services may be provided, depending on the type of victim and the location of the shelters.

The Gulf Cooperation Council Model Law to Combat Human Trafficking dictates that shelter should be provided for victims of trafficking.²²³ Most trafficking laws provide that victims of trafficking are entitled to accommodation in safe places such as shelters.

The Bahraini law, for example, allows for “admitting the victim into a special centre for the provision of shelter or ... with a licensed authority to undertake providing accommodation thereto if it is found that this is required.”²²⁴

The Islamic Law Perspective

The right to assistance is covered by the Islamic principles of assistance to those in distress and those in need—victims of trafficking certainly find themselves often psychologically and physically traumatized and require medical and psychological aid.

5.C.8. Right to seek residency

A victim of trafficking should be entitled to seek residency in the country of destination. The immediate return of the victims to their home countries may be unsatisfactory both for the victims and for the law enforcement authorities endeavouring to combat trafficking. For the victims, return might make them, their family, or their friends in the country of origin vulnerable to reprisals by the traffickers. For law enforcement purposes, if the victims continue to live clandestinely in the country or are removed immediately, they cannot give information for effectively combating trafficking. The more confident the victims are that their rights and interests will be protected, the more information they will be able to provide.

Accordingly, article 7 of the U.N. Protocol states that “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” and “shall give appropriate consideration to humanitarian and compassionate factors.”²²⁵

Paragraph 68 of the Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime, advocates adopting measures that provide victims of trafficking with some legal form of residency status:

[T]here is no obligation to legislate measures relating to the status of victims. However, in several countries where measures have been adopted for the temporary or permanent residence of victims of trafficking, such as Belgium, Italy, the Netherlands and the United States of America, such measures have had a positive effect on victims coming forward to testify against traffickers and on non-governmental organizations encouraging victims to whom they provide services to report incidents to the government.²²⁶

Some states have made residency status contingent on the victim's testifying in court and, more broadly, cooperating with the authorities prosecuting the traffickers. However, it is more in line with a human rights-based approach to combating trafficking not to make residency status contingent on the victim's cooperation with the authorities.

The right to seek residency is rarely present in Arab legislation. Article 15(7) of the Saudi Arabian law states that “[i]f the victim is a foreigner and it is necessary for him to stay in the Kingdom during the investigation procedures, the prosecution or the competent court would assess the matter.”²²⁷

Article 7 of the Bahraini law states that the minister of social development must form a “Committee for the Assessment of the Status of Foreigners Who Are Victims of Trafficking in Persons.”²²⁸ The law is more detailed than the Saudi law in that it empowers the committee to examine the needs of a victim for repatriation to his or her country of origin or for a job if the victim must remain in Bahrain for an extended period. However, such employment recommendations are subject to review no less often than once every six months.

5.C.9. Right to recovery and reflection period

Closely linked to the concept of residency status is the legislator's option, in the country of destination, of granting the victim a “recovery and reflection period.” In its Toolkit to Combat Trafficking in Persons, the United Nations Office on Drugs and Crime highlights the importance of such a period:

Granting a reflection period, followed by a temporary or permanent residence permit, would ideally be granted to victims of trafficking regardless of whether the trafficked person is able or willing to give evidence as a witness. Such protection of the victim serves to raise his or her confidence in the State and its ability to protect his or her interests. Once recovered, a trafficked person with confidence in the State is more likely to make an informed decision and cooperate with authorities in the prosecution of traffickers.²²⁹

Articles 6 and 8 of European Union Council Directive 2004/81/EC of 29 April 2004 include provisions regarding the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration and who cooperate with the competent authorities. These provisions make a reflection period available to persons who are willing to cooperate with the authorities prosecuting cases of trafficking:

[M]ember states shall ensure that the third-country nationals [who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration and who cooperate with the

competent authorities] are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

During the reflection period ... the third-country nationals concerned shall have access to [medical psychological treatment, translation services, and legal aid] and it shall not be possible to enforce any expulsion order against them.²³⁰

After the expiry of the reflection period, or earlier ... Member States shall consider:

- (a) the opportunity presented by prolonging the third-country national's stay on its territory for the investigations or the judicial proceedings, and
- (b) whether he/she has shown a clear intention to cooperate and
- (c) whether he/she has severed all relations with those suspected of [trafficking in human beings and illegal immigration].²³¹

However, the Council of Europe Convention on Action against Trafficking in Human Beings has made such a period a mandatory requirement for States Parties to the Convention regardless of the willingness of victims of trafficking to cooperate with the prosecuting authorities:

[E]ach Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorize the persons concerned to stay in their territory.²³²

5.C.10. Right to safe return to country of origin

Just as victims of trafficking in persons should have the right to seek residency in the country to which they have been trafficked, they should likewise have the right to a dignified return to their country of origin. Countries should ensure that victims are returned only with their voluntary and informed consent. The assistance of NGOs and other mechanisms should be called into play to ensure that victims are protected from past and potential traffickers both while they are in transit and during their reintegration.

Article 8(1) of the U.N. Protocol provides that States Parties of which victims of trafficking are nationals or residents should “facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.”²³³ Repatriation of victims “shall preferably be voluntary.”²³⁴ Victims should be provided with all necessary assistance to ensure a dignified return.

The repatriation of victims of trafficking may be regulated through international or bilateral treaties between countries of origin and countries of destination.

Best Practice

The International Labour Organization (ILO) assembled a list of 12 guidelines to assist persons who are involved in the recovery and integration of child victims of trafficking. This list is part of the ILO’s Child-Friendly Standards and Guidelines for the Recovery and Integration of Trafficked Children.

