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The Developments of Trafficking in Women in Post-Revolution Tunisia

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Abstract

The Tunisian Uprising of 2011 played as a catalyst in relation to the development of trafficking in women into reaching today's notions, categories and numbers of victims. The increase in the rate of female victims of trafficking at the local and transnational levels has urged the Tunisian authorities to pay more attention to the shortcomings of the laws and the legal national framework in general. This study will discuss the historical and legal developments of the issue of trafficking in women in Tunisia. It will explore the case studies of certain categories of local and transnational female victims and focus on the re-victimization of women throughout the trafficking process and after. My research will depend basically on first-hand resources for accurate, yet new information, statistics and testimonies. I obtained my information through interviewing governmental and non-governmental officials. I have reached out to all concerned civil society actors who work on the issue of trafficking for statistics and data relevant to victims and traffickers and also in an attempt to know the role these actors play in fighting trafficking. This research depends on official data from different governmental bodies, mainly the Ministry of Interior and Justice. I am using also newspapers articles and things written on the different forms of internal and transnational trafficking in Tunisia like the Jihad al-Nikah³ and forced prostitution, and others examples. I managed to collect data through conducting interviews with officials, getting statistics and having access to law cases from Tunisian courts.

Introduction

Humanity struggled for decades to fight slavery which sneaks back into different societies around the world taking different shapes and forms disguised under what is called today as the modern-day slavery or trafficking in persons. This

phenomenon is considered to be the third most dangerous and widespread crime around the globe after the trade of weapons and drugs.

What we see today of trafficking in persons is nothing new or different from the prehistoric practices of slavery; as they are two faces for the same coin. It is actually the same thing whether we speak of selling women at *Suq al-Birka*¹ in the 19th century, or we speak of forcing women into illegal prostitution after deceiving them with a fake online job today. Even though Ahmed Bey² abolished slavery in Tunisia in the early 1800s; slavery came back to the Tunisian scene masked under new forms and names. It has developed further after the advent of the Arab revolutions headed by Tunisia in January 2011. The developments detected afterwards in cases, categories, laws and efforts show the increase of this phenomenon in the recent years following the Jasmine Revolution.

Discrimination against women in the MENA region made it easier for traffickers to exploit women for the nature of the Arab Muslim culture that categorizes females as second- class citizens. Females suffer of limited opportunities and they are pressured to meet society's expectations, which could push them in the hands of abusers because of their fragile situation for being dependent on the male figures in their societies.

I have become interested in the issue of Trafficking in Women for it has intrinsically been linked to the issues of gender, human rights, international law and governmental and non- governmental organizations. I started conducting research on trafficking in persons in the last two years, after meeting in person with a Nigerian victim who was trafficked into Italy through Tunisia and who magically survived the webs of trafficking and started her own non-governmental organization to help other female victims. When I started doing research, I realized that there is a lack of data and that little research has been done on the issue of trafficking in Tunisia. There are limited statistics and basically no exact information on trafficked women in both types of trafficking whether the internal or cross-border ones. Some other researches have been conducted on the exploitation of women in Tunisia in different sectors; however, no records exist of stating that these exploited women are trafficked. Consequently, I felt the need to conduct my own research in order to get the truth about the dimensions of trafficking in women at the national level and to try to help further researches in detecting and reaching out to women to protect and help them.

As for the connection between this topic and my area of interest which is international relations, I believe it fits perfectly for it explores the link between

¹ *Suq al-Birka*: Where the weekly slave market in Tunis was held every Friday. Now, it is a gold market in the heart of the Old Medina of Tunis.

² Ahmed Bey, the tenth Husayni ruler 10 October 1837- 30 May 1855.

Tunisia and international legal instruments, conventions, entities and efforts related to this international crime of trafficking. Tunisia keeps good relations and ties with different international organizations and entities to keep its long history of cooperation with the international community. Nevertheless, these good relations are jeopardized by the lack of efforts Tunisia is putting into its fight against trafficking. The fact that Tunisia has not yet passed its own legal national anti-trafficking laws puts it under the spot light. The country is still lagging behind as far as the compliance with international conventions in relation to trafficking are concerned, which has urged the U.S.A, EU and UN to question Tunisia's commitments towards the defense of human rights and keeping its obligations to the international community. Consequently, this would eventually lead Tunisia to lose the funds from the international community that supports it for committing to its promises and obligations. It is important to note that Tunisia withdrew all its reservations to the United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2014. That puts Tunisia under more pressure to fully comply with international laws and to meet the expectations of the international community in defending women's rights.

The Tunisian Uprising of 2011 played as a catalyst in relation to the development of trafficking in women into reaching today's notions, categories and numbers of victims. The increase in the rate of female victims of trafficking at the local and transnational levels has urged the Tunisian authorities to pay more attention to the shortcomings of the laws and the legal national framework in general. In fact, it is so easy for the judicial body to simply convict trafficked women in prostitution. Female victims experience a double injustice: being persecuted according to outdated legal texts (dating back to 1913) after being abused and exploited as result of trafficking. This study will discuss the historical and legal developments of the issue of trafficking in women in Tunisia. It will explore the case studies of certain categories of local and transnational female victims and focus on the re-victimization of women throughout the trafficking process and after.

My research will depend basically on first-hand resources for accurate, yet new information, statistics and testimonies. I obtained my information through interviewing governmental and non-governmental officials. I have reached out to all concerned civil society actors (NGOs and IGOs) who work on the issue of trafficking for statistics and data relevant to victims and traffickers and also in an attempt to know the role these actors play in fighting trafficking. This research depends on official data from different governmental bodies, mainly the Ministry of Interior and Justice. I am using also newspapers articles and things written on the different forms of internal and transnational trafficking in Tunisia like the Jihad

al-Nikah³ and forced prostitution into the Gulf countries in addition to other examples. I could manage to collect data through conducting interviews with officials, getting statistics and having access to law cases from Tunisian courts.

With these concerns in mind, this paper aims at serving a dual purpose. First, to provide a personal criticism of the current situation of trafficking in women in Tunisia. Second, it will put forward new first-hand data on victims and experts opinions in relation to the deficiency of laws and will provide also some recommendations for a better fight in dealing with trafficking.

The main issue of re-victimization of female trafficking victims and how I view the development of trafficking in women will be addressed in three parts. The first chapter tackles the gradual emergence and transformation of the term of slavery into trafficking. It explores the developments in terminology that led to today's trafficking definition of The Palermo Protocol. The second section of the same chapter will explore the gender perspective of trafficking in women and what makes women more vulnerable to this crime. The second chapter discusses the role of the government and the legal international and national decrees and conventions in fighting trafficking in women. It will also discuss the new Tunisian bill of law on trafficking and its efficiency in fighting trafficking. It will also look into the brief history of the legal architecture and the development of the international texts culminating in The Palermo Protocol. The focal issue in this chapter will be on the challenges facing Tunisia in fighting trafficking through passing related legal texts, keeping its commitment to protecting human rights as promised when signed international agreements, especially in the context of the post-revolution. The third chapter will reveal new statistics and details of the newly developed transnational trafficking crimes in women in Tunisia. This includes information about foreign women trafficked in Tunisia and Tunisian women trafficked abroad. It puts in question the state's decisions in dealing with real cases of trafficked women; mainly the case of exploited women in Lebanon and foreign women mainly African exploited in Tunisia. This is followed by a thorough criticism in relation to all aspects related to the trafficking scene in Tunisia. Finally, I wrap up by providing some helpful professional and personal recommendations for a better fight against trafficking.

This paper was written in 2015, and all the information here is related to research conducted in 2014-2015.

³ *Jihad Al-Nikah*: also Sexual Jihad, basically it means that Muslim women travel to Syria to offer their sexual services to the jihadists fighting their against the Assad regime in a form of doing Jihad. The latter means a war or fight done by Muslims against non-believers.

The Historical Development of Trafficking in Women

I. Trafficking in Persons: Concepts and History

The historical development of trafficking in women has roots in ancient times with a different naming of slavery. Different definitions have developed throughout time and culminated with the current context of The Palermo Protocol. Following, this research will present the different definitions given by different international tools to introduce a thorough meaning of what trafficking is in order to build the basis of understanding this topic and put the reader in context in relation to this not well-known phenomenon.

1. The Definitions of Trafficking in Persons

A. The International Context

Different definitions have emerged with the spread of the phenomenon according to countries and laws. However, the UN definition is the most generally accepted internationally and is presented through the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women (The Palermo Protocol).

Trafficking in Persons is the recruitment, transportation, transfer, harboring 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 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴

This definition puts forward two main ideas; the first is that slavery is the same crime of trafficking with only a different name. The second idea is that it explores the variations of actions, which with the presence of only one of them could make a victim of trafficking eligible to be called as such. In fact, the Global Slavery Index identifies the term slavery itself in addition to concepts of trafficking

⁴ Article 3, paragraph (a) of the United Nations. "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women." 2000. www.osce.org 15 05 2015

in persons and forced labor to describe modern forms of slavery.⁵

Slavery includes “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. Slavery-like practices are those such as debt bondage, forced or servile marriage, sale or exploitation of children (including in armed conflict) and descent-based slavery.⁶

Consequently, from this definition, I can argue that trafficking in women today is indeed the developed notion and form of old slavery. More details will follow in the coming sections. For now, I will explore more the details related to the trafficking in persons.

According to the International instruments and definitions, trafficked people are subject to all kinds of actions they are forced to do. This varies from being held as a hostage with no freedom at all, into not getting the full salary as promised or simply working extra hours.

Trafficked people are held against their will through acts of coercion, and are forced to work for or provide services to the trafficker or others. The work or services may include anything from bonded or forced labor to commercial sexual exploitation. The arrangement may be structured as a work contract, but with no or low payment, or on terms which are highly exploitative. Sometimes the arrangement is structured as debt bondage, with the victim not being permitted or able to pay off the debt.⁷

Trafficking in Persons refers to slavery in all its forms. The term ‘trafficking’ itself describes the mechanisms and methods of recruitment and mobilization used to isolate and threaten victims to take advantage of them. Trafficking in persons is rooted in ancient times and it has flourished throughout history. It has been used by many civilizations, forcing individuals or groups of individuals to total subjugation, by depriving them of their rights and freedoms. This is why trafficking is often described as ‘Modern Slavery of the Twenty-First Century’.

⁵ The Global Slavery Index, «The Global Slavery Index 2014.» 2014, <http://www.globalslaveryindex.org/>, 14 December 2014, https://d3mj66ag90b5fy.cloudfront.net/wpcontent/uploads/2014/11/Global_Slavery_Index_2014_final_lowres.pdf, 6

⁶ United Nations, Office of the High Commissioner for Human Rights, « Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery» 30 April 1956 <http://www.ohchr.org/>, 5 January 2015 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>. Articles 1-7.

⁷ The United Nations Office on Drugs and Crime, *Trafficking in Persons and Migrant Smuggling*. 2015. 05 Feb 2015 <<http://www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html>>,12.

Even though the phenomenon of trafficking in persons is not new, it is still very little known to the public.⁸

B. The Tunisian Context

In comparison with the previously stated international definitions, the Tunisian bill of law on preventing and combating trafficking in persons defines Trafficking in persons as follows:

Trafficking in persons means attracting or recruiting people, transferring, transporting or changing their destination or deporting them or harboring them or receiving them through the use of force or weapons or threat by both or other forms of coercion, of abduction or deception or exploitation of a position of vulnerability, or the abuse of power, acceptance, or providing sums of money or benefits to gain the approval of someone who has power over another in the purpose of exploitation of any kind whether it is the perpetrator of such acts or by placing it at the disposal of others to exploit.⁹

According to the bill of law, the terms exploitation includes many forms of vulnerability. It expands to comprise any persons exploited into prostitution, forced labor, servitude, slavery, begging, and the removal of fetuses for the purpose of trafficking. In fact, the bill explores in depth the meaning of exploitation as it states “..exploitation caused by the age, or their illegal status or severe case of being in need, or the case of severe illness or addiction or pregnancy of women or the case of mental or physical defect hindering the person concerned to face the offender.”¹⁰ The anti-trafficking bill of law insists on showing what vulnerability means to introduce it to decision makers and concerned authorities for the purpose of creating a visible profile of potential victims.

C. Definitions of Labels Related to Trafficking in Persons in the Tunisian Anti-Trafficking Bill of Law

In addition to defining the notions of vulnerability and exploitation, the bill puts forward different meanings of what could possibly be a situation of trafficking

⁸ The International Organization for Migration, "Baseline Study on Trafficking in Persons in Tunisia: Assessing the Scope and Manifestations." 2013, <http://tunisia.iom.int>, 15 February 2015. <http://tunisia.iom.int/sites/default/files/resources/files/IOMTunisia_BaselineStudyTrafficking_English_LR.pdf>.

⁹ Article 2 of the Final Draft of *Tunisian Anti-Trafficking Bill of Law* handed by Salma Abida. April 2015,1 (own translated). See Appendix I.

¹⁰ Ibid, 2.

victims could find themselves trapped at. I will present what originally came in the bill to provide a thorough understanding of the different concepts considered as trafficking in Tunisia and to create a space for comparison, as follows:¹¹

a. Bonded or forced labor

All work or services imposed on any person under the threat of any penalty and in which this person has not volunteered themselves to do the work.

b. Enslavement

Any situation in which the person is forced by someone else to do work or perform services in conditions they do not have the power to change or get rid of.

c. Slavery-like practices

Include the following cases:

- Forcing women for the purpose of marriage.
- Coercion of women to pregnancy or renting their wombs.
- Use of a child in illegal or criminal activities (such as in armed conflicts).
- Adoption of a child for the purpose of exploitation of any kind.
- Economic or sexual exploitation of children on their employment.
- Debt Bondage: the situation arising from forcing the debtor to perform work or services either by themselves or another dependent person as a guarantee to a debt they owe if the fair value of that work or service is not used to pay off this debt or if the service's period or nature was undetermined.
- Serfdom: the situation arising from the obligation under the agreement that the person lives and works on the land of another and that the person who provides work or services to the other person with or without compensation and without having the freedom to change their situation.

d. Slavery

Forcing a person to perform a work or services according to conditions that person has no power of escaping or changing.

e. Sexual exploitation

Getting benefits of any kind by involving a person in sexual work whether

¹¹ The original words own translated from the Tunisian Anti-Trafficking bill.

its prostitution or by providing any sexual services including abusing them in pornography through the production of porn or its promotion by any means.¹²

D. Differences Between Trafficking in Persons and Smuggling of Migrants

Even though trafficking and smuggling are naturally linked, they are different in many ways. On the one hand, trafficking has the possibility to appear within borders in the absence of real movement. This could happen to internal trafficking cases of different forms of exploitation such as domestic servitude. It is true though that there is some sense of dislocation by the mere fact of subjecting victims to mental isolation. It is important to note that the reality of trafficking is different than what everybody thinks of the mere fact of moving someone from one country to another by force, as in fact, it could be carried out in the same country in the absence of a trafficking network. Members of families and close friends could be responsible for the exploitation of the victim.

On the other hand, smuggling of migrants means any illegal way of entering a destination state through a third party. This means that the smuggled person is fully aware that he will be moved from one country to another through a network or a person who would take in charge all the responsibility of finding a way to get that smuggled person in to the destination country.

So, here we see the difference in borders notion between trafficking and smuggling as the nature of smuggling necessitates the cross-border displacement.¹³ Therefore, trafficking in persons and smuggling of migrants are often confused not only because of their nature of crossing borders or illegal migration, but also because of their interconnectedness as smuggling could lead to trafficking.¹⁴

Hence, the two definitions provided by the additional Protocols of the Convention of 2000, further show the difference between trafficking and smuggling in the notion of documents' confiscation.¹⁵ In the trafficking act and as the victim is forced into his/her situation, traffickers confiscate their legal documents what puts them under more pressure. The victim then finds herself/himself in a forced illegal status under threat and menace. While in the case of the

¹² The issue of sexual exploitation caused arguments within the committee whether launching this law will lead to the cancellation of the legislation which regulates public prostitution and the committee had decided to leave decisiveness in this matter to the concerned governmental entities which will be discussed in Chapter II.

¹³ European Council "Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime." 24 July 2006. <http://ec.europa.eu> 19 June 2015

¹⁴ *Supra Note 8*

¹⁵ *Supra Note 13*

smuggled person who has a status of an illegal immigrant, these reactions would not take place for the simple reason of pre-arranged agreement. The crossing of borders by illegal means includes false documentations and papers. Consequently, the relationship between the smuggler and the migrant usually ends once the latter arrives at their destination. This crime is considered to be primarily a crime against a state unlike trafficking, which is a crime against an individual.

On a different note, the year 2011 was marked by the advent of the Arab Spring in the Middle East and North Africa (MENA) region, particularly in Tunisia, the first country to have toppled its regime. These revolutions have triggered an unprecedented wave of migration flows across the region. Tunisia witnessed a considerable wave of migrants whether Tunisians immigrating to Europe or international migrants who sought refuge in Tunisia.¹⁶ Refugee camps were set up in the Southeast part of the country in order to address the situation. Besides, Tunisia was used as a platform for transit to European countries, and especially to the Italian island of Lampedusa.¹⁷ These massive and unexpected migrations have increased the vulnerability of migrants to trafficking in persons, especially women and minors, but surprisingly enough trafficking in persons did not seem to be a priority for Tunisian authorities at that moment. The seriousness of this issue was not apparent to concerned experts at that time, as many other aspects seemed to be more urgent to be dealt with like writing the new constitution

2. Historical Background of Slavery

Slavery dates back in history to thousands of years, as it existed in prehistoric societies, which lived on hunting and owning people. At that time, it was more of an institution than it is today. Keeping in mind that slaves have always suffered from physical and sexual exploitation, the topic of trafficking in persons and its link to exploitation has a shorter history.¹⁸

A. The History of Slavery in Africa

Even though forms of slavery existed before the 1400s, the beginning of that century marked the start of European slave trading in Africa with the Portuguese then the British joined in the transportation of people from Africa into using them

¹⁶ According to the IOM, most of the migrants were Libyans and workers from different nationalities (Sub-Saharan Africans and Asians), and Syrians who sought refuge after the Syrian war which erupted in Syria in 2011.

¹⁷ *Supra Note 8*, 17.

¹⁸ Freedom From Fear Magazine, A Short History of Trafficking in Persons, 23 February 2010, 10 March 2015 <<http://f3magazine.unicri.it/?p=281>

as slaves.¹⁹ When it comes to Africa, Slavery existed more than 3,500 years ago, women constituted the majority of early African slaves. In addition to agricultural work, female slaves carried out other economic functions, such as trading in addition to domestic shores.

With the rise of humanitarian sentiments in Western Europe and with the 18th century Age of Enlightenment in Europe and the shift in economy from agriculture to industry, a movement to abolish the slave trade and the practice of slavery came into being in the Western world starting in Britain in 1807. Slavery in Africa was almost abolished in the 1930s. However, the pain and stigma of being a slave still affects descendants of slaves.²⁰

B. The History of White Slave Trade

The world started to pay attention to the (The international trade of women) with the movement against white slavery, which means “The procurement-by use of force, deceit or drugs-of a white woman or a girl against her will for prostitution.”²¹

Some figures prove that trade in women existed in the end of 1800 and beginning of 1900. Beginning 20th century, some international agreements started to emerge to fight trafficking in women such as the International Agreement for the Suppression of the ‘White Slave Traffic’ of 1904, which was signed in Paris and aimed to ensure that women and girls are protected against criminal traffic known as the “White Slave Traffic”. After that, in 1910, International Convention for the Suppression of the White Slave Trade was signed by thirteen countries and focused on the criminalization of trafficking,²² while the 1904 agreement addressed the migration side of the issue. After that, National Committees for the suppression of traffic were established in many European countries and started to work as a foundation for international discussions on white slave trade in order to join forces to fight the crime. However, the World War I (World War One), in 1914 put an end to any further development of international work against traffic at that time. The term white slavery was faced with criticism as it put many other women outside

¹⁹ <<http://web.cocc.edu/cagatucci/classes/hum211/timelines/htimeline3.htm>>

²⁰ Richard Brown, *Slavery in Africa*, 2000, 15 April 2015 <<http://autocwww.colorado.edu/~flc/E64ContentFiles/AfricanHistory/SlaveryInAfrica.html>>

²¹ Doezeema, Joe, «Loose women or lost women? the re-emergence of the myth of white slavery in contemporary discourses of trafficking in women.» December 1999, <http://link.springer.com> 22 March 2015 <<http://link.springer.com/article/10.1007/s12147-999-0021-9#page-1>>

²² United Nations Treaties Collection, *International Convention for the Suppression of the "White Slave Traffic," May 4, 1910, 211 Consol. T.S. 45, 1912 GR. Brit. T.S. No. 20, as amended by Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and Amendi.* 1951, 2 January 2015.

Europe in the shadows, so it was eventually changed into “Traffic in Women”. This change of terminology also reflects the move of discussion from the national to the international level, making it explicitly a global issue.²³

In 1927, The League of Nations was founded after WWI and had the goal of maintaining world peace and focusing on international issues such as human trafficking. The Suppression of White Slave Traffic was changed to "traffic in women and children" so that everyone was included with no discrimination to race.²⁴

In 1904, the International Agreement for the Suppression of "White Slave Traffic" was signed and put into action. The purpose of this agreement was to protect women, young and old, from being involved in "white slave traffic." White slavery referred to forcing or deceiving a white woman or girl into prostitution. Some people argue, however, that this act was only put into place in order to control the number of European women who were seeking to find jobs abroad. In this vein Emma Goldman states:

Only when human sorrows are turned into a toy with glaring colors will baby people become interested – for a while at least. The people are very fickle babies that must have new toys every day. The “righteous” cry against the white slave traffic is such a toy. It serves to amuse the people for a little while, and it will help to create a few more fat political jobs – parasites who stalk about the world as inspectors, investigators, detectives, and so forth. What is really the cause of the trade in women? Exploitation, of course.²⁵

Emma is being skeptical about the reality that pushes women into prostitution and abuse. She points out to how politicians and decision makers even when they tend to seem serious about saving women in need who find themselves trapped in the actions of prostitution, for a better life, don't really move to stop this. It is as if they make a scene just to push the blame away, but in reality, no real actions are being taken to put an end to exploiting women.

When it comes to international trafficking of women, the destination countries have changed over the course of time. In Fact, the report of the League of Nations in 1927 illustrated how women were trafficked from Europe to some other

²³ Brian.Donovan,. *White Slave Crusades: Race, Gender, and Anti-vice Activism*. Illinois: (University of Illinois Press, 2006), 51.

²⁴ Ciara Segura, *When did trafficking in women become a human rights issue? – The "white slavery" panic*, 27 May 2010, 4 October 2014 <<http://stanford.edu/group/womenscourage/cgi-bin/blogs/sextraffickingandprostitution/2010/05/27/when-did-trafficking-in-women-become-a-human-rights-issue-the-white-slavery-panic/>>.

²⁵ Emma Goldman, «The White Slave Traffic.» 1910,<http://theanarchistlibrary.org/>, 6 October 2014 <http://theanarchistlibrary.org/library/emma-goldman-the-white-slave-traffic.pdf>,19.

destination countries such as Tunisia, Algeria, and Brazil, and after 80 years, these countries became the source of trafficking, the other way round. Therefore, the main victims of trafficking 80 years ago were Europeans and now it is the contrary. The United Nations held the fourth World Conference in 1995 to address the issue of trafficking of women. The biggest outcome of this conference was the fact that trafficking was recognized as an act of violence against women, and the concept of trafficking was further defined (“Trafficking”).²⁶

C. History of Slavery in Tunisia

Trafficking in persons is not a new phenomenon. In History, this practice which was part of slavery was widespread in the Muslim world and in the North African region. Thousand years before the Christian era, Caravans coming from the south, were going towards Tunisia, Kairawan, the capital of *Ifriqiyya*.²⁷ From there, slaves were transported to the coastal ports of the Mediterranean.

Slave’s routes, better known as Trans-Atlantic sea passages witnessed thousands who were aggressively taken away from their homes against their will to cross on foot the 2000 kilometers through the Sahara’s sand storms and end up sold ‘legally’ on governments’ slave markets in Istanbul, Tunis and other places. Around 1300 slaves were imported in Tunisia by the end of 18th, beginning 19th Century.²⁸ The black slave was a common phenomenon in Tunisia's households. In 1841, up to thirty slaves, mostly women, were bought and sold in the Suq al-Birka. As the slave trade developed in the middle Ages, the "intra-African and Eastern trafficking" got spread over fourteen centuries.

In the Tunisian Context, the Phoenicians established the origin of slavery in the country from the tenth century BC, and the founders of Carthage in 814 BC. The first slaves came at that time from the local Berber people. Slavery in Tunisia responded primarily to the specific needs of urban society. The slave property was then a sign of nobility in Tunisian cities. Unlike men, it was very rare for a woman to be “sold” a second time because women mostly converted to Islam, which prohibits the enslavement of a Muslim. Although it has been an important center of slavery in the region, in the 19th Century, Tunisia; however, was at the head of the fight against this practice.

In January 1841, Ahmed Bey announced a decree to abolish black slavery in

²⁶ The United Nations, *The United Nations Fourth World Conference on Women*, September 1995, 12 January 2015 <<http://www.un.org/womenwatch/daw/beijing/platform/violence.htm>>.

²⁷ Ifriqiyya was the name of Tunisia during middle ages.

²⁸ E.C. Haven, "The abolition of slavery in Tunisia (1846): A study into its historical backgrounds and its juridico-theological legitimization." 2006. <https://openaccess.leidenuniv.nl>. 17 January 2015 <https://openaccess.leidenuniv.nl/bitstream/handle/1887/4968/second%20chapter%20dissertatie.pdf?sequence=5>, 349-357

Tunisia. With this decision, Tunisia has become the first Arab country to break with such institution taken for granted since immemorial times. It took five years for the Tunisian abolition decree to come to its conclusion in 1846. The slave market of Tunis was permanently closed in August 1842, and slavery was abolished in the country. Slavery persisted until the early twentieth century in the region.²⁹ It ended at the beginning of the twentieth century, as the last slave market was closed in Morocco in 1920. However, today's average price of a slave equals less than one tenth of its value during the Roman Empire.³⁰

3. Trafficking in Persons

A. Trafficking in Persons in the MENA region

Between 2010 and 2012, the MENA region reported a higher overall proportion of victims of trafficking for forced labor than other parts of the world, and it is the most detected form of trafficking in the region (49%), followed by sexual abuse (36%), other types of exploitation (14%) and finally the removal of organs (0.8%). Trafficking in African women also took place in the Middle East as cases of exploitation of people from North Africa were identified in the Middle East between 2007 and 2010.³¹

As a result of what is called “The Arab Spring”, migration from North Africa towards Europe has risen and raised challenges for the MENA region as these flows of immigrants are dangerous for the migrants as trafficking could happen at any moment.³² According to the global database on trafficking victims assisted by the International Organization for Migration (IOM), more than 50% of cases assisted in the MENA region are internal trafficking and female victims account for 55% in 2011.³³

B. Trafficking in Persons in Tunisia

When it comes to examining the phenomenon of trafficking in Tunisia, it is

²⁹ The Decree on the prohibition of slavery in the regency of 29/5/1890 states in its first article: "Slavery does not exist and it is forbidden in the Regency; all human beings, without distinction of nationality or color, are free and may also, if they believe injured, resort to laws and magistrates", 47.

³⁰ *Supra note 21*

³¹ *Supra note 8, 49*

³² Sarah Craggs, «Fighting Trafficking in Persons with the approach based on Human Rights.» *Fighting Trafficking in Persons with the approach based on Human Rights*, Tunis: Annual Report of Activities 2011 (IOM (2012), 2012. 21).

³³ *Supra Note 8, 49*

very important to understand the political, economic and socio-cultural contexts of the country in order to come to a better and deeper understanding of the actors involved, the main causes of this phenomenon, and categories of victims. In the context of post January 14, 2011 and the democratic transition, it is very important to focus on the changes at the national level in relation to security and stability.

Sami Ben Houidi pointed out the important role the revolution played in changing the situation of the country. He states:

My question is how the revolution changed the situation of the country? As before, it used to be a dictatorship, someone in power who claims to be the protector of rights and freedoms on the international scene, and the country claimed to be protecting Tunisian women where they couldn't be abused. That Tunisia is protecting all citizens and celebrate its political, social and economic achievements in a dictatorship. But, we were not allowed to speak about violating women rights and dignity before at that era, and now, after the revolution, we all got our freedoms, so we can criticize all authorities and institutions and we can discuss taboos. That is why it seems that the phenomenon is wide spread now, because it is discussed overtly.³⁴

From the previous statement and from an opinion of an expert at the Ministry of Justice, it is important to note that the revolution and the changes it brought ranging from democracy to freedoms is what makes the trafficking in persons phenomenon seems wide spread. We hear of it more today, and we see some action to fight it, contrary to the dictatorship time. If the image of the protector of the country was to be shaken by speaking about such crimes in Tunisia, then it makes perfect sense that we lived in a bubble of a good image, just to reflect the good image of the leader. It had nothing to do with really protecting victims and keeping the country safe.

4. Factors that Contribute to the Trafficking Structure in Tunisia

In order to understand the situation of trafficking in persons in Tunisia today we need to look at the new, post-revolution context of the country. Since 2011, Tunisia has witnessed political instability, raise of the unemployment rate, social marginalization and growing economic inequalities. These are the main factors that can make individuals more vulnerable to exploitation.

Geographically, Tunisia's 1,300 kilometers of coastline facing Italy in addition to its proximity to the island of Lempadusa, make it an ideal transit

³⁴ Houidi, Sami Ben. Assistant Director-General of the Department of judicial interests in the Ministry of Justice. Interviewed by Racha Haffar. 20 April 2015. See Appendix X

destination for trafficking in persons.³⁵

Politically speaking, the revolution of January 14, 2011 forced Tunisia to enter a new phase of political instabilities and the country has been at crossroads since then, which led to the development of trafficking in persons on both national and transnational levels.

Tunisia is now engaged in a process of institutional reform and democratic transition as it is still working on reforming laws. The Constitution of 1959 was revoked, and the new constitution was adopted in January 26, 2014. Following the political assassinations of opposition leaders, this new Constitution faced major challenges and had been the subject of much debate. It addressed topics such as religion and state and women's rights. These debates were closely monitored in order to better understand the development of public policies in the fight against human trafficking, based on the interaction of gender.³⁶

On the legal side, the revolution created some sort of legal vacuum where attempts of placing a new legal framework took long, especially considering the period of adopting the new constitution. Since 2007, the suggestion of a bill of law against trafficking in persons has started and only recently the draft of this law became ready for adoption by the new parliament.

The security system created an even more favorable situation for crimes such as trafficking in persons as it gave more attention to relatively more serious topics such as terrorism and adopted them as a priority and turned a blind eye to the crime of trafficking in persons and forced labor. In fact, some security officials are involved in such crimes by receiving bribes and ignoring the situation.³⁷

If you wonder what the main reason which made this phenomenon more spread now, I would say the answer is the security vacuum. The security sector changed its techniques and the officials now claim that they cannot reach the truth and work properly without using force or weapons, which is a traditional way of dealing with criminals. Therefore, in such a transitional period, information is chaotic, unlike during dictatorships when information reaches authorities instantly.³⁸

Sami ben Houidi pointed out the way the talks on exploitations started and how talks about freedoms started to rise to the surface. Bit by bit, people started to question corruption and exploitation, especially those issues and files related to

³⁵ *Supra Note 8*, 29

³⁶ *Supra Note 8*, 32

³⁷ *Supra Note 34*

³⁸ *Ibid 34*

women's rights' violations and women exploited in prisons by the judicial system right when things started to settle down after the Libyan revolution. In addition, Ben Houidi stated the fact that chaotic status of Libyan immigrants who fled their country is jeopardizing our security. These Libyans do not respect the laws and they use their wealth in getting what they want, which makes it even unsafe for Tunisian women.

When it comes to the socio-economic context, poverty and marginalization are the main reasons for exploitation of people into crimes such as trafficking, as they increase their vulnerability especially women to fall in the hands of traffickers. The country is facing a major economic set back and the Tunisian economic growth seems rather slow. Contrary to urbanized eastern cities, rural western ones still suffer from inequalities in employment and access to social services such as education and health care. With high rates of unemployment which vary between 31% and 48% among graduates,³⁹ that facilitates the youth becoming victims of trafficking in Tunisia and out. In addition, due to the lack of stable markets and job opportunities in the formal sector, many citizens are employed in the underground economy representing 85% of Tunisian companies, according to the Tunisian Union of Industry, Trade and Handicrafts (UTICA). A recent survey by the National Institute of Statistics (INS) suggests that informal employment represents 42% of total employment in Tunisia, absorbing a very important part of the labor force mainly in trade and services. This situation endangers many Tunisians, and increases the risk of exploitation.

At the social level, 15.5% of Tunisians were under the poverty line in 2010 and 4.6% below extreme poverty. Women and children are usually the most affected by poverty, as it exposes them to the lack of schooling, work at a young age and risky situations. The social, economic and cultural difficulties can push people to leave their area and go to the big cities, and even to leave their countries in search of better opportunities, without preparation or the necessary information for local integration and protection from trafficking networks.

II. Trafficking in Women: The Gender Perspective

As I have discussed earlier, Trafficking in persons is not a new phenomenon and the biggest fractions of affected victims are women. The problem is that this crime has taken a new turn when it comes to the gender issue and women's rights. Women and girls are the most vulnerable category. Trafficking is directly linked with prostitution what makes it an even more complicated issue for women. The growing justification of violations of women rights is created by further

³⁹ *Supra Note* 8, 31

criminalizing them when they get involved in sexual acts without paying attention to the causes and the nature of that sexual act. That jeopardizes these women's positions and subjects them to more vulnerability. The question is whether these women were sexually abused, exploited, or involved in prostitution. It is important to distinguish between both issues and not jump into obvious conclusions linking both actions. Trafficking happens for other reasons than prostitution, and prostitution could be in a different context than trafficking. Hence, governments should start separating between both acts and not only focus on prostitution.⁴⁰

During the drafting of the Palermo Protocol, debates about prostitution remained unresolved, leading to little and not fair efforts in legislative, preventative and rehabilitative efforts in dealing with victims and stereotyping. When approaching trafficking from a gender perspective, the matter of prostitution remains of an open-ended problematic to legislation makers. The Protocol left the "exploitation of the prostitution of others" and "other forms of sexual exploitation" undefined, and failed to decide whether voluntary adult prostitution should be considered trafficking or not. Consequently, deciding on keeping this matter as a domestic jurisdiction. Even though this protocol has broadened the concept to include children and labor trafficking, the governments, scholars and decision makers still view trafficking from a sexual exploitation lens and fail-to a certain extent- to investigate through the other forms. Hence, it is necessary to shift this perspective and have a different, yet insightful view on trafficking and gender.