1. Each child is an individual and the recovery and integration process should be an individual one promoting the best interests of each child.
2. Although differences between individual children are respected, each child should not suffer discrimination on the basis of age, sex, nationality, race, language, religion, ethnicity, social origin, birth, or other status.
3. No trafficked child should be held in detention at any time.
4. Each child’s right to privacy and confidentiality should be respected and protected at all times.
5. Each child should be protected from all forms of neglect and physical and psychological abuse (including verbal abuse) at all times.
6. The views of each child should be considered and actively sought.
7. Each child should be made aware of his or her rights as well as responsibilities.
8. Each child should be treated with respect, affection, and dignity. Self-reliance and resilience of the child should be promoted in line with his or her age and maturity.
9. Family and community-type arrangements for a child should be favoured over institutional settings.
10. Each child should not be separated from his or her family unless there is a risk of the child’s being neglected, abused, or re trafficked.
11. Care providers should form networks to ensure that each child has appropriate physical and emotional care in a setting that encourages his or her development.
12. Care providers should be trained and experienced in caring for children and should have the relevant professional qualifications according to their job description.²³⁵

5.D. Procedural protection of victims of trafficking

Procedural law is instrumental in ensuring that the rights of victims are guaranteed within the times prescribed by law. Effective procedural laws are also a reflection of a human rights approach to combating trafficking that strives to ensure that victims of trafficking do not endure any further abuse during the prosecution phase. In addition, procedural laws must take specific account of the special needs of child victims and child victim witnesses.

A number of principles are therefore needed to ensure that procedural law is in harmony with the protections afforded by anti-trafficking legislation.

5.D.1. Witness protection

Witness protection is critical to securing the safety of victims of trafficking who wish to testify against their traffickers. Moreover, the availability of strong witness protection mechanisms and procedural measures may be an important factor in a victim's decision to cooperate with the authorities prosecuting a case. The United Nations Convention against Transnational Organized Crime stipulates the following:

[E]ach State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.²³⁶

Similarly, article 23 includes a provision on obstruction of justice and requires the criminalization of various forms of obstruction, including the use of physical force, threats, or intimidation.²³⁷

Protective measures must be in place, particularly during court proceedings. In this regard, the Council of Europe Convention on Action against Trafficking in Human Beings provides the following:

[E]ach Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

A. the protection of victims' private life and, where appropriate, identity;

B. victims' safety and protection from intimidation, in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures.²³⁸

Some States have enacted various witness protection mechanisms that are not necessarily specific to victims of trafficking but that can and should be applied to them. Other States, however, provide for specific protection related to the crime of trafficking. For instance, article 20 of the Qatari law states that “[a]nyone who discloses or reveals the identity of the victim or that of the witness subjecting him to danger or causing him harm ... shall be punished with imprisonment with a period of not more than 2 years and a fine not to exceed 50,000 Dinar.”²³⁹

Also, article 23 of Egyptian Law No. 64 of 2010 provides for the protection of witnesses during court proceedings “to avoid any influence upon them” and calls upon the State to “take whatever measures [that are] required to conceal their identity.”²⁴⁰ Similarly, article 10 of Iraqi Law No. 28 of 30 April 2012 mentions “providing the necessary protection of witnesses and victims.”²⁴¹

The double witness rule or the corroborative evidence rule disqualifies the evidence if there is only one witness. Under that rule the witness’s testimony must be corroborated by another witness or by other material evidence implicating the accused. Some countries have applied the rule in criminal proceedings to deny victims of trafficking standing as a credible witness. Such rules must be examined and reconsidered to allow the experiences of trafficking victims to be heard in court even when some elements of their story cannot be corroborated.

5.D.2. Investigation and court proceedings

Should the victim decide to cooperate with the authorities in pursuing the prosecution of a trafficking case, he or she will have a right to protection from possible retaliation. Having such legislation in place affords much-needed security and peace of mind to victims of trafficking, who frequently fear intimidation and reprisals from traffickers. Paragraph 6(2b) on the U.N. Protocol provides for “[a]ssistance to enable [victims’] views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.”²⁴²

The various procedural principles needed to provide such protection include privacy of victim witnesses, gender sensitivity, special protection for child victim witnesses, inadmissibility of past behaviour, and avoidance of overreliance on victim testimony.

5.D.2.1. Privacy of victim witnesses

The protection of privacy in court proceedings is critical to ensuring the safety and security of a victim of trafficking who chooses to cooperate with the authorities prosecuting the case. The threat of intimidation or reprisals from traffickers targeting the victim or members of the victim’s family may be heightened if the victim’s identity is not protected during court proceedings. Security promised by privacy during investigation and court proceedings will consequently allow for more

efficient disclosure of the offence of trafficking in persons. As a general rule, court proceedings should be open to the public and the media to promote confidence in the judicial system. However, in many trafficking-in-persons cases, in particular cases involving sexual exploitation or children, the best way of doing justice is to declare the court proceedings closed.

5.D.2.2. Gender sensitivity

Because victims of trafficking are often women, it is important to ensure that anti-trafficking legislation adopts a gender-sensitive approach. For example, women (including women who are social welfare workers) should be involved at all stages of the proceedings concerning cases of trafficking, including the investigation and trial.

5.D.2.3. Child victim witnesses

Child victims are particularly vulnerable and therefore require extra measures of protection beyond those that should be afforded to adult victim witnesses. Children have special rights, needs, and vulnerabilities that must be considered when prosecuting trafficking cases involving child victim witnesses. Special interviewing techniques should be used when working with child victim witnesses, and special procedures should be implemented to spare them the trauma of testifying in court. Some legal systems provide for audiovisual recording of hearings of children and others, allowing children to appear before the court by videoconference.

Best Practice

U.S. legislation provides special protection to child victim witnesses. Chapter 18 of the U.S. Code, section 3509, reads:

The court may order that the testimony of the child be taken by closed-circuit television as provided in subparagraph (A) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

- (i) The child is unable to testify because of fear.
- (ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.
- (iii) The child suffers a mental or other infirmity.
- (iv) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.”²⁴³

5.D.2.4. Inadmissibility of past behaviour

Another important legislative consideration concerning procedural law is the inadmissibility of a trafficked victim's past behaviour in court proceedings. This factor is particularly important in cases of sex trafficking.

5.D.2.5. Avoiding overreliance on victim testimony

The OHCHR “Recommended Principles and Guidelines on Human Rights and Human Trafficking” provides that States, intergovernmental organizations, and NGOs should consider the following:

[P]roviding law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers. States should encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony.²⁴⁴

Best Practice

In November 2002, a roundtable conference of 17 chief justices, which was held in the Peace Palace at The Hague, adopted the Bangalore Principles of Judicial Conduct. These principles are now widely accepted as defining the international standards for ethical conduct by members of the judiciary:

1. Independence: Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.
2. Impartiality: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.
3. Integrity: Integrity is essential to the proper discharge of the judicial office.
4. Propriety: Propriety and the appearance of propriety are essential to the performance of all of the activities of a judge.
5. Equality: Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.
6. Competence and diligence: Competence and diligence are prerequisites to the due performance of judicial office.²⁴⁵

Applying Your Knowledge: Combating Trafficking in Persons in the MENA Region: Protection

Exercise A: Review Questions

1. Does your law provide a right to legal aid to victims of trafficking?

2. Are victims of trafficking entitled to residency status in accordance with the national trafficking law?

3. How does the domestic law provide for the right of trafficking victims to seek compensation?

4. Is a victim's witness entitled to witness protection in accordance with the national law?

5. What are some of the traumatic experiences that victims of trafficking may endure?

6. How should law enforcement initially approach and communicate with victims?

7. What are some of the likely behavioural patterns of victims that may result from their experience of being trafficked?

Exercise B: Practical Task

Draft a law regarding the rights of domestic workers in accordance with ILO Convention No. 189 concerning decent work for domestic workers

Chapter 5 Endnotes

- 173 “Combating Trafficking in Persons in Accordance with the Principles of Islamic Law,” United Nations Office of Drugs and Crime, Vienna, 2010.
- 174 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (U.N. Protocol), opened for signature 12 December 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (entered into force 25 December 2003), art. 14.2.
- 175 Council of Europe Convention on Action against Trafficking in Human Beings, 2005, art. 3.
- 176 United Nations, Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police (New York and Geneva: United Nations: 1997), <http://www.ohchr.org/Documents/Publications/training5en.pdf>.
- 177 United Nations Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, art. A(1).
- 178 Council of the European Union, Council Framework Decision on the Standing of Victims in Criminal Proceedings, March 2011, art. 1(a).
- 179 Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), Al-Jarida Al-Rasmiyya, May 2010 (Egypt), art. 1, http://www.protectionproject.org/wp-content/uploads/2010/09/Law_regarding_Combating_Human_Trafficking_FINAL1.pdf.
- 180 Iraq Anti-Trafficking Law, 23 February 2012, art. 1.
- 181 Law 164 of 24 August 2011 (Punishment of Crimes of Trafficking in Persons) (Lebanon), art. 586(1), http://www.protectionproject.org/wp-content/uploads/2010/09/Lebanon_TIP-Law_2011-Ar.pdf.
- 182 Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons) (Syria), art. 1, http://www.protectionproject.org/wp-content/uploads/2010/09/Syria_Trafficking-Law_2010-arabic.pdf.
- 183 United Nations Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, art. A(2).
- 184 “Combating Trafficking in Persons in Accordance with the Principles of Islamic Law,” United Nations Office of Drugs and Crime, Vienna, 2010.
- 185 Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, http://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf.
- 186 United States v. Veerapol, 312 F.3d 1128, 1130 (9th Cir. 2002); United States v. Supawan Veerapol, 2000, United Nations Office on Drugs and Crime (UNODC) Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/1999/united_states_v._supawan_veerapol.html?tmpl=old.
- 187 U.N. Protocol, art. 6.4.
- 188 First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking, United Nations, Bratislava, 2010, 29, http://www.unodc.org/documents/human-trafficking/First-Aid-Kit/First_Aid_Kit_-_Booklet_eng.pdf.
- 189 Jordanian National Strategy to Combat Trafficking in Persons for the Years 2010–2012, Second Pillar: Protection, First Strategic Goal: Identifying Victims and Those Affected by TIP Crimes, Subsidiary Strategy 2, http://www.ahtnc.org.jo/sites/default/files/trafficking_in_persons.pdf.
- 190 First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking, United Nations, Bratislava, 2010, 29, http://www.unodc.org/documents/human-trafficking/First-Aid-Kit/First_Aid_Kit_-_Booklet_eng.pdf.
- 191 U.S. Department of Homeland Security Blue Campaign Initiative, “Human Trafficking Indicators,” http://www.dhs.gov/xlibrary/assets/ht_ice_human_trafficking_indicators_pamphlet.pdf.
- 192 UNODC, “Human Trafficking Indicators,” http://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf.
- 193 UNODC Regional Office for Central Asia, “Victims Not Villains,” http://www.unodc.org/centralasia/en/news/victims-not-villains_a-supportive-approach-to-interviewing-victims-of-human-trafficking.html.
- 194 Law No. 64 of 2010 (Egypt), art. 23.
- 195 Ibid., art. 22.
- 196 Law No. 1 of 9 January 2008 (Law with Respect to Trafficking in Persons) (Bahrain), art. 5.
- 197 Legislative Decree No. 3 of 2010 (Syria), art. 15(2).
- 198 Ibid., art. 15(2).
- 199 U.N. Protocol, art. 6.