On a different note, globalization of information, technology and borders helped trafficking grow by giving traffickers a chance to operate transnationally and reach out to bigger numbers of victims. It also gave a grave dimension to female victims by showing them the outer world through technology to find better jobs and living conditions. As a result of the growing globalized world, flows of work migrants have increased and put more females at the risk of being exploited and trafficked.⁴¹

Still, we must study the social and cultural contexts which lead female victims into webs of this crime. The MENA region has the highest measured level of discrimination against women. The widespread exploitation of women into domestic servitude shows their inferior status. They are also affected by their gender as their ability to access justice once exploited is jeopardized. In fact, for some countries, a woman's testimony turns against her as in courts it is worth half

⁴⁰ Milena Sandra, "Theoretical Reading in Trafficking in women for the purpose of sexual exploitation in prostitution. Case of Study: Columbia." 2010. <http://www.banrepcultural.org> 15 January 2015 <<http://www.banrepcultural.org/sites/default/files/ma.tesis-explotacion-sexual-caso-colombia-sandra-milena-cardozo-pro.pdf>>

⁴¹ Coalition Against Trafficking in Women, «Guide to the New UN trafficking protocol.» 2001, <http://www.no-trafficking.org>, 18 May 15 <http://www.no-trafficking.org/content/pdf/guide_to_the_new_un_trafficking_protocol.pdf>, 3.

of a man's testimony and judges view women who testify against their sexual abusers by immorality and accuse them with adultery. The mere fact of being a woman, not only increases exposure to being exploited, but also triggers re-victimization once trapped. Millions of women are potential victims at any moment, including females of all ages. These victims are subject to all forms of violence by organized criminal networks, individual criminals, community and more importantly family members. All countries are subject to this horrible crime, whether by being countries of origin, transit, or destination for victims. In the MENA region, not only citizens are affected, but also expats or foreigners who come from other parts of the world to work in the region find themselves entrapped in such crimes. The spark that the Tunisian revolution had started spread out to the region and created a wave of revolutions leading to the displacement of many people. More than a million people around the region, but more specifically in and into Tunisia, this movement of migrants shed the light on the situation of exploitation of migrants and also refugees and on the measures needed to be taken to protect displaced people from trafficking in persons in all its forms.

Trafficking in persons is a global phenomenon which is hard to be traced and the number of its victims can never be set exactly. In fact, it is estimated that there are 800,000 victims of trans-national trafficking every year.⁴² Internal trafficking victims and networks would score a bigger number. This universal crime affects all continents and it does not spare neither the MENA region nor Tunisia in particular.⁴³

Tunisia achieved a first step in its commitment to the fight against the crime on a national level by ratifying the 2003 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (Palermo Protocol), supplementing to the United Nations Convention against Transnational Organized Crime. In addition, the Tunisian government has been working on the drafting and adoption of a national law against trafficking in persons, through the Ministry of Justice and the ministry of human rights (now dissolved) since 2009. More recently, the Tunisian government has committed to implement a series of measures to fight more effectively the crime of trafficking in persons, especially within the Ministries of Interior and Justice. (The following chapter will provide more details about this issue).

Tunisia is found to be a source, destination, and possible transit country for women, men and children subjected to different forms of trafficking and most importantly forced labor and sexual exploitation. Women migrants who fled unrest in neighboring countries like Libya continue on being vulnerable in Tunisia.

⁴² *Supra Note 8, 8.*

⁴³ *Ibid*

Trafficking was identified in *Choucha Camp*⁴⁴ at the Libyan border, according to the United Nations High Commissioner for Refugees (UNHCR). Tunisian women also get false promises of work in the MENA region in certain countries, such as Lebanon, the United Arab Emirates (UAE), and Jordan. Upon arrival, they find themselves forced into prostitution.⁴⁵ At the national level, and over the past years, some young Tunisian girls who are between 15 and 18 years-old were exploited in prostitution in the coastal cities like Sousse. While, the ones who are sent to work as domestic servants for wealthy families in Tunis and major coastal cities come mainly from the northwest part of the country. In addition, Women from west and east Africa are subject to forced labor as domestic workers in Tunisia and beyond.⁴⁶ Worldwide women are mainly exploited for sexual purposes, which is one of the worst forms of Gender-based violence. It is therefore important to try to analyze the trafficking in persons from a gender perspective and to look at the situation of women in Tunisia to understand the different types of exploitations they could undergo.

We cannot deny the fact that Tunisia is known to be the leading Arab country in women rights as Tunisian women are pointed at by being privileged compared to all other women in the region. In fact, the Tunisian Constitution of 1959 has offered Tunisian women a better status when it recognized the principle of equal rights between men and women in all areas.⁴⁷ The country is still proving to be on top of the list for achieving women rights and gender equality. In parallel to these efforts, legislative reforms at the national level were implemented which include most importantly the law of February 2008, which harmonizes the age of marriage (18 years for men and women). In addition, The United Nations confirmed receipt, in April 23, 2014, of Tunisia's decision to fully and officially withdraw all its reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). By that, it became the first country to do so in the region.

However, when assessing the current gap in the pre-supposed gender equality in a context of an Arab state, we understand why it is impossible to see gender equality in Tunisian families, in public spaces and in the labor market. The status of women remains lower than that of men. Just as is the case everywhere around the world, and Tunisia here makes no exception. When we examine the

⁴⁴ *Choucha Camp*, the Tunisian refugee camp established in 2011 to house those fleeing the Libyan conflict.

⁴⁵ Department, U.S State. «U.S. State Department Trafficking in Persons Report.» June 2013. www.state.gov. 4 February 2015 <<http://www.state.gov/documents/organization/210742.pdf>>.

⁴⁶ See Appendix V

⁴⁷ According to CREDIF, *Center for Research, Studies, Documentation, and Information on Women in Tunisia*. It is a Governmental institution related to the Ministry of Women, Family and Childhood.

vulnerabilities created as a result of the gendered-based treatment, in some parts of the world more than others, we understand what actually feeds trafficking in both the demand and supply. These vulnerabilities are the consequence of a gender-biased history where political, economic and social standards and norms oblige women to be dependent on men. Consequently, they become vulnerable and susceptible to all kinds of abuse if that “male figure” and his support are shaken somehow. In fact, there is a gender dimension to poverty and a whole concept called “the Feminization of Poverty.”⁴⁸ This has appeared after the growth in number of poor people who are female as the majority of the 1.5 billion people living on 1 dollar a day or less are women. The past decades have witnessed the growth in the cycle of poverty when assessing the gap between women and men. Worldwide, women earn on average somehow less than 50 per cent of what men earn. This goes back to the fact that women are marginalized in their prospective societies as they are denied access to education, credit land and inheritance. Their efforts are gone unrecognized and that creates a deeper gap in the gender spectrum. The denial of support services and community ones remain big to women in many areas around the globe. Consequently, these deprived women find themselves in an empty circle where they can’t access resources to change their situation, and consequently remain poor, which pushes them indirectly into the webs of traffickers. In 1995, the Beijing Platform for Action which was adopted by the Fourth World Conference on Women called for countries to “undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land”, after realizing the gender dimension to poverty and how to overcome it by improving the status of women.⁴⁹

Globally, the perception that poverty is becoming feminized is increasing, meaning an increasing number of the world’s poorest population females. “More than one billion people in the world today, the great majority of whom are women, live in unacceptable conditions of poverty, mostly in the developing countries” according to the Platform for Action adopted at the Fourth World Conference on Women in Beijing in September 1995. Examining this from a feminist approach, the focus is on the gender implications and the costs of poverty on the social aspect. In her opinion, Moghadam states: “They include the growing involvement of women and children in the informal economy; differential treatment of girls and boys in households; pressure to get girls married off quickly; higher school dropout

⁴⁸ Valentine M. Moghadam, «SHS Papers in Women’s Studies/ Gender.» 2003, <http://www.cpahq.org/>, 6 January 2015 <http://www.cpahq.org/cpahq/cpadocs/Feminization_of_Poverty.pdf>, 3.

⁴⁹ United Nations Entity for Gender Equality and the Empowerment of Women. The Feminization of Poverty. May 2000. 12 December 2014 <<http://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm>>.

rates for girls; less control over fertility; and recourse to prostitution.”⁵⁰

Many females around the world do not have access to education, proper health care or employment. They can be put in isolation and then in the quest for a positive change in their lives through seeking a source of income they become victims of all kinds of abuse and exploitation. When looking at the growing sectors of “feminized” economy -bride trade, domestic workers, commercial sex- we find a link between the latter and the increasing demand for female trafficking victims.⁵¹

The “feminization of migration” is a result of the feminization of poverty, as these women risk everything to find a source of income abroad to help them survive and support their families and with all these restrictive traveling procedures, some women tend to resort to smugglers who eventually traffic them.⁵² In addition to this, the different practices of paying women less wages, using them in hard agricultural jobs and forcing them into domestic servitude for the simple fact that it is the female’s job to work domestically as a stereotype only complicates the life for female in societies with such practices. Thus, trafficked women are seen by their employers as cheap, easier to control and more submissive in doing their jobs. Consequently, the demand grows and the number of female victims grows accordingly. When women find themselves tied to men, they become more vulnerable to trafficking in patriarchal societies. These societies have institutional and social flaws, which create injustice towards women by categorizing them as the male’s property and a second hand citizen. Discriminatory laws create a sense that women cannot decide on themselves, cannot act or own properties and even cannot have a free economic status away from the male to whom she is tied. When the female’s well-being and the will to decide on her own is taken away from her, she becomes vulnerable to trafficking once the male guardian is gone. I would like to point out that in the Arab Muslim cultures, girls and women face huge difficulties in growing in such patriarchal societies. Females grow exhausted of the lack of opportunities and recognition as equals. As a result, many try to escape their realities for a better future, seeking what they believe might be a better life, but they often end up as victims of trafficking. Here in Tunisia, many young girls seek refuge from their family control, as they do not have the freedom to decide on many things related to their own lives. For them, seeking a job in the Gulf or the Middle East seems like the open door that never

⁵⁰ *Supra* Note 48

⁵¹ The United States Department of State, "Gender Imbalance in Human Trafficking," 15 June 2009, *state.gov*, 2 April 2015 <<http://www.state.gov/documents/organization/126792.pdf>>

⁵² Gabhan, Nic, "Human Trafficking: A twenty First Century Slavery." 2006, *jstore.org*, 2015 Mai 19 <http://www.jstor.org/stable/27665410> ,531.

existed in their hometown reality. However, when they find themselves under threat with their passports confiscated to work in nightclubs and other places where they get sexually abused, it is only then that they realize the loss. In my opinion, if these women had not found themselves victims of social, political and economic inequalities in their country, they would not have looked for better chances abroad and they would not have become victims for trafficking networks like the ones which trafficked Tunisian women in Lebanon. (Cases of victims will be further discussed in Chapter III).⁵³

In the Tunisian case, "There should be no discrimination between men and women" as stated in the Labor Code,⁵⁴ In many sectors, wage inequalities remain apparent. Tunisian women are affected by regional disparities at the economic and social levels. Rural women in agriculture, for example, earn up to half as much as men and work more hours. Tunisian women also suffer from a literacy rate 15% higher than men but are less likely to continue their studies, although they do better in their studies than their male counterparts, that goes back to the fact that females are looked down to in their families. Finally, the exploitation of some young girls who come from marginalized areas into domestic servitude makes them destined for that for life at an early age. When assessing the context of violence against women in Tunisia, it is necessary to understand the context of development of certain cases of exploitation. According to a recent study, 47% of women aged 18-64 report having experienced at least one form of physical, psychological, sexual or economic violence in their lives.⁵⁵ So, examining the violence women experience is important because it makes it clear why they become more susceptible to manipulation and exploitation. Perpetrators could possibly be as close to the woman as her family members and husband. Most importantly, this issue should be addressed not only by individuals but also by the government and civil society in order to defend the rights of women, and protect them from such crimes. Facing stigma in Tunisia, young, single mothers, who have children out of the wedlock, are vulnerable to trafficking. They are classified by their society as inferior and of a lower rank and they lose basic human rights. In fact, these young women when they are isolated, sometimes minors, are subject to various forms of exploitation, especially when they try to meet the needs of their child. Therefore, it is highly important to establish a stronger legal framework to support them.

On the other hand, regardless of all the efforts made in the Tunisian judicial

⁵³ *Ibid*

⁵⁴ Article 5 (a) of the Tunisian Labor Code.

⁵⁵ United Nations Population Fund, «*Addressing Violence against Women and Girls in Sexual and Reproductive Health Services.*» 2010. <http://www.unfpa.org/> 10 January 2015
<http://www.unfpa.org/sites/default/files/pub-pdf/addressing_violence.pdf>

system and the new additions which are considered gender-friendly in the Tunisian new bill of law, which I will explain in the next paragraphs, the cases of sexual exploitation of women in trafficking incidents remain problematic for the judicial system. As, these crimes are categorized under the frame of ethical crimes, and of course prostitution. A group of NGOs which support prostitution as legal work and in response to the Palermo Protocol lobbied to limit the definition of trafficking into forced trafficking, and to omit the terms of trafficking for prostitution or sexual exploitation. They also wanted to remove the notion of the victim and limit it to only those women who could prove that they were forced into prostitution after being trafficked; however, the demand was disregarded. This sounds just like what the judicial system in Tunisia is doing today with trafficking victims, as in Tunisia like the case of many Arab countries, trafficking in women has always been linked with prostitution. The Tunisian judicial system demands these victims to prove that they were forced into prostitution, and if proved otherwise, then they would be convicted with this “ethical” crime. Article 3b of the Palermo Protocol insures “that victims of trafficking will not bear the burden of proof”. Back to the point of the separation of prostitution and trafficking as Article 3a calls for no separation between both actions for victims. But at the same time, it acknowledges that “much trafficking is for the purpose of prostitution and for other forms of sexual exploitation” but not only that as victims could be trafficked for forced labor. The argument about legalizing prostitution is also present among experts in Tunisia as they see in it a way of violating women rights. According to the General Prosecutor, Sadok Amari, who states: “These laws which regulate prostitution in Tunisia make women more vulnerable to sexual exploitation. They control the permit of prostitutes and their status which, to me, is another face to legalizing trafficking in women. Hence, this law should be banned as it also dates back to the French occupation era.”⁵⁶ Similar arguments on the international scene were discussed as they link the legalization of prostitution with the growth of women trafficking; however, this is not my main argument in this research, so I will not go into it in details.

I want to assess the presentation of gender-based arguments in three laws against trafficking in persons and compare the international performance in drafting the laws to the Tunisian one. When examining the Palermo Protocol and comparing it to the Council of Europe Convention on Action against Trafficking in Human Beings and the Tunisian bill against trafficking in persons, I would like to point out what I have observed in relation to the level of gender-sensitivity these laws have provided: all the laws mention gender equality and gender issues and women rights; however, with a slight difference.

⁵⁶ Amari, Sadok. Interview with the Attorney General at the Ministry of Justice. Interviewed by Racha Haffar. 3 April 2015. See Appendix X.

First, when evaluating the Palermo Protocol, I noticed that it mentions gender and women a few times. In fact, it is mentioned in Article 2, as it specifies women as a vulnerable category to trafficking. The word gender is mentioned in Article 6 as it indicates that state parties should pay attention to the gender of victims and provide them with special care. In addition, in the article about prevention, it states that victims should be protected from victimization, especially women. The fourth point of the same article provides an important stress on strengthening the preventive measures and specifies the factors that push women to trafficking like poverty and lack of equal opportunities.

Second, when examining the Council of Europe Convention Action against Trafficking in Human Beings⁵⁷, it seems to be more gender-friendly as it takes into consideration women vulnerability and the importance of posing the question of gender equality as a reason for affecting women and victimizing them. It pinpoints the fact that international laws and frameworks should avoid pay into avoiding any discrimination based on sexual grounds and guarantee gender equality through combatting this phenomenon. All signatory parties to these conventions should pay attention to gender mainstreaming when working on raising awareness to protect future victims. When it comes to preventive measure, parties should take into account gender differences into tackling developing educational programs, paying attention to girls who might not get proper education and into reaching a positive change on the level of educational programs which play an unfair role into spreading unacceptable nature of discrimination based on sex, causing gender inequality in societies. Also, in helping victims, it is important to have a gender-sensitive approach into providing women with more adequate techniques. One of the other interesting points is that each party should pay attention to expatriation solutions to avoid re-victimizing women. Article 17 on gender equality bounds each party into promoting gender equality through the use of gender responsible measures. This convention shall not affect the rights and obligations derived from the provisions of the Protocol supplementing the United Nations Convention against Transnational Organized Crime, which is intended to enhance the protection afforded by it.

Third, the Tunisian Anti-Trafficking bill of law goes with the main principle of the Palermo Protocol as it stresses the importance of stating victims specially women as being the most vulnerable category. In addition, the Tunisian law has introduced important and new aspects of exploiting women that I have not found in any other convention in relation to trafficking which are the abuse of the fetuses for trafficking, forcing women to marriage, to pregnancy and renting their wombs.

Another gender-sensitive aspect is shown in the penalties that are subject to

⁵⁷ Council of Europe. Council of Europe Convention on Action against Trafficking in Human Beings. 2005. 20 July 2015 <<http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>>

augmentation in case the victim is pregnant or if the offender is the woman's husband or relative. It adds a gender touch even though only one female expert participated in the drafting of this law. Salma Abida, the judge who was the only female in the committee which drafted this law, tells about her important addition to the bill, which makes it more sensitive to women rights and to female victims of trafficking. For her, this bill was inspired from the international instruments and the Palermo protocol which specifies women as most vulnerable. She added the renting or female womb and forcing women to get pregnant and the forced marriage as parts of slavery-like practices. She states: "If it wasn't for me being there, as the only woman, I would not be sure if these terms would have been added to the bill."⁵⁸

The Developments of the Legal Framework

I. Trafficking in Women and the International Legal Framework

This section will explore the evolution of international laws in relation to trafficking in persons prior to the adoption of the Palermo Protocol. Internationally, It has long been acknowledged that trafficking in persons is not merely a domestic issue, but rather, is a cross- border, transnational phenomenon. Hence, international laws play a fundamental role in shaping the conceptualizations of trafficking in persons.⁵⁹

This phenomenon has a long history of development from early stages of slavery to today's modern forms of trafficking in persons and modern-day slavery. The international community went through a long way of developing texts and agreements to fight classical slave trade into reaching slavery-like practices, which jeopardized the dignity of people throughout history. These practices have been denounced in numerous legislative international instruments. Even though slavery and slave trade were abolished centuries ago, trafficking in its new forms is still thriving today against all international power and nothing seems to be able to restrain it, as little seems to be effective in the fight against it. The understanding of "all could be victims" of trafficking and the different forms of trafficking have changed over the past century. The issue of the lack of knowledge of the public about the phenomenon is a big obstacle, as well, which is leading thousands to the

⁵⁸ Abida, Salma. Judge at the Ministry of Justice. Interviewed by Racha Haffar. 15 April 2015. See Appendix X.

⁵⁹ International law is necessary to tackle issues, such as human trafficking, which cannot be adequately addressed at the national level. Regional and domestic efforts to address this issue are fundamentally inadequate in isolation by the fact that such decisions bind only a limited number of policies and states.

webs of this global crime.⁶⁰ In fact, the phenomenon has not been recognized until recently and wasn't legally regulated at the global level as it was only until the early 1900s that the word "trafficking" first appeared.

Actually, the Convention against Trafficking in White slaves or "International Agreement to ensure the Effective Protection against Criminal Trafficking known as the White Slave Trade" made the first appearance of the word trafficking in 1904.⁶¹ Treaties in this matter have started in 1904 and culminated by the UN Trafficking Protocol of 2000. In order to understand comprehensively the current status of the legal framework on trafficking, it is necessary to take a closer look at the history of international instruments which led to the development of today's framework. "It is through an understanding of why and how the current anti-trafficking agenda came into being that we can then move towards a more informed and aware critique of current practices."⁶²

When the League of Nations officials started to become more concerned after noticing the fast growth of this phenomenon, which affected women badly by then, several international conventions in relation to this matter were adopted starting from 1904, 1910, 1921 and 1933.⁶³ By clarifying the various developments which have contributed to the current conceptualization of today's anti-trafficking laws, we can understand the efficiencies, yet weaknesses which are present in them today.

When it comes to the concept of gender, international laws have to a great extent adopted such perception of trafficking in persons, through which women are perceived as the 'victims' of trafficking for the purpose of different forms of exploitation, mainly of prostitution.

The following part will demonstrate the three main areas of international laws which have governed the contemporary framework through their developments. These areas are: slavery, prostitution, and labor.⁶⁴

⁶⁰ *Supra note 13*

⁶¹ *Supra note 7, 3.*

⁶² Marie, Segrave, Sanja Milivojevic and Pickering Pickering, *Sex Trafficking: International Context and Response*. Portland: Willan, 2009. 3

⁶³ International Convention for the Suppression of the White Slave Trade, 1910. International Convention for the Suppression of Trafficking in Women and Children, 1921. International Convention for the Suppression of the Trafficking in Women, 1933.

⁶⁴ Schloenhardt, Andreas et Corin Morcom, «All About Sex?! The Evolution of Trafficking in Persons in International Law.» March 2011, <http://www.law.uq.edu.au>, 4 January 2015 <http://www.law.uq.edu.au/documents/humantrafficking/international-law/Evolution-of-Int-Law-relating-to-Trafficking-in-Persons.pdf>

1. The Development of International Legislations

A. Anti-Slavery Conventions

As we have noticed, international instruments dealing with trafficking in persons date back to the abolition of slavery. By means of, the recognition of slavery and slavery-like practices as a form of exploitation for the purpose of trafficking in persons started to emerge with the development of international anti-slavery instruments. In fact, the early “white slave traffic” conventions created the basics of today’s contemporary anti-trafficking framework.

The beginning of the 19th century witnessed the rise of moral condemnations surrounding slavery and slave trade and the prohibition of these practices featured more than 75 conventions.⁶⁵ They facilitated the development of international anti-slavery legal instruments and created the fundamental basis for the development of international anti-trafficking framework. Thus, related definitions of exploitation to trafficking, which were contained within the international anti-slavery laws have been transferred into the framework of trafficking in persons, to a big extent. The focus of early anti-slavery conventions was essentially on the ban of the slave trade from Africa. Actually, it was the treaty of Paris of 1814,⁶⁶ which put forward the need to abolish the slave trade. At that time, the 1815 Declaration Relative to the Universal Abolition of the Slave Trade was the first of its kind to state that the slave trade was a violation of human rights. It is worth mentioning that both international anti-slavery and anti-trafficking frameworks adopt a criminalization approach to achieve the abolition of such practices.

A century later, the 1919 Convention revising the General Act of Berlin and the General Act of Brussels internationally put forward an obligation towards all involved parties to put their ultimate efforts in securing “the complete suppression of slavery in all its forms and of the slave trade by land and sea.” Following the establishment of the League of Nations 1919,⁶⁷ the women’s movement shifted its attention to the international rather than the national issues. In the year 1921, and during the international conference in Geneva, hosted by the League of Nations, the term “traffic in women” was proposed to replace the “white slave traffic”. In

⁶⁵ J. H. Verzijl, Jan Hendrik Willem. *International Law in Historical Perspective*. The Hague: (Martinus Nijhoff Publishers, 1998) 238-260

⁶⁶ Ibid

⁶⁷ League of Nations, *Covenant of the League of Nations*, 28 April 1919. 23 July 2015 <http://www.refworld.org/docid/3dd8b9854.html>

the 1927 Report of the League of Nations, international traffic was defined as: “the direct or indirect procurement and transportation for gain to a foreign country of women and girls for the sexual gratification of one or more other persons.”⁶⁸

The fight against slavery developed leading to the 1926 League of Nations International Slavery Convention, which was the first international instrument to define slavery and slave trade.⁶⁹ With the birth of the United Nations in 1945, this Agreement was succeeded by the Convention on the Abolition of Slavery in 1953. It was only in 1956 through the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery⁷⁰ that states found themselves obliged to adopt all measures to abolish practices similar to slavery, precisely debt bondage⁷¹ in addition to Serfdom,⁷² servile marriage,⁷³ and the exploitation of children.⁷⁴ The preamble of that convention states that "freedom is a right that every human being acquires at birth." In fact, this convention provides a definition of practices considered "practices similar to slavery," for the first time. "Member states shall take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women."

⁶⁸ *Supra note 18*

⁶⁹ *Supra note 18*

⁷⁰ United Nations« Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery». 30 April 1956. 23 July 2015. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>

⁷¹ Article 1 Supplementary Slavery Convention defines ‘debt bondage’ as the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt of the length and nature of those services are not respectively limited and defined.

⁷² (Article 1 Supplementary Slavery Convention defines ‘serfdom’ as the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status Article 1 of the Supplementary Slavery Convention.)

⁷³ Under Article 1 Supplementary Slavery Convention ‘servile marriage’ is any institution or practice whereby: i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or ii) the husband of a woman, his family or his clan, has the right to transfer her to another person for value received or otherwise; or iii) a woman on the death of her husband is liable to be inherited by another person

⁷⁴ The exploitation of children in this context is any instrument 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 to the exploitation of the child or young person or of his labour: Article 1 of the Supplementary Slavery Convention.) Therefore, the fight against trafficking in persons was strengthened and developed with the recognition of slavery and servitude as potential exploitative purposes of trafficking. The fact that the 1948 Universal Declaration of Human Rights mentions slavery in its 4TH Article, proves that slavery still existed at that time.

B. Anti-Prostitution Conventions

In addition to the anti-slavery conventions, the international anti-prostitution conventions contributed in a significant manner to the current conceptualizations of trafficking in persons, as these instruments succeeded in developing an international framework to combat trafficking in persons. However, the main purpose was to fight commercial sexual exploitation in which women came to be recognized as the main victims in this industry.

The ‘white slave traffic’ of the early 20th century was labelled after acts of abduction of Caucasian females who were found forced into prostitution after crossing national borders. Consequently, trafficking became linked to prostitution. And this focus on prostitution remained the main motive for international efforts to criminalize trafficking. These conventions related only to trafficking for the purpose of commercial sexual exploitation and focused on fighting this practice only as a means to abolish prostitution. The best proof on that is the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others,⁷⁵ which declares prostitution ‘incompatible with the dignity and worth of the human person’.⁷⁶ Equally, this convention shows how the international community was concerned with trafficking in persons for the purpose of commercial sexual exploitation.

In fact, the range of the 1910 International Convention for the Suppression of the White Slave Traffic⁷⁷ remained unchanged, keeping the link between trafficking and commercial sexual exploitation of Caucasian females.⁷⁸ The 1921 convention for the Suppression of the Traffic in Women and Children⁷⁹ further validates the definition contained in the 1910 Convention; in that way, keeping an emphasis on prostitution as the exploitative purpose of trafficking.⁸⁰

The 1933 International Convention for the Suppression of the Traffic in

⁷⁵ United Nations, Office of the High Commissioner for Human Rights, «Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.» 2 December 1949, <http://www.ohchr.org/>, 5 January 2015 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>

⁷⁶ See Preamble of the 1949 Convention.

⁷⁷ League of Nations. «International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910, amended by the Protocol signed at Lake Success, New York, 4 May 1949.» 4 May 1949. treaties.un.org. 10 January 2015 <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20VII/VII-9.en.pdf>>.

⁷⁸ Tom.Obokata, *Trafficking Of Human Beings From A Human Rights Perspective: Towards A Holistic Approach* (Leiden: Koninklijke Brill NV, 2006), 14.

⁷⁹ League of Nations, «International Convention for the Suppression of the Traffic in Women and Children.» 30 September 1921, treaties.un.org.,20 April 2015 <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20VII/VII-3.en.pdf>>.

⁸⁰ *Supra Note* 78,15

Women of the Full Age⁸¹ defines trafficking as “the transfer of women across nation-state borders for immoral purposes, regardless of their consent or coercion.”⁸² So, here, this convention puts forward a new notion of victims which is broadened to show that even with the consent, victims remain victims and shall be treated as such. Referring to Tunisia as a study case in this research, it is highly important to see how the current laws fail to protect victims and their rights from this practice. (The case of Tunisian law will be explained in details in the next section of this chapter.)

It is also clear how these definitional limitations looking first at white women within borders, then across borders, then including all ages and still restricting it to the sex industry show how the gendered conception of the trafficking ‘victim’ had developed.

Additionally, these conventions show the connection created between trafficking in women and prostitution. It is worth mentioning that these four white slave traffic conventions gave importance only to the recruitment and transportation process and didn’t look at the end purpose of prostitution which remained a matter of national concern. For instance, the retaining of a woman in a brothel, even against her will, was not within the range of the 1910 Convention, but rather was considered as a matter of national jurisdiction.⁸³ While many states condemned the exploitation of prostitution, the regulation of prostitution was considered to be a matter of national choice.⁸⁴ The abolitionist movement⁸⁵ greatly criticized this approach and marked it as useless in addressing the phenomenon, as according to the opinion of the abolitionists, it is regulating prostitution, what would actually stimulate and motivate the traffic in women.⁸⁶ It was only until the 1949 International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others that the abolitionist approach was adopted and the League of Nations draft of 1937 convention which consolidated

⁸¹ League of Nations, «International Convention for the Suppression of the Traffic in Women of Full Age.» 11 October 1933, treaties.un.org, 24 January 2015 https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-5&chapter=7&lang=en

⁸² Annuska. Derks, *From White Slaves to Trafficking Survivors: Notes on the Trafficking Debate* (Center for Migration and Development, 2000) 4.

⁸³ M. Clara. Maffei, *Tratta, prostituzione forzata e diritto internazionale. Il caso delle «donne di conforto»* (Giuffrè, 2002).

⁸⁴ Scarpa Silvia, *Trafficking in Human Beings: Modern Slavery* (London, Oxford University Press, 2008) 54.

⁸⁵ Abolitionism is a movement to end slavery, whether formal or informal in Western Europe and the Americas. It was a historical movement to end the African and Indian slave trade and set slaves free.

⁸⁶ Radhika Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women*, 29 February 2000, 16 December 2014 [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/\\$FILE/G0011334.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/$FILE/G0011334.pdf)

the four previous white slave traffic agreements.⁸⁷ However, there are some inconsistencies in approach between the title, preamble and text of the convention, as explained:

The title refers to trafficking and the exploitation of the prostitution of others; the preamble acknowledges that both prostitution and trafficking in persons for the purpose of prostitution are incompatible with human dignity; and the text refers to commercial sexual exploitation as the exploitative purposes of trafficking in persons.⁸⁸

The 1949 Convention develops race, gender and age neutral terminology and removes the transnational element of trafficking in persons. By that, it extends the definition of trafficking in persons, while keeping in mind the focus on the sex industry.⁸⁹ It explicitly connects trafficking in persons with the exploitation of prostitution.⁹⁰

This approach provides a narrow vision to what victims of trafficking really are. As, it assumes that prostitution is the only generator of trafficking and that all prostitutes and women in the sex industry are victims. It fails to protect those who are trafficked for purposes other than sexual exploitation. After that, negotiations of the Trafficking in Persons Protocol came to surface after realizing the inefficiency of the latter convention.⁹¹ This was also a drive for the adoption of the 1979 CEDAW⁹² which was also a very clear statement and attempt to cut ties with the previous 1949 convention, and also the abolitionist approach, which was perceived as a failure to protecting women rights in relation to trafficking.⁹³ In fact, the CEDAW was not spared from reinforcing traditional conceptualizations of the female victim of trafficking for the purpose of commercial sexual exploitation and such labels carry on to being the predominant in contemporary conceptualizations of trafficking in persons.

⁸⁷ International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, (hereinafter the 1949 Convention), adopted 2 December 1949, entered into force 25 July 1951.

⁸⁸ Demleitner, Nora V. «Forced Prostitution: Naming an International Offense.» 1994. <https://index.justice.gov.il>, 14 April 2015 <http://index.justice.gov.il/Units/Trafficking/MainDocs/Forced%20Prostitution-%20Naming%20an%20International%20Offense.pdf>, 163-174.

⁸⁹ *Supra Note 84*, p.52

⁹⁰ *Supra Note 78*, p.17

⁹¹ *Supra Note 84*, p. 55

⁹² United Nations, «Convention on the Elimination of all Forms of Discrimination against Women.» 18 December 1979, www.ohchr.org, 25 October 2014 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

⁹³ *Supra Note 84*, p. 94

Consequently, these early anti-trafficking instruments jeopardized the positions of victims related to sex industry as immoral which in a way justifies the neglect to their rights as persons who have been through a lot of exploitation and human rights violations. This is applicable in the case of Tunisia today, and the state punishes victims of trafficking- women who have been caught in sexual acts while they were trafficked- and victimizes them by sentencing them to jail.

(More details on this will follow in the following sections.) However, analysis of international conventions of prostitution, show a persistent criminalization approach which drew a growing attention from policy makers and NGOs to work on protecting victims.

The gendered aspect of the traffic of women into the sex industry continues to dominate contemporary conceptualizations of trafficking in persons and more international efforts are being invested in that.⁹⁴

C. Anti-Economic Exploitation Conventions

To carry on the same track of the development of international laws in relation to trafficking in persons, we must talk about the developments within the international labor laws prohibiting specifically, forced labor, exploitation of child labor, and exploitation of migrant workers. This has contributed to the contemporary trafficking in person's framework, mainly by expanding the scope of trafficking to include the exploitation of labor outside of the sex industry and classical forms of slavery. Similarly, international laws have shifted attention to the rights of the child in the light of exploitation for labor and that helped in extending the framework of trafficking in persons today.

In addition, the International Labor Organization (ILO) has made it possible to shift the world's attention to the trafficking phenomenon only from the angle of sex trade and prostitution when it passed certain conventions defending the rights of laborers and condemning their exploitation. Mentioning some of these conventions, which came as early as building upon the 1926 slavery convention, was the 1930 Forced Labor Convention⁹⁵ and the 1957 Abolition of Forced Labor Convention.⁹⁶ These measures have worked on preventing forced labor from putting people into slavery-like conditions. From the ILO standpoint, trafficking is

⁹⁴ Vidyamali, Samarasinghe et al., «Strategising Prevention: A Critical Review of Local Initiatives to Prevent Female Sex Trafficking.» February 2007, jstore.org, 14 April 2015 [http://www.jstor.org/stable/25548176?](http://www.jstor.org/stable/25548176?seq=1#page_scan_tab_contents) seq=1#page_scan_tab_contents 53.

⁹⁵ The International Labour Organisation, «C29 Forced Labour Convention, 1930.» 28 June 1930, tavaana.org, 17 November 2014 <https://tavaana.org/sites/default/files/C29%20Forced%20Labour%20Convention,%201930.pdf>

⁹⁶ The International Labour Organisation, «Abolition of Forced Labour Convention, 1957 (No. 105).» 25 June 1957, www.ohchr.org, 25 November 2014 <http://www.ohchr.org/Documents/ProfessionalInterest/abolition.pdf>

a “degrading misuse of human resources resulting in undignified and unproductive work.”⁹⁷ These agreements oblige state parties to suppress and abolish forced or compulsory labor.

The 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor⁹⁸ shows the emphasis on prohibiting exploiting children as the worst form of child labor. When it comes to migrant workers, the ILO instruments also influence the international anti-trafficking framework. One of the most recent international conventions on this matter is the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,⁹⁹ which contributes to the fight against trafficking in persons as many trafficked victims belong to this category of migrant workers. However, it is important to notice that there is a clear lack of interest by states to the treatment of migrant victims and their exploitation. It is apparent in the way they deal with many victims who face illegal status and confiscated papers. In the example of Tunisia, the state is not doing any extra effort in recognizing and helping them. There will be more information on this in the following sections and chapter.

2. The Palermo Protocol

These were the conventions which laid the basis for today’s international conventions and efforts into fighting trafficking. Along the history of international laws, global anti-trafficking measures were better addressed in a more comprehensive way in today’s most reliable and recent instrument among all, which has put forward what we define today as ‘trafficking in persons’. The United Nations Convention against Transnational Organized Crime and its two related protocols: the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, which entered into force in 2003-2004. These conventions were created by the United Nations Office on Drugs and Crime (UNODC), which have been supporting international laws in their fight against trafficking in persons. One of the most recent

⁹⁷ International Labour Organisation, «Unbearable to Human Hearts: Child Trafficking and Action to Eliminate it.» 01 December 2002, www.ilo.org, 25 December 2014 <http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_768/lang--en/index.htm>. Vii

⁹⁸ The International Labor Organization, « CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION » June 1999. <http://www.ilo.org/>, 17 April 2015 <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm>

⁹⁹ United Nations Convention on Migrant Rights, «International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Familie.» 1 July 2003, <http://unesdoc.unesco.org>, 2 April 2015 <http://unesdoc.unesco.org/images/0014/001435/143557e.pdf>

instruments was the creation of the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) in 2007 in order to support these conventions.¹⁰⁰

The definition of trafficking in persons in its current form first appears in 2000. As a consequence to the discussions in Palermo, Italy, later that led to the Palermo Protocol which came into force December 12, 2002. One Hundred seventeen signatory states agreed to fight all forms of trafficking in persons including (slavery, slavery-like practices, sexual exploitation, forced labor and removal of organs). The Palermo protocol entered into force December 25, 2003.¹⁰¹

When it comes to what this protocol has put forward, it is important to notice the new aspects in relation to definitions of victims. The protocol provides broader definition of trafficking in persons. It balances law enforcement and victims' rights. It is worth mentioning that two comprehensive documents that relate to different international law instruments have shed the light on how trafficking victims should be treated.¹⁰² "These two documents were produced to ensure that trafficked persons were treated as victims rather than as criminals." It is important that victims' rights are protected specially women and children.¹⁰³ However, it remains always problematic to translate these conventions and agreements into reality as very few criminals are condemned and more victims are not even identified, let alone, be protected or rescued.¹⁰⁴

There are some uncertainties about how functional and feasible this protocol could be. It is evident that preventative mechanisms, investigative procedures, prosecutorial systems, and victim rehabilitation must be tailored to specific aspects of trafficking in persons including the different types of exploitation, law related issues, and victims. As victims of sexual exploitation differ from labor ones, and the latter differs from the ones of slavery-like practices like forced marriage.¹⁰⁵ "Trafficking in persons is a complex, multi-faceted problem that intertwines issues of law enforcement, border control, gender, crime, security and

¹⁰⁰ Lindsey King, «Topical Research Digest: Human Rights and Human Trafficking.» 10 September 2014, <http://endslavery.salvos.org.au>, 16 January 2015 <<http://endslavery.salvos.org.au/wp-content/uploads/2014/09/10.-InternationalLaw.pdf>>.

¹⁰¹ *Supra note 94*, 53

¹⁰² Human Rights Standards for the Treatment of Trafficking Persons and the Recommended Principles and Guidelines on Human Rights and Human Trafficking.

¹⁰³ *Supra note 100*

¹⁰⁴ Houidi, Sami Ben. Assistant Director-General of the Department of judicial interests in the Ministry of Justice interviewed by Racha Haffar. 20 April 2015. See Appendix X

¹⁰⁵ *Supra Note 58*

human rights'.¹⁰⁶ The fourth World Conference on women in 1995 calls for “effective suppression of trafficking in women and girls for the sex trade”. So, it is important to point out the fact that with this protocol, the international community maintained a focus on trafficking in women.¹⁰⁷

3. Tunisia’s Compliance with International Laws

Although trafficking is a complex issue, these previously mentioned international legal instruments have been implemented to aid trafficking victims and to combat this worldwide phenomenon. The Palermo Protocol offers more influence than all these preceding hopeful agreements as it proves to be a law enforcement instrument. It requires states to take serious actions into penalizing traffickers, protecting victims and granting them residence whether temporary or permanent in the countries of destination. So, signatory parties are obliged to create their own national legislation which supports these provisions at the domestic level. Even those states which are not party to the UN Convention against Transnational Organized Crime and its two related protocols find themselves obliged to protect the rights of trafficked persons under provisions in the Universal Declaration of Human Rights.

The issue of compliance with anti-trafficking laws is problematic, but states can actually work on overcoming this. In fact, states get funds to support their national strategies in their combats but they shouldn’t rely on the UN solely as they have to expand their national legislations. It is highly important for everyone to recognize that trafficking is like an epidemic and no one could be spared of it. Therefore, states should realize that their roles in this fight are significant to the overall global fight. Just as the world objected to slavery collectively, it also requires collective opposition to abolish trafficking in persons. NGOs throughout the world undertake a big responsibility into monitoring human rights violations with respect to trafficking in persons. As they collect data and analysis and send it to the UN, which in turn is able to fully assess the violations then deals with the issue in relation to international laws. Further details on this will be provided in Chapter III. However, it is not only the role of NGOs to write reports, as states also are expected to submit regular ones regarding their level of compliance with the convention. The UN overseas these levels of national compliances demonstrated

¹⁰⁶ Alexandra Amiel, « Integrating a Human Rights Perspective into The European Approach to Combating the Trafficking of Women for Sexual Exploitation. » 2006, <https://litigation-essentials.lexisnexis.com>, 20 June 2015 https://litigation-essentials.lexisnexis.com/webcd/appaction=DocumentDisplay&crawlid=1&doctype=cite&docid=12+Buff.+Hum.+Rts.+L.+Rev.+5&srctype=smi&srcid=3B15&key=56a5f4f178cd3075a73abcd44dae08f_5.

¹⁰⁷ *Supra Note 26*

by states and they monitor abuses to certain treaties at the same time. Regional and domestic legislations are the backbone to the enforcement of international laws, as the latter could not function in isolation from them. States with their domestic instruments aim at combatting this phenomenon through provisions that go in accordance with the international agreements, which are effective to tailor their enforcement and monitor methods to their own needs.

Many obstacles face states in applying these international and national legislations because of the complexity of applying them. Therefore, the crime not only transcends borders but also jurisdictions. Applying international law to someone who is in a different state takes a lot of resources, money and energy, and many countries with limited resources find it hard to do so.

Another problem facing states is when it comes to enforcing anti-trafficking laws there is a lack of training for officials who are supposed to be dealing with this crime. Even if the law is implemented there is a gap in the performance of local officers like border patrol officers, federal agents and police officers. This, consequently, affects victims who are maltreated and find themselves at the position of a criminal of illegal immigrant, either arrested or deported. Victims find themselves short of language of the country where they were caught and that creates problems at a bigger scale. In the case of Tunisia, those who were abroad, upon their return find themselves in a position of a defendant trying to prove they are innocent. In fact, Tunisian women who have been trafficked into Lebanon and the gulf countries where faced by charges of prostitution upon their return to Tunisia. When it comes to foreign women trafficked into Tunisia, these victims find themselves also powerless as they can be faced with the fact that they are illegal immigrants upon their illegal stay in the country. (This will be further discussed in the next sections).¹⁰⁸

II. Trafficking in Women and the National Legal Framework

This section will discuss the development of the national legal framework in trafficking in persons. I will talk about the current legislation in use today, which is applied to cases of trafficking and what the new anti-trafficking bill of law has to offer. The central argument will focus on the issue of re-victimization and women rights in relation to trafficked women.¹⁰⁹

¹⁰⁸ Lindsey King, «Topical Research Digest: Human Rights and Human Trafficking.» 10 September 2014, <http://endslavery.salvos.org.au>, 16 January 2015 <<http://endslavery.salvos.org.au/wp-content/uploads/2014/09/10.-InternationalLaw.pdf>>.

¹⁰⁹ The information mentioned in this part is mainly based on 9 interviews with experts from different ministries (Interior, Social Affairs, Women Affairs, Justice,) and experts from civil society available at Appendix X. In addition, I will use an official document from the ministry of Justice about the country's efforts in fighting this crime available at Appendix II.

1. The Legal Development of National Laws

A. Pre-Revolution

Tunisia as any other signatory party was bound to sign and ratify the previously mentioned international instruments under international pressure to meet a certain level of compliance. The pressure from the UN, EU and US State Department started even before the revolution of 2011. The country found itself going behind others in the region as it hasn't passed its own national law on trafficking hitting by that a lower status on the scale of Tier placements which is Tier Two Watch List.¹¹⁰

There is a national bill of law against trafficking which was passed through the ministerial council and now it is waiting to be debated in the parliament. Experts are afraid this might take long resulting into pushing Tunisia's placement in the Tier list into the last ranking which is the Tier 3; the worst in fighting trafficking in persons.¹¹¹ Prior to the revolution, there was a series of texts condemning slavery and crimes related to trafficking which Tunisia has signed. Some of these instruments date back to 1846, as mentioned in Chapter I. They were signed to fight slavery, trafficking and slavery-like practices. According to the ministry of justice, Tunisia prohibited slavery since issuing the Public Order of Prohibiting Slavery January 23, 1846 and issued the first legal text prohibiting slavery and enslavement according to the decree of May 29, 1890. In the past century, Tunisia had ratified a series of texts related to trafficking, such as the Slavery Convention of 1926 and the Protocol amending the Convention and the Supplementary Convention on the Abolition of Slavery, of the Slave Trade and Institutions and Practices Similar to Slavery of 1956.¹¹²

According to the Ministry of Justice,¹¹³ there is no legal text in the current Tunisian legal framework about trafficking, supposed to define trafficking in persons according to international standards, criminalizes it and describes it as an

¹¹⁰ Tier 2 Watch List: States which do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards.

¹¹¹ Tier 3: States which do not fully comply with the minimum standards and are not making significant efforts to do so.

¹¹² The international agreements which were signed prior to the revolution include most importantly: The United Nations Covenant on Civil and Political Rights (16 December 1966) ; The UN Convention against Torture and other cruel, inhuman and degrading treatment (10 December 1984) ; Article 7 of the International Covenant on Civil and Political Rights states that "No one shall be subjected to torture or to of cruel, inhuman or degrading ". Article 8 provides that "no one shall be held slavery, slavery and the slave trade in all their forms shall be prohibited."

¹¹³ The Ministry of Justice is the main governmental body dealing with the fight against trafficking in Tunisia.

independent crime, which has its own specific legal body and, which differentiates it from other similar crimes such as illegal immigration or other linked crimes.

When it comes to how the country and the judicial system dealt with victims prior to the revolution, it is important to highlight the fact that the re-victimization of victims of trafficking who were spotted in sexual acts related to prostitution was and is still the case until today. The laws Tunisia is using now don't protect victims, and rather, they put them under judgment, once again. They could be put in prison for getting involved in acts of prostitution while the convict who abused the victim is set free, or charged with much less than what he/she deserves. This, in fact, is one of the reasons why the victims or the government never mentioned this topic before the revolution. Because the truth surrounding this topic involves government officials and people with power who could use nepotism into setting free some convicts who were pled guilty in sexual abuse.¹¹⁴

Tunisian penal code includes prohibition of different forms of exploitation and prevents all forms of assault against humans in general. It consists of different crimes which have direct connection with trafficking in persons, and it has guaranteed combating this phenomenon until now, to some extent.¹¹⁵ Most importantly, in this matter, Tunisia was committed to ratify the Palermo Protocol on fighting trafficking in persons in 2003; however, and after more than a decade, still there are no internal laws to go with what Tunisia signed in accordance. There is just the previously mentioned bill of law on trafficking in persons.¹¹⁶ On a different note, it is worth mentioning that there is a radical development at the level of the anti-trafficking national bill and procedures dealing with female victims of trafficking.

B. Post-Revolution

In the post-revolution era, the international pressure which existed before grew as the country is going through transitional changes and it opened its doors to all different commitments to human rights in order to satisfy the international community.¹¹⁷ In a sense, the growing structure of governmental and non-governmental bodies, which are paying a larger respect for human rights, is clearer now. Nevertheless, we cannot find one single organization dedicated for the fight

¹¹⁴ *Supra* Note 34

¹¹⁵ Official Governmental Document: The Response of the Ministry of Justice about the Country's Efforts in Fighting Trafficking in Persons in Tunisia, appendix I.

¹¹⁶ Yacoubi, Amal. Project Officer at the EuroMed. Interviewed by Racha Haffar, 19 January 2015. See Appendix X.

¹¹⁷ Abdallah, Abdelhamid. Previous head of mission at the Ministry of Human Rights and Transnational Justice. Interview by Racha Haffar. 2015 January 22. See Appendix X

against trafficking. Today, if one looks around, he/she may notice the big number of national and international parties which don't consider trafficking in persons as a big problem threatening Tunisia. Even Tunisians themselves demonstrated a lack of knowledge in this regard. Thus, it is this lack of knowledge about the topic what led to the growth of the phenomenon in the country as it can be interpreted as a form of negligence. The issues that have emerged after the revolution and which I have mentioned in Chapter I are hindering the fight against trafficking. The national anti-trafficking law would have been promulgated if these issues didn't exist.¹¹⁸ As mentioned in the previous section of this chapter, the international instruments signed by Tunisia are thoroughly mentioned in the document of the Ministry of Justice.¹¹⁹

2. Current Legislation in Force

Even though there are no specific laws in the Tunisian legal system concerned with trafficking in persons, there are many different applicable texts, which criminalize different forms of trafficking in persons and which guarantee- to a certain extent -combatting this phenomenon, even in a partial way. The Tunisian constitution states "All citizens, male and female, are equal in rights and duties, and are equal before the law without discrimination. The State guarantees to citizens, male and female, individual and collective rights and freedoms, and provides them with the conditions for a dignified life."¹²⁰

In addition to the constitution which guarantees rights and dignity for citizens, the Tunisian Penal Code and the Labor Code both include laws dealing with such crimes. They provide a group of laws prohibiting sexual exploitation and economic exploitation of labors. Here, I will only focus on the ones which are most important in dealing with trafficking- related practices, and they are as follows (the rest are included in Appendix I pages 4-9.)

A. The Tunisian Penal Code

The Tunisian Penal Code criminalizes sexual exploitation in its different

¹¹⁸ *Ibid*

¹¹⁹ Appendix II, pages 1-3.

¹²⁰ The Jasmine Foundation. "Constitution of the Republic of Tunisia." 26 January 2014. <http://www.jasmine-foundation.org/>. 2 April 2015 http://www.jasmine-foundation.org/doc_unofficial_english_translation_of_tunisian_constitution_final_ed.pdf ChapterII, Article 21.

forms and helps protect different rights related to women, namely:¹²¹

Begging and exploitation of vulnerability (Art.171), fraud of identity papers (Art.193), abuse of children(Art. 210-224), abduction and kidnaping(Art. 237 and following), enforcement (Art. 283), deception(Art. 291), criminalization of rape (Art.227), criminalization of pimping(Art. 232) Criminalizing harnessing someone without legal obligation (Art.105 penal code), criminalization of sexual assaults and secret prostitution and using prostitution as a job to get a salary or mediating in it or motivating others into doing it (Art.226 of penal code and what follows). When it comes to using women wombs or abusing fetuses for commercial services, the law number 93 of 2001 prohibits such practices.

B. The Tunisian Labor Code

The Labor Code prohibits the economic exploitation of workers and regulates certain related aspects. In addition to the Tunisian national legislation which is centered on the principles of respecting human entities, prohibiting all forms of slavery, enslavement, sexual abuse, physical abuse; they also pay attention to forced labor and economic exploitation. In fact, Tunisia has ratified a large number of conventions with the support of the ILO in protection of workers. The content of these agreements was taken, essentially, by the Labor Code. Some of the provisions in the Labor Code against labor exploitation are common to all workers, others are for vulnerable workers; women and children and the rest are for foreign workers.

However, the protection given to workers by these rules remains very inadequate. As follows are some of the laws:

Organizing salaries (Art.828 of the obligations and contract code), salaries for lifetime until death of employee are invalid as this long life period of payment is considered as a convincing form of enslavement, which Tunisian law is being aware of as a violation to the laws of prohibiting slavery (Art. 833).

The Labor Code issued in 1966 paid attention to contractual relations in the professional framework and put comprehensive rules to protect against forced labor and servitude into creating balanced relations between employers and employees. Regulations include working hours, payments, regulating women working at night, administrative and health control, etc. The law that regulates domestic servitude conditions guarantees protective measures against their abuse. Article 79 of 1965 sets the maximum working hours per week to 48 hours. Most importantly, the Labor Code also protects women and children below 18 years

¹²¹ Ministère de la Justice et des Droits de l'Homme Tunsienne. "Code Pénal Tunisie." 12 December 2010. <http://www.e-justice.tn>. 12 April 2015 http://www.e-justice.tn/fileadmin/fichiers_site_francais/codes_juridiques/Code_penal_12_07_2010_fr.pdf

against heavy work such as underground work in mines and quarries, or works recoveries, processing and storage. The Code prohibits Also night work of women and children.¹²²

C. Current Anti-Trafficking Bill of Law

Tunisia has been under a lot of pressure from the international community to form its own national law, which has to comply with international standards and agreements in the fight against trafficking. It is important to point out that since Tunisia signed and ratified the Palermo Protocol in 2003, there has been slight work done in developing this national legal framework until the actual planning started in 2010. So, prior to the 2011 revolution, the ministries in charge started to think about this bill of law. The actual work began in August 2012 when the Ministry of Justice's Anti-Trafficking office, which was made up of three persons drafted the first Anti- Trafficking legislation in November 2012. Now, the final draft of this national bill of law on trafficking in persons is awaiting approval in the parliament. Experts hope that it will pass no further than by the end of 2015, as for them it is a priority and should be also considered as such by the parliament.¹²³

In an interview I conducted with Sami ben Houidi, about the other reasons than the international pressure that pushed Tunisia to draft this national bill, the latter stated the following: "I see that the punishment is not enough, currently the laws in use don't classify crimes related to trafficking as felonies and rather they are classified as offences which set the convict to a maximum of five years imprisonment. With the new change, and by considering them as high violations of human rights, we will punish the criminals according to what they deserve, and there will be an elevation in the penal laws."

According to Salma Abida,¹²⁴ this new law will bring three main differences after applying it. For her, the notion of the victim will become sacred; as for the current laws and notions applied to victims, women who are lured, abused, got their passports confiscated, were obliged or not to be part of the prostitution act, are participants in this act and they have to be penalized according to the judicial body. Now, this will change as experts are devoting a great deal of effort and attention to this matter in order to re-establish the notion of victims.

¹²² Souhayma, Ben Achour, "Le droit tunisien face à la traite de personnes et au trafic de migrants: Note d'analyse et de synthèse." 2011, <http://cadmus.eui.eu/>, 14 March 2015 <http://cadmus.eui.eu/bitstream/handle/1814/17800/CARIM_ASN_2011_47.pdf?sequence=1> 14.

¹²³ Amari, Sadok. Interview of the Attorney General at the Ministry of Justice. Interviewed by Racha Haffar. 3 April 2015. See Appendix X.

¹²⁴ Abida, Salma. Interview of the Judge at the Ministry of Justice. Interviewed by Racha Haffar. 15 April 2015. See Appendix X.

Consequently, legal experts want to make sure that the female victim will not be charged for any action related to the trafficking incident. In addition, the consent of the victim will not be taken accountable for, and it will not be considered when there is a presence of force, threat, or any other form of exploitation of the female victim's vulnerability.

To be more specific, this bill is following the provisions of the Palermo Protocol as it is adopting the consent part of Article 3(b), which specifies that if one of the means set forth in Article 3(a) is used, it is irrelevant whether the person expressed consent or not.¹²⁵ This new bill of law has also devoted a number of mechanisms for providing help and protection to victims (further information will be provided in chapter III).

Trafficking in persons has grown from a national framework into a transnational one where many other countries are now involved as countries of destination for Tunisian victims and vice-versa. Tunisian women are exploited in the Middle East, and more specifically in Lebanon and the Gulf countries. However, it is noted by experts who are criticizing the current laws in use that these laws are insufficient for the defense of women rights. And they are hoping this new law will bring about the inevitable change awaited. Experts are afraid this law might take two years or even more and this delay might harm more victims in the process.¹²⁶

When it comes to criminalizing traffickers, the bill is concerned with national and transnational trafficking, whether the crime is done by a single actor or whether it is an organized crime by a group of people. It also broadens the list of offenses to ensure a comprehensive reach for criminal acts. In fact, the new provisions in this bill show the inefficiency of the current laws as when it comes to prosecution, penalties are insufficient and are not severe enough or equal to other crimes with more serious penalties, such as rape. For example, the penal code sets five years imprisonment for forced prostitution of women and 10 years imprisonment for exploiting a person for forced labor, while the penalties set for rape range from five years imprisonment to the death penalty. So, some real changes have to be done on this level, soon.

In Tunisia, the efforts which have been taken to domesticate the UN Protocol into national legislation are still considered limited until this draft law promulgates. For example, in Tunisia, Article 231 of the Penal Code criminalizes women who get involved in prostitution even by coincidence to imprisonment up to two years. And, what is more shocking and more relevant to trafficking, Article 232

¹²⁵ Article 3 (a) of the Palermo Protocol is the previously mentioned definition of trafficking in persons in Chapter I.

¹²⁶ Jaouadi, Najet. The responsible for the department of social prevention of the judicial police under the Ministry of Interior. Interviewed by Racha Haffar. 23 April 2015. See Appendix X.

criminalizes procuring a woman for unlawful sexual intercourse and intermediating in it to up to only three years in prison. We see the need for urgent change in these laws as they have to be reinterpreted more deeply by the state to cover trafficking and the modern forms of slavery. Thus, these scattered laws made Tunisia take so long to come up with the new specific law and; therefore, paved the ground for this phenomenon to grow.

4. The Overall Efforts of Tunisia in Dealing with this Phenomenon

Tunisia has invested in a number of international, regional and national efforts to fight trafficking in persons. At the international level, Tunisia was present in different international workshops and platforms working on the fight against trafficking in persons, such as the workshop in Vienna organized by the Euromed in April 23, 2013.¹²⁷ There is also collaboration at the level of states between Tunisia and the US Department of State office with a focus on monitoring and combating trafficking in persons.

At the regional level, Tunisia has participated in regional conferences such as the one on Human Trafficking and the Protection of Illegal Immigrants in Khartoum October 13, 2014.¹²⁸ The concerned authorities stated that due to international, regional and bilateral cooperation in the fields of justice and security, today, there is more space for cooperation between Tunisia and other international and regional actors.

At the national level, experts from the Ministry of Justice explained the role Tunisia played with the only international organization working in Tunisia on the fight against trafficking. The IOM has established the S.H.A.R.E project "Support and Hand-over of Assistance and Referral mechanisms as well as Exchange of practices in anti-trafficking" in 2011 with close collaboration with the Ministry of Justice. The S.H.A.R.E project initiated a baseline study, the first of its kind in Tunisia to scan the phenomenon of trafficking in persons. Along with it there were many trainings and awareness campaigns for the reason that - as Salma Abida argues "when we started working on the S.H.A.R.E project, many people didn't even know what the meaning of trafficking is. This is what we started working on, an empty field that has nothing. And worse of all is how we kept saying that we are not directly concerned with this phenomenon and we don't have it. All this proves

¹²⁷ EU Neighborhood Info Center, Trafficking in human beings: Euromed Migration III holds workshop in Vienna, 2 May 2013, 18 October 2014 <http://www.enpi-info.eu/medportal/news/latest/32916/Trafficking-in-human-beings:-Euromed-Migration-III-holds-workshop-in-Vienna>.

¹²⁸ The International Organization of Migration, The Khartoum Process: EU-AU Cooperate to Combat Human Trafficking in the Horn of Africa, 28 October 2014. 5 January 2015 <http://weblog.iom.int/khartoum-process-eu-au-cooperate-combat-human-trafficking-horn-africa>

the level of seriousness the problem has reached.”

The S.H.A.R.E project established mechanisms and exchange of practices to fight this phenomenon and to get a better understanding of the situation. This project includes ministerial representative from different ministries, civil society and international organizations. There is also a collaboration with NGOs which deal with women rights for awareness and which provide care for victims within the national work plan of protecting women from violence and which the ministry of women affairs is in charge of.¹²⁹

When it comes to governmental bodies specialized in the fight against trafficking, it is worth mentioning that at the level of the government, there should be a committee working on this.¹³⁰ However, since this bill hasn't been issued yet, the committee cannot be formed. There are different cells created in different ministries to combat trafficking except for the ministry of interior which has made a specialized security body to fight it and to work with other bodies in collecting information, analyzing them and using them to trace traffickers and victims. Thus, a provisional national committee was established within the Ministry of Justice to supervise the national action plan, and it will take care of the work until the bill promulgates and consequently the national committee exists.

Tunisia's policies prior to the 2011 revolution contributed in deepening the misbalance between authorities and citizens which helped crippling the efforts of eliminating the root causes of this phenomenon. Yet, after the revolution, the development programs adopted by the government have been working on limiting social and financial causes leading to trafficking.

Raising awareness is one of the most prominent actions on the government's agenda for the coming years.¹³¹ Many governmental bodies and non-governmental ones are working on raising awareness by targeting the Tunisian youth to convince them of the dangers of being victims of trafficking during illegal immigration and young females who intend to go and work abroad through unregulated contracts of being victims of sexual exploitation. Nevertheless, this development will happen at the level of experts not the citizens as the topic doesn't reach all citizens for it is not mentioned enough in the media.¹³² More support and work is needed to achieve awareness through campaigns, educational programs, conferences, seminars, printings and brochures to introduce and define this phenomenon and the main

¹²⁹ *Supra Note 8*, 16.

¹³⁰ This national committee is supposed to undertake responsibilities of creating strategies in collaboration with other public and private sectors. It is in charge of providing protection to victims of trafficking and creating preventive measures, integration strategies, trainings for officials and awareness campaigns and others more.

¹³¹ Appendix III: Government's agenda in relation to trafficking in persons.

¹³² *Supra Note 126*

axes of the new bill of law. There is also a big attention given by Ministries of Justice, Interior, Foreign Affairs, Social Affairs, Health, Finance, and Women's Affairs, as well as members of civil society to organize conferences, workshops and trainings; both to include the civil society and to introduce the new knowledge on this topic to the government officials as a part of capacity building strategy. The trainings were for police and border security officials and military officials who are responsible for the security at the refugees' camps and borders. In collaboration between the Ministries of Social Affairs and Women's Affairs and the government, different shelters were set up for vulnerable groups such as single mothers, youth at risk, and sick elderly; however, no specialized centers for trafficking victims were established. When it comes to recruitments, the government continues to investigate the operating recruitment agencies in Tunisia by requiring them to sign contracts by the Ministry of Employment before recruiting Tunisian workers for employments abroad.

The Developments of Categories of Transnational Female Victims in Tunisia

I. Categories of Transnational Female Victims in Tunisia

In this chapter, I will explore the different categories of transnational (cross-border) female victims of trafficking in Tunisia. Then will discuss the categories of trafficked women in Tunisia prior to the revolution, and show how the revolution has added new categories of victims in Tunisia. Since this research has an international relations perspective, I will focus especially on the trafficking of foreign women in Tunisia and trafficking of Tunisian women abroad. Consequently, I will be dealing with internal trafficking in the country briefly. Meaning, my focus is only on transnational trafficking. I will use data and testimonies to support my argument. I will also examine the role of different actors in providing protection and help for these victims.

1. Who could be a Victim in Tunisia?

Briefly, I would like to start by exploring the trafficking of minor girls in Tunisia for both sexual exploitation and servitude. Most of these young females are from the North West part of the country; from cities such as Selien, Ain Drahem and Tbarka. They get sent out by their families to work for rich families who live in the capital or other coastal cities. They could be as young as 10 years-old and they face all forms of exploitation and enslavement. Here, the purpose is primarily

for servitude. There are intermediaries called “Samsara” who find the girl a suitable house and then they take her salary- either to split it with her family or even just for themselves- leaving her with nothing. And at the same time, these girls get sexually abused and exploited making of them even more vulnerable victims.¹³³

In fact, during 2013, there have been 5655 notices of children in potential similar situation of exploitation, where females represented 49.4 percent making 2857 notices.¹³⁴ Also, these minors and underage exploited females could easily get involved in illegal prostitution, convicted by law and persecuted instead of being treated as victims. In this same context of prostitution, foreign women could be victims of international trafficking networks. Some of them are held in detention centers and prisons for illegal prostitution. In fact, in 2012, 129 foreign women were put in such centers, but none was identified as a victim of trafficking by the Ministry of Interior.

In addition, females who are victims of sexual violence whether it is committed by a stranger or a family member, they become more vulnerable to exploitation. Some women rescued turn to prostitution because they start perceiving themselves as slaves or sex objects. Female students are facing high risks of Orfi¹³⁵ marriages and for being abandoned after being deceived into these marriages. Once they get pregnant, they find themselves abandoned in the streets with their newly born babies. Same applies to single mothers, as they find themselves stigmatized in a judgmental society what makes them find themselves forced into illegal prostitution after having limited access to housing and employment.¹³⁶ They become homeless and might find resort in the arms of their traffickers. One of these single mothers, while she was pregnant, found no solution but to turn to prostitution to pay for accommodation. After a study conducted by the Ministry of Social Affairs on single mothers in 2007, it was found that the average age of these females was 26 years. Women coming from rural areas face great marginalization and they are vulnerable for the lack of social and economic developments in their regions. They face wage discrimination as they get up to two times less than men doing the same work and they are so poor.¹³⁷ Consequently,

¹³³ Wakil, Lubna Al. «Presentation on child protection delegate in Bizerte, Reality of Trafficking in Children and Minors through the work of Delegates Minors through the work of Delegates of Child Protection.» s.d.

¹³⁴ Department, U.S State. «U.S. State Department Trafficking in Persons Report.» June 2013. www.state.gov. 4 February 2015 <<http://www.state.gov/documents/organization/210742.pdf>>.

¹³⁵ Orfi: Customary marriages are illegal but allow the couple to consummate their relationship without a formal marriage.

¹³⁶ *Supra Note 8*, 69

¹³⁷ *Ibid 8*

traffickers find in them a great prey.

When it comes to immigration, smuggled women and those who were found in illegal status of immigration should not be treated as criminals who should be deported out of the country. In other words, a woman who travels and migrates for a better job or who has a status of a refugee and found herself trafficked should not be punished and treated as an illegal alien. Tightened legislations on borders pave the way for traffickers to abuse more women and put women under a lot of harassment. These women find themselves in the hands of international traffickers and unwelcomed by any destination country.¹³⁸ In fact, from my interview with experts at the IOM, I realized that many migrant women who come here to work find themselves in an illegal situation after being trafficked and they fear telling the authorities about what happened to them not to be put in prison for their illegal status, so they just bear longer with their trafficked situation. To be more precise, and other than the African victims I will mention in the next parts, many refugees who fled the Syrian war found themselves staying illegally in Tunisia.¹³⁹ Some of these Syrian refugees got married to Tunisian men who failed to get them a residency, and since they have no family and support, they get abused by their husbands. Some of them end up begging in the streets with a confiscated passport if they get caught by the police, leaving them with no option but to be vulnerable to any kind of trafficker. The same applies to African women who are brought to Tunisia through intermediaries who faked contracts of decent jobs for them. They stay for a bit then after finishing the legal period of three months residency;¹⁴⁰ they find themselves in the streets without residence, rights, or illegal status, so they join prostitution networks for survival. In 2013, four African women were assisted by Beity¹⁴¹ alongside other women from different nationalities facing similar situations as the following table demonstrates:

¹³⁸ Coalition against Trafficking in Women. «Guide to the New UN trafficking protocol.» 2001. <http://www.no-trafficking.org>. 18 May 15 <http://www.no-trafficking.org/content/pdf/guide_to_the_new_un_trafficking_protocol.pdf>, 11

¹³⁹ According to UNHCR, the number of Syrian refugees reached 6338 in North Africa (1 February 2013).