- 200 Office of the High Commissioner for Human Rights (OHCHR), Recommended Principles and Guidelines of Human Rights and Human Trafficking (Geneva: United Nations), Guideline 6, http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf.
- 201 U.N. Protocol, art. 6(1).
- 202 "Combating Trafficking in Persons in Accordance with the Principles of Islamic Law," United Nations Office of Drugs and Crime, Vienna, 2010.
- 203 U.N. Protocol, arts. 6(2)(a) and 6(3)(b).
- 204 OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 6(5).
- 205 U.N. Protocol, art. 6(2)(b).
- 206 Ibid., art. 6(2a).
- 207 Law No. 64 of 2010 (Egypt), art. 23(e).
- 208 Ibid., art. 23(c).
- 209 U.N. Protocol, art. 6(6).
- 210 United Nations Convention against Transnational Organized Crime (UNTOC), G.A. Res. 55/25, U.N. Doc. A/Res/55/25 (8 January 2001), art. 14(2).
- 211 Law No. 64 of 2010 (Egypt), art. 27.
- 212 Ibid.
- 213 Law No. 9 of 3 March 2009 on Prevention of Human Trafficking (Jordan), <http://www.protectionproject.org/wp-content/uploads/2010/09/Jordan-Anti-Trafficking-Legislation-2009-and-TIP-Law-2008.pdf>
- 214 Royal Decree 126/2008 Promulgating the Law Combating Trafficking in Persons, 23 November 2008 (Oman), art. 17.
- 215 Code of Criminal Procedure (Algeria), arts. 3 and 239.
- 216 Civil Code (Algeria), art. 124.
- 217 Law No. 15 of 2011 (Regarding Combating Human Trafficking) (Qatar), art. 10, http://www.protectionproject.org/wp-content/uploads/2010/09/Qatar_TIP-Law_2011-Ar.pdf.
- 218 "Combating Trafficking in Persons in Accordance with the Principles of Islamic Law," United Nations Office of Drugs and Crime, Vienna, 2010.
- 219 United States v. Louisa Satia, Criminal Case No. 00-590, 2001, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/united_states_v._louisa_satia_criminal_case_no._00-590.html?tmpl=old.
- 220 United States v. Maude Paulin, 2008, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/2008/united_states_v._maude_paulin.html?tmpl=old.
- 221 Chellen v. John Pickle Company, 2006, UNODC Human Trafficking Case Law Database, http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/2006/chellen_v._john_pickle_co.html?tmpl=old.
- 222 U.N. Protocol, art. 6(3).
- 223 Gulf Cooperation Council Model Law to Combat Human Trafficking (prepared by the Expert Committee Meeting at the General Secretariat, Riyadh, Saudi Arabia, 19-21 March 2006).
- 224 Law No. 1 of 9 January 2008 (Bahrain), art. 5(5).
- 225 U.N. Protocol, art. 7.
- 226 Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocol Thereto, para. 68, http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf.
- 227 Royal Decree No. M/40 of 2009 (Suppression of the Trafficking in Persons Act), Um Al-Quaran, 7 August 2009 (Saudi Arabia), art. 15(7), http://www.protectionproject.org/wp-content/uploads/2010/09/Saudi-Arabia_TIP-Law_2009_Combined.pdf.
- 228 Law No. 1 of 9 January 2008 (Bahrain), art. 7.
- 229 UNODC, Toolkit to Combat Trafficking in Persons (Vienna: UNODC, 2008).
- 230 European Union Council Directive 2004/81/EC of 29 April 2004, art. 6.
- 231 Ibid., art. 8.
- 232 Council of Europe Convention on Action against Trafficking in Human Beings, 2005, art. 13.
- 233 U.N. Protocol, art. 8(1).

- 234 Ibid., art. 8(2).
- 235 International Labour Organization, *Child-Friendly Standards and Guidelines for the Recovery and Integration of Trafficked Children* (Bangkok: International Labour Organization, 2006), 18–20, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_75_en.pdf.
- 236 UNTOC, art. 24(1).
- 237 Ibid., art. 23.
- 238 Council of Europe Convention on Action against Trafficking in Human Beings, 2005, art. 30.
- 239 Law No. 15 of 2011 (Qatar), art. 20.
- 240 Law No. 64 of 2010 (Egypt), art. 23.
- 241 Law No. 28 of April 2012 on Combating Human Trafficking (Iraq), art. 10, <http://www.protectionproject.org/wp-content/uploads/2010/09/-----2012-Official-TIP-Law.pdf>.
- 242 U.N. Protocol, para. 6(2b).
- 243 Child Victims' and Child Witnesses' Rights, 18 USC § 3509.
- 244 OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 5.
- 245 Bangalore Principles of Judicial Conduct, 2002, http://www.unodc.org/pdf/corruption/bangalore_e.pdf.

Chapter 6. Combating Trafficking in Persons in the MENA Region: Participation

6.A. Introduction

6.A.1. Importance of participation in the implementation of prevention, prohibition, and prosecution efforts

In the area of trafficking in persons, cooperation among the relevant government agencies, among countries when cases of trafficking have an international component, and among governments and civil society is essential in guaranteeing the implementation of all prevention, protection, and prosecution efforts.

Cooperation among governments and civil society organizations is equally important to identifying victims of trafficking and to offering direct services, such as legal assistance, medical care, and psychological aid. Civil society organizations can also contribute to a dignified process of repatriation (if the victim so desires) and reintegration or of integration into society if the victim is granted resident status.