¹⁴⁰ Article 9 states that "All foreigners staying in Tunisia more than three uninterrupted months or six non-consecutive months in a year, must obtain a visa and a temporary residence permit which will be issued in accordance with this Act."

¹⁴¹ Mawahem, Hedia. Beity, Association for Women without Homes. Interviewed by Racha Haffar. 23 January 2015. See Appendix X.

Year	Nationalities	Total Number
2013	Algerians, Libyan, Africans, Palestinian	8
2014	Cameroon, Russian, Bulgarian, Ivorian, German,	10
2015	Brazilian, Syrian, Africans	3

These figures show how little the number of needy women reach out to help as there must be much more than this. It also demonstrates the different nationalities of females victims who live through such situations. This could also show the urge for establishing more specialized centers to provide proper help for all specific different types of victims.

2. The Pre-Revolution Context of Transnational Trafficking in Women

A. Foreign Women and Sexual Exploitation

When looking at the categories of trafficked female victims in Tunisia prior to the 2011 revolution, we notice that when it comes to the trafficking of foreign women into sexual exploitation in Tunisia, back in the 1990s, they represented about 80 percent of the prostitutes in Tunisian Cabarets.¹⁴² These trafficked foreigners were mainly Europeans and Egyptians. The latter, have been trafficked through international pimping networks, according to a press article by Attariq newspaper.¹⁴³ They are fooled into prostitution by false promises of working as dancers in nightclubs. However, today, it is totally the opposite, the locals represent the majority. In 2007, three Ukrainian women were identified as victims of sexual exploitation and even forced labor in Tunisian hotels.¹⁴⁴ In addition, some Dominican women were sold in Tunisian luxurious hotel for prostitution.

¹⁴² *Supra* Note 8, 65

¹⁴³ *Ibid* 67

¹⁴⁴ The United States Department of State, "Gender Imbalance in Human Trafficking," 15 June 2009, state.gov, 2 April 2015 <<http://www.state.gov/documents/organization/126792.pdf>.

B. Foreign Women and Domestic Servitude

Through this research, I came to realize that it is not only today that African women are trafficked in Tunisia into domestic servitude. In fact, this phenomenon dates back earlier than we think. In 2008, a documented case of two young females from Ghana were working for a high official taking care of his sick daughter; these two got their papers confiscated and they couldn't leave. They had to work all the time, and in 2010, they were still there in the service of this high official who enjoyed a diplomatic protection.¹⁴⁵ This immunity protects many officials who exploit women and keep them under control, women are brought from West and East Africa to work as servants in Tunisia and they get exploited and get trafficked for domestic servitude, as reported by IGOs and NGOs to authorities. In fact, studies and information regarding this topic remain limited and all concerned actors should conduct further research and investigation in this field, as it is hard for women to be trafficked and cross borders without the help of well-organized national networks.

C. Tunisian Women and Sexual Exploitation Abroad

In 2007, a 22-year-old Tunisian woman who was a victim of trafficking for sexual exploitation in Turkey was assisted by an international organization.¹⁴⁶ Her story began when her friend persuaded her to go work as a baby sitter for a Turkish family. Once there, she found herself forced into prostitution. However, according to the ministry of interior, most cases of prostitution in Turkey are voluntary and not coerced. It is confirmed that trafficking in women into prostitution happens through a legal procedure; a valid passport and visa when they were first offered jobs abroad. Between 2009 and 2010, many daughters were taken by their fathers to the "prostitutes market" to be sold off to customers. The specific ages of these girls or their place of origin are not documented, though.¹⁴⁷ In 2009, two women were rescued from being trafficked into forced prostitution in Jordan.¹⁴⁸

In fact, all this proves the fact that Tunisia is indeed a country of origin of victims of trafficking in the Middle East; namely Lebanon and the Gulf and also

¹⁴⁵ *Supra* Note 8, 67

¹⁴⁶ Office to Monitor and Combat Trafficking in Persons, United States of America Department of State. 2012. 13 February 2015 <http://www.state.gov/j/tip/>

¹⁴⁷ *Ibid*

¹⁴⁸ The United States Department of State, "Gender Imbalance in Human Trafficking," 15 June 2009, state.gov, 2 April 2015 <<http://www.state.gov/documents/organization/126792.pdf>

West Africa. Lebanon is a channel for victims trafficked into West Africa.¹⁴⁹ Recruitment could also happen in the internal regions of Tunisia such as El Kef, where victims could be directly transported to destination countries; i.e. Ivory cost for sexual exploitation. Many women get recruited by their friends, acquaintances and/or through the internet and the social media, of course. However, in the next part, I will talk more about the growth of categories and numbers of victims in the post-revolution context, which is caused not only by the advance of technology but also by the wars and unstable situations in the region.

3. Trafficking in Women and the Context of the Tunisian Revolution

Tunisia has always been considered as a transit portal for immigrants and refugees from Africa into Europe as it is situated at the tip of the African continent. Consequently, foreigners of different nationalities get the status of trafficked victims in this context. The revolution was a catalyst when it comes to internal and cross-border trafficking as with the Libyan and Syrian wars, refugees at the borders of the Tunisian land who fled the wars into the camps were exploited and the phenomenon grew.¹⁵⁰ The borders areas with both Algeria and Libya make great hubs for smuggling and trafficking. Migrant women victims of unrests in these neighboring countries find themselves vulnerable in Tunisia.

In fact, according to Sadok Amari, the fact that the country is not fighting trafficking is because of the financial and social instabilities the country is facing, which increased after the revolution. The emptiness and security vacuum created after the revolution helped prepare the atmosphere for more exploitation as when it comes to transnational victims; cross-border female victims of different African nationalities are trafficked into domestic servitude and prostitution. The rising terrorism today does not leave the space for trafficking to appeal to decision makers as a priority. The most important thing experts insisted on is the fact that the laws have to change and that authorities have to work on making the anti-trafficking bill as a priority to save more victims and bring more villains to justice. It is also important to pin-point that one of the main factors of trafficking is poverty.

The openness to the use of technology encouraged traffickers through the easy connectivity and easy reach to deceive victims more. Social media today, which at some point played an important role in the success of the revolution, is also playing an important role in the success of trafficking operations. These aspects have thrived throughout the region in recent years and changed the nature

¹⁴⁹ Ivory Coast, Benin, Senegal. (put transcription of interviews if needed) check appendix.

¹⁵⁰ *Supra Note* 8, 18.

of demand and shifted it to a national supply.¹⁵¹

In 2012, an unprecedented increase in illegal prostitution was observed by the First Instance Court of Tunis. This development in internal prostitution led consequently to the increase of external prostitution. Now, there are two cases of clandestine prostitution at least per week, which should be given more attention as these women could be trafficked abroad.

Between 2010 and 2012, which is the revolution period, the UNODC noticed that there are higher proportions of trafficked victims into forced labor in North Africa and the Middle East than other parts of the world.¹⁵²

As a result of the change in the Tunisian context following the revolution, there is a change in the categories of trafficking in women accordingly. It is important to note that Jihad al-Nikah only existed after the revolution, which is considered as a new form of exploitation, connected to a religious mainstream. It found a convenient ground to develop and to take new dimensions with the presence of the security vacuum. The only proof of the existence of this form of trafficking is the quote of an official who demanded his name remains anonymous in the Ministry of Interior back in 2012, when he stated that the number of sexually exploited Tunisian women- who were falsified into Jihad prostitution- doesn't exceed fifteen. They were persuaded to offer social services for Jihadists,¹⁵³ such as providing them with medical care, preparing their meals and washing their clothes. However, this phenomenon remains controversial as no proofs or statistics are provided by authorities.¹⁵⁴

In addition, there is a rise in Orfi marriages after the revolution. According to the Ministry of the Interior, this type of marriage is not as frequent, but staff members working with single mothers noticed an upturn after the revolution. It is also important to note that students reported having been contacted to work in the Gulf countries; knowing it as a good cover for exploiting them into prostitution.

New definitions and notions were added to the new previously mentioned anti-trafficking bill of law to broaden the range of victims. First, when it comes to

¹⁵¹ Interview Jaouadi, Najet. Responsible for the department of social prevention of the judicial police under the Ministry of Interior. Interviewed by Racha Haffar. 23 April 2015. See Appendix X.

¹⁵² United Nation's Office on Trafficking and Drugs, "Global Report on Trafficking in Persons 2012." 2012, <https://www.unodc.org>, 15 February 2015 https://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf

¹⁵³ Jihadists: Muslim warriors who take on duties to maintain religion.

¹⁵⁴ Own translated from France 24. "19" في سوريا يعدن إلى بلادهن حوامل" September 2013. <http://www.france24.com/ar/20130919-%D8%AA%D9%88%D9%86%D8%B3-%D8%AC%D9%87%D8%A7%D8%AF-%D8%A7%D9%84%D9%86%D9%83%D8%A7%D8%AD-%D9%88%D8%B2%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D8%AF%D8%A7%D8%AE%D9%84%D9%8A%D8%A9-%D9%85%D8%AD%D9%85%D8%AF-%D8%A7%D9%84%D8%B9%D8%B1%D9>

definitions (which are mentioned in chapter I) the most important new addition to female victims are forcing women for the purpose of marriage and coercing them to pregnancy or renting their wombs. As previously mentioned, the notion of consent from the victim has been discharged and the victim will no longer be charged for any of the actions she was involved in whether by her consent or not.

Let's take the example of the most controversial case of cross-border trafficking in Tunisian women. March 13, 2013 witnessed a big controversy in the Tunisian legal system and a lot of criticism arose about the case of the 85 Tunisian women who were caught in a crime of trafficking by a Lebanese trafficking network. However, three of the 85 were charged for prostitution. The addition of the slavery-like practices like debt bondage to the new bill of law will save such victims from being pled guilty. In this part, I will only explore the change in notion and the details about the victims and their trials will follow, where I have dedicated a whole part to disclose different aspects about cross-border victims of trafficking in post-revolution Tunisia.

There is also a change at the level of defining the convict who exploited the victim into prostitution and it will include family members such as the husband if he persuaded his wife and changed her destination. The punishment will be of a minimum of 15 years.¹⁵⁵

With all this, we can notice the development of the notion throughout history. Back in 1846, it was only limited to slavery and now it includes all aspects and notions related to different characteristics that might relate directly or indirectly to the phenomenon.¹⁵⁶ Furthermore, the notion of age will be changed from article 231,¹⁵⁷ which doesn't specify the age of the victim into making it clear that women above 18-years-old will be charged with prostitution. Logically, minors will be always lured under threat or not, they shouldn't be treated as criminals.¹⁵⁸

There is another bill of law "Against all Forms of Violence Against Women", which includes a chapter about trafficking in women; however, experts from the Ministry of Justice indicated that there is repetition and it is redundant, so it might be dismissed as all aspects are covered in the anti-trafficking bill. Consequently, I was advised not to use it for the sake of avoiding confusion.¹⁵⁹

¹⁵⁵ Houidi, Sami Ben. Assistant Director-General of the Department of judicial interests in the Ministry of Justice interviewed by Racha Haffar. 20 April 2015. See Appendix X

¹⁵⁶ *Ibid*

¹⁵⁷ Article 231 of Penal Code

¹⁵⁸ Jaouadi, Najet. The responsible for the department of social prevention of the judicial police under the Ministry of Interior. Interviewed by Racha Haffar. 23 April 2015. See Appendix X.

¹⁵⁹ Abida, Salma. Judge at the Ministry of Justice. Interviewed by Racha Haffar. 15 April 2015. See Appendix X.

Experts could not hide their resentment towards such laws failing to protect women, as stated by Mohamed Messai. “We have been using the same laws since the Bey time, which is 1913, when it comes to protection of women from crimes; we have to protect them first from such laws, which are failing them. We need to change the laws, and it’s a must.”¹⁶⁰

4. Recent Transnational Cases of Trafficked Victims

In this part, after disclosing the changes and developments brought in to the trafficking in women context in post-revolution Tunisia, I would like to study the two main cases of transnational actions of trafficking in women. First, the case of Tunisian women trafficked abroad, mainly in Lebanon and the Gulf countries. Second, foreign women trafficked in Tunisia. This part will explore these cases in their current status following the revolution, their development and will be supported by first-hand statistics, court cases, and victims’ testimonies obtained through my research.

A. The Case of Tunisian Women Trafficked Abroad

When it comes to Tunisian women who are exploited abroad, it is worth mentioning that after the revolution, the number has risen. Previously, when I mentioned Lebanon, Jordan and the Gulf countries, the numbers detected were really low; only ranging between one to two victims. Today, we hear of cases including 85 victims. The famous case of those 85 Tunisian female victims trafficked in Lebanon had created much debate. In September 2012, those victims were sentenced for different penalties for prostitution and pimping. The story began when a Lebanese pimp travelled to Tunisia to make a deal with Tunisian intermediaries who would take in charge the recruitment of girls for him. Usually, it is easier when it happens through the internet and social media, but also, the recruitment through hairdressers is very effective. These young women are offered simple jobs yet with a rewarding salary as waitresses, dancers or singers. They are easily recruited via e-mails with their photos in different positions. It only takes the girl to pay between 400-500 dollars for the intermediary to provide her the paperwork, the visa and the contract. Of course, they are deceived as these contracts and papers are fake and are just a method to fool them into believing the job is real. The pimp offers the girl through the intermediary an artist visa, which is issued by the Lebanese Consulate and also passports issued by the Tunisian authorities. The intermediary who is basically responsible for all the recruitment

¹⁶⁰ Messai, Mohamed. Researchal Judge at the Center of Legal Studies. Interviewed by Racha Haffar 20 April 2015. See Appendix X.

process receives a commission of 500 dollars for each girl and he/she gets the money through Western Union. Upon their arrival to their destinations, these girls were tested for any STDs.¹⁶¹ They found them selves obliged to sign contracts as prostitutes at night clubs after their passports were confiscated from them. They were also faced with reality of reimbursing the visa, housing and travel expenses to their trafficker. This situation of Debt Bondage¹⁶² obliges them to join the prostitution network illegally, as they cannot afford to pay the money back or even afford their return ticket back to Tunisia. They find themselves sometimes drugged and forced into prostitution. As an encouragement to stick around, they get paid 100 dollars per client. One of the worst things is keeping them tied with the Kafala¹⁶³ system. And of course they are threatened by force and blackmailing to stick to their new jobs. They work and sleep in the same building and they are always escorted by a member of the network. Some victims get offers of marriage to be encouraged, and actually one of them was married Orfi to one of the cabaret customers where she worked. However, the recruitment process is worrying Tunisian authorities, especially when it is done through social media, as it is harder to trace according to the Ministry of Interior. The Ministry of Interior with close collaboration with the Interpol¹⁶⁴ managed to detect this network. It is obvious that these two bodies had difficulties in detecting the victims as these actions are carried out within the legal framework of migration flows for employment (by providing three- months renewable contracts).

When we tackle this incident from a legal perspective and after the authorities arrested those 85 Tunisian women on basis of prostitution charges upon their return from being forced to work in prostitution in August 2012. The judge dropped charges of 79 of them and the rest arrested for illegal prostitution and pimping. First, we see how the current laws fail female victims forced into prostitution after being trafficked. They were not identified or believed to be victims and were convicted under laws of Penal Code (articles 231 and 232) for the absence of a specific law on trafficking. However, if the new anti-trafficking bill of law was an applicable law by then, these women wouldn't have gone through all these accusations and convictions. In fact, as mentioned in the previous chapter, this bill will broaden the range of victims to guarantee no victim of trafficking

¹⁶¹ STDs: Sexually Transmitted Diseases.

¹⁶² The situation arising from forcing the debtor to perform work or services either by themselves or another dependent person as a guarantee to a debt they owe if the fair value of that work or service is not used to pay off this debt or if the service's period or nature was undetermined.

¹⁶³ The *kafala* system is another term to sponsorship. It is a system used to monitor migrant laborers in the Middle East, mainly in Lebanon, Bahrain, Iraq, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE.

¹⁶⁴ *Interpol*: International Criminal Police Organization, an association of over 100 national policeforces, devoted to fighting international crime through collaboration among intelligence agencies around the world.

would face similar fate of being pled guilty in illegal prostitution. One of the victims in a different incident, A. A., was promised to work as a nurse and when she arrived to her destination it wasn't the case. The pimp asked her to repay the 3000 dollars he had already paid for her plane ticket and visa. When her phone was confiscated, she couldn't contact her family and was obliged to stay there until she pays off her debt.

For the Tunisian judicial system now, a victim is only a victim if she returns back to Tunisia quickly enough for the judges to believe her, otherwise she is accused of wanting to work as a prostitute and wanting the money she gets from it. Najet El Jaouadi states: "Some of them stay up to two years and come back talking about different boyfriends, that is for us pure prostitution and we don't regret putting such women in jail."¹⁶⁵

Some other victims were released because they proved being deceived into falsified jobs. The court's case states that N., the Lebanese trafficker, who was behind this crime, along with three female intermediaries and three female victims were sentenced to jail.¹⁶⁶ N. got sentenced to three years imprisonment, while the other three intermediaries got a sentence of a year and the victims of trafficking who were convicted of illegal prostitution got a sentence of eight months in prison. This shows how unserious laws are in deterring such crimes and punishing network traffickers in such way. Three years of imprisonment is considered as nothing compared to the seriousness of this crime which affected severely the lives of 85 women and maybe some others. So, is wondering about the legitimacy of re-victimizing these three victims a valid point when we examine the defaulted law

When it comes to statistics, there is a huge lack of national efforts in providing accurate statistics of transnational trafficking crimes against Tunisian women abroad. It was only until January 2015 that the Ministry of Interior provided me with statistics about women victims of sex trafficking in the Middle East for the years 2012-2013-2014. The number of female trafficking intermediaries detected in Tunisia in 2012 was 38, in 2013 it was 24 and in 2014 it was 39. When it comes to the numbers of victims detected in 2012 it was 87, in 2013 it was 177 and in 2014 a total of 88.¹⁶⁷ However, the IOM only identified two Tunisian victims exploited in trafficking abroad (Liberia and USA), mainly in forced prostitution and forced services.¹⁶⁸ In the quest for testimonies from Tunisian victims trafficked abroad, I faced a lot of difficulties in reaching them and

¹⁶⁵ Jaouadi, Najet. The responsible for the department of social prevention of the judicial police under the Ministry of Interior. Interviewed by Racha Haffar. 23 April 2015. See Appendix X.

¹⁶⁶ Case number 2278, 14 March 2013, Court of First Instance in Tunis.

¹⁶⁷ See Appendix IV for statistics of Ministry of Interior.

¹⁶⁸ See Appendix V for IOM statistics.

getting their direct stories as my applications in different NGOs and ministries were rejected.¹⁶⁹ However, it was easier to get testimonies of foreign women trafficked in Tunisia as NGOs were permitted to pass them to me.

After studying the Lebanon case, I would like to point out some other similar, yet separate incidents. There are cases of women being arrested upon their return in Tunisia after declaring being sexually exploited in Lebanon and Bahrain. There is an incident of 28 women who were trafficked in Lebanon in 2012. A pimp was behind sending them to Lebanon and sending others to Bahrain. Two of these women trafficked in Bahrain were interviewed¹⁷⁰ and they stated that they were kept in their rooms all day without any freedom of movement, in 2012. The only testimony I got was the story of one of the victim's fiancé who spoke on Ettounsia channel¹⁷¹ when the program 'Labes' shed the light on trafficking cases and their processes. So this victim is one of the 28 mentioned above.¹⁷²

B. Foreign Women Trafficking in Tunisia

After the revolution, more foreign women, specifically Africans, have been found subject to trafficking in Tunisia. In 2011, a case of an Ivorian woman who has been held in domestic servitude was revealed. She was kept by a senior official.¹⁷³ Another case of an Ivorian woman held in domestic servitude by another senior official of the same institution in Tunis came to surface.¹⁷⁴ In addition, seven Nigerian women were identified as trafficking victims into domestic servitude in Libya by networks in Italy when the ship they were on while heading to Europe, which was full of migrants was assisted by Tunisian Coast Guard after getting stranded at the sea in 2012. Two weeks later they were repatriated back to Nigeria.¹⁷⁵

The only statistics which exist in Tunisia covering the profiles of this category of trafficked foreign women in Tunisia are provided by the IOM. They have been assisted in the period between 2012 and 2015. I got this document in April shortly after its preparation. Since 2012, the total number of victims detected

¹⁶⁹ See Appendix VI for proof

¹⁷⁰ *Supra Note 8*, p.64

¹⁷¹ February 20 2013.

¹⁷² Check Appendix VII for testimony.

¹⁷³ Department, U.S State. «U.S. State Department Trafficking in Persons Report.» June 2013. www.state.gov. 4 February 2015 <<http://www.state.gov/documents/organization/210742.pdf>

¹⁷⁴ *Supra Note 8*, 65.

¹⁷⁵ *Ibid*

and assisted by the IOM was a total of 43 victims.¹⁷⁶ Among these victims, 23 come from Ivory Coast (58%), 9 from Nigeria (22%), 2 from Tunisia, 2 from Mali, 2 from Colombia and 1 victim from each of Cameroun, Ghana, Senegal, Philippines and Congo. From the total number, the highest percentages were those of Ivory Coast (54%) and Nigeria was second (21%). The types of exploitation were as follows:

- Thirty six cases of domestic servitude.
- Five cases of exploitation in forced labor.
- One case of sexual exploitation and forced labor.
- One case of sexual exploitation.

The majority of victims are females aged (18-52), 21 of them are women coming from Ivory Coast who were exploited in domestic servitude in the capital Tunis and other Tunisian coastline cities. There was another group of young Nigerian females who were detected among illegal migrants rescued at the sea in 2012 as they were exploited in Libya in domestic servitude and some signs show that they were possibly exploited in forced prostitution upon arrival in Europe. The majority of the victims assisted were adults (88%); however, five of them were minors- below the age of eighteen (2 Nigerians, 2 Ivorians, 1 Malian.)¹⁷⁷

I managed to get two testimonies about trafficked Ivorian female victims in Tunisia. The first testimony is by Father David¹⁷⁸, who headed the funeral of a migrant victim to the Christian cemetery of Sfax. He testified to the ATFD on the situation of Ivoirians trafficked into domestic servitude in Sfax.¹⁷⁹ Testimony is provided in Appendix VIII. The second one is a story of a Malian victim of domestic servitude in Tunisia presented by Amal Association.¹⁸⁰

II. Governmental and Non-Governmental Organizations and Trafficking in Women in Tunisia

In this final section, I will talk about the efforts made by governmental and non-governmental bodies in the post-revolution period in protecting and helping

¹⁷⁶ These statistics are coordination with public national institutions, organizations of civil society and foreign consultants in Tunisia. In the framework of the S.H.A.R.E project activities.

¹⁷⁷ See Appendix V for document handed in April 2015 by IOM

¹⁷⁸ David Mayeda Gnadouwa is the priest to whom these Ivorian trafficking victims dared to resort to for help.

¹⁷⁹ Sfax is a city located 270Km southeast of the capital Tunis.

¹⁸⁰ See Appendix IX for Malian victim testimony.

victims. This includes state's instances and civil society actors, basically IGOs and NGOs. Then I will give a general thorough criticism to what have been missing in the fight against trafficking in women in Tunisia by these different actors.

1. Post-Revolution Governmental Efforts in Providing Protection and Help for Victims

When it comes to the protection of the witnesses and victims, the penal code doesn't have any precise laws in this matter; however, the new bill of law has put forward some new articles in this mater, and I mention the ones I didn't mention earlier:

- Providing physical protection for victims, witnesses, whistleblowers, judges and everyone involved in informing the authorities about the crimes.
- Hiding the identity of anyone who asks for it depending on the danger degree assessed by the judicial body in charge.
- Victims get the right to ask for information and guidance about appealing for compensation.¹⁸¹

When it comes to the health, social and psychological protection for victims, the new law will provide victims with:

- Medical help
- Judicial support with no costs to ensure rights for the victims and guidance with judicial help to start their cases against their perpetrators.
- Helping victims return to their countries.
- Social help (education, housing, jobs) for victims to reintegrate in their lives again.

Regarding the efforts of enhancing national capacity to prevent and fight trafficking in persons:

- The S.H.A.R.E project in cooperation between the Ministry of Justice and the IOM has been working on enhancing national capacities since 2011.
- In the framework of the project, a series of six workshops were organized during 2013 in the capital and the regions in order to train officials on identifying victims and the different needed methods for helping them.
- Over hundred officials benefited from these trainings; including teams from

¹⁸¹ See Appendix II

different ministries (Social Affairs, Women Affairs and Family, Foreign Affairs, and Justice). Also, judges, public prosecutors, representatives of embassies, consulates and diplomats.

In addition, this new bill would also provide a green line for victims to directly reach the Tunisian authorities from any place they are at.¹⁸² Since 2011 the Tunisian government has improved its knowledge about the topic and the range of victims through research and investigations conducted after the revolution, and through the creation of a database of trafficking crimes which was initiated by the ministry of interior in 2012.

2. Post-Revolution Non-Governmental Efforts in Providing Protection and Help for Victims

Alongside the state's efforts, there must be some coordinated actions on the level of civil society, NGOs and IGOs to effectively counter trafficking in Tunisia. Combining efforts could create synergies, which will prevent trafficking and also provide better protecting and help to victims. Even though we notice a growing interest in this issue lately, more specifically after the revolution; however, little has been done to fight trafficking in Tunisia. It is worth mentioning that the role of NGOs and IGOs is so important in combatting this crime, but there is a huge absence for organizations specialized in this field. It is true that with the help of the IOM and the S.H.A.R.E project which put together governmental and non-governmental bodies closer in their work against this, there is still a lot to do. International organizations such as the IOM, UNHCR¹⁸³, The High Commissioner for Human Rights (OHCHR) and The United Nations Population Fund (UNFPA) are working together on this; nevertheless, they all agree on the need to rely more on civil society to provide appropriate services to vulnerable groups of trafficking, especially women with a better understanding of the local context. But it is sad to see how underdeveloped this network is in Tunisia and how limited their capacities and resources are.

Tunisian NGOs which are involved directly in the fight against trafficking are at the same time a part of the S.H.A.R.E project and they are: Amal

¹⁸² Abida, Salma. Judge at the Ministry of Justice. Interviewed by Racha Haffar. 15 April 2015. See Appendix X.

¹⁸³ The United Nations High Commissioner for Refugees (UNHCR) prevents trafficking in persons among vulnerable groups (asylum seekers, repatriated, stateless persons, internal displaced persons) and assist victims.

Association,¹⁸⁴ Beity Association,¹⁸⁵ the Tunisian Red Crescent, ATFD, AIESAT,¹⁸⁶ AFTURD,¹⁸⁷ Caritas,¹⁸⁸ and Terre d'Asile.¹⁸⁹ According to the Ministry of Justice, the role of these NGOs as it sees it is that of a partner of the previously mentioned S.H.A.R.E project. These NGOs are specialized in different fields and they work on other types of victims, but this doesn't stop them from trying to help any potential trafficking victim. One of the problems facing these NGOs is that there is little research done to uncover the magnitude of this problem.¹⁹⁰

The IOM has made an awareness-raising campaign based on a video called "The Story of Fatma." The video tells a story of a Tunisian young woman seeking a job online; she eventually gets to the destination country of her new job after going through an easy recruitment procedure to find herself a victim of trafficking.¹⁹¹ During an interview with Hanen Ben Belgacem,¹⁹² working at the IOM, I got to learn about the way the IOM helps victims trafficked in Tunisia to return home. According to Hanen, once a victim is identified, she gets social and psychological help and gets encouraged to file a case against her perpetrator. In the case of refusal for their security and because of fear of traffickers, they get help to go back home through a purchased airplane ticket and some money to start a little project back home to sustain their living. Some of them go to seek help to return home without realizing they are victims. However, the IOM also helps get those with illegal status-who stayed longer than three months- an exemption from the government; as without the Exemption they have to pay a fine of 80 dinars per extra illegal month, which they can't afford. Personally, from what I have read in different sources, I believe it might not be safe for many of them to be sent back home as they might find themselves back to the same situation prior to their trafficking incident, especially victims coming from conflict zones. Also, if a

¹⁸⁴ Amal Association

¹⁸⁵ Beity Association

¹⁸⁶ AIESAT: L'Association Internationale des Etudiants et Stagiaires Africains à Tunis

¹⁸⁷ AFTURD : Association des Femmes Tunisiennes pour la Recherche sur le Développement

¹⁸⁸ Caritas: Christian Charity

¹⁸⁹ Terre d'Asile: NGO working on immigrants' rights.

¹⁹⁰ Julia Braunmiller, «The Protection Project Report Review of the Trafficking in Persons Report.» July 2013, <http://www.protectionproject.org>, 1 May 2015 <<http://www.protectionproject.org/wp-content/uploads/2013/07/TPP-Review-of-TIP-Report-2013-Final.pdf>>.

¹⁹¹ IOM Middle East and North Africa: Flash Report <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Flash-Report-32.pdf>

¹⁹² Belgacem, Hanen Ben. Project Assistant at the International Organization of Migration. Interviewed by Racha Haffar. 15 May 2015. See Appendix X.

network or gang was involved, they might threaten the safety of the victim and her family. And in the cases of refugees fleeing wars, they might not have a home to return to in the first place.¹⁹³ The only way to properly fight this crime is by uniting efforts between the different sectors and make sure the public also gets involved in this through raising awareness.

3. General Criticism

I will end this chapter by providing a thorough criticism in relation to the laws, protection of victims, and overall performance. Even though the government is making significant efforts like the ones mentioned in the previous parts, it is important to note that it does not fully comply with the minimum standards for the elimination of trafficking. When it comes to criticizing the overall performance in relation to the legal framework and its development, we can mention that the legal vacuum is an important default. More than a decade after signing and ratifying the Palermo protocol and still there is no national legal framework to fight trafficking. The government still doesn't consider the current bill of law as a priority. It is even more frightening that the laws in use today haven't been ratified since 1913. More concern is expressed by experts about the fact that the bill has not promulgated yet. For them, this delay is dangerous as it jeopardizes the situation of trafficking in the country specially, and human rights generally. Abdelhamid Abdallah stated: "This shows how slow we act and how much damage we cause to ourselves by losing all this time in advancing our legal framework."¹⁹⁴

There are other gaps on different levels. There is no national central unit of collecting data in relation to trafficking analysis information and making statistics. There are no accurate statistics about the most spread forms and cases of trafficking nationally and transnationally. There are no clear and exact information about the link between the crimes of trafficking and illegal immigrations and no specific statics about the crimes of trafficking. There is a huge lack in statistics in relation to victims, which I already spoke about earlier. The government doesn't recognize all these gaps as a real problem affecting the nation, and the concerned authorities assume that trafficking is not wide spread. However, the government's continued determination that trafficking in persons is not a significant problem in the country has created a hindrance for police and court officials to address trafficking cases.

On the level of prosecution, it's true that there was a raise from zero

¹⁹³ David A Feingold, "Human Trafficking." October 2005. <https://www.jstor.org>, 19 April 2015 <<https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Flash-Report-32.pdf>>.

¹⁹⁴ Abdallah, Abdelhamid. Previous head of mission at the Ministry of Human Rights and Transnational Justice. Interview by Racha Haffar. 2015 January 22. See Appendix X

prosecutions and convictions in 2012 into one sex trafficking prosecution in 2013 using the existing legal framework, that increase remains very low. In fact, these numbers of course lack accuracy as there is a lack of statistics. In the Lebanon case the pimp was sentenced to only 3 years imprisonment under article 232 of Penal Code. This penalty doesn't show the seriousness of the offense and is for sure insufficient. However, and according to the ministry of justice, this information is different as in their report, 177 victims were recorded in 2013 and there were 50 cases at courts in the first 7 months of 2014 and the penalties were between 6 months and 3 years. So, this inaccuracy in tracing crimes and criminals is in fact problematic.

When it comes to victims, there are no specific tools or national mechanisms as a reference to recognize them especially among illegal immigrants and to provide protection for them. There are no specific methods to help victims except what the child protection code provides guidelines against sexual or economic exploitation of children such as prostitution or begging. There are no exact data about the nationalities and sexes of victims. No exact data about the re-trafficked victims and the reasons which made them fall again in the hands of traffickers. There are no data on mechanisms and tools of directing victims to specific authorities or facilities for protection and help.¹⁹⁵ No exact statistics about the different categories of trafficked victims but the one about the foreign victims trafficked into Tunisia and the Tunisian women trafficked abroad in prostitution. It is true that maybe the explicit cross-border forms of trafficking such as the Lebanon case are not wide spread, but trafficking in Tunisia is increasing and the denial by the public for the little knowledge and the denial by authorities helps in aggravating the situation and subjugating more women to more victimization, suffering and loss of their rights. Therefore, the country is violating what Article 46 of the constitution says about protecting women.¹⁹⁶ The government does not encourage victims by any kind of policies to come forward ask for prosecution of their trafficking offenders.¹⁹⁷

The matter of reintegration is off the table as the absence of the specific law has led to the absence of specified centers in taking care of reintegrating victims back into their societies. Even though the government is cooperating with

¹⁹⁵ Official Governmental Document: The Response of the Ministry of Justice about the Country's Efforts in Fighting Trafficking in Persons in Tunisia, appendix I.

¹⁹⁶ The State commits to protecting women's achieved rights and works to promote and develop them. The State shall guarantee equality of opportunity between men and women in the bearing of all responsibilities and in all fields. The State shall strive to achieve equal representation for women and men in elected councils. The State shall take the necessary measures to eradicate violence against women.

¹⁹⁷ Department, U.S State. «U.S. State Department Trafficking in Persons Report.» June 2013. www.state.gov. 4 February 2015 <<http://www.state.gov/documents/organization/210742.pdf>>

international organizations and actors into offering temporary shelters and social services to Libyans, Syrians, and other people fleeing political unrests. There are no previous registered cases of cooperation with other Arab, African or Western states in judicial and security matters.¹⁹⁸ There are no specific data on the number of victims who received protection services with all its different forms, without specifying their ages, sexes nationalities and the type of services they got.¹⁹⁹

Finally, Tunisia not only risks the well-being of its citizens for not applying its own national law, but also risks the United States aids and its classification of Tunisia on its trafficking ranking. This means the country will hit the lowest level at the Tier List, which is for those states that put the least effort in fighting trafficking.

CONCLUSION

This research helped me discover some facts about trafficking in women in Tunisia. The first chapter of this research traced the historical timeline of the emergence of slavery and trafficking in persons throughout history. It also defined concepts necessary to understand the phenomenon of trafficking in women in Tunisia as it shows the relations between the different faces of slavery that are embodied in trafficking. The chapter explores the different forms of exploitation which affect a female victim according to the new legal texts and definitions such as the Palermo Protocol. It adds to this the new definitions introduced at the Tunisian national context through the new anti-trafficking bill of law. This bill brought new concepts of exploitation to the surface in relation to women's rights, such as renting women wombs and forced marriage. In addition, it creates a link between traditional slavery in Tunisia in the past with today's trafficking. By introducing the new post-revolution Tunisian context, exploitation with all its forms in Tunisia makes more sense today in the light of the recent changes at the social, political, economic and legal levels. The first chapter also tackled trafficking in women from a gender perspective, showing the main reasons making of women the biggest proportion of abused citizens in their societies.

The second chapter shed light on the legal developments of trafficking-related laws which advanced starting from the early 1900s. International legal instruments played an important role in combatting slavery and putting trafficking in its current context today. If it was not for these tools, slavery would have been more spread and more victims would have had to endure inhumane practices. The Palermo Protocol which came into practice in 2003 was the latest international

¹⁹⁸ *Supra Note 195*

¹⁹⁹ See Appendix II

instrument to put forward a global accepted definition, mechanisms, and strategies for a better updated fight against trafficking. Although Tunisia signed and ratified this Protocol accordingly in the same year as a way of compliance with international standards to fight the trafficking crime, it failed to validate its own national anti-trafficking law on time. The Tunisian legal system still lacks the practicality in dealing with such crime and its victims, as laws of the Penal Code applied today have proved to be inefficient in prosecution and protection. The Tunisian legal framework is out of date and short in achieving justice to affected women victims of trafficking. Experts and concerned authorities found themselves obliged to put forward more efforts in the field of fighting trafficking. They started to organize workshops, campaigns to bring the proper know-how of fighting trafficking and protecting victims. However, these efforts are still limited and need to be boosted in an efficient manner.

The last chapter examined the scene of trafficking in post-revolution Tunisia. It explained how the revolution played a catalyst in advancing forms, categories and numbers of trafficked women. Throughout the chapter, I analyzed categories of vulnerable groups in Tunisia. Students, single mothers, and immigrants make up a big portion of the total number of victims. In addition, the research presented statistics of both categories of transnational trafficked women in Tunisia. Ivorian women make up the majority of foreign women trafficked in Tunisia for servitude with 58 percent of the total number followed by Nigeria with a total of 22 percent.²⁰⁰ Tunisian women trafficked abroad for sexual exploitation make a total of 88 victims in 2014.²⁰¹ Moreover, the new forms of trafficking in post-revolution Tunisia include the Jihad al-Nikah on which no concrete data could be traced for the fact that there is so much secrecy on the issue. Tunisia makes a perfect country of origin, transit and destination of trafficked victims with a strategic location at the tip of the African continent that makes it a great attraction to illegal immigrants fleeing their African countries towards the European continent. The advance of technology, education and lack of employment make many women seek better jobs abroad. Traffickers find a great opportunity to exploit women with false promises. Here one can mention the case of eighty five Tunisian women who were pled guilty upon their return to Tunisia from being trafficked in Lebanon into prostitution.

The focus here was on the notion of re-victimization of Tunisian women. Women exploited in prostitution once trafficked face harsh accusations from Tunisian authorities. They are not considered as victims unless proved otherwise - according to articles 231 and 232 of the Penal Code-and might end up convicted

²⁰⁰ See appendix V for full statistics

²⁰¹ See appendix IV for full statistics

for a year imprisonment. This is a consequence of the absence of specific laws categorizing victims as such. The new Tunisian Anti-Trafficking bill of law puts forward the notion of exempting victims from the effort of proving their innocence and automatically categorizes them as victims regardless of their situation.

Trafficking in women in Tunisia has reached a new alerting status and needs more attention. Although governmental and non-governmental bodies have started to put more efforts in standing against this phenomenon, there still remains a huge lack in combatting its growth and development. Today, we see more of it than yesterday, and it exists in all forms and corners of the country. Look around carefully and you might detect a victim, but the public might be ignorant of the whole thing since there is little knowledge and awareness about the issue.

Throughout this research, I faced many challenges that hindered my data collection. First of all, the topic is new to the Tunisian scene and not much research has been done about the issue. I had to conduct my own field work to get first-hand information. Second, I faced a lot of difficulties to reach victims. When I applied for an authorization from the ministry of interior to meet certain victims related to the Lebanon case or to the Jihad al-Nikah or even prostitution, I was faced with rejection and all I got was false promises. When it comes to the Jihad al-Nikah, I could not find any proper documented cases to study and introduce in my research. In addition, reaching victims through the NGOs was also difficult as the number is limited and these victims refuse to be interviewed for safety measures. Third, the lack of knowledge of some of the interviewees was problematic for the research for not enough showed awareness in regard to this issue. There is a lack of understanding about the definitions and forms of trafficking in persons and I had to explain it practically to every single person instead of getting the information I seek from them. There were some problems reaching certain officials which prevented further collection and analysis of data. In many cases I also was not welcomed and helped even by some NGOs.

During this research, I came to find recommendations on a professional level given by organizations, national authority officials and experts in different sectors. I will put forward some of these recommendation that might really help improve the scheme of fighting and preventing trafficking in women in Tunisia, and provide a basis for a better way of dealing with victims.

The first thing that has to be done at the legal level for a real fight against this crime is to pass the anti-trafficking law for the importance of having a specific legal framework at the national level. The anti-trafficking commission already mentioned in Chapter II should start working as soon as possible to take in charge many anti-trafficking actions and future plans. This commission could create a database for statistics and launch awareness campaigns. Educational campaigns, seminars, and workshops should work on raising awareness about trafficking for a

better prevention. It is important to start implementing measures against discrimination vulnerable groups face, especially in relation to gender, origins, region, occupation, and family status (divorced women and singles mothers).²⁰² A comprehensive national action plan should be taken into consideration in parallel with the legal framework. In fact, laws related to the protection of vulnerable groups have to be reinforced by the government and laws failing victims should be revoked. There must be an adoption of national legislation for asylum seekers, and a reinforcement of laws concerning illegal immigrants.

Second, when it comes to victims, the government should develop measures and techniques to identify victims through providing trainings for specialized authorities among vulnerable groups, illegal immigrants, asylum seekers and foreigners working in Tunisia.²⁰³ The government should set up specialized shelters and centers to help and assist trafficking victims psychologically, physically and socially in to protect them from their traffickers. This should include a green line and a toll free center for instant reach of authorities. Developing a National Referral Mechanism-which includes all stakeholders in order to strengthen national cooperation including governmental bodies, non-governmental bodies, civil society, international organizations, local unions, UN agencies and even media outlets- to cover all aspects for the protection and assistance of victims.²⁰⁴ It is necessary to create measures for transnational victims to go back home and help them with their reintegration in their countries of origin. The states should provide alternatives to laws of repatriation of victims especially when they need the protection of the destination country, such as resettlement in a third country.²⁰⁵

Creating cooperation and partnership between the state and the private sector to guarantee national victims get access to education, trainings, and employment is a must. There should be a focus on strengthening the capacity of police officers and border control officers and justice ones through trainings of investigation research techniques for a better reach of victims and traffickers.

When it comes to the regional level, it is recommended to initiate a collective database for information and statistics. Exchanging legal and technical expertise help alleviate the level of deterrence in the region as a whole. Creating a mutual fund among these states of the region for supporting and integrating victims

²⁰² The International Organization for Migration, "Baseline Study on Trafficking in Persons in Tunisia: Assessing the Scope and Manifestations." 2013, <http://tunisia.iom.int>, 15 February 2015.

²⁰³ s.d The United States Department, <http://www.state.gov>, 14 April 2015 <http://www.state.gov/documents/organization/226849.pdf>.

²⁰⁴ *Supra Note 202*

²⁰⁵ *Ibid*

could bring some positive changes in their lives. It is also suggested by the Ministry of Justice to Support the Arab initiative into building capacities through the intensive training workshops and regional meetings to help authorities work in this matter.²⁰⁶ Sami ben Houidi stated the importance of strengthening the fight against poverty as it helps save many prospective victims. Understanding the schemes of unemployment help overcoming the obstacles created by poverty and which in turn affects the Tunisian population.²⁰⁷

At the personal level, I have come across some ideas to help improve the fight against trafficking. I believe it is highly important to work on strengthening the capacity of civil society and to create NGOs interested in trafficking in persons. Hence, it is impossible to fight trafficking networks and help vulnerable women at risk without launching NGOs specialized in this field who could have trained staff into identifying and assisting different forms and categories of national and cross border victims. These NGOs could take in charge the responsibility to raise awareness among university students and even reach out to the Ministry of Education to spread the knowledge through integrated curricula and textbooks. In relation to the exploitation of domestic servants, there should be specialized inspectors assigned for checking homes where potential victims could be recruited. Moreover, the public needs a comprehensive understanding about the topic in the light of the immense ignorance demonstrated by citizens. This could be done through print-outs, leaflets, booklets and catalogues to be distributed in public spaces in different events. It could include introducing the definitions of trafficking, the ways it may happen, who could be a victim, how to detect one and report him/her to authorities. It could also include authorities to directly reach them for any suspected crime. Finally, when I think about cases like the Lebanon one, I find it beneficial if the state keeps track of women who travel for jobs abroad and create a rescue team. This strategy could work if the state makes sure to keep the contacts of these working women and to contact them upon their arrival.

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²⁰⁶ See Appendix II

²⁰⁷ Houidi, Sami Ben. Assistant Director-General of the Department of judicial interests in the Ministry of Justice interviewed by Racha Haffar. 20 April 2015. See Appendix X

and never hesitated to give me advice and encouragement when needed.

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BIBLIOGRAPHY

BOOKS

- Craggs, Sarah. "Fighting Trafficking in Persons With approach based on human rights." Fighting Trafficking in Person with the approach based on human rights, Tunis: Annual Report of Activities 2011,IOM (2012),2012.21.
- Donovan, Brian. *White Slave Crusades: Race, Gender, and Anti-vice Activism*. Illinois: University of Illinois Press, 2006.
- Maffei, M. Clara. *Tratta, prostituzione forzata e diritto internazionale. Il caso delle «donne di conforto»*.Giuffrè, 2002.
- Obokata, Tom. *Trafficking Of Human Beings From A Human Rights Perspective: Towards A Holistic Approach*. The Netherlands: Martinus Nijhoff Publishers, 2006.
- Segrave, Marie, Sanja Milivojevic and Pickering. *Sex Trafficking: International Context and Response*. Portland: Willan, 2009
- Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery*. London: Oxford University Press, 2008)
- Verzijl, J. H. Jan Hendrik Willem. *International Law in Historical Perspective*. The Hague: Martinus Nijhoff Publishers, 1998.
- Waki, Lubna Al. «Presentation on child protection delegate in Bizerte, Reality of Trafficking in Children and Minors through the work of Delegates Minors through the work of Delegates of Child Protection.» s.d.

TUNISIAN LEGISLATION

- Présidence de la République. "Journal Officiel De la République Tunisienne." 22 May 2015. <http://www.legislation.tn> 14 June 2015
- The Jasmine Foundation. "Constitution of the Republic of Tunisia." 26 January 2014. <http://www.jasmine-foundation.org/>. 2 April 2015 http://www.jasmine-foundation.org/doc/unofficial_english_translation_of_tunisian_constitution_final_ed.pdf
- Ministère de la Justice et des Droits de l'Homme Tunsienne. "Code Pénal Tunisie." 12 December 2010. <http://www.e-justice.tn>. 12 April 2015 http://www.e-justice.tn/fileadmin/fichiers_site_francais/codes_juridiques/Code_penal_12_07_2010_fr.pdf

INTERVIEWS

- Abdallah, Abdelhamid. Previous head of mission at the Ministry of Human Rights and Transnational Justice. Interview by Racha Haffar. 2015 January 22.
- Abida, Salma. Judge at the Ministry of Justice. Interviewed by Racha Haffar. 15 April 2015.
- Belgacem, Hanen Ben. Project Assistant at the International Organization of Migration. Interviewed by Racha Haffar. 15 May 2015.
- Houidi, Sami Ben. Assistant Director-General of the Department of Judicial interests in the Ministry of Justice. Interviewed by Racha Haffar. 20 April 2015.
- Amari, Sadok. Interview of the Attorney General at the Ministry of Justice. Interviewed by Racha Haffar. 3 April 2015.
- Jaouadi, Najet. The responsible for the department of social prevention of the judicial police under the Ministry of Interior. Interviewed by Racha Haffar. 23 April 2015.
- Yacoubi, Amal. Project Officer at the EuroMed. Interviewed by Racha Haffar, 19 January 2015.
- Mawahem, Hedia. Beity, Association for Women without Homes. Interviewed by Racha Haffar. 23 January 2015.
- Messai, Mohamed. Researcher Judge at the Center of Legal Studies. Interviewed by Racha Haffar 20 April 2015.

PAY TO USE DATABASES

- <http://www.lexisnexis.com>
- <http://www.jstor.org>

ARTICLE, STUDIES AND REPORTS

- Amiel, Alexandra. « INTEGRATING A HUMAN RIGHTS PERSPECTIVE INTO THE EUROPEAN APPROACH TO COMBATING THE TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION. » 2006. <https://litigation-essentials.lexisnexis.com>. 20 June 2015 <https://litigation-&docid=12+Buff.+Hum.+Rts.+L.+Rev.+5&srctype=smi&srcid=3B15&key=56a5f4f178cd3075a73abcda44dae08f>
- Andreas, Schloenhardt, et Corin Morcom. « ALL ABOUT SEX?! THE EVOLUTION OF TRAFFICKING IN PERSONS IN INTERNATIONAL

- LAW.» March 2011. <http://www.law.uq.edu.au>. 4 January 2015 <http://www.law.uq.edu.au/documents/humantraffic/international-law/Evolution-of-Int-Law-relating-to-Trafficking-in-Persons.pdf>
- Ben Achour, Souhayma, "Le droit tunisien face à la traite de personnes et au trafic de migrants: Note d'analyse et de synthèse." 2011. <http://cadmus.eui.eu/>. 14 March 2015 <http://cadmus.eui.eu/bitstream/handle/1814/17800/CARIM_ASN_2011_47.pdf?sequence=1>
 - Braunmiller, Julia. «The Protection Project Report Review of the Trafficking in Persons Report» July 2013. <http://www.protectionproject.org>. 1 May 2015
 - <<http://www.protectionproject.org/wp-content/uploads/2013/07/TPP-Review-of-TIP-Report-2013-Final.pdf>>.
 - Coalition Against Trafficking in Women. «Guide to the New UN trafficking protocol.»2001. <http://www.no-trafficking.org>. 18 May 15 <http://www.no-trafficking.org/content/pdf/guide_to_the_new_un_trafficking_protocol.pdf>.
 - Coomaraswamy, Radhika. Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women. 29 February 2000. 16 December 2014 [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/\\$FILE/G0011334.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/$FILE/G0011334.pdf)
 - Department, U.S State. «U.S. State Department Trafficking in Persons Report.» June 2013. www.state.gov. 4 February 2015
 - <<http://www.state.gov/documents/organization/210742.pdf>>.
 - Derks, Annuska. "From White Slaves to Trafficking Survivors." May 2009. <http://www.nswp.org>. 2015 April 16 <<http://www.nswp.org/sites/nswp.org/files/CMD-0002M.pdf>>
 - Doezema, Joe. «Loose women or lost women? the re-emergence of the myth of white slavery in contemporary discourses of trafficking in women.» December 1999. <http://link.springer.com>. 22 March 2015 <<http://link.springer.com/article/10.1007/s12147-999-0021-9#page-1>>.
 - Demleitner, Nora V. «Forced Prostitution: Naming an International Offense.» 1994. <http://index.justice.gov.il>. 14 April 2015 <http://index.justice.gov.il/Units/Trafficking/MainDocs/Forced%20Prostitution-%20Naming%20an%20International%20Offense.pdf>
 - European Council. "Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime." 24 July 2006. <http://ec.europa.eu>. 19 June 2015
 - Feingold, David A. "Human Trafficking." October 2005. <https://www.jstor.org>. 19 April 2015 <<https://www.iom.int/files/live/sites/iom/files/>

- Country/docs/IOM-Flash-Report- 32.pdf>.
- France 24 "حوامل بالدهن إلى يעדن سوريا في "النكاح جهاد" مارسن تونسيات" 19" 19 September 2013. france24.FR. 15 April 2015 <http://www.france24.com/ar/20130919->
 - %D8%AA%D9%88%D9%86%D8%B3-%D8%AC%D9%87%D8%A7%D8%AF-
 - %D8%A7%D9%84%D9%86%D9%83%D8%A7%D8%AD-
 - %D9%88%D8%B2%D8%A7%D8%B1%D8%A9-
 - %D8%A7%D9%84%D8%AF%D8%A7%D8%AE%D9%84%D9%8A%D8%A9-
 - %D9%85%D8%AD%D9%85%D8%AF-%D8%A7%D9%84%D8%B9%D8%B1%D9
 - Gabhan, Nic. "Human Trafficking: A twenty First Century Slavery." 2006. jstore.org.2015 Mai 19 <<http://www.jstor.org/stable/27665410> >.
 - Haven, E.C. "The abolition of slavery in Tunisia (1846): A study into its historical backgrounds and its juridico-theological legitimization ."2006. <https://openaccess.leidenuniv.nl/bitstream/handle/1887/4968/second%20chapter%20dissertatie.pdf?sequence=5>
 - King, Lindsey. «TOPICAL RESEARCH DIGEST: HUMAN RIGHTS AND HUMAN TRAFFICKING.» 10 September 2014. <http://endslavery.salvos.org.au/wp-content/uploads/2014/09/10.-InternationalLaw.pdf>>.
 - League of Nations. «International Convention for the Suppression of the Traffic in Women and Children.» 30 September 1921. treaties.un.org. 20 April 2015
 - <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20VII/VII-3.en.pdf>>.
 - Moghadam, Valentine M. «SHS Papers in Women's Studies/ Gender.»2003. <http://www.cpahq.org/>. 6 January 2015
 - <http://www.cpahq.org/cpahq/cpadocs/Feminization_of_Poverty.pdf>.
 - Morcom, Corine et al. «Evolution of Trafficking in Persons in International Law.»2011. <http://www.law.uq.edu.au/documents/humantraffic/international-law/Evolution-of-Int-Law-relating-to-Trafficking-in-Persons.pdf>>.
 - Office of the High Commissioner for Human Rights. "RECOMMENDED PRINCIPLES AND." 2010.<http://www.ohchr.org/2April2015><http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf
 - Office of the High Commissioner on Human Rights.Supplementary

- Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. 2015. 01 April 2015<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>>.
- Samarasinghe , Vidyamali et al. «Strategising Prevention: A Critical Review of Local Initiatives to Prevent Female Sex Trafficking.» February 2007. jstore.org. 14 April 2015 <http://www.jstor.org/stable/25548176?seq=1#page_scan_tab_contents>.
 - Sandra Milena, "Theoretical Reading in Trafficking in women for the purpose of sexual exploitation in prostitution,Case of Study: Columbia ." 2010. <http://www.banrepcultural.org/>,15 January 2015
 - <<http://www.banrepcultural.org/sites/default/files/ma.tesis-explotacion-sexual-caso- colombia-sandra-milena-cardozo-pro.pdf>>.
 - Schulman, Cristina. "Protecting children against sexual violence: The criminal law benchmarks of the Budapest and Lanzarote Conventions." 4 December 2012. <http://www.coe.int>. 3 April 2015
 - <http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Reports- Presentations/2571_Child_benchmark_study_V32_pub_4_Dec12.pdf>.
 - The Global Slavery Index. «The Global Slavery Index 2014.»2014. <http://www.globalslaveryindex.org/>.14December2014<https://d3mj66ag90b5fy.cloudfront.net/wp-content/uploads/2014/11/Global_Slavery_Index_2014_final_lowres.pdf>
 - The International Labour Organisation. «Abolition of Forced Labour Convention, 1957 (No. 105).» 25 June 1957. www.ohchr.org. 25 November 2014
 - <<http://www.ohchr.org/Documents/ProfessionalInterest/abolition.pdf>>.
 - The International Organization for Migration. "Baseline Study on Trafficking in Persons in Tunisia: Assessing the Scope and Manifestations." 2013. <http://tunisia.iom.int>. 15 February 2015
 - <http://tunisia.iom.int/sites/default/files/resources/files/IOMTunisia_BaselineStudyTraffic king_English_LR.pdf>
 - The United States Department of State."Gender Imbalance in Human Trafficking." 15 June 2009. state.gov. 2 April 2015
 - <<http://www.state.gov/documents/organization/126792.pdf>>
 - The United States Department.s.d. <http://www.state.gov>. 14 April 2015
 - <<http://www.state.gov/documents/organization/226849.pdf>>.
 - United Nations Entity for Gender Equality and the Empowerment of Women.The Feminization of Poverty. May 2000. 12 December 2014
 - <<http://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm>>

- United Nations, Office of the High Commissioner for Human Rights. «Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.» 2 December 1949. <http://www.ohchr.org/>. 5 January 2015
- <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>>.
- United Nations Office on Trafficking and Drugs. "Global Report on Trafficking in Persons 2012." 2012. <https://www.unodc.org>. 15 February 2015
- <https://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf>
- United Nations Population Fund, «*Addressing Violence against Women and Girls in Sexual and Reproductive Health Services*» 2010. <http://www.unfpa.org/> 10 January 2015
- The United Nations Office on Drugs and Crime, *Trafficking in Persons and Migrant Smuggling*. 2015. 05 Feb 2015 <<http://www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html>>.
- Office to Monitor and Combat Trafficking in Persons, United States of America Department of State. 2012. 13 February 2015 <http://www.state.gov/j/tip/>.

INTERNATIONAL TREATIES

- League of Nations. «International Convention for the Suppression of the Traffic in Women of Full Age.» 11 October 1933. treaties.un.org. 24 January 2015
- <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-5&chapter=7&lang=en>.
- League of Nations. «International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910, amended by the Protocol signed at Lake Success, New York, 4 May 1949.» 4 May 1949. treaties.un.org. 10 January 2015 <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20VII/VII-9.en.pdf>>.
- The International Labor Organization. «Convention Concerning the Prohibition and Immediate Action for The Elimination .» June 1999. <http://www.ilo.org/>. 17 April 2015 <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm>
- The International Labour Organisation. «C29 Forced Labour Convention, 1930 .» 28 June 1930. tavaana.org. 17 November 2014
- <<https://tavaana.org/sites/default/files/>>

- C29%20Forced%20Labour%20Convention,%201930.pdf
- United Nations Convention on Migrant Rights. «International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.» 1 July 2003. <http://unesdoc.unesco.org>. 2 April 2015
 - <<http://unesdoc.unesco.org/images/0014/001435/143557e.pdf>>.
 - United Nations. «Convention on the Elimination of all Forms of Discrimination against Women.» 18 December 1979. www.ohchr.org. 25 October 2014
 - <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>>.
 - United Nations, Office of the High Commissioner for Human Rights, «Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery» 30 April 1956 <http://www.ohchr.org/>, 5 January 2015 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>
 - United Nations. "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women." 2000. www.osce.org. 15 05 2015
 - United Nations Treaties Collection. *International Convention for the Suppression of the "White Slave Traffic," May 4, 1910, 211 Consol. T.S. 45, 1912 GR. Brit. T.S. No. 20, as amended by Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and Amendi.* 1951. 2 January 2015

WEBOGRAPHY

- Agatucci, Cora. African Slave Trade and European Imperialism? 01 January 2010. 19 January 2015 <<http://web.cocc.edu/cagatucci/classes/hum211/timelines/htimeline3.htm>>
- Brown, Richard. *Slavery in Africa*. 2000. 15 April 2015 <<http://autocww.colorado.edu/~flc/E64ContentFiles/AfricanHistory/SlaveryInAfrica.html>>.
- Council of Europe. Council of Europe Convention on Action against Trafficking in Human Beings. 2005. 20 July 2015
- <<http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>>
- EU Neighborhood Info Center. Trafficking in human beings: Euromed Migration III holds workshop in Vienna. 2 May 2013. 18 October 2014 <<http://www.enpi-info.eu/medportal/news/latest/32916/Trafficking-in-human-beings:-Euromed-Migration-III-holds-workshop-in-Vienna>>
- Freedom From Fear Magazine. A short history of trafficking in persons. 23 February 2010. 10 March 2015 <<http://f3magazine.unicri.it/?p=281>>
- International Labour Organisation. «Unbearable to Human Hearts: Child

- Trafficking and Action to Eliminate it.» 01 December 2002. www.ilo.org. 25 December 2014 <http://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_768/lang--en/index.htm>.
- Segura, Ciara. When did trafficking in women become a human rights issue? – The "white slavery" panic. 27 May 2010. 4 October 2014
 - <<http://stanford.edu/group/womenscourage/cgi-bin/blogs/sextraffickingandprostitution/2010/05/27/when-did-trafficking-in-women-become-a-human-rights-issue-the-white-slavery-panic/>>
 - The International Organization of Migration. The Khartoum Process: EU-AU Cooperate to Combat Human Trafficking in the Horn of Africa. 28 October 2014. 5 January 2015 <<http://weblog.iom.int/khartoum-process-eu-au-cooperate-combat-human-trafficking-horn-africa>>.
 - The United Nations Office on Drugs and Crime. *Trafficking in Persons and Migrant Smuggling*. 2015. 05 Feb 2015 <<http://www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html>>.
 - The United Nations. *The United Nations Fourth World Conference on Women*. September 1995. 12 January 2015
 - <<http://www.un.org/womenwatch/daw/beijing/platform/violence.htm>>.

Appendices

Appendix I: The Tunisian Anti-Trafficking Bill of Law

Appendix II: Ministry of Justice document on the efforts of Tunisia in the fight against trafficking in persons

Appendix III: Government's agenda in relation to trafficking in persons.

Appendix IV: Statistics handed by Ministry of Interior, January 2015 by Najet Jaoudi about trafficked Tunisian women in the Gulf and Lebanon.

Appendix V: Statistics handed by the IOM in April 2015 about the profiles and numbers of victims of trafficking assisted in Tunisia (2012-2015)

Appendix VI: Certificate from the ATFD as a proof for not being able to get through to victims testimonies

Appendix VII: Victim Testimony 1

Appendix VIII: Victim Testimony 2

Appendix IX: Victim Testimony 3

Appendix X: Interviews. Upon request, audio file available from author.

Appendix I

The Tunisian Anti-Trafficking Bill of Law



ويشمل الاستغلال استغلال بغاء الغير أو دعارته أو غيرها من أشكال الاستغلال الجنسي أو
المسخرة أو الخدمة قسرا أو الاسترقاق أو الممارسات الشبيهة بالرقيق أو الاستعباد أو التسول أو نزع
الأعضاء أو الأمسحة أو الخلايا أو الأمشاج أو الأجنة بقصد الاتجار بها.

2- حالة استضعاف :

أي وضع يعتقد فيه الشخص أنه مضطر للخضوع للاستغلال ناجم خاصة عن كونه طفلا أو عن
حالته غير القانونية أو حالة الاحتياج الشديد أو حالة المرض الخطير أو حالة الإيثار أو حالة الحمل
لدى المرأة أو حالة قصور ذهني أو بدني يعوق الشخص المعني عن التصدي للجاني.

3- المسخرة أو الخدمة قسرا :

أي عمل أو خدمة يفرض عبوة على شخص تحت التهديد بأي عقاب و لا يكون هذا الشخص قد
تطوع بأدائه بمحض اختياره.

4- الاسترقاق :

أي وضع تمارس فيه على الشخص السلطات الناجمة عن حق الملكية كلها أو بعضها.

5- الممارسات الشبيهة بالرقيق :

تتضمن الحالات التالية :

- إفسار الدين : الوضع الناشئ عن إجبار مدين على أداء عمل أو خدمات بنفسه أو بواسطة
شخص آخر تابع له ضمانا لدين متخذ بذمته إذا كان مقابل ذلك العمل أو تلك الخدمات لا يوظف
لسداد هذا الدين أو إذا كانت مدة أو طبيعة العمل أو الخدمات غير محددة.

- القنائة : الوضع الناشئ عن إلزام شخص بموجب اتفاق بأن يعيش ويعمل على أرض شخص
آخر وإن يقدم عمل أو خدمات لهذا الشخص بعرض أو بغير عرض و دون أن يملك حرية تغيير
وضعه.

- إكراه المرأة على الزواج

- إكراه المرأة على الحمل أو استئجار رحمها.

- استخدام طفل في أنشطة غير مشروعة أو إجرامية أو في نزاع مسلح.

- تبني طفل لغرض استغلاله أيا كان نوعه.

- الاستغلال الاقتصادي أو الجنسي للأطفال بمناسبة تشغيلهم.

6- الاستعباد :

إجبار شخص على القيام بعمل أو أداء خدمات وفقاً لشروط لا يستطيع ذلك الشخص التخلص منها أو تغييرها.

7- الاستغلال الجنسي:

الحصول على منافع أيا كانت طبيعتها من خلال توريث شخص في أعمال دعارة أو بغاء أو في تقديم أية أنواع أخرى من الخدمات الجنسية بما في ذلك استغلاله في المشاهد الإباحية وذلك عبر إنتاج مشاهد ومواد إباحية أو مسكها أو ترويجها بأية وسيلة كانت¹.

8- جماعة إجرامية منظمة :

جماعة ذات هيكل تنظيمي مؤلفة من ثلاثة أشخاص أو أكثر تكونت لأي مدة كانت و تعمل بطريقة متضاهرة على ارتكاب إحدى جرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون بقصد الحصول بصورة مباشرة أو غير مباشرة على منافع مالية أو مادية.

9- وفاسق :

كلّ نأمر تكون لأي مدة كانت مهما كان عدد أعضائه بقصد ارتكاب جرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون دون أن يلزم وجود تنظيم هيكلية أو توزيع محدد ورسمي للأدوار بينهم أو أن تستمر عضويتهم فيه.

10- جريمة عبر وطنية :

تكون الجريمة عبر وطنية في الصور التالية :

- إذا ارتكبت في الإقليم الوطني وبدولة أجنبية أو أكثر،
- إذا ارتكبت في الإقليم الوطني وجرى الإعداد أو التخطيط لها أو إدارتها أو الإشراف عليها بدولة أجنبية،
- إذا ارتكبت في دولة أجنبية وجرى الإعداد أو التخطيط لها أو إدارتها أو الإشراف عليها بالإقليم الوطني،
- إذا ارتكبت في الإقليم الوطني من مجموعة منظمة تمارس أنشطة إجرامية في أكثر من دولة واحدة،
- إذا ارتكبت في الإقليم الوطني ونتجت عنها آثار هامة في دولة أجنبية أو ارتكبت في دولة أجنبية وكانت لها آثار هامة في الإقليم الوطني.

الفصل 3 :

¹ - أثارَت مسألة الاستغلال الجنسي فناناً داخل اللجنة حول ما إذا كان إصدار هذا القانون يقرب منه إلغاء التصريح المنظم للبقاء العنفي ورأت اللجنة تركه الحسم في هذه المسألة للجهات الحكومية المعنية.

ينطبق هذا القانون على جرائم الاتجار بالأشخاص المرتكبة داخل الإقليم الوطني وكذلك الجرائم المنظمة وعبر الوطنية.

الفصل 4 :

تختص المحاكم العدلية دون غيرها بالنظر في جرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون والجرائم المرتبطة بها.

تطبق أحكام المجلة الجزائية ومجلة الإجراءات الجزائية ومجلة المرافعات والعقوبات العسكرية والنصوص الجزائية الخاصة على الجرائم المنصوص عليها بهذا القانون بقدر ما لا تتعارض مع أحكامه. ويخضع الأطفال إلى مجلة حماية الطفل.

الفصل 5 :

لا يعتد برضا الضحية لتقدير وقوع جريمة الاتجار بالأشخاص إذا استعملت في ارتكابها إحدى الوسائل المنصوص عليها بالعدد 1 من الفصل 2 من هذا القانون.

ولا يشترط لقيام أركان الاتجار بالأشخاص استعمال تلك الوسائل إذا كانت الضحية طفلا أو شخصا عديم الأهلية أو من ذوي الإعاقة.

ولا يعتبر رضا الضحية طرفا يحمل على تخفيف العقوبات المنصوص عليها بهذا القانون.

الفصل 6 :

لا يؤخذ من ارتكب بدون سوء نية جرما مرتبطا ارتباطا مباشرا بإحدى جرائم الاتجار بالأشخاص التي كان ضحية لها.

الفصل 7 :

تسقط الدعوى العمومية في جرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون بمضي خمسة عشر عاما كاملة إذا كانت ناتجة عن جنابة ويمرور خمسة أعوام إذا كانت ناتجة عن جنحة.

الباب الثاني :

في زجر الاتجار بالأشخاص

القسم الأول

في من يعاقب

الفصل 8 :

بعاقب بالسجن مدة عشرة أعوام وبخطية قدرها خمسون ألف دينار كل من يرتكب إحدى جرائم الاتجار بالأشخاص المنصوص عليها بالفصل 9² من هذا القانون.