6.A.2. International obligation of cooperation with civil society

The U.N. Protocol stipulates that the States Parties should cooperate with non-governmental organizations (NGOs) in adopting prevention measures to combat trafficking and measures of assistance and protection. According to article 9, “[P]olicies, programs and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.”²⁴⁶ Furthermore, article 6(3) of the U.N. Protocol states:

Each State Party shall consider implementing 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, other relevant organizations and other elements of civil society, and, in particular, the provision of (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.²⁴⁷

The Council of Europe Convention on Action against Trafficking in Human Beings also refers to civil society and calls on States to raise awareness about the role of civil society in identifying demand as a root cause of trafficking, to make available to

victims contact information for NGOs in their country of origin to assist them when they return, and to adopt measures to protect NGOs offering assistance to victims of trafficking from retaliation or intimidation during criminal proceedings.²⁴⁸

Article 5(6) regarding prevention of trafficking in human beings states:

Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.²⁴⁹

References to civil society in the are also present in three other articles. Article 10(1) addresses the identification of the victims reads:

Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.²⁵⁰

Article 12(5) discusses the assistance of the victims:

Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.²⁵¹

Article 16(5), which addresses the repatriation and return of victims, reads:

Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non-governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.²⁵²

Best Practice

A successful example of cooperation with NGOs is the work undertaken by the Qatar Foundation for Combating Human Trafficking (QFCHT). The QFCHT, a governmental organization with an independent status, works in cooperation with the Qatari National Office for Combating Human Trafficking and the National Lodging House to offer shelter for victims of trafficking and to collect information on the rescued victims. The QFCHT proposes policies, national work plans, and special legislation on combating trafficking in persons. It aims to consolidate society's full awareness of human trafficking by working with the competent governmental and non-governmental institutions in Qatar. In addition, once victims of trafficking are identified and rescued, the QFCHT provides medical, psychological, and social care, as well as legal advice and representation, and reports cases to the competent authorities. Children at the Lodging House are provided with education as well as recreational programs to help them overcome trauma and abuse. Financial aid and vocational training are offered to victims as part of a rehabilitation and reintegration program.²⁵³

6.A.3. Role of law enforcement in working with NGOs

Law enforcement officials assigned to cases of human trafficking should have a list of appropriate local NGOs that can assist in protecting and rehabilitating the victim. Cooperation with NGOs is also a way for law enforcement to gather intelligence concerning trafficking rings and vulnerable victims in their community.

NGOs may also assist law enforcement in identifying victims of trafficking. Victims may be more willing to tell their stories to NGOs, which are regarded as empathetic, rather than to law enforcement officers, who may be regarded as threatening. This situation is exacerbated in the case of trafficking victims who are in the country of destination illegally and who may fear deportation. In addition, NGOs may have accumulated expertise in victim profiling and in victims' typical behaviour patterns, which may aid in identification.

After a successful rescue, NGOs play a significant role when it comes to interacting with the victim. NGOs may counsel victims and assist in reducing their trauma, as well as assisting in victims' interviews with law enforcement officials. NGOs are also better equipped to help rehabilitate victims; they provide them with the appropriate care and necessary assistance, such as medical and psychological care; they inform victims of their legal rights and the best paths for accessing justice; and they empower victims during the rehabilitation process. NGOs are the crucial link between victims and civil society, as well as law enforcement and civil society.

Best Practice

In Indonesia, a “Point of Origin” strategy is used to offer training about human trafficking to local police officers and NGOs working to combat trafficking. The partnership established a solid network of information sharing between the public and the police, leading to multiple arrests and convictions of traffickers. Through this training, law enforcement officials became master police trainers and were deployed throughout the country. This approach was then used to establish a long-term program for the Indonesian National Police, funded by the International Criminal Investigative Training Assistance Program of the U.S. Department of Justice.²⁵⁴

6.B. Models of participation of civil society in government efforts to combat trafficking in persons

Two main models serve to engage civil society organizations in government efforts to combat trafficking in persons: the representation model and the consultation model.

6.B.1. Representation model

The representation model—the more inclusive model for the full partnership of civil society organizations in government anti-trafficking efforts—involves the inclusion of representatives of relevant NGOs on a national inter-agency body tasked with implementing anti-trafficking policies.

6.B.2. Consultation model

The consultation model, conversely, engages NGOs on a consultative basis. In this model, the law mandates that the government regularly retain representatives of civil society organizations concerned with trafficking in persons as consultants. NGO participation can include testifying as part of parliamentary hearings aimed at policy development and refinement, consulting in research and investigations carried out by parliament, or providing independent expertise in policy evaluation.

6.B.3. Civil society on Arab committees to combat trafficking in persons

The Gulf Cooperation Council Model Law to Combat Human Trafficking, while providing for coordination among State agencies, is silent about coordination between such State agencies and members of civil society. Similarly, the law of the United Arab Emirates makes it a function of the National Committee for Combating Human Trafficking to coordinate “between different state bodies including Ministries, Departments, Establishments and Authorities related to the combating of human trafficking,”²⁵⁵ but it makes no reference to NGOs.

Article 23 of the Omani law mandates that the National Committee for Combating Trafficking in Persons shall coordinate among all competent national authorities “and relevant international organizations to set up measures and procedures capable of combating transnational trafficking crimes.”²⁵⁶ The law of Jordan gives the National Committee to Protect from Human Trafficking the authority to cooperate with all agencies to implement programs for the physical, mental, and social rehabilitation of victims and those who are affected by the crime of human trafficking and to supervise the hosting of these persons in the places that were established for this purpose.²⁵⁷ NGOs are not represented on these national committees. The Saudi Arabian law is also silent regarding any role for NGOs.

The Syrian law is clearer with regard to the role of civil society, stating that “[t]he concerned authorities shall take measures to ensure providing victims of trafficking the appropriate protection ... in cooperation, whenever necessary, with official institutions, popular organizations, trade unions, and NGOs that are concerned with the issue.”²⁵⁸

The only reference in the Egyptian law to institutions other than the government is in article 26, which states that “[t]he competent authorities shall provide care, education, training, and rehabilitation programs to the Egyptian victims, whether through governmental or non-governmental institutions.”²⁵⁹

In Bahrain, article 8 of the law on human trafficking calls for establishing the Committee for Combating Trafficking in Persons with the purpose of coordinating among government departments, but it does not call for coordination with civil society. Although the functions of the Bahraini committee do not include coordination with civil society, the law does require the minister of social development to nominate “representatives of three civil societies”²⁶⁰ to the committee, a model of civil society participation that should be applauded.

It should also be noted that Arab anti-trafficking laws address preventive measures only as a part of the functions of inter-agency task forces. These measures include (a) conducting research, (b) collecting information, (c) carrying out media campaigns, (d) participating in international conferences related to human trafficking, (e) amending existing legislation related to human trafficking, (f) creating a database of information and statistics on the subject, (g) conducting training programs for those who are in charge of implementing human trafficking legislation, and (h) ensuring the implementation of the law by the competent government authorities. Again, these laws should allow for a civil society role in implementing these measures.

In defining the functions of Arab inter-agency task forces, the Arab laws do not distinguish between coordination and reporting, nor do they emphasize reporting as one of the most important means of enforcement. For instance, Bahrain’s law makes

it a function of the Committee for Combating Trafficking in Persons to participate with the appropriate government authorities in preparing reports to be presented to U.N. committees, but it does not provide for a self-reporting mechanism where the committee itself would publish an annual or periodic report to be submitted to parliament. However, the Bahraini law entrusts the committee with submitting a report to the minister of foreign affairs on the implementation of international conventions to which the Kingdom is a party. The law of the United Arab Emirates includes preparation of reports on the measures taken by the government to combat human trafficking as a function of the National Committee to Combat Human Trafficking, but it does not provide for the issuance of an annual report. Additionally, for the reasons detailed in the previous sections, NGOs and other elements of civil society must be consulted in any report that assesses the scope of the problem and the appropriate responses.

6.C. Engaging the five elements of civil society

Civil society organizations combat trafficking in persons at the local, national, regional, and international levels. Civil society is composed of five main elements: non-governmental organizations, corporations, academia, media, and religious institutions. Each element has a separate but essential role to play in confronting and combating trafficking in persons in the Arab world.

6.C.1. Non-governmental organizations

Non-governmental organizations combat trafficking in persons in a number of ways. Among the most common forms of activities undertaken by NGOs to fight trafficking are public awareness campaigns, advocacy, research, networking, provision of direct services, and policy development.

Best Practice

An example of successful civic engagement is the initiatives undertaken by Darna, an organization based in Tangiers, Morocco. Darna operates a youth centre and a farm school for street children. The centre and the school aim at providing street children with a safe environment, basic education, psychological support, and marketable skills to help them find jobs and become less vulnerable to the dangers of street life, including trafficking, abuse, and commercial sexual exploitation.²⁶¹

6.C.2. Corporations

The private sector is often overlooked in anti-trafficking initiatives despite its tendency to engage governmental, intergovernmental, and non-governmental actors of change. However, representatives of the private sector can play an important

role in combating trafficking by adopting corporate policies that aim to sever any links between legitimate businesses and trafficking in persons. Aside from the need to ensure the liability of legal entities, it is important to raise their awareness of the issue and encourage them to develop ethical policies and codes of conduct that require adherence to a zero-tolerance policy when it comes to any form of trafficking, particularly trafficking in children.

6.C.2.1. Code of Conduct for businesses

Recognizing the important role of the private sector, with particular emphasis on international corporations, the United Nations adopted the United Nations Global Compact, a principle-based framework for businesses that uses 10 principles in the areas of human rights, labour, the environment, and anti-corruption. The Global Compact encourages businesses worldwide to adopt sustainable and socially responsible policies and to report on their implementation. Principles 4 and 5, in particular, encourage businesses to adopt policies to ensure the abolition of all forms of compulsory labour and child labour.

Best Practice

The U.N. Global Compact's 10 Principles

1. Businesses should support and respect the protection of internationally proclaimed human rights; and
2. Make sure that they are not complicit in human rights abuses.
3. Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
4. The elimination of all forms of forced and compulsory labour;
5. The effective abolition of child labour; and
6. The elimination of discrimination in respect of employment and occupation.
7. Businesses should support a precautionary approach to environmental challenges;
8. Undertake initiatives to promote greater environmental responsibility; and
9. Encourage the development and diffusion of environmentally friendly technologies.
10. Businesses should work against corruption in all its forms, including extortion and bribery.²⁶²

Certain areas in the private sector are especially vulnerable to trafficking in persons because of the high demand for trafficked persons. The tourism sector is such an example, with the phenomenon of children and young girls being trafficked for sex tourism worldwide. To assist businesses in the tourism industry in complying with the

principles of the U.N. Global Compact, ECPAT International, in cooperation with the United Nations Children’s Fund and the World Trade Organization, developed a code of conduct containing six criteria for suppliers of tourism services:

1. [E]stablish an ethical policy regarding commercial sexual exploitation of children ...
2. [T]rain the personnel in the country of origin and travel destinations ...
3. [I]ntroduce a clause in contracts with suppliers, stating a common repudiation of commercial sexual exploitation of children ...
4. [P]rovide information to travelers by means of catalogues, brochures, in-flight films, ticket-slips, home pages, etc. ...
5. [P]rovide information to local “key persons” at the destinations ...
6. [R]eport annually.²⁶³

Best Practice

In responding to this call, the Carlson Hotels have developed a Responsible Business program that focuses on taking responsibility for diversity, inclusion, health, and respect of internationally recognized labour standards, including the protection of children from forced labour and sexual exploitation within their premises. Carlson Hotels train their employees to recognize situations of human trafficking and to take action against it. Carlson also communicates this Responsible Business program to customers, providing them with the opportunity to support Carlson’s commitment to social responsibility issues and to benefit from the practices. Moreover, Carlson strives to purchase goods from suppliers that demonstrate social responsibility.²⁶⁴

Best Practice

The Apple Supplier Code of Conduct comprises four sections: labour and human rights, health and safety, environmental impact, and ethics. Regarding labour and human rights, Apple aims to (a) end excessive work hours; (b) eradicate forced labour of migrant workers; (c) prevent underage labour; (d) prohibit discrimination in the workplace, including discrimination based on race, gender, age, sexual orientation, ethnicity, disability, religion, political affiliation, national origin, and marital status; and (e) work with suppliers that use only conflict-free materials.²⁶⁵

6.C.2.2. Regulating the work of private employment agencies

Private employment agencies in many Arab countries, it has been reported, contribute to the trafficking infrastructure by facilitating the deceptive practices of recruitment used in the trafficking business. Taking advantage of their positions as

intermediaries between workers in the countries of origin and business and families in the countries of destination, employment agencies often engage in exploitative practices, such as imposition of exploitative fees, retention of workers' passports, blackmail, and intimidation. To regulate the work of such employment agencies, article 8(1) of International Labour Organization Convention No. 181 of 1997 on private employment agencies calls on States to do the following:

After consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within [their] jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in [their] territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.²⁶⁶

In the Middle East and North Africa (MENA) region, only Morocco and Algeria have ratified this convention.