الفصل 9²:

بعاقب بنصف العقوبات المقررة لجرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون أو للجرائم المرتبطة بها كل من يحرص علنا بأي وسيلة كتت على ارتكابها عندما يولد هذا الفعل، بحكم طبيعته أو في سياقه، خطرا باحتمال ارتكابها.

وإذا كان العقاب المستوجب هو الإعدام أو السجن بفترة العمر يعرض ذلك للعقاب بالسجن مدة عشرين عاما.

الفصل 10 :

بعاقب بالسجن مدة سبعة أعوام وبخطية قدرها أربعون ألف دينار كل من اتخبط أو شارك بأي عنوان كان، داخل تراب الجمهورية أو خارجه، في جماعة إجرامية منظمة أو وفاق يهدف إلى إغداد أو تحضير أو ارتكاب جرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون.

وتكون مدة العقوبة خمسة عشر عاما وخطية قدرها مائة ألف دينار لمكوني ومدبري الجماعات أو الرفاق المذكورة.

الفصل 11 :

يقع تتبع الذات المعنوية إذا تبين أن ارتكاب جرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون يمثل الغرض الحقيقي من إنشائها أو تم لغايتها أو إذا حصلت لها منه منافع أو مداخيل أو إذا تبين أنها توفر الدعم بأي شكل من الأشكال لأشخاص أو تنظيمات أو أنشطة لها علاقة بجرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون.

تعاقب الذات المعنوية بخطية تساوي قيمة الأموال المتحصل عليها من جرائم الاتجار بالأشخاص على أن لا يقل مقدارها عن خمس مرات قيمة الخطية المستوجبة للأشخاص الطبيعيين.

كما يمكن للمحكمة أن تقضي بحرمان الذات المعنوية من مباشرة النشاط لمدة أقصاها خمسة أعوام أو أن تقضي بحلها.

² - تم حذف أفعال الدعوة والمساعدة والمساهمة في تسهيل، وقوع الجريمة أو الشروع في ارتكابها كما لم يقع إدراج فعل التوسط باعتبارها تشكل كلها صورا من صور المشاركة أو المعاونة والتسيس عليه سلب الفصل سيؤول إلى معاقبة المشارك أو المعاول في جريمة الاتجار بعنوية أخف، من تلك المعاونة على مشارك أو معاول في جريمة حق عام.

ولا يمنع تتبع الذات المعنوية من توقيع العقوبات المنصوص عليها بهذا القانون على ممثليها أو مسيريها أو الشركاء فيها أو أعوانها إذا ثبتت مسؤوليتهم الشخصية عن هذه الأفعال.

الفصل 12 :

يعاقب بالسجن مدة سنة أعوام ومخطية قدرها ثلاثون ألف دينار كل من يعتمد ارتكاب إحدى الأفعال التالية :

1 - إعداد محل لاجتماع أعضاء تنظيم أو وفاق أو أشخاص لهم علاقة بجرائم الإتجار بالأشخاص المنصوص عليها بهذا القانون أو إيواؤهم أو إخفاؤهم أو ضمان فرارهم أو عدم التوصل للكشف عنهم أو عدم عقابهم أو على الاستفادة بمحصول أفعالهم،

2 - توفير بأي وسيلة كانت أسلحة أو مواد أو معدات أو وسائل نقل أو تجهيزات أو مؤونة أو مواقع إلكترونية لفائدة تنظيم أو وفاق أو لفائدة أشخاص لهم علاقة بجرائم الإتجار بالأشخاص المنصوص عليها بهذا القانون،

3- إرشاد أو تدبير أو تسهيل أو مساعدة أو التوسط أو التنظيم بأي وسيلة كانت ولو دون مقابل دخول شخص إلى التراب التونسي أو مغادرته بصفة قانونية أو حلسة سواء تم ذلك برا أو بحرا أو جوا من نقاط العبور أو غيرها بهدف ارتكاب إحدى جرائم الإتجار بالأشخاص المنصوص عليها بهذا القانون أو كان ذلك الشخص ضحية لها.

4- وضع كفايات أو خبرات على ذمة تنظيم أو وفاق أو على نعمة أشخاص لهم علاقة بجرائم الإتجار بالأشخاص المنصوص عليها بهذا القانون،

5- إنشاء أو توفير أو نشر معلومات مباشرة أو بواسطة لفائدة تنظيم أو وفاق أو لفائدة أشخاص لهم علاقة بجرائم الإتجار بالأشخاص المنصوص عليها بهذا القانون بقصد المساعدة على ارتكابها، أو التستر عليها أو الاستفادة منها أو عدم عقاب مرتكبيها،

6 - صنع أو اقتعال بطاقة تعريف وطنية أو جواز سفر أو غير ذلك من الرخص أو الشهادات المذكورة بالفصول 103 إلى 100 من المجلة الجزائية لفائدة تنظيم أو وفاق أو لفائدة أشخاص لهم علاقة بجرائم الإتجار بالأشخاص المنصوص عليها بهذا القانون.

الفصل 13 :

يعاقب بالسجن مدة عام وبخطية قدرها خمسة آلاف دينار كل من تمتع عبدا ولو كان خاضعا للمر المهني عن إشعار السنط ذات النظر فورا بما بلغ إلى علمه من معلومات أو إرشادات وبما أمكن له الاطلاع عليه من أفعال حول ارتكاب جرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون. ولا يمكن القيام بدعوى الغرم أو المؤاخذة الجزائية ضد من قام عن حسن نية بواجب الإشعار.

الفصل 14 :

يعد مرتكبا لجريمة إعاقة سير العدالة كل من :

- استعمل القوة أو التهديد أو عرض عطايا أو هدايا أو منافع من أي نوع أو وعد بشيء من ذلك لحمل شخص على الإدلاء بشهادة زور أو لإخفاء الحقيقة سواء كان ذلك في مضرة أو مصلحة المتهم وذلك في كافة مراحل الدعوى العمومية المتعلقة بجرائم الاتجار بالأشخاص،
- استعمل القوة أو التهديد أو عرض عطايا أو هدايا أو منافع من أي نوع أو وعد بشيء من ذلك لعدم كشف ضحايا الاتجار بالأشخاص أو لحملهم على عدم رفع شكاية أو لرجوعهم في التثني،
- اعتدى على شخص أو على مكاسبه أو على أفراد أسرته أو مكاسبهم بغرض الانتقال إثر الإدلاء بشهادة أو تقديم دليل في دعوى جزائية متعلقة بجرائم الاتجار بالأشخاص،
- اطلع بحكم وظيفته على معلومات تتعلق بنتائج جزائية من أجل جرائم الاتجار بالأشخاص وتعمد إفشاءها لأشخاص يشتبه في تورطهم في تلك الجرائم بغرض إعاقة سير الأبحاث أو عدم كشف الحقيقة أو التنصي من التتبع والعقاب وذلك دون المساس بحقوق الدفاع.

الفصل 15 :

يعاقب مرتكب جريمة إعاقة سير العدالة طبقا للصورة المقررة بالمطلة الأولى من الفصل المتقدم بنفس عقوبة الجريمة محل التتبع لكن دون أن تتجاوز مدة السجن عشرين عاما. ويكون العقاب بالسجن مدة خمسة أعوام وبخطية قدرها عشرين ألف دينار في باقي الصور الأخرى. ولا يمنع ذلك من تطبيق العقوبات الأكثر شدة إن اقتضى الحال ذلك.

القسم الثاني

في الإعفاء من العقوبات والتخفيف منها

الفصل 16 :

يُعفى من العقوبات المستوجبة من بادر من الممتنمين لجماعة إجرامية منظمة أو وفاق يهدف إلى ارتكاب إحدى الجرائم المنصوص عليها بهذا القانون أو الجرائم المرتبطة بها، بإبلاغ السلطات ذات النظر بإرشادات أو معلومات مكنت من اكتشاف الجريمة وتفادي تنفيذها.

ولا يتمتع ذلك المحكمة من إخضاعه للمراقبة الإدارية أو منعه من الإقامة بأماكن معينة لمدة لا تقل عن ثلاثة أعوام ولا تفوق عشرة أعوام إلا إذا قضت المحكمة بالحظ من هذه العقوبة إلى ما دون أدناها القانوني.

الفصل 17 :

يعاقب الممتنمي لجماعة إجرامية منظمة أو وفاق أو من كان له مشروع فردي يهدف إلى ارتكاب إحدى الجرائم المنصوص عليها بهذا القانون أو الجرائم المرتبطة بها بتصف العقوبة المقررة أصالة لجريمة الاتجار بالأشخاص أو الجريمة المرتبطة بها إذا مكنت الإرشادات أو المعلومات التي تولوا إبلاغها إلى السلطات ذات النظر بمناسبة البحث الأولي أو التفتحات أو التحقيق من وضع حد لجرائم الاتجار بالأشخاص أو جرائم مرتبطة بها ، أو من الكشف عن جميع فاعليها أو بعضهم أو من إلقاء القبض عليهم

و يكون العقاب المستوجب السجن مدة عشرين عاما إذا كان العقاب المقرر أصالة للجريمة الإعدام أو السجن بقية العمر.

القسم الثالث

فيما يزيد العقوبات شدة

الفصل 18 :

يكون العقاب بالسجن مدة خمسة عشر عاما وبخطية من خمسين ألف دينار إلى مائة ألف دينار إذا ارتكبت جريمة الاتجار بالأشخاص:

- ضد طفل أو باستخدامه،
- ضد شخص عديم الأهلية أو من ذوي الإعاقة أو باستخدامه ،
- ضد امرأة حامل ،
- ضد مجموعة من ثلاثة أشخاص فأكثر،
- إذا كان مرتكب الجريمة زوجا للضحية أو أحد أصولها أو فروعها أو وليها أو كانت له سلطة عليها،

- إذا ارتكبت الجريمة ممن استغل صفته أو السلطة أو التسهيلات التي حولتها له وظيفته أو نشاطه المهني،
- إذا ارتكبت الجريمة بتدليس وثائق الهوية أو السفر أو الإقامة،
- إذا ارتكبت الجريمة باستخدام مواد مخدرة أو مؤثرات عقلية،
- إذا نتج عن الجريمة إصابة الضحية بسقوط أو عجز بدني مستمر لم تتجاوز درجته العشرين بالمائة أو إصابته بأحد الأمراض الجنسية السارية.

الفصل 19 :

يكون العقاب بالسجن من خمسة عشر أعوام إلى عشرين عاما وبخطية من خمسين ألف دينار إلى مائة ألف دينار :

- إذا ارتكبت جريمة الاتجار بالأشخاص من مجموعة إجرامية منظمة أو من وفاق،
- إذا ارتكبت ممن كان عائدا في جرائم الاتجار بالأشخاص،
- إذا كانت الجريمة عبر وطنية،
- إذا نتج عن الجريمة إصابة الضحية بسقوط أو عجز بدني مستمر تجاوزت درجته العشرين بالمائة.

الفصل 20:

يكون العقاب بالسجن ببقية العمر وبخطية من مائة ألف دينار إلى مائتي ألف دينار إذا ترتب عن ارتكاب إحدى جرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون موت الضحية أو انتحارها أو إصابتها بمرض يؤدي إلى وفاتها.

الفصل 21 :

إذا ارتكب الحائري عدة جرائم متباينة، يعاقب لأجل كل واحدة بانفرادها، و في كل الحالات لا تضم العقوبات لبعضها.

القسم الرابع

في التحقيق

الفصل 22 :

على قاضي التحقيق حجز الأسلحة والذخيرة والمعدات والتجهيزات والوثائق وغيرها من الوسائل المعدة أو المستعملة لارتكاب الجريمة أو لتسهيل ارتكابها والأشياء التي يشكل صنعها أو مسكها أو استعمالها أو الاتجار فيها جريمة.

وتحرز قائمة في المحجوز بمحضر ذي الشبهة أو من وجد لديه ذلك المحجوز إن أمكن ثم يحزر قاضي التحقيق تقريراً في الحجز يتضمن وصفاً للمحجوز وخصائصه وجميع البيانات المفيدة مع ذكر تاريخ الحجز وعدد القضية.

الفصل 23 :

يمكن لقاضي التحقيق الإذن من نفاذ نفسه أو بطلب من النيابة العمومية بوضع المكاسب المتقولة أو العقارية أو الأرصدة المالية الراجعة لذى الشبهة تحت قيد الحجز وتحديد أوجه التصرف فيها أو وضعها عند الاقتضاء تحت الإلتزام.

وعليه تمكن ذي الشبهة بجزء من أمواله يقي بتنطية الضروريات من حاجياته وحاجيات أسرته بما في ذلك المسكن.

كما له الإذن برفع التدابير المشار إليها ونو دون طلب.

يبت قاضي التحقيق في مطلب رفع التدبير في أجل أقصاه أربعة أيام من تاريخ تقديمه.

والقرار الصادر عن قاضي التحقيق برفع التدبير أو رفضه كلياً أو جزئياً يقبل الاستئناف لدى دائرة الإتهام من طرف وكيل الجمهورية والمظنون فيه أو محاميه قبل مضي أربعة أيام من تاريخ الإطلاع بالنسبة لوكيل الجمهورية ومن تاريخ الإعلام بالنسبة لمن عداه.

واستئناف وكيل الجمهورية يحول دون تنفيذ القرار.

وفي صورة الاستئناف يوجه قاضي التحقيق ملف القضية إلى دائرة الاتهام بمجرد القضاء أجل الاستئناف بالنسبة لوكيل الجمهورية والمظنون فيه أو محاميه .

ويجب على دائرة الاتهام البت في مطلب الاستئناف في أجل أقصاه ثمانية أيام من تاريخ انصالتها بالملف.

الفصل 24 :

يتم سماع الضحايا والشهود والخبراء والمبلغين فرادى في غياب ذي الشبهة ولا تجري مكافحتهم به أو بغيرهم من الشهود إلا برضاهم.

القسم الخامس

في محاكم القضاء

الفصل 25 :

تطبق أحكام الفقرات الأولى والثانية والثالثة من الفصل 23 وأحكام الفصل 24 من هذا القانون لدى محاكم القضاء.

الفصل 26 :

على المحكمة أن تقضي باستصفاء الأموال المستعملة لارتكاب الجريمة أو لتسهيل ارتكابها التي ثبت حصولها بصفة مباشرة أو بصفة غير مباشرة من الجريمة، ولو انتقلت إلى أي ذمة مالية أخرى، سواء بقيت تلك الأموال على حالتها أو تم تحويلها إلى مكاسب أخرى.

وفي صورة عدم التوصل إلى الحجز الفعلي يحكم بخطية لا تقل في كل الحالات عن قيمة الأموال التي تعلقت بها الجريمة لتقوم مقام الاستصفاء.

وعلى المحكمة أيضا أن تقضي باستصفاء الأسلحة والذخيرة والمعدات والتجهيزات وغيرها من الوسائل المستعملة لارتكاب الجريمة أو لتسهيل ارتكابها والأشياء التي يشكل صنعها أو مسكها أو استعمالها أو الاتجار فيها جريمة.

وللمحكمة أن تقضي بمصادرة جميع المكاسب المنقولة أو العقارية والأرصدة المالية للمحكوم عليه أو بعضها إذا ثبت استعمالها لغرض تمويل أشخاص أو تنظيمات أو أنشطة لها علاقة بالجرائم المنصوص عليها بهذا القانون.

الفصل 27 :

لا يمكن في كل الحالات أن تنال الأحكام الصادرة باستصفاء الأموال أو بمصادرتها تطبيقا لهذا القانون من الحقوق التي اكتسبها الغير عن حسن نية.

الفصل 28 :

للمحكمة أن تقضي بحرمان المحكوم عليه من مباشرة الوظائف أو الأنشطة المهنية التي استغل بمقتضاها للتسهيلات المخولة له لارتكاب إحدى جرائم الاتجار بالأشخاص.

كما يتحتم الحكم بالمرافقة الإدارية أو المنع من الإقامة بأماكن معينة مدة لا تقل عن ثلاثة أعوام ولا تفوق عشرة أعوام إلا إذا قضت المحكمة بالخط من هذه العقوبة إلى ما دون أدناها القانوني.

ولا يمنع ذلك من الحكم بكل أو بعض العقوبات التكميلية الأخرى المقررة قانونا.

الفصل 29 :

تقضي المحكمة بنفس الحكم بطرد وترحيل الأجنبي المحكوم عليه من أجل جرائم الاتجار بالأشخاص من التراب التونسي بعد قضائه للعقاب.
ويحجر على الأجنبي المحكوم عليه وفق هذا القانون دخول البلاد التونسية مدة عشر سنوات إن كان العقاب من أجل جنحة ومدى الحياة إن كان العقاب من أجل جنابة.
وكل من يخالف ذلك يعاقب بالسجن من عام إلى خمسة أعوام ويخطية قدرها عشرة آلاف دينار.
والمحاولة موجبة للعقاب.

القسم السادس

في طرق التحري الخاصة

الفصل 30 :

في الحالات التي تقتضيها ضرورة البحث يمكن اللجوء إلى اعتراضات لتصالات قوى الشبهة بمقتضى قرار كتابي معلى من وكيل الجمهورية أو قاضي التحقيق.
يشمل اعتراض الاتصالات الحصول على بيانات المرور والتنصت أو الاطلاع على محتوى الاتصالات وكذلك نسخها أو تسجيلها باستعمال الوسائل الفنية المناسبة والاستعانة في ذلك، عند الاقتضاء، بمشغلي الشبكات العمومية للاتصالات ومشغلي شبكات النفاذ ومزودي خدمات الاتصالات كل حسب نوع الخدمة التي يمدونها.
وتتمثل بيانات المرور في مصدر الاتصال والجهة المرسل إليها والشبكة التي تمر عبرها وساعة وتاريخ وحجم و مدة و نوع الخدمة المذكورة.
ويتضمن قرار وكيل الجمهورية أو قاضي التحقيق جميع العناصر التي من شأنها التعريف بالاتصالات موضوع طلب الاعتراض والأفعال الموجبة له ومدته.
لا يمكن أن تتجاوز مدة الاعتراض أربعة أشهر بداية من تاريخ القرار قابلة للتديد مرة واحدة لنفس المدة بمقتضى قرار معلى.
ويتعين على الجهة المكلفة بتنفيذ الاعتراض إعلام وكيل الجمهورية أو قاضي التحقيق بحسب الأحوال بالترتيبات التي تم اتخاذها لإتجازها وبالتاريخ الفعلي لانطلاق عمارة الاعتراض.
ويمكن في أي وقت الرجوع في القرار المنصوص عليه بهذا الفصل كلما دعت الضرورة إلى ذلك.

الفصل 31 :

يتعين على الجهة المكلفة بإنجاز الاعتراض القيام بمأموريتها بالتنسيق مع وكيل الجمهورية أو قاضي التحقيق بحسب الأحوال وتحت رقابته وإحاطته بسير عملية الاعتراض بما يمكنه من اتخاذ التدابير اللازمة لحسن سير البحث.

تضمن جميع المكاتبات والمراسلات والنفاير المتعلقة بعملية الاعتراض بملف مستقل خاص يقع إسنافته للملف الأصلي قبل اتخاذ قرار في إجراء البحث أو قبل إصدار قرار في ختم التحقيق.

الفصل 32 :

تحزر الجهة المكلفة بإنجاز الاعتراض، عند إتمام أعمالها، تقريراً يتضمن وصفاً للتركيبات المتخذة والعمليات التي أنجزت ونتائجها يُرفق رجوياً بالبيانات التي تسنى جمعها أو نسخها أو تسجيلها وكذلك البيانات التي تمكن من حفظها وقراءتها وفهمها.

إذا لم تتوفر عن المعطيات المجمعة من الاعتراضات تنبغات حزلية فإنها تتمتع بمقتضيات الحماية وفقاً للتشريع الجاري به العمل في مجال حماية المعطيات الشخصية.

الفصل 33 :

في الحالات التي تقتضيها ضرورة البحث يمكن اللجوء إلى الاختراق بواسطة عون أمن متخفي أو مخبر معتمد من قبل مأموري الضابطة العدلية .

ويباشر الاختراق بمقتضى قرار كتابي معطل من وكيل الجمهورية أو من قاضي التحقيق وتحت رقابته لمدة أقصاها أربعة أشهر قابلة للتديد لنفس المدة بقرار معطل.

ويمكن في أي وقت الرجوع في الفرار المنصوص عليه بهذا الفصل كلما دعت الضرورة إلى ذلك.

الفصل 34 :

يتضمن القرار الصادر عن وكيل الجمهورية أو قاضي التحقيق اللوحة البصمية والبصمة الجينية والهوية المستعارة للمخترق. ويسري العمل به على كامل تراب البلاد التونسية.

يحجر الكشف عن الهوية الحقيقية للمخترق لأي سبب من الأسباب .

كل كشف يعاقب مرتكبه بالسجن مدة خمسة أعوام وبخطية قدرها عشرة آلاف دينار .

إذا تسبب الكشف في ضرب أو جرح المخترق أو زوجه أو أبنائه أو والديه تُرفع العقوبة إلى سبعة أعوام وإلى خطية قدرها خمسة عشرة ألف دينار.

إذا تسبب الكسوف في موت المخترق أو أحد الأشخاص المنصوص عليهم بالفقرة السابقة ترفع العقوبة إلى عشرة أعوام سجنًا وخطية قدرها عشرون ألف دينار دون أن يمنع ذلك من تطبيق العلويات الأكثر شدة المتعلقة بالقتل العمد.

الفصل 35 :

لا يراخذ المخترق جزائياً عند قيامه بدون سوء نية بالأعمال التي تتطلبها عملية الاختراق.

الفصل 36 :

يتولى مأمور الضابطة العدلية المتعهد بالإشراف على مراقبة سير عملية الاختراق ويرفع تقاريرها في الغرض إلى وكيل الجمهورية أو إلى قاضي التحقيق كلما دعت الضرورة إلى ذلك وكذلك عند نهاية عملية الاختراق.

ولا يمتنع بملف القضية إلا التقرير النهائي.

الفصل 37 :

في الحالات التي تقتضيها ضرورة البحث يمكن لوكيل الجمهورية أو لقاضي التحقيق بحسب الأحوال أن يأذن بمقتضى قرار كتابي معال لمأموري الضابطة العدلية بوضع عدة تقنية تهدف إلى النقاط وتثبيت ونقل وتسجيل كلام وصورة نوي الشبيهة بصفة سرية ودون علمهم بأغراضهم الشخصية أو بأسكن أو عريات خاصة أو عمومية.

يتضمن قرار وكيل الجمهورية أو قاضي التحقيق بحسب الأحوال الإذن بدخول الأماكن أو العريات الخاصة ولو خراج الساعات المنصوص عليها بالفصل 95 من مجلة الإجراءات الجزائية ودون علم أو موافقة مالك العرية أو صاحب المكان أو أي شخص له حق عليهما.

ويتضمن القرار المذكور جميع العناصر التي من شأنها التعرف بالأغراض الشخصية أو بالأماكن أو العريات الخاصة أو العمومية المعنية بالمراقبة السمعية البصرية والأفعال الموجبة لها ومذاتها.

لا يمكن أن تتجاوز مدة المراقبة السمعية البصرية أربعة أشهر بداية من تاريخ القرار وتكون قابلة لتتمديد مرة واحدة لنفس المدة بمقتضى قرار معلل.

ويمكن في أي وقت الرجوع في القرار المنصوص عليه بهذا الفصل كلما دعت الضرورة إلى ذلك.

لوكيل الجمهورية أو قاضي التحقيق أو مأموري الضابطة العدلية ، حسب الحالات، الاستعانة بمن يرونه من الأهران المؤهلين و أهل الخبرة لوضع العدة التقوية.

تضمن جميع المكاتبات والمراسلات والتقارير والتسجيلات المتعلقة بعملية المراقبة السمعية البصرية بملف مستقل خاص يقع إضافته للملف الأصلي قبل اتخاذ قرار في إجراء البحث أو قبل إصدار قرار في ختم التحقيق.

تحذر الجهة المكلفة بإنجاز المراقبة السمعية البصرية عند إتمام أعمالها تقديراً يتضمن وصفاً للترتيبات المتخذة والعمليات التي أنجزت ومكانها وتاريخها وساعتها ونتائجها يُرفق وجوباً بالتسجيلات السمعية البصرية التي تسجل جمعها والمغيدة لكشف الحقيقة.

تُنقل المحادثات الجارية بلغة أجنبية إلى اللغة العربية بواسطة مترجم محلف.

إذا لم تتربط عن المعطيات المجمعة من المراقبة السمعية البصرية نتيجات جزائية فإنها تتمتع بمقتضيات الحماية وفقاً للتشريع الجاري به العمل في مجال حماية المعطيات الشخصية.

الفصل 38 :

يعاقب بالسجن مدة عشرة أعوام الأشخاص الذين يقشون عن إحدى المعلومات المتعلقة بعمليات الاعتراض أو الاختراق أو المراقبة السمعية البصرية أو المعطيات المجمعة منها، ولا يمنع ذلك من تطبيق العقوبات الأكثر شدة إن اقتضى الحال ذلك.

الفصل 39 :

لا يمكن استعمال وسائل الإثبات التي وقع جمعها بمناسبة عملية اختراق أو اعتراض أو مراقبة سمعية بصرية إلا في حدود إثبات الجرائم المعنية بالبحث.

تعدم التسجيلات السمعية أو البصرية بحضور ممثل عن النيابة العمومية بمجرد صدور حكم بات بالإثبات أو البراءة.

وفيما عدى ذلك يقع إعدامها بمجرد انقضاء الدعوى العمومية بمرور الزمن بحضور ممثل عن النيابة العمومية.

ويحرر في كل الأحوال محضر في الغرض.

الباب الثالث : في الهيئة الوطنية لمكافحة الاتجار بالأشخاص

الفصل 40 :

تحدث لدى وزارة العدل هيئة تسمى الهيئة الوطنية لمكافحة الاتجار بالأشخاص' تعقد جلساتها بمقر الوزارة التي تتولى تأمين كتابتها القارة.

وتخصص للهيئة للقيام بمهامها اعتمادات تلحق بـ ميرانية وزارة العدل.

الفصل 41 :

تتركب الهيئة الوطنية لمكافحة الاتجار بالأشخاص من :

- فاض عدلي من الرتبة الثانية على الأقل رئيسا، مباشر كامل الوقت،
 - خبير من وزارة الداخلية،
 - خبير من وزارة الدفاع الوطني،
 - خبير من وزارة الشؤون الخارجية،
 - فاض ممثل لمركز الدراسات القانونية والقضائية،
 - خبير من الوزارة المكلفة بالشؤون الاجتماعية،
 - خبير من الوزارة المكلفة بالتكوين المهني والتشغيل،
 - خبير من الوزارة المكلفة بالصحة،
 - خبير من الوزارة المكلفة بالمرأة والطفولة،
 - خبير من هيئة حقوق الإنسان،
 - خبيرين مختصين من الناشطين في الجمعيات ذات الصلة بمجال مكافحة الاتجار بالأشخاص.
- ويوقع تعيين أعضاء الهيئة بمقتضى أمر باقتراح من الوزارات والهيئات المعنية لمدة ثلاث سنوات.
- ولرئيس الهيئة أن يدعو أي شخص من ذوي الخبرة والاختصاص لحضور اجتماعات الهيئة قصد الاستئناس برأيه في المسائل المعروضة عليها.
- ويضبط تنظيم الهيئة وطرق سيرها بأمر.

الفصل 42 :

تتولى الهيئة الوطنية لمكافحة الاتجار بالأشخاص القيام خصوصا بالمهام التالية:

- وضع إستراتيجية وطنية تهدف إلى الوقاية من الاتجار بالأشخاص ومكافحته واقتراح الآليات الكفيلة بتنفيذها و تنسيق الجهود في مجال تطبيق إجراءات حماية الضحايا والشهود والمبلغين وكذلك إجراءات مساعدة الضحايا،

- تلقي الإشعارات حول عمليات الاتجار بالأشخاص وإحالتها على الجهات القضائية المختصة،
- إصدار المبادئ التوجيهية الكفيلة بتمكين كافة المتكثفين وبحفة خاصة الناقلين التجاريين وسفندي الشغل و مندوبي حماية الطفولة والأخصائيين الاجتماعيين والمصالح المكلفة بمراقبة الحدود والأجانب ووثائق الهوية والسفر والتأشيرات والإقامة من ترصد عمليات الاتجار بالأشخاص والإبلاغ عنها،
- إصدار المبادئ التوجيهية الكفيلة بالتعرف على ضحايا الاتجار بالأشخاص وتوفير المساعدة اللازمة لهم،
- تيسير الاتصال بين مختلف المصالح والجهات المعنية بهذا المجال وتنسيق جهودها وتثقيفها على الصعيدين الوطني والدولي،
- التعاون مع المنظمات غير الحكومية المعنية بمكافحة الاتجار بالأشخاص ومساعدتها على تنفيذ برامجها في هذا المجال،
- جمع المعطيات والبيانات والإحصائيات المتعلقة بالاتجار بالأشخاص لإحداث قاعدة بيانات بهدف استغلالها في إنجاز المهام الموكولة لها،
- تثبيط الطلب الذي يحفز جميع أشكال استغلال الأشخاص ونشر الوعي الاجتماعي بمخاطر الاتجار بهم عن طريق الحملات التحسيسية والبرامج الثقافية والتربوية وإقامة المؤتمرات والندوات وإصدار النشرات والأدلة،
- تنظيم دورات تدريبية والإشراف على برامج التكوين على الصعيدين الوطني والدولي،
- التعرف بالتدابير التي اتخذتها الدولة لمكافحة الاتجار بالأشخاص وإعداد الأجابة على المسائل التي تطلب المنظمات الدولية إيداء الرأي فيها ذات العلاقة بمينان تسخنها،
- المساهمة في تنسيق البحوث والدراسات لتحديث التشريعات المنظمة للمجالات ذات العلاقة بالاتجار بالأشخاص على ضوء المعايير الدولية وأفضل الممارسات بما يحقق تنفيذ برامج الدولة في التصدي لهذه الظاهرة.

الفصل 43 :

تستعين الهيئة في تنفيذ المهام الموكولة لها بالمصالح والهياكل العمومية المختصة في جمع المعلومات والإحصائيات حول المسائل المرتبطة بمهامها وتنفيذ إجراءات حماية الضحايا والشهود والمبلغين وإجراءات مساعدة الضحايا.

الفصل 44 :

تعمل الهيئة الوطنية لمكافحة الاتجار بالأشخاص على تشجيع التعاون مع نظيراتها بالبلاد الأجنبية التي تربطها بها اتفاقات تعاون والتعجيل بتبادل المعلومات معها بما من شأنه أن يكفل الإنذار المبكر بالجرائم المعنية بهذا القانون وتقادي ارتكابها.

ويتوقف التعاون المشار إليه بالفقرة المتقدمة على احترام مبدأ المعاملة بالمثل وعلى التزام نظيراتها بالبلاد الأجنبية، بمقتضى التشريع المنظم لها، بالتقيد بالسر المهني وعدم إحالة المعلومات والمعلومات المجمعة لديها أو استغلالها لأغراض أخرى غير مكافحة الجرائم المعنية بهذا القانون وجزئها.

الفصل 45:

تعد الهيئة الوطنية لمكافحة الاتجار بالأشخاص تقريراً سنوياً عن نشاطها يتضمن وجوباً اقتراحاتها لتطوير الآليات الوطنية لمكافحة الاتجار بالأشخاص تحيله إلى كل من رئيس الجمهورية ورئيس مجلس نواب الشعب ورئيس الحكومة يتم نشره للعموم. كما يمكن للهيئة إصدار بلاغات حول نشاطاتها وبرامجها.

الباب الرابع

في آليات الحماية والمساعدة

القسم الأول

في إجراءات الحماية

الفصل 46 :

تُتخذ التدابير الكفيلة بالحماية الجسدية للضحايا والشهود ومساعدتي القضاء والمختوق والمبلغين وكل من تكفل بأي وجه من الأوجه بواجب إشعار السلطات ذات النظر بإحدى جرائم الاتجار بالأشخاص في الحالات التي يكون فيها ذلك لازماً.

كما تلتسحب التدابير المشار إليها، عند الانتهاء، على أفراد أسر الأشخاص المشار إليهم بالفقرة المتقدمة وكل من يُحتمى استهدافه من أقاربهم.

الفصل 47 :

يمكن لقاضي التحقيق أو غيره من الهيئات القضائية في حالات الخطر الملح وإن اقتضت الضرورة ذلك إجراء أعمال البحث أو الإنمن بالبقاء الجلسة بغير مكانها المعتاد مع اتخاذ التدابير اللازمة لضمان حق المتهم في الدفاع عن نفسه.

ولهما أن يقررا استتطاق المتهم وتلقى تصريحات من يزيان فائدة في سماعه باستعمال وسائل الإتصال المرئية أو المسموعة الملائمة دون ضرورة لحضور المعني بالأمر شخصيا.
وتتخذ حينئذ التدابير الكفيلة بعدم الكشف عن الأشخاص الواقع سماعهم.

الفصل 48 :

يمكن للأشخاص المشمولين بالحماية في صورة دعوتهم إلى الإدلاء بتصريحاتهم لدى مأموري الضابطة العدلية أو لدى قاضي التحقيق أو غيره من الهيئات القضائية أن يعونوا محل مخابرتهم لدى وكيل الجمهورية المختص ترابيا.

وتضمن في هذه الحالة هوياتهم ومقراتهم الأصلية بدفتر سري معد للغرض مرقم وممضى من قبل وكيل الجمهورية يقع فتحه لديه للغرض.

الفصل 49 :

يمكن في حالات الخطر الملم للأشخاص المشمولين بالحماية أن يطلبوا عدم الكشف عن هويتهم. ويفتد وكيل الجمهورية أو الهيئة القضائية المتعددة وجهة الطلب في ضوء طبيعة الخطر وجديته وتأثير الإجراء على السير العادي للدعوى العمومية.

وفي صورة الموافقة على الطلب تضمن هوية الأشخاص المذكورين وغيرها من البيانات الأخرى التي من شأنها الكشف عنهم بما في ذلك إسماءاتهم بدفتر سري ومرقم وممضى من وكيل الجمهورية يقع فتحه لديه للغرض.

وفي هذه الحالة لا تحرر المعطيات التي من شأنها الكشف عن هوية الأشخاص بمحاضر سماعهم وتضمن بمحاضر مستقلة تحفظ بملف منفصل عن الملف الأصلي.

الفصل 50 :

للمظنون فيه أو ذاته أن يطلب من الهيئة القضائية المتعددة الكشف عن هوية الأشخاص المشمولين بالحماية وذلك في أجل أقصاه عشرة أيام من تاريخ الاطلاع على مضمون تصريحاتهم.

ويمكن للهيئة القضائية ذات النظر الإثن برفع التدبير المشار إليه بالفصلين 48 و 49 من هذا القانون والكشف عن هوية المعني بالأمر إذا تبين لها جدية الطلب ولم يكن هناك ما يخشى معه تعريض حياته أو مكاسبه أو حياة أو مكاسب أفراد أسرته إلى خطر.

يبت قاضي التحقيق في مطلب رفع التدبير في أجل أقصاه أربعة أيام من تاريخ تقديمه.

ويعلم وكيل الجمهورية المعني بالأمر بقرار الكشف عن هويته ويتلقى جوابه.

والقرار الصادر عن قاضي التحقيق يرفع التدبير أو رفضه يقبل الاستئناف لدى دائرة الإتهام من طرف وكيل الجمهورية إما تلقائيا أو بطلب ممن صدر القرار بالكشف عن هويته والمظنون فيه أو محاميه والقائم بالحق الشخصي قبل مضي عشرة أيام من تاريخ الإطلاع بالنسبة لوكيل الجمهورية ومن تاريخ الإطلاع بالنسبة لمن عداه.

واستئناف وكيل الجمهورية يحول دون تنفيذ القرار.

وفي صورة الاستئناف يوجه قاضي التحقيق ملف القضية إلى دائرة الإتهام بمجرد انقضاء أجل الاستئناف بالنسبة لوكيل الجمهورية والمظنون فيه أو محاميه والقائم بالحق الشخصي.

ويجب على دائرة الإتهام التثبت في مطلب الاستئناف في أجل أقصاه ثمانية أيام من تاريخ اتصالها بالملف.

الفصل 51 :

لا يمكن في كل الحالات، أن تتال تدابير الحماية من حق المظنون فيه أو نائبه في الإطلاع على مضمون المحاضر وغيرها من أوراق الملف وذلك مع مراعاة أحكام الفصل 194 من مجلة الإجراءات الجزائية.

الفصل 52 :

للجنة القضائية المتعددة أن تقرر من تلقاء نفسها أو بطلب من ممثل النيابة العمومية أو بناء على طلب كل من له مصلحة في ذلك إجراء الجلسات بصورة سرية.

ويحجر في هذه الحالة نشر المعلومات عن المرافعات أو القرارات التي من شأنها الذيل من الحياة الخاصة للضحايا أو سمعتهم دون المساس بالضمانات الأخرى المقررة بالنصوص الخاصة.

الفصل 53 :

يعاقب بالسجن من خمسة أعوام إلى عشرة أعوام وبخطية من عشرة آلاف دينار إلى خمسين ألف دينار كل من عرض حياة الأشخاص المعنيين بالحماية أو مكاسبهم أو حياة أو مكاسب أفراد أسرهم إلى خطر وذلك بالإفصاح عمدا عن أي معطيات من شأنها الكشف عنهم .

ولا يمنع ذلك من تطبيق العقوبات الأكثر شدة إن اقتضى الحال ذلك.

وإذا كان الشخص المعني بالحماية هو المخفوق تنطبق أحكام الفصل 34 من هذا القانون.

الفصل 54 :

تتم معالجة جميع المعطيات والبيانات المتعلقة بضحايا الاتجار بالأشخاص عند تطبيق أحكام هذا القانون وفقا للتشريع الجاري به العمل في مجال حماية المعطيات الشخصية.

القسم الثاني :

في إجراءات المساعدة

الفصل 55 :

تعمل الهيئة الوطنية لمكافحة الاتجار بالأشخاص بالتنسيق مع المصالح والهيكل المعنية على توفير المساعدة الطبية اللازمة لضمان التعافي الجسدي والنفسي للضحايا الذين هم في حاجة إلى ذلك. ويتمتع الضحايا عند الانضمام بمجانية العلاج والتداوي بالهيكل الصحية العمومية. وتضبط شروط وطرق التكفل بمصاريف علاج الضحايا بأمر.

الفصل 56 :

تعمل الهيئة الوطنية لمكافحة الاتجار بالأشخاص بالتنسيق مع المصالح والهيكل المعنية على توفير المساعدة الاجتماعية الضرورية للضحايا لتيسير إعادة إنماجهم في الحياة الاجتماعية وإبوانهم وذلك في حدود الإمكانيات المتاحة.

ويراعى في اتخاذ هذه التدابير من الضحايا وجنسهم وحاجياتهم الخصوصية.

الفصل 57 :

تتكفل الهيئة الوطنية لمكافحة الاتجار بالأشخاص بإرشاد الضحايا حول الأحكام المنظمة للإجراءات القضائية والإدارية الكفيلة بمساعدتهم على تسوية وضعيتهم والحصول على التعويض المناسب عن الأضرار اللاحقة بهم.

وتتولى الهيئة متابعة الملفات الخاصة بهم لدى السلط العمومية بالتنسيق والتعاون مع المنظمات غير الحكومية ومد يد المساعدة لهم عند الانضمام لرفع العراقيل التي قد تعيق التوصل بحقوقهم.

الفصل 58 :

يمكن منح الإعانة العدمية لضحايا الاتجار بالأشخاص لمباشرة الإجراءات القضائية المدنية أو الجزائية المتعلقة بهم.

وتتولى الهيئة مساعدة الضحايا على تكوين ملفاتهم قصد الحصول على الإعانة العدمية طبقا للإجراءات القانونية الجاري بها العمل .

ويتم النظر في مطلب الإعانة العدمية مع مراعاة الوضعية الخصومية للضحية.

الفصل 59:

يمكن لضحايا الاتجار بالأشخاص الصادرة لفائدتهم أحكام بآنة بالتعويض تعذر تنفيذها على المحكوم ضده أن يطلبوا الحصول على تلك المبالغ من صندوق الدولة.
وتحل الدولة محل الضحايا في استخلاص المبالغ التي وقع صرفها باعتبارها ديناً صومياً.

الفصل 60 :

تعمل الهياكل والمؤسسات المعنية على تيسير العودة الطوعية لضحايا الاتجار بالأشخاص إلى أوطانهم وذلك مع مراعاة سلامتهم، وتتسق مع الدول الأجنبية المعنية لرفع العراقيل المادية والإدارية التي تحول دون تحقيق ذلك.

وتنظر المصالح المعنية في طلبات الضحايا الأجانب الخاصة بالإقامة مؤقتاً بالبلاد التونسية أو التمديد فيها لمباشرة إجراءات التقاضي الرامية إلى ضمان حقوقهم، مع مراعاة وضعيتهم الخاصة.

الباب الخامس

في جرائم الإتجار بالأشخاص المرتكبة خارج تراب الجمهورية

الفصل 61 :

تكون المحاكم التونسية المختصة بالنظر في جرائم الإتجار بالأشخاص المنصوص عليها بهذا القانون والجرائم المرتبطة بها المرتكبة خارج تراب الجمهورية في الصور التالية:

- إذا ارتكبت من قبل مواطن تونسي،
- إذا ارتكبت ضد أطراف أو مصالح تونسية،
- إذا ارتكبت ضد أطراف أو مصالح أجنبية من قبل أجنبي أو شخص عديم الجنسية يوجد محل إقامته المعتاد داخل التراب التونسي، أو من قبل أجنبي أو شخص عديم الجنسية وجد بالتراب التونسي، ولم تطلب السلط الأجنبية المختصة بالنظر تسليمه بصفة قانونية قبل صدور حكم بات أو نهائي بشأنه من قبل المحاكم التونسية ذات النظر.

الفصل 62 :

لا تتوقف إثارة الدعوى العمومية في الصور المنصوص عليها بالفصل المنقذ من هذا القانون على تجريم الأعمال موضوع التتبع بمقتضى قانون الدولة التي ارتكبت فيها.

الباب السادس في تسليم المجرمين

الفصل 63 :

لا يمكن اعتبار جرائم الإتجار بالأشخاص، بأي حال من الأحوال، جرائم سياسية غير موجبة للتسليم.
ولا يمكن اعتبار جرائم الإتجار بالأشخاص، بأي حال من الأحوال، جرائم مالية غير موجبة للتسليم.

الفصل 64 :

تستوجب جرائم الإتجار بالأشخاص المنصوص عليها بهذا القانون التسليم وفقا لأحكام الفصل 308 وما بعده من مجلة الإجراءات الجزائية إذا ارتكبت خارج تراب الجمهورية ضد أجنبي أو مصالح أجنبية من قبل أجنبي أو شخص عديم الجنسية وجد بالتراب التونسي .
ولا يتمّ التسليم إلا في صورة تلقى السلط التونسية ذات النظر طلبا قانونيا في ذلك، من قبل دولة مختصة بالنظر وفقا لقانونها الداخلي.

لا يمنح التسليم إذا توفرت أسباب حقيقة تدعو إلى الاعتقاد بأن الشخص موضوع طلب التسليم سيكون في خطر التعرض للتعذيب أو أن طلب التسليم يرمي إلى تتبع أو عقاب شخص بسبب عنصريه أو لونه أو أصله أو دينه أو جنسه أو جنسيته أو آرائه السياسية.

الفصل 65 :

إذا تكرر عدم تسليم شخص موضوع تتبع أو محاكمة لأجل جريمة من الجرائم المنصوص عليها بهذا القانون يقع تتبعه وجوبا أمام المحاكم التونسية إذا كان موجودا بالتراب التونسي سواء ارتكبت الجريمة أم لم ترتكب بالتراب المذكور ويقطع النظر عن جنسية الجاني أو كونه عديم الجنسية.

الفصل 65 :

تُلغى أحكام الفصل 171 ثالثا من المجلة الجزائية.
ينشر هذا القانون بالأرائد الرسمي للجمهورية التونسية وينفذ كقانون من قوانين الدولة.

Appendix II

Ministry of Justice document on the efforts of Tunisia in the fight against trafficking in persons

1

Republique tunisienne
Ministère de la justice
Centre d'études juridiques et judiciaires

الجمهورية التونسية
وزارة العدل
مركز الدراسات القانونية والقضائية

ردّة وزارة العدل التونسية على الاستبيان الاسترشادي حول جهود مكافحة الاتجار بالبشر في المنطقة العربية

تنفيذاً للقرار الصادر عن الدورة (30) لمجلس وزراء العدل العرب رقم 1015-30-2014/11/19 بشأن مشروع التقرير العربي السنوي الأول حول جهود مكافحة الاتجار بالبشر في المنطقة العربية، تشرف وزارة العدل التونسية بالرد على الاستبيان الاسترشادي وموافاتكم بالمعلومات والبيانات والإحصائيات المتوفرة الخاصة بالجهود المبذولة لمكافحة الاتجار بالبشر وذلك حتى يتسنى عرض تلك المعلومات على لجنة خبراء مكافحة الاتجار بالبشر المشكلة من مجلس وزراء العدل العرب والداخلية العرب واللجان الوطنية لمكافحة الاتجار بالبشر في الدول العربية لدراستها تمهيدا لإعداد التقرير العربي حول جهود مكافحة الاتجار بالبشر في المنطقة العربية.

المحور الأول
أولا : فيما يتعلق بالاتفاقيات الدولية

[1- مواقف الدولة من التوقيع والتصديق على الاتفاقيات والبروتوكولات الآتية :

- اتفاقية الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية لعام 2000. وافقت تونس على اتفاقية الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية بمقتضى القانون عدد 63 المؤرخ في 23 جويلية 2002 وصانقت عليها بموجب الأمر عدد 2101 المؤرخ في 25 سبتمبر 2002.
- بروتوكول منع وقوع ومعالجة الاتجار بالأشخاص وبخاصة النساء والأطفال المكمل لاتفاقية الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية لعام 2000. وافقت تونس على بروتوكول منع وقوع ومعالجة الاتجار بالأشخاص، وبخاصة النساء والأطفال، المكمل لاتفاقية الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية لعام 2000 بمقتضى القانون عدد 5 المؤرخ في 21 جانفي 2003 وصانقت عليه بموجب الأمر عدد 698 المؤرخ في 25 مارس 2003.
- بروتوكول مكافحة تهريب المهاجرين عن طريق البر والبحر والجو المكمل لاتفاقية الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية لعام 2000. وافقت تونس على بروتوكول مكافحة تهريب المهاجرين عن طريق البر والبحر والجو المكمل لاتفاقية الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية لعام

- ١٥ - الاتفاقية العربية لمكافحة جرائم تقنية المعلومات التي وقعها تونس في 21 ديسمبر 2010.
- ١٦ - القانون العربي الاسترشادي لمواجهة جرائم الاتجار بالأشخاص الذي اعتمده مجلس وزراء العدل العرب في دورته 21 بالقرار رقم 601 - 21 - 2005/11/29 ومجلس وزراء الداخلية العرب في دورته 23 بالقرار رقم 473 - 2006/23.
- القانون العربي الاسترشادي للتعاون القضائي الدولي في المسائل الجنائية الذي اعتمده مجلس وزراء العدل العرب في دورته الثانية والعشرين بالقرار رقم 653 - 22 - 2006/11/29.
- * كما صادقت تونس على اتفاقيات دولية أخرى تعتبر وثائق مرجعية في المبادرة العالمية لمكافحة الاتجار بالبشر لسنة 2007 نذكر منها بالخصوص :
- ١٧ - الاتفاقية الخاصة بالرق لسنة 1926 التي تم الترخيص للانضمام إليها بموجب القانون عدد 32 لسنة 1966 للمؤرخ في 3 ماي 1966.
- ١٨ - الاتفاقية الإضافية المتعلقة بإلغاء الرق والاتجار في الرقيق والأنظمة والتقاليد النسيبة بالرق لسنة 1956 التي تم الترخيص للانضمام إليها بموجب القانون عدد 32 لسنة 1966 للمؤرخ في 3 ماي 1966 .
- ١٩ - اتفاقية العمل الدولية رقم 182 بشأن أسوأ أشكال عمل الأطفال لسنة 1999 التي تمت المصادقة عليها بموجب القانون عدد 1 لسنة 2000 المؤرخ في 2000/1/24.
- ٢٠ - البروتوكول الاختياري الملحق باتفاقية حقوق الطفل بشأن اشتراك الأطفال في النزاعات المسلحة لعام 2000 الذي تم الترخيص في انضمام الجمهورية التونسية إليه بمتنصتي القانون عدد 42 لسنة 2002 المؤرخ في 7 ماي 2002.
- ٢١ - نظام روما الأساسي للمحكمة الجنائية الدولية الذي وافقت تونس على الانضمام إليه بمتنصتي المرسوم عدد 4 المؤرخ في 19 فيفري 2011 وصادقت على هذا الانضمام بمتنصتي الأمر عدد 549 المؤرخ في 14 ماي 2011.

المحور الثاني

ثانيا : فيما يتعلق بتجريم صور وأشكال الاتجار بالبشر

1-2 النصوص والتشريعات المتعلقة بمنع ومكافحة الاتجار بالبشر وتجريم صور وأشكال الاتجار المختلفة.

* تجدر إبداء ملاحظة أولية تخص جميع التساؤلات الواردة بالاستبيان وهي عدم وجود نص تشريعي في النظام القانوني التونسي النافذ حاليا يعرّف الاتجار بالأشخاص طبق

المعايير الدولية ويجرمه بوصفه جريمة مستقلة لها أركانها القانونية بما يميزها عن الجرائم الشبيهة لها (كجريمة الهجرة غير الشرعية) أو المرتبطة بها.

* ولئن لم يكن هناك في التشريع التونسي الحالي قانون مستقل يُعنى بالرقاية من الاتجار بالأشخاص ومكافحته، فإن عديد النصوص النافذة في المنظومة القانونية التونسية تجرم صور وأشكال مختلفة من الاتجار بالأشخاص وهو ما من شأنه أن يضمن إلى حد ما مكافحة هذه الظاهرة ولو بصفة جزئية وذلك من خلال :

- بادرت تونس بمنع الاسترقاق منذ إصدار الأمر العلي المؤرخ في 23 جانفي 1846 المتعلق بمنع الاسترقاق. *

- كما أصدرت النص القانوني الأول المتعلق بزجر الاسترقاق والعبودية بموجب الأمر العلي المؤرخ في 29 ماي 1890.

- تضمنت المجلة الجزائية التونسية تجريم صور متعددة من الاستغلال ومنعت كل أشكال الاعتداء على الإنسان بصورة عامة كما تضمنت جرائم متعددة لها صلة بالاتجار بالأشخاص ضمنت إلى حد الآن التصدي لظاهرة الاتجار بالبشر. وفيما يلي أهم الجرائم التي يمكن إدراجها في هذا المجال:

1. تجريم التسول واستغلال حالة الاستضعاف كاستخدام طفل أو أكثر في التسول (أمر 3 أرييل 1939 والفصل 171 من المجلة الجزائية).

2. تجريم اصطناع أو تدليس جواز سفر للخارج أو رخصة جولان داخل التراب التونسي (الفصل 193 وما بعده من المجلة الجزائية).

3. تجريم سوء معاملة الأطفال أو تعريضهم للخطر (الفصل 210 وما يليه والفصل 224 من المجلة الجزائية).

4. تجريم الفرار بشخص كالاختطاف وتحويل الوجهة والإخفاء والنقل (الفصل 237 وما يليه من المجلة الجزائية).

5. تجريم الاعتداء على الحرية الذاتية كحجز شخص دون إذن قانوني (الفصل 250 وما يليه من المجلة الجزائية).

6. تجريم العصب والمساومة (الفصل 283 وما يليه من المجلة الجزائية).

7. تجريم التحيل وغيره من أنواع الخداع (الفصل 291 وما يليه من المجلة الجزائية).

- تنظيم التبني والكفالة بموجب القانون عدد 27 لسنة 1958 المؤرخ في 4 مارس 1958 المتعلق بلولاية العسومية والكفالة والتبني وإخضاعهما لرقابة السلطة القضائية بما يجنب إمكانية الاتجار في الأطفال. *

- تنظيم إسناد لقب عائلي للأطفال المهمنين أو مجهولي النسب بموجب القانون عدد 75 لسنة 1998 المؤرخ في 28 أكتوبر 1998 للقضاء على حالة من حالات الاستضعاف التي تصيب المرأة عند الحمل أو الإنجاب خارج إطار الزواج. *

- رسم المشروع في مجال حماية الطفل الصادرة في 9 نوفمبر 1995 السياسة التشريعية العامة في مجال الطفولة التي تأسست على مبدأ عام يقتضي بأن المجتمع مدين للطفل بالحماية من كافة أشكال العنف أو الضرر أو الإساءة البدنية أو المعنوية

نفوذ أو تقديم أو قبول مبالغ مالية أو مزايا لنيل موافقة شخص له سيطرة على شخص آخر وذلك بقصد الاستغلال أيا كانت صورته سواء من طرف مرتكب تلك الأفعال أو بوضعه على ذمة الغير لاستغلاله.

حالة استضعاف: أي وضع يعتد فيه الشخص أنه مضطر للخضوع للاستغلال ناجم خاصة عن كونه طفلا أو عن حالته غير القانونية أو حالة الاحتياج الشديد أو حالة المرض الخطير أو حالة الإدمان أو حالة الحمل لدى المرأة أو حالة قصور ذهني أو بدني يعوق الشخص المعني عن التصدي للجاني .

وبعاقب الفصل 8 من نفس المشروع كل من يرتكب إحدى جرائم الاتجار بالأشخاص المنصوص عليها بالفصل 2 بالسجن والخطية.

كما خصص مشروع القانون تسما كاملا **لتشديد العقوبات** عندما ترتكب جرائم الاتجار بالأشخاص في صور خاصة (مثلا ضد طفل أو باستخدامه، ضد شخص عديم الأهلية أو من ذوي الإعاقة، إذا ارتكبت الجريمة من مجموعة إجرامية منظمة أو من وفاق، إذا ارتكبت الجريمة باستخدام مواد مخدرة أو مؤثرات عقلية، إذا نتج عن الجريمة إصابة الضحية بسقوط أو عجز بدني مستمر لم تتجاوز درجته العشرين بالمائة أو إصابته بأحد الأمراض الجنسية السارية...).

هذا وجرم مشروع القانون جرائم مرتبطة بجرائم الاتجار باليشر كتمديد إنلاف أو إخفاء وتائق الهوية أو السفر أو الإقامة الخاصة بضحايا الاتجار بالأشخاص أو إعاقة سير العدالة كاستعمال القوة أو التهديد أو عرض عطابيا لحمل شخص على الإدلاء بشهادة زور أو إخفاء الحقيقة لعدم كشف ضحايا الاتجار بالأشخاص أو لحملهم على عدم رفع شكاية أو لرجوعهم في التثكي أو الاعتداء على شخص أو على مكاسبه أو على أفراد أسرته أو مكاسبهم بغرض الانتقام إثر الإدلاء بشهادة أو تقديم دليل في دعوى جزائية متعلقة بجرائم الاتجار بالأشخاص الخ...

2-2 التشريعات المرتبطة بتجريم صور الاستغلال المختلفة مثل قوانين مكافحة الدعارة والعمل القسري ونقل الأعضاء.

* يرتكز التشريع الوطني التونسي على مبدأ احترام حرمة الذات البشرية ومنع كل أشكال العبودية والاسترقاق الشغلي أو الجنسي أو الجسدي ومن صور تجريم الدعارة والعمل القسري ونقل الأعضاء نذكر على سبيل المثال:

- تجريم تسخير أشخاص دون موجب قانوني (الفصل 105 من المجلة الجزائية).
- تجريم الاعتداءات الجنسية وتعاطي البيغاء السري والتعش منه أو التوسط فيه أو التحريض عليه (الفصل 226 وما يليه من المجلة الجزائية).
- تنظيم الإجارة على الخدمة في النصول 828 وما يليه من مجلة الالتزامات والعقود وقد تضمن الفصل 833 بأن الإجارة على مدة حياة الأجير أو على مدة طويلة جدا بحيث يموت الأجير فيها باطلا. والإجارة الأبدية أو طويلة المدة شكل مقنع للاستعباد احتاط منه المشرع لمخالفته أحكام منع الرق.

أو الجنسية أو الإهمال أو التقصير التي تزول إلى الاستغلال. وقد ترجم القانون الجزائي هذه السياسة في نصوص زجرية متعددة تضمن حماية فعالة وناجعة من كل أشكال الاستغلال والإهمال ومن ذلك اعتبار الطفل الذي يكون عرضة للاستغلال الجنسي والاقتصادي (دعارة، تسول ...) طفلا مهددا يستحق حماية اجتماعية وقضائية (الباب الأول والثاني من العنوان الأول من مجلة حماية الطفل).

- تحديد شروط الزواج ومن أهمها ضبط السن الدنيا للزواج بـ 18 سنة لوضع حد لإكراه المرأة والأطفال على الزواج وضمان توفر الرضا الصحيح لدى الزوجين (الفصلان 3 و5 من مجلة الأحوال الشخصية).
- تخضع ممارسة الأنشطة السياحية إلى نصوص قانونية وترتيبية تنظم بعث المؤسسات السياحية واستغلالها وتسهر هياكل عمومية متخصصة على مراقبة تلك المؤسسات من الناحية الفنية وكذلك من الناحية الأمنية لمنع التجاوزات وكشفها وردعها. وتنتج النية إلى تعزيز الإجراءات الوقائية والردعية للتصدي لبعض التصرفات وذلك بتنظيم نشاط الإيواء بالمحلات المفروشة قصد منع استغلالها في تعاطي البغاء.

* هذا وتجدر الإشارة إلى أن الدولة التونسية شرعت منذ سنة 2010 في إعداد مشروع قانون يتعلق بمنع الاتجار بالأشخاص ومكافحته هو الآن معروض على الحكومة التونسية قصد المصادقة عليه وإحلاله على مجلس نواب الشعب في أقرب الأجال. وقد تضمن مشروع القانون المحاور الأساسية للإستراتيجية الوطنية لمكافحة الاتجار بالأشخاص التي تقوم على اعتماد المفهوم المتفق عليه دوليا لهذه الظاهرة كحد أدنى للتعاون في هذا المجال وتجرير مجموعة شاملة من الأفعال التي تشكل اتجارا بالأشخاص مع إقرار بعض الظروف المشددة للعقاب وحالات للإعفاء أو للتخفيف من العقاب.

ويتعلق المحور الثاني بإنشاء الهيئة الوطنية لمكافحة الاتجار بالأشخاص للإشراف على تنفيذ الإستراتيجية الوطنية وتنسيق جهود مختلف المصالح والهياكل العمومية والخاصة المتدخلة في المجالات ذات العلاقة بهذه الظاهرة.

كما تضمن المشروع إنشاء الآليات الخاصة بحماية الضحايا ومساعدتهم لإحكام زجر هذه الظاهرة ومساعدة الضحايا على التعافي الجسدي والنفسي والاجتماعي من الآثار المترتبة عن خضوعهم للإيذاء المباشر وغير المباشر وضمان جبر ضررهم بصورة عادلة.

ويعكس مشروع القانون التزام تونس بدعم المنظومة الوطنية لحماية حقوق الإنسان وصونها والتصدي الناجع لكل الممارسات التي من شأنها النيل من كرامة الذات البشرية ورقابة المجتمع من الأشكال الجديدة للإجرام المنظم والعبور للحدود الوطنية فضلا عن إيفائها بالتزاماتها الدولية المترتبة عن مصادقتها على الصكوك المرجعية لمكافحة الاتجار بالأشخاص.

ويعرف الفصل الثاني من مشروع القانون الاتجار بالأشخاص على النحو التالي :

الاتجار بالأشخاص: يعد اتجارا بالأشخاص استتلاب أو تجنيد أشخاص أو نقلهم أو تحويل وجهتهم أو ترحيلهم أو إيواؤهم أو استقبالهم باستعمال القوة أو السلاح أو التهديد بهما أو غير ذلك من أشكال الإكراه أو الاختطاف أو الحيلة أو استغلال حالة استضعاف أو استغلال

- كرسّت مجلة الشغل الصادرة في 30 أبريل 1966 الصبغة التعاقدية للعلاقات المهنية ووضعت مجموعة شاملة من القواعد الحمائية في مجال العمل للقضاء على كافة أشكال العمل القسري والسخرة من خلال تحقيق التوازن في العلاقة المهنية بين الأجراء والموجرين . ومن أهم هذه القواعد تنظيم أوقات العمل ومختلف أصناف الراحة والسن الدنيا للقبول في العمل وتنظيم تشغيل الأطفال والنساء ليلا والأجر الأدنى المضمون وتشغيل اليد العاملة الأجنبية والمراقبة الإدارية والصحية بأماكن العمل. كما عزز المشرع صيغتها الأمرّة بتجريم مخالفتها فشكّلت بذلك درعا واقيا من الاستغلال الاقتصادي.

- أبقى المشرع عند سنه لمجلة الشغل على القانون عدد 25 لسنة 1965 المؤرخ في 1965/7/1 المتعلق بحالة عملة المنازل ساري المفعول لتضمنه إجراءات حمائية خاصة لفائدة هذه الفئة تطبق في أماكن عملهم وخارجها للإحاطة بهم ومنع استغلالهم. ونظرا لخصوصيات هذه الفئة من العملة، عزز المشرع الإجراءات المقررة لفائدتها بتقويض القانون المذكور أعلاه في 4 أبريل 2005 قصد منع تشغيل الأطفال دون سن 16 عاما كاملة.

- نظم المشرع أخذ الأعضاء البشرية وزرعها صلب القانون عدد 22 لسنة 1991 المؤرخ في 1991/3/25 لضمان الشفافية الكاملة لهذه العمليات محجرا بصورة مطلقة كافة أشكال الاتجار في الأعضاء والأنسجة البشرية.

- حجر القانون عدد 93 لسنة 2001 المؤرخ في 7 أوت 2001 المتعلق بالطب الإنجابي تكوين الجنين البشري أو استعماله لغايات تجارية (الفصل 7) كما منع في إطار الطب الإنجابي استعمال رحم امرأة أخرى لحمل الجنين (الفصل 15) وسلط عقوبة جزائية بخمس سنوات سجنا وبخطية قدرها عشرة آلاف دينار على من يخالف أحكام الفصلين المذكورين.

- كما كرسّت النصوص القانونية والترتيبية الخاصة بقطاع الصحة والأدوية مبدأ احترام الحرمة الجسدية للمريض ومنعت منعا مطلقا استغلاله في نشاط غير مشروع.

* تجدر الإشارة من هذه الناحية، إلى أن مشروع القانون المتعلق بالوقاية من الاتجار بالأشخاص ومكافحته عمل على تجريم كافة أشكال الاستغلال الاقتصادي والجنسي والعمل القسري بأن نصّ بالفصل 2 منه على أنه يقصد بالمصطلحات التالية :

1. السخرة أو الخدمة قسرا : أي عمل أو خدمة يفرض عنوة على شخص تحت التهديد بأي عقاب ولا يكون هذا الشخص قد تطوع بأدائه بمحض اختياره.
2. الاسترقاق: أي وضع تمارس فيه على الشخص السلطات الناجمة عن حق الملكية كلها أو بعضها.
3. الممارسات الشبيهة بالرق: تشمل الحالات التالية :
 - إيسار الدين : الوضع الناشئ عن إجبار مدين على أداء عمل أو خدمات بنفسه أو بواسطة شخص آخر تابع له ضمانا لدين متخذ بنمته إذا كان مقابل ذلك العمل أو تلك الخدمات لا يوظف لسداد هذا الدين أو إذا كانت مدة أو طبيعة العمل أو الخدمات غير محددة.

- القنائة : الوضع النائى عن إلزام شخص بموجب اتفاق بان يعيش ويعمل على ارض شخص آخر وان يقدم عمل أو خدمات لهذا الشخص بعبوض أو بغير عبوض وبدون أن يملك حرية تغيير وضعه.
 - إكراه المرأة على الزواج.
 - إكراه المرأة على الحمل أو استئجار رحمها.
 - استخدام طفل فى أنشطة غير مشروعة أو إجرامية أو فى نزاع مسلح.
 - تبني طفل لغرض استغلاله أيا كان نوعه.
 - الاستغلال الاقتصادي أو الجنسي للأطفال بمناسبة تشغيلهم.
4. الاستعباد: إجبار شخص على القيام بعمل أو أداء خدمات وفقا لشروط لا يستطيع ذلك الشخص الخلاص منها أو تغييرها.
5. الاستغلال الجنسي: الحصول على منافع أيا كانت طبيعتها من خلال توريط شخص فى أعمال دعارة أو بغاء أو فى تقديم أية أنواع أخرى من الخدمات الجنسية بما فى ذلك استغلاله فى المشاهد الإباحية وذلك عبر إنتاج مشاهد ومواد إباحية أو مسكها أو ترويجها بأية وسيلة كانت.

وبعاقب الفصل 8 من نفس المشروع كل من يرتكب إحدى جرائم الاتجار بالأشخاص المنصوص عليها أنفا بالسجن والخطية.

3-2 النصوص والتشريعات المتعلقة بالهجرة غير الشرعية

- يخضع دخول الأجانب إلى تونس وإقامتهم فيها وخروجهم منها إلى أحكام القانون عدد 7 لسنة 1968 المؤرخ 1968/3/8 والمتعلق بحانة الأجانب. وتضمن هذا القانون أحكاما زجرية لردع استقبال وإيواء وإقامة أجنبي دون احترام الإجراءات المقررة للغرض.
- تخضع حركة الأشخاص عبر الحدود إلى أحكام القانون عدد 40 لسنة 1975 المؤرخ فى 1975/5/14 المتعلق بجوازات السفر ووثائق السفر. وعزز القانون الأساسي عدد 6 لسنة 2004 المؤرخ فى 2004/2/4 إجراءات مراقبة هجرة الأشخاص المقررة صلب القانون بتجريم تهريب المهاجرين لغاية إنخالهم إلى التراب التونسي أو إخراجهم منه خلسة مهما كانت الوسيلة المستعملة ويشدد العقاب فى صورة حصول وفاق أو تنظيم.
- يجرم الفصل 146 من مجلة الطيران المدني كل قائد طائرة يقوم بإركاب أو إنزال ركاب خلافا للتراتب الجاري بها العمل والفصل 151 من نفس المجلة كل من وضع بنية التلبس علامة حجز على سند نقل.
- يجرم الفصلان 73 و76 من المجلة التأديبية والجزائية البحرية كل شخص يبخر خلسة وكل شخص يساعد بالبحر أو بالبر للمسافر خفية على الإبحار أو النزول بالبر أو يخفيه.

4-2 أسس مسؤولية الأشخاص الاعتبارية عن جرائم الاتجار بالبشر بنظامكم القانوني.