6.C.2.3. Limitations on matchmaking organizations and international marriage brokers

Transactional marriages are common in some Muslim countries. In such marriages, a foreigner finds a wife through a “marriage broker” and then takes her back to his home country, where he may exploit her. Similar to the abuse and exploitation of the legitimate industry of consensual matchmaking in the West, such a practice may constitute an illegitimate abuse of an otherwise legitimate institution if the matchmaking organization knows the woman will be exploited or is negligent in this regard. Any such legal entity facilitating trafficking either knowingly or as a result of negligence should be strictly sanctioned. A variety of obligations should be placed on such businesses, with the aim of preventing exploitative practices before they occur. Similarly, agencies that facilitate international marriages (marriages by catalogue, transactional marriages, and marriages via the Internet) or international adoptions may also engage in illicit practices, which can amount to or be directly conceived as acts of trafficking in persons.

Best Practice

The following is according to section 4 of the Philippine Acts of Trafficking in Persons:

It shall be unlawful for any person, natural or juridical, to commit any of the following acts: (...) (c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labour or slavery, involuntary servitude or debt bondage.²⁶⁷

6.C.3. Academia

Education is an important tool for the prevention of trafficking in persons. Education is paramount as both a means to provide young generations with the skills and knowledge necessary to become active and productive members of society and a means to develop their awareness of their rights and duties under national and international legislation, thus reducing their vulnerability to trafficking and other forms of abuse. Education is also an effective tool in raising awareness among the wider public on the dangers of trafficking in persons and its long-term negative impact on the economic and social development of the country. Means to integrate the topic of trafficking in persons into the educational system include curriculum reform, student group discussions, moot court awareness-raising exercises, and outreach services coordinated by the educational institutes. Moreover, academic institutions play an important role in the field of research into the various aspects of trafficking in persons. Often they assist policy makers in designing and implementing anti-trafficking government programs.

A recent development in the educational curriculum of various universities in the MENA region is the establishment of clinical legal educational programs. The programs are legal centres based within the law faculties of the universities that offer law students the opportunity to develop practical skills by working on real cases of trafficking in persons and related crimes. Under the supervision of experienced lawyers and faculty professors, the students engage in providing legal consultation to victims of trafficking and other vulnerable victims with regard to their rights and duties under national and international legislation. The main clinical legal programs in the Arab world are the Iraq Refugee Assistance Project at the University of Amman in Jordan, the Legal Clinic at Alexandria University in Egypt, and the Human Rights Clinic at Al-Quds University on the West Bank. There are also law clinics at United Arab Emirates University in the United Arab Emirates, Beirut University in Lebanon, Helwan and Assiut Universities in Egypt, and Baghdad University in Iraq.

In addition to broadening the students' legal skills, the legal aid clinics are proving to be instrumental in raising awareness on trafficking in persons among students and in providing assistance to victims who would otherwise have limited access to the justice system of the country.

6.C.4. Media

The media can be useful in spreading awareness and understanding of trafficking in persons among national and international populations. Media outlets include television, radio, and newspapers, all of which have helped disseminate information on trafficking in persons. Some governments have incorporated the media into their trafficking-in-persons prevention policy as a means of raising awareness.

Although the media are a powerful tool in influencing public opinion and raising awareness about an issue, with such power comes the responsibility to provide accurate information while ensuring the protection of individual sources from any harm as a result of information disclosure. Media coverage of cases of trafficking in persons must not endanger the lives of the victims or infringe on their privacy.

Public awareness media campaigns are helpful not only in informing the public about the dangers of trafficking in persons and the signs that help people recognize it but also in rescuing those who may have already fallen victim to trafficking, particularly by alerting the general public and people who may come into contact with potential victims.

Best Practice

To compensate for the still feeble government intervention on this level, some organizations have specifically decided to address trafficking in persons from the demand side. For instance, the A21 Campaign, a Greek network of individuals, organizations, and government officials who are committed to abolishing injustice in the 21st century, has worked with “johns” to educate them on the realities of engaging sex workers. In 2010, a media campaign was launched in Greece for the purpose of informing those men about the stories and backgrounds of the women working in the sex industry in Greece, as well as the violence and abuse the women suffer and the slavery-like conditions in which they are kept by their exploiters. The campaign was intended to prompt clients of sex workers to think about the consequences of their part in the sex industry and to reconsider their preconceived assumptions and attitudes about those who work in the sex industry. The A21 Campaign has also designed short courses for schoolboys to impress young men about the realities of human trafficking before they ever become paying clients.²⁶⁸

6.C.5. Religious institutions

Religion can be a powerful influence in preventing trafficking in persons. Many faith-based organizations today work toward combating trafficking in persons through awareness-raising and educational programs.

In the MENA region, various imams and Islamic scholars have contributed to raising awareness of the problem of trafficking in the Arab world by issuing fatwas condemning the crime and urging the Muslim people to refrain from cultural practices that might be conducive to trafficking in persons in the region and around the world.