- لم يكرس المشرع التونسي في المجلة الجزائية مبدأ المسؤولية الجزائية للشخص المعنوي وإن كان قررها في عدة قوانين خاصة (قانون الصرف، البيئة، المناقصة والأسعار...).
- أقر مشروع القانون المتعلق بمكافحة الاتجار بالأشخاص مسؤولية الأشخاص الاعتبارية عن جرائم الاتجار بالأشخاص، إذ جاء بالفصل 11 منه أنه: " يقع تتبع الذات المعنوية إذا تبين أن ارتكاب جرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون يمثل الغرض الحقيقي من إنشائها أو تم لفائدتها أو إذا حصلت لها منه منافع أو مداخيل أو إذا تبين أنها توفّر الدعم بأي شكل من الأشكال لأشخاص أو تنظيمات أو أنشطة لها علاقة بجرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون.
- تعاقب الذات المعنوية بخطية تساوي قيمة الأموال المتحصل عليها من جرائم الاتجار بالأشخاص على أن لا يقل مقدارها عن خمس مرات قيمة الخطية المستوجبة للأشخاص الطبيعيين.
- كما يمكن للمحكمة أن تقضي بحرمان الذات المعنوية من مباشرة النشاط لمدة أقصاها خمسة أعوام أو أن تقضي بحلها.
- ولا يمنع تتبع الذات المعنوية من توقيع العقوبات المنصوص عليها بهذا القانون على مثلها أو مسيرها أو الشركاء فيها أو أعوانها إذا ثبتت مسؤوليتهم الشخصية عن هذه الأفعال.

المحور الثالث

ثالثا : فيما يتعلق بالإطار المؤسسي لمكافحة الاتجار بالبشر على المستوى الوطني

* تجدر إبداء ملاحظة أولية في خصوص جميع التساؤلات الواردة بهذا المحور من الاستبيان مفادها عدم وجود إطار مؤسسي متخصص في مكافحة الاتجار بالأشخاص بالمنظومة التشريعية التونسية النافذة حاليا تُعنى بوضع إستراتيجية وطنية للرعاية من الاتجار بالأشخاص ومكافحته والتنسيق بين مختلف الأطراف المتدخلة الحكومية منها وغير الحكومية على المستوى الوطني والدولي.

وقد تضمن مشروع القانون المتعلق بالوقاية من الاتجار بالأشخاص ومكافحته المشار إليه آنفا في الباب الثالث منه إحداث إطار مؤسسي متخصص لدى وزارة العدل وهي "الهيئة الوطنية لمكافحة الاتجار بالأشخاص" تعقد جلساتها بمقر الوزارة التي تتولى تأمين كتابتها القارة. وتخصص للهيئة للقيام بمهامها اعتمادات تلحق بميزانية وزارة العدل. وتتميز تركيبة الهيئة الوطنية لمكافحة الاتجار بالأشخاص بكونها مختلطة إذ تضم بالإضافة إلى ممثلين عن مختلف الوزارات والهيئات المتدخلة في مجال مكافحة الاتجار بالبشر ممثلين عن المنظمات غير الحكومية وهيئات المجتمع المدني ذات الصلة بمجال مكافحة الاتجار بالأشخاص.

سُوقِدَ حَتَدَ الْفَصْلِ 42 مِنْ مَشْرُوعِ الْقَانُونِ الْمِهَامِ الْأَسَاسِيَةِ لِلْهَيْئَةِ الْوَطْنِيَّةِ لِمُكَافَحَةِ الْإِتْجَارِ بِالْبَشَرِ وَالْمُمَثَّلَةِ أَسَاسًا فِي وَضْعِ إِسْتِرَاطِيَّةٍ وَطْنِيَّةٍ تَهْدَفُ إِلَى الْوَقَايَةِ مِنَ الْإِتْجَارِ بِالْأَشْخَاصِ وَمُكَافَحَتِهِ وَاقْتِرَاحِ الْآلِيَّاتِ الْكَثِيْلَةِ بِتَنْفِيْذِهَا وَتَنْمِيْقِ الْجُهُودِ فِي مَجَالِ نَطْبِيْقِ إِجْرَائَاتِ حَمَايَةِ الضَّحَايَا وَالشُّهُودِ وَالْمُبْعِيْنَ وَكَذَلِكَ إِجْرَائَاتِ مَسَاعَدَةِ الضَّحَايَا.

3-1 النواحي التنفيذية والاستراتيجيات وخطط العمل والبرامج المتعلقة بمنع ومكافحة الاتجار بالبشر وحماية الضحايا.

* منذ أن صادقت تونس على بروتوكول منع وقوع ومعالجة الاتجار بالأشخاص وبخاصة النساء والأطفال تشكلت صلب وزارة العدل لجنة فنية تضم ممثلين عن المتدخلين الحكوميين وممثلين عن منظمات المجتمع المدني والمنظمات الدولية المنتصبة بتونس قصد تصور رؤية وطنية لمكافحة الاتجار بالأشخاص.

وعملت اللجنة على متابعة تطور جهود مكافحة الاتجار بالأشخاص في تونس من خلال استغلال نتائج أعمال الإستراتيجية العربية والعالمية لمكافحة الاتجار بالبشر والتقارير الدوري الذي تصدره الخارجية الأمريكية سنويا. وبعد جهود استمرت منذ سنة 2008 توصلت اللجنة إلى النتائج التالية :

- إعداد مشروع قانون للوقاية من الاتجار بالأشخاص ومكافحته سيقع عرضه على أنظار مجلس نواب الشعب في أقرب الأجل.
- تصور واعتماد برنامج خاص لتطوير القدرات الوطنية في مجال مكافحة الاتجار بالأشخاص في تونس بالتعاون بين وزارة العدل التونسية والمنظمة الدولية للهجرة وتمويل من وزارة الشؤون الخارجية الأمريكية يعرف ببرنامج "دعم ونقل آليات المساعدة والتوجيه وتبادل الخبرات في مجال مكافحة الاتجار بالأشخاص" (مشروع Share) والذي تم تنفيذه خلال سنتي 2011-2014، مع تعبير المنظمة الدولية للهجرة عن الاستعداد لمواصلة هذا التعاون في إطار مرحلة ثانية تمتد من 2014 إلى 2017.
- وتمثل المحاور الرئيسية للبرنامج فيما يلي:
- إنجاز دراسة ميدانية أولية لتشخيص وضع الاتجار بالأشخاص في تونس،
- التعمد بالقيام بتقييم موضوعي لفهم أفضل لنطاق وحجم مشكلة الاتجار بالأشخاص في تونس،
- تكوين المتدخلين الرئيسيين وتدريبهم على التصدي للظاهرة،
- التأكيد على أهمية إحداث آلية وطنية للإحالة (Mécanisme National de Référencement) تمكن من تحديد ضحايا الاتجار بالأشخاص من بين المهاجرين غير الشرعيين وتوفير الحماية لهم، كتطوير وتفعيل إطار إجرائي يمكن بطريقة استباقية المسؤولين الحكوميين من تمييز ضحايا الاتجار بالأشخاص من بين الفئات الضعيفة على غرار أطفال الشوارع والمهاجرين غير الحاملين لوثائق رسمية وعمالة الفتيات في الخدمة المنزلية والأشخاص العاملين في مجال البغاء،

المعطيات والبيانات والإحصائيات المتعلقة بالاتجار بالأشخاص لإحداث قاعدة بيانات بهدف استغلالها في إنجاز المهام الموكولة لها ونشر الوعي الاجتماعي بمخاطر الاتجار بالأشخاص عن طريق الحملات التحسيسية وإقامة المؤتمرات والندوات وإصدار النشرات والأدلة وتنظيم الدورات التدريبية والإشراف على برامج التكوين والتعريف بالتدابير التي اتخذتها الدولة لمكافحة الاتجار بالأشخاص وإعداد الأجوبة على المسائل التي تطلب المنظمات الدولية إبداء الرأي فيها ذات العلاقة بميدان تدخلها والمساهمة في تنشيط البحوث والدراسات لتحديث التشريعات المنظمة للمجالات ذات العلاقة بالاتجار بالأشخاص بما يحقق تنفيذ برامج الدولة في التصدي لهذه الظاهرة.

4-3 بيان أوجه التعاون والتنسيق بين الجهات الحكومية ومنظمات المجتمع المدني بشأن جهود المنع والمكافحة وحماية الضحايا مع تزويدنا بقائمة بالمنظمات غير الحكومية المعتمدة في هذا المجال وبياناتها.

* لا تتوفر حاليا قائمة رسمية في المنظمات غير الحكومية المعتمدة في مجال المنع والمكافحة وحماية الضحايا وبياناتها.

* تتألف الهيئة الوطنية لمكافحة الاتجار بالأشخاص المزمع إحداثها عند المصادقة على مشروع القانون من ممثلين عن الجهات الحكومية المعنية ومنظمات المجتمع المدني والهيئات المستقلة والشخصيات الوطنية المختصة. وتسمح هذه التركيبة المختلطة بتنسيق جهود كافة الأطراف المتخلطة والتعاون فيما بينها لتنفيذ رؤية وطنية لمكافحة هذه الظاهرة.

5-3 بيان أوجه التعاون والتنسيق بين الجهات الحكومية وقطاع الأعمال بشأن جهود المنع والمكافحة وحماية الضحايا.

القطاع الخاص شريك في كل البرامج التي تُنفذ و تُنفذ حاليا في تونس ومن بينها برنامج "شار" الذي تم تنفيذه خلال سنتي 2011-2014، والذي سيتواصل في إطار مرحلة ثانية تمتد من 2014 إلى 2017 بالتعاون مع المنظمة الدولية للهجرة وبتمويل من وزارة الخارجية الأمريكية، إذ تمت دعوة الاتحاد التونسي للصناعة والتجارة والصناعات التقليدية باعتباره الهيكل الممثل للأعراف أو المؤجرين في القطاع الخاص ليكون عضوا في اللجنة العليا لقيادة المشروع كما تمت برمجة أنشطة خاصة في إطار المشروع لفائدة القطاع الخاص لتقوية التزامه بتنفيذ تدابير المنع والحماية والمساعدة.

المحور الرابع

رابعا : فيما يتعلق بتدابير واجراءات المنع

1-4 تحديد الجهود المبذولة لرفع الوعي بخطورة الاتجار بالبشر، والغفات المخاضية بها والجهات القائمة عليها.

* تقوم جهات مختلفة حكومية منها (على غرار وزارة التكوين المهني والتشغيل، ووزارة المرأة والأسرة وغيرها) وغير الحكومية (على غرار الجمعية التونسية للنساء الديمقراطيات

- مواصلة تنفيذ حملات تحسيسية حول الاتجار بالأشخاص.

* تكون أيضا على مستوى وزارة الشؤون الخارجية التونسية فريق عمل مشترك تونسي أمريكي لمكافحة الاتجار بالبشر بتاريخ 14 أكتوبر 2014 يضم ممثلين عن الوزارات والهيئات المعنية والمجتمع المدني والسفارة الأمريكية بتونس عقد سلسلة من الاجتماعات المتتالية وشرع في إعداد خطة عمل وطنية لمكافحة الاتجار بالأشخاص في تونس بالنسبة لسنة 2014/2015.

* تمّ الشروع في وضع برنامج عمل وطني من قبل الحكومة التونسية لمكافحة ظاهرة عمالة الأطفال (plan d'action national de lutte contre le travail des enfants) بالنسبة للفترة الممتدة بين سبتمبر 2013 وديسمبر 2015 وذلك في إطار البرنامج الدولي للقضاء على عمالة الأطفال (IFEC: International Programme on the elimination of child labour) المتخذ بتونس تحت رعاية منظمة العمل الدولية (ILO).

2-3 النظام المؤسسي لمنع ومكافحة الاتجار بالبشر وخاصة القوانين والقرارات المتعلقة بإنشاء وتشكيل اللجان والهيئات والمجالس الوطنية وإدارات مكافحة الاتجار بالبشر.

* اعتبارا لعدم صدور القانون المتعلق بالوقاية من الاتجار بالأشخاص ومكافحته وعدم إحداث الهيئة الوطنية لمكافحة الاتجار بالأشخاص، فإنه لا وجود بالمنظومة التشريعية والترتيبية النافذة حاليا في تونس قوانين أو قرارات خاصة بإنشاء هذه اللجنة وتنظيمها لاسيما وأن الفصل 41 من مشروع القانون قد أحال إلى أمر لضبط تنظيم الهيئة وطرق سيرها.

* غير أنه تجدر الملاحظة بأن بعض الوزارات أحدثت خلايا خاصة بمكافحة الاتجار بالأشخاص على غرار وزارة الداخلية التي أنشأت وحدة أمنية متخصصة في مكافحة الاتجار بالأشخاص تتعاون مع مختلف الأجهزة المختصة لجمع المعلومات وتحليلها وتبادلها واستغلالها للكشف عن الجرائم ومساعدة الضحايا.

3-3 هل توجد وحدة مركزية وطنية تختص بجمع المعلومات والبيانات المتعلقة بالاتجار بالبشر وتحليلها وإعداد الإحصاءات والدراسات بشأنها (وحدة معلومات)، مع موافقتنا ببياناتها وتبعيتها ومهامها واختصاصاتها وانجازاتها على نحو تفصيلي. في حالة عدم وجود هذه الوحدة المركزية نأمل موافقتنا بالمساعدات التقنية اللازمة لإنشائها وتفعيل عملها.

* لا وجود حاليا لوحدة مركزية وطنية في تونس تختص بجمع المعلومات والبيانات المتعلقة بالاتجار بالأشخاص وتحليلها وإعداد الإحصاءات والدراسات بشأنها.

* وقد نصّ مشروع القانون المتعلق بالوقاية من الاتجار بالأشخاص ومكافحته على إحداث هيئة تسمى "الهيئة الوطنية لمكافحة الاتجار بالأشخاص" تتولى خاصة **جمع**

التي تكونت في إطار المرحلة الأولى من مشروع شار المذكور أعلاه وذلك بقصد التعريف بأهداف البرنامج وبظاهرة الاتجار بالأشخاص.

* كما تم في نفس الإطار إنجاز ومضة إخبارية مسجلة بعنوان "قصة فاطمة" Spot vidéo "L'histoire de Fatma" وذلك بثلاث لغات : العربية والفرنسية والانجليزية تم بثها في تونس وفي جميع أنحاء العالم عن طريق المنظمة الدولية للهجرة. ويتمثل موضوع هذه الموضة في تحذير ضحايا الاتجار بالأشخاص وخاصة النساء من خطورة عروض الشغل الزائفة التي تقدم لهم عن طريق الأنترنت.

ويندرج تنظيم هذه الحملات الإعلامية ضمن مواصلة تنفيذ الحملات التحسيسية التي وقع القيام بها من قبل الحكومة التونسية حول الاتجار بالأشخاص.

4-4 الجهود التي بذلتها دولتكم للقضاء على الأسباب الجذرية المؤدية للاتجار بالبشر.

ساهمت سياسات الدولة قبل 14 جانفي 2011 في تعميق اختلال التوازن بين الجهات والأفراد وهو ما ساعد على تعطيل جهود القضاء على الأسباب الجذرية المؤدية للاتجار بالأشخاص.

وتركز برامج التنمية التي اعتمدها الدولة بعد الثورة على الحد من الأسباب الاجتماعية والاقتصادية المؤدية إلى الاتجار بالبشر.

4-5 آليات منع ارتكاب جرائم الاتجار بالبشر عن طريق وسائل تقنية المعلومات.

يتأسس النظام الحالي لتنظيم استعمال وسائل تقنية المعلومات على الموازنة بين احترام حرية التعبير والاتصال والمصلحة العامة في تتبع وزجر كل إساءة لاستعمال تلك التقنيات. وتعتمد الموازنة خاصة على تكثيف الوعي باستعمال آليات الرقابة الذاتية والعائلية مع تعزيزها بتجريم صور من الأفعال التي تمثل خطرا على المجتمع ومن بين الأفعال التي بجرمها القانون الإغذاء بالفواحش وبما ينافي الحياء أو التحريض على الفجور والقسوة باستعمال تقنيات الاتصال.

وتجدر الإشارة في هذا الخصوص إلى أن اللجنة الوطنية لمكافحة الجرائم عبر الأنترنت أنهت في ديسمبر 2013 من إعداد مشروع قانون يتعلق بمكافحة الجرائم المتصلة بأنظمة المعلومات والاتصال بهدف الترفي من الجرائم المتصلة بأنظمة المعلومات والاتصال وزجرها وضبط الأحكام الخاصة بجمع الأدلة الكترونية المتعلقة بمختلف الجرائم بما فيها جرائم الاتجار بالبشر.

4-6 التدابير التي تم اتخاذها من قبل السلطات المعنية لمنع تعرض الأشخاص للاتجار، خاصة منع استغلال المهاجرين والعمل.

- يخضع دخول الأجانب إلى تونس وإقامتهم فيها وخروجهم منها إلى أحكام القانون عدد 7 لسنة 1968 المؤرخ 1968/3/8. وتتضمن هذا القانون أحكاما زجرية لردع استقبال وإيواء وإقامة أجنبي دون احترام الإجراءات المقررة للعرض.

المهتمة بهذا المجال والتي ركزت مركز استماع في الغرض) برفع الوعي بخطورة الاتجار بالبشر تستهدف خاصة فئة الشباب لإقناعه بمخاطر الرفوع ضحية الاتجار عند الهجرة سرايا والفتيات الراغبات في العمل خارج الحدود بعقود غير منظمة لإقناعهن بمخاطر الرفوع ضحايا للاستغلال الجنسي.

* غير أن هذه الجهود تحتاج إلى مزيد الدعم والتنسيق وهو ما يصبر إلى تحقيقه مشروع القانون من خلال تكليف الهيئة الوطنية لمكافحة الاتجار بالأشخاص "بتثييط الطلب الذي يحفز جميع أشكال استغلال الأشخاص ونشر الوعي الاجتماعي بمخاطر الاتجار بهم عن طريق الحملات التحسيسية والبرامج الثقافية والتربوية وإقامة المؤتمرات والندوات وإصدار النشريات والأدلة".

2-4 البحوث والدراسات والإحصاءات والمراجعات التي قامت بها سلطاتكم الوطنية في مجال مكافحة الاتجار بالبشر.

من بين النتائج الإيجابية التي تحققت في إطار المرحلة الأولية لمشروع "دعم ونقل الليات المساعدة والتوجيه وتبادل الخبرات في مجال مكافحة الاتجار بالبشر" (Share) المشار إليه أعلاه هو إعداد دراسة وطنية أولية حول "الاتجار بالأشخاص في تونس" Etude « exploratoire de la traite des personnes en Tunisie » من قبل فريق عمل متعدد الاختصاصات عمل تحت إشراف لجنة القيادة. وقد ساهمت هذه الدراسة الميدانية في تشخيص ظاهرة الاتجار بالأشخاص لأول مرة في تونس. كما بينت للدراسة الأولية أن تونس هي بلد انطلاق ووجهة وكذلك عبور للاتجار بالأشخاص وتضمنت أيضا إضافة إلى تشخيص الظاهرة جملة من التوصيات والمقترحات تمثلت أساسا في وضع إطار قانوني وطني شامل حول الاتجار بالأشخاص وتنفيذ خطة عمل وطنية في هذا المجال كتنعيم الجانب الوقائي والمساعدة والحماية وتعزيز التعاون والتنسيق على المستويين الوطني والدولي.

وقد تم عرض نتائج هذه الدراسة بصفة رسمية يوم 21 جوان 2013 من قبل المنظمة الدولية للهجرة بالاشتراك مع وزارة العدل التونسية ليقع على إثر ذلك نشرها بثلاث لغات وهي العربية والفرنسية والإنجليزية.

وانطلاقا من ذلك التاريخ تم عقد سلسلة من الاجتماعات بهدف مزيد نشر نتائج الدراسة حول الاتجار بالأشخاص ووضع إستراتيجية وطنية لمكافحة الاتجار بالأشخاص تقوم أساسا على معالجة الأسباب الجذرية للاتجار بالأشخاص ووضع إجراءات خاصة بالضحايا (التعرف على الضحايا والمساعدة والجبر والتعويض) وتجريم الاتجار بالأشخاص والأعمال المسهلة له وأخيرا إنفاذ القانون.

3-4 جهود الإعلام في رفع الوعي بظاهرة الاتجار بالبشر.

* تم تنظيم حملات إعلامية وتروعية على نطاق واسع للتعريف بالاتجار بالأشخاص وعواقبه على الأفراد والمجتمع ككل وذلك من خلال تشريك الصحفيين ضمن لجنة القيادة

- كرسّت مجلة الشغل الصادرة في 30 أبريل 1966 الصيغة التعاقدية للعلاقات المهنية ووضعت مجموعة شاملة من القواعد الحمائية في مجال العمل للنساء على كافة أشكال العمل القسري والسخرة من خلال تحقيق التوازن في العلاقة المهنية بين الأجراء والمؤجرين ومن أهم هذه القواعد تنظيم أوقات العمل ومختلف أصناف الراحة والسن الدنيا لقبول في العمل وتنظيم تشغيل الأطفال والنساء ليلا والأجر الأدنى المضمون وتشغيل اليد العاملة الأجنبية والمراقبة الإدارية والصحية بأماكن العمل. كما عزز المشرع صيغتها الأمر بتجريم مخالفتها فشكّلت بذلك درعا واقيا من الاستغلال الاقتصادي.

- يعمل ديوان التونسيين بالخارج على رصد تطور هجرة التونسيين واقتراح السياسات والآليات التي تساعد على إحكام تنظيمها والقيام بالبحوث والدراسات في مجال الهجرة ومساعدة التونسيين المقيمين بالخارج على الاندماج سواء داخل مجتمعات الإقامة أو عند عودتهم النهائية لوطنهم ومساعدة الجالية الأجنبية المقيمة بتونس على معالجة القضايا التي قد تحدث لهم.

4-7 هل توجد وسائل أو آليات سريعة وناجزة تتيح التواصل مع السلطات الوطنية المعنية والإبلاغ عن ضحايا وحالات الاتجار بالبشر.

* لا وجود حاليا لوسائل وآليات سريعة وناجزة تتيح الإبلاغ عن حالات الاتجار والتواصل مع السلطات الوطنية المعنية.

* تعمل وزارة الشؤون الاجتماعية حاليا على دراسة المقترح المتعلق بإحداث خط أخضر للإبلاغ عن حالات الاتجار بالبشر في تعامل مع آلية الإسعاف الاجتماعي المعدنة بموجب القرار عدد 14 الصادر عن المجلس الوزاري المصوب بتاريخ 22 أبريل 2013.

4-8 إمكانية منح الضحايا الأجانب حق الإقامة المؤقتة بالبلاد لحين انتهاء التحقيقات والشفاء والنعافي - مع توضيح نوع ومدة الإقامة.

* تخضع إقامة الأجانب في الوقت الراهن إلى أحكام القانون عدد 7 لسنة 1968 المؤرخ 1968/3/8 المتعلق بحالة الأجانب من حيث قبولها والتمديد فيها وسحبها. ولا يتضمن هذا القانون إشارة خاصة لضحايا الاتجار بالأشخاص. غير أنه يمكن للسلطات الإدارية من منح استثناءات تقتضيها ظروف إنسانية خاصة.

* ونظرا لهذا النقص نص مشروع القانون المتعلق بالوقاية من الاتجار بالأشخاص ومكافحته المزمع اعتماده على أحكام خاصة تتعلق بمنح الضحايا الأجانب تسهيلات إدارية للإقامة مؤقتا بالبلاد التونسية أو التمديد في إقامتهم لمباشرة إجراءات التقاضي الرامية إلى ضمان حقوقهم، مع مراعاة وضعيتهم الخاصة.

كما ينص الفصل 60 من المشروع على أنه تعمل الهيكل والمؤسسات المعنية على تيسير العودة الطوعية لضحايا الاتجار بالأشخاص إلى أوطانهم وذلك مع مراعاة سلامتهم، وتنسق مع الدول الأجنبية المعنية لرفع العراقيل المادية والإدارية التي تحول دون تحقيق ذلك.

* توجد حاليا لجنة فنية مكلفة بإعداد مشروع قانون ينظم وضع اللاجئين ومشروع أمر متعلق بإحداث هيئة وطنية لحماية اللاجئين.

المحور الخامس

خامسا : فيما يتعلق بالتحقيق والاتهام والمحاكمة في جرائم الاتجار بالبشر

1-5 نوعية وأنماط جرائم الاتجار بالبشر الأكثر شيوعا، الوطنية منها والمتعدية للحدود الوطنية، ووسائل ودروب المتاجرين.

لا توجد حاليا إحصائيات دقيقة عن أنماط وحالات الاتجار بالأشخاص الأكثر شيوعا وطنيا أو عبر وطني.

2-5 وسائل تطويع الضحايا أو الإيقاع بهم والسيطرة عليهم.

لا توجد حاليا بيانات ومعطيات دقيقة عن وسائل تطويع الضحايا.

3-5 الحالات التي تم من خلالها تطويع الضحايا أو التفرير والإيقاع بهم والسيطرة عليهم عن طريق وسائل تقنية المعلومات.

لا توجد حاليا بيانات ومعطيات دقيقة عن وسائل تطويع الضحايا باستعمال تقنية المعلومات.

4-5 هوية الجماعات الإجرامية المنظمة الضالعة في ارتكاب جرائم الاتجار بالبشر، سواء كانت تمارس أنشطتها بإقليم الدولة أو خارجه، مع بيان طبيعتها وتركيبتها وبنيتها وأماكنها وأنشطتها والصلات بينها وبين غيرها من الجماعات الإجرامية الأخرى، وأساليب ارتكاب تلك الجرائم، وحركة عائداتها.

لا توجد حاليا بيانات ومعطيات دقيقة عن وسائل تطويع الضحايا باستعمال تقنية المعلومات.

5-5 بيان ما إذا كان هناك ارتباط بين جرائم الاتجار بالبشر والهجرة غير الشرعية سواء من إقليم الدولة أم إليها.

لا توجد حاليا بيانات ومعطيات دقيقة عن الموضوع.

6-5 إحصاء بقضايا الاتجار بالبشر التي تم الاضطلاع بها منذ بداية عام 2011 حتى نهاية شهر يونيو 2012، بما يشمله ذلك من بيانات بعدد وأرقام ونوعية تلك القضايا وعدد وأسماء المتهمين والضحايا فيها وجنسياتهم، ما تضمنته من صور استغلال، وما تم من تحقيقات واتهامات وما صدر فيها من قرارات وأحكام.

* لا توجد حاليا إحصائيات دقيقة عن جرائم الاتجار بالأشخاص.

* في ظل غياب نص قانوني خاص يتعلق بمكافحة الاتجار بالبشر، يتم تطبيق أحكام المجلة الجزائية ويقع تتبع المخالفين من أجل تعاطي البغاء السري والتحرير على الفجور

والتوسط في خفاء الغير والتحيل. وقد سُجل خلال سنة 2013، عدد 177 قضية تم الاحتفاظ بـ107 شخص وإحالتهم على العدالة كما سُجل عدد 50 قضية خلال السبعة أشهر الأولى من سنة 2014 وتم الاحتفاظ بعدد 08 أشخاص منهم. وتتراوح الأحكام الصادرة بين عدم سماح الدعوى والسجن لمدة تتراوح بين 6 أشهر و3 سنوات.

5-7 بيان بالجهات أو الأقسام أو الدوائر الأمنية والقضائية المتخصصة في جرائم الاتجار بالبشر، واختصاصاتها وصفات الفاعلين عليها، وخبرتهم وكفاءتهم في مجال مكافحة جرائم الاتجار بالبشر.

* هياكل العدالة الجزائرية العادية مختصة بالنظر في قضايا الاتجار بالأشخاص (أعران الضابطة العدلية المنصوص عليهم بالفصل 10 من مجلة الإجراءات الجزائية وأجهزة القضاء العلني).

* نجد الإشارة إلى أنه من بين التدابير التي تم اتخاذها إحداث خلية لمكافحة الاتجار بالبشر صلب الإدارة الفرعية للوقاية الاجتماعية بإدارة الشرطة العدلية (مع إمكانية إحداث مصلحة لمكافحة الاتجار بالبشر صلب الهيكلية الجديدة المقترحة للإدارة) تعني بمباشرة هذا المنصب من القضايا عبر اتخاذ جملة من الإجراءات (تحرير محاضر بحث ضد الفتيات المعروفات بترددهن على الدول المستقطبة للنساء للعمل في مجال الدعارة وضد الوسطاء والاحتفاظ بهم وإحالتهم على العدالة وإدراج الذين هم بحالة فرار بالتفتيش، والتنسيق مع نقاط العبور الجوية والبحرية للإعلام عن التحركات الحدودية للأشخاص المعروفين بترددهم على الدول المستقطبة للنساء لاستغلالهن في مجال الدعارة، ومراسلة الإدارات المعنية للحصول على معلومات تتصل بالوسطاء والضحايا، والتنسيق مع الجمعيات التي تعنى بالمرأة للإحاطة بالنساء ضحايا الاتجار بالبشر نفسياً واجتماعياً والمشاركة ضمن لجنة القيادة في خطة العمل الوطنية المتعلقة بحماية المرأة من العنف التي تشرف على تنفيذها وزارة المرأة والأسرة يشارك فيها ممثلون عن مختلف الوزارات والمنظمات والجمعيات المعنية).

المحور السادس

سادسا : فيما يتعلق بحماية الضحايا والشهود

1-6 التشريعات أو النصوص القانونية المتاحة الخاصة بحماية الضحايا والشهود.

* تم تركز منظومة الإجراءات الجزائية في تونس نظاما خاصا بحماية الضحايا والشهود والمبلغين غير أن مجلة الإجراءات الجزائية نصت على بعض الأحكام المتفرقة التي تدعم حماية الضحايا والشهود كتلقي أقوال الشهود لفرادى وبدون حضور ذي الشبهة وإجراء المرافعات سرا إذا رأت المحكمة من تلقاء نفسها أو بناء على طلب ممثل النيابة العمومية ذلك محافظة على النظام العام أو مراعاة للأخلاق (الفصلان 65 و143) وتجريم إفشاء الأسرار في غير الصور القانونية (الفصل 254 من مجلة الجزائية).

* وهي المقابل أقر مشروع القانون المتعلق بالوقاية من الاتجار بالأشخاص ومكافحته جملة من الأحكام الخاصة بحماية الضحايا والشهود نذكر من أهمها:

- إقرار مبدأ عدم مؤاخذه من ارتكب جرما مرتبطا ارتباطا مباشرا بإحدى جرائم الاتجار بالأشخاص التي كان ضحية لها.

- إقرار مبدأ توفير الحماية الجسدية للضحايا والشهود ومساعدتي القضاء والمخترق والمبلغين وكل من تكفل بأي وجه من الأوجه بواجب إشعار السلط ذات النظر بإحدى جرائم الاتجار بالأشخاص في كل الحالات التي يكون فيها ذلك لازماً.
- كما تتسحب التدابير المشار إليها، عند الاقتضاء على أفراد أسر الأشخاص المذكورين وكل من يخشى استهدافه من أقربيه.
- سماع الضحايا والشهود والخبراء والمبلغين فرادى في غياب ذي الشبهة ولا تجري مكافحتهم به أو بغيرهم من الشهود إلا برضاهم. ويمكن للمحكمة المنعقدة في حالات الخطر الملم وإن اقتضت الضرورة ذلك، تلقي تصريحاتهم باستعمال وسائل الاتصال المرئية أو المسموعة الملائمة دون وجوب حضور المعني بالأمر شخصياً.
- إخفاء مقر الإقامة وذلك بتمكين الأشخاص المشمولين بالحماية في صورة دعوتهم إلى الإدلاء بتصريحاتهم لدى مأموري الضابطة العدلية أو لدى قاضي التحقيق أو غيره من الهيئات القضائية من أن يعينوا محل مخابرتهم لدى وكيل الجمهورية المختص ترابياً.
- إمكانية إجراء أعمال البحث أو الإذن بانعقاد الجلسة بغير مكاتبه المعتاد مع اتخاذ التدابير اللازمة لضمان حق المتهم في الدفاع عن نفسه.
- إخفاء الهوية وذلك بتمكين الأشخاص المشمولين بالحماية في حالات الخطر الملم أن يطالبوا بعدم الكشف عن هويتهم. وينذر وكيل الجمهورية أو الجهة القضائية المنعقدة وجاهة الطلب في ضوء طبيعة الخطر وجديته وتأثير الإجراءات على السير العادي للدعوى العمومية.
- للجهة القضائية المتعده أن تقرر من تلقاء نفسها أو بطلب من ممثل النيابة العمومية أو بناء على طلب كل من له مصلحة في ذلك إجراء الجلسات بصورة سرية. ويحجر في هذه الحالة نشر المعلومات عن المرافعات أو القرارات التي من شأنها النيل من الحياة الخاصة للضحايا أو سمعتهم.
- عقاب كل من عرض حياة الأشخاص المقصودين بالحماية أو مكاسبهم أو حياة أو مكاسب أفراد أسرهم إلى خطر وذلك بالإفصاح عمداً عن أي معطيات من شأنها الكشف عنهم لغاية إلحاق الأذى بهم أو الإضرار بمكاسبهم.
- التنصيص على أنه تتم معالجة جميع المعطيات والبيانات المتعلقة بضحايا الاتجار بالأشخاص وفقاً للتشريع الجاري به العمل في مجال حماية المعطيات الشخصية.

2-6 الوسائل المتاحة للتعرف على الضحايا وخاصة بالمنافذ الحدودية وإدارات الهجرة والإقامة والجنسية ودوائر وأقسام الشرطة والمؤسسات الاجتماعية والصحية والجهات المسؤولة عن تنفيذ قوانين العمل.

لا توجد حالياً وسائل متاحة أو آلية مرجعية وطنية (Mécanisme national de référencement) للتعرف على ضحايا الاتجار بالبشر تمكن من التحديد الدقيق للضحايا خاصة من بين المهاجرين غير الشرعيين وتوفير الحماية لهم كتنظيم ونفعل إطار إجرائي يمكن بطريقة استباقية المسؤولين الحكوميين من تمييز ضحايا الاتجار بالأشخاص من بين

الفئات الضعيفة على غرار أطفال الشوارع والمهاجرين غير الحاملين لوثائق رسمية وعماله الفتيات في الخدمة المنزلية والأشخاص العاملين في مجال البغاء.

3-6 نوعية وجنسيات الضحايا.

لا توجد حاليا بيانات ومعلومات دقيقة عن نوعية وجنسيات الضحايا.

4-6 بيان بالضحايا الذين تم إعادة الاتجار بهم، وأسباب وقوعهم في براثن المتاجرين مرة أخرى، وصور الاستغلال التي