For example, on 3 September 2002, Saudi Arabia's Grand Mufti issued a fatwa against the abuse of foreign labour by Saudi employers and stated, "[B]lackmailing and threatening [foreign] labourers with deportation if they refuse the employers' terms, which breach the contract, is not allowed."²⁶⁹

Similarly, Sheik Youssef al-Qaradawi, an eminent Islamic scholar, issued a fatwa in March 2008 stating that the sponsorship rule that prevails in some countries is inconsistent with the teachings of Islam and should be abolished. The "sponsorship rule" provides an employer sponsoring a worker with a variety of rights that may infringe on the rights of the employee. For example, foreign workers' travel documents are withheld by employers; consequently, an employee may not leave his employer and seek other employment without approval, nor is the employee allowed to leave the country for any reason without first obtaining the employer's approval. This rule may violate the worker's right to free movement. Sheik Youssef al-Qaradawi explained that the "[s]ponsorship system nowadays produced visa-market[s], leaving [many] workers living in sub-human conditions, as a large number of labourers are accommodated in small areas. It is really a shame and also it is against the Islamic principles which call for respecting human rights."²⁷⁰

In a more recent fatwa issued on 4 July 2011 in Amman, Jordan, the president of the World Islamic Sciences and Education University, Abdul Nasser Abu Basal, stated that human trafficking, if organized and conducted on a large scale, warrants the application of the hudud punishment for highway robbery or corruption in land.

6.D. Use of new technologies to promote effective partnership

Effective use of the Internet and other forms of information technology, such as websites and computer databases, can also serve to combat trafficking in persons. Statistics are difficult to collect and quickly become outdated, but information technology-related initiatives can be used to enhance coordination and information sharing among NGOs, civil society organizations, and governments, including law enforcement officials. The Internet can be used to spread information about anti-trafficking initiatives, to educate the public about the dangers and issues surrounding trafficking in persons, and to promote bilateral and multilateral networking with a view to stepping up the pressure and addressing the problem. Comprehensive anti-trafficking databases can connect isolated anti-trafficking groups across regions, provide information to law enforcement and border control officials on persons suspected of being trafficked, assist victims, and provide accurate trafficking statistics.

Applying Your Knowledge: Combating Trafficking in Persons in the MENA Region: Participation

Exercise A: Review Questions

1. What regulations would you suggest be established to monitor the work of employment agencies?

2. Does your national law regulate foreign marriages?

3. How does the trafficking law address the role of civil society?

4. To what extent do human rights organizations in your country conduct activities related to trafficking in persons?

-
5. Do you know of any colleges, universities, or other institutions of learning that offer courses on trafficking in persons or related issues?

6. Why is combating human trafficking in the interest of corporations?

7. How best can law enforcement and corporations partner with each other to raise awareness about human trafficking?

Exercise B: Practical Tasks

1. Draft a curriculum on trafficking in persons for academic institutions.

Chapter 6 Endnotes

- 246 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, opened for signature 12 December 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (entered into force 25 December 2003), art. 9.
- 247 *Ibid.*, art. 6(3).
- 248 Council of Europe Convention on Action against Trafficking in Human Beings, art. 16(6).
- 249 *Ibid.*, art. 5(6).
- 250 *Ibid.*, art. 10(1).
- 251 *Ibid.*, art. 12(5).
- 252 *Ibid.*, art. 16(5).
- 253 Qatar Foundation for Combating Human Trafficking, http://www.qfcht.org/home_en.aspx.
- 254 U.S. Agency for International Development (USAID), "The Multiple Roles of Police in Combating Trafficking in Persons," <http://blog.usaid.gov/2011/08/the-multiple-roles-of-police-in-combating-trafficking-in-persons/>.
- 255 Law No. 51 of 9 November 2006 (Combating Human Trafficking Crimes) (United Arab Emirates), art. 12, http://www.protectionproject.org/wp-content/uploads/2010/09/United-Arab-Emirates_Trafficking-Law_2006-Ar+En.pdf.
- 256 Royal Decree 126/2008 Promulgating the Law Combating Trafficking in Persons, 23 November 2008 (Oman), art. 23.
- 257 Law No. 9 of 3 March 2009 on Prevention of Human Trafficking (Jordan), <http://www.protectionproject.org/wp-content/uploads/2010/09/Jordan-Anti-Trafficking-Legislation-2009-and-TIP-Law-2008.pdf>.
- 258 Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons) (Syria), art. 15(1), http://www.protectionproject.org/wp-content/uploads/2010/09/Syria_Trafficking-Law_2010-arabic.pdf.
- 259 Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), Al-Jarida Al-Rasmiyya, May 2010 (Egypt), art. 26, http://www.protectionproject.org/wp-content/uploads/2010/09/Law_regarding_Combating_Human_Trafficking_FINAL1.pdf.
- 260 Law No. 1 of 9 January 2008 (Law with Respect to Trafficking in Persons) (Bahrain), art. 8.
- 261 Darna, Tangier, Morocco, http://www.darnamaroc.org/index_en.html.
- 262 United National Global Compact, "The Ten Principles," <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/>.
- 263 ECPAT International, "Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism," 1998.
- 264 The Protection Project at The Johns Hopkins University, School of Advanced International Studies (SAIS), "100 Best Practices in Combating Trafficking in Persons: The Role of Civil Society," 58, http://www.protectionproject.org/wp-content/uploads/2012/07/100-Best-Practices-in-Combating-TIP_Final-Doc1.pdf.
- 265 Apple Supplier Code of Conduct, <http://www.apple.com/supplierresponsibility/accountability.html>.
- 266 International Labour Organization Convention No. 181 Concerning Private Employment Agencies, date of adoption 19 June 1997 (entered into force 10 May 2000), art. 8(1).
- 267 Philippines, Anti-Trafficking in Persons Act (RA No. 9208) of 2003, sec. 4(c).
- 268 The A21 Campaign, <http://www.thea21campaign.org/>.
- 269 Fatwa issued on 3 September 2001 by the Saudi Arabian Grand Mufti regarding the abuse of foreign labour by Saudi employers.
- 270 Fatwa issued in March 2008 by Sheik Youssef al-Qaradawi regarding sponsorship rule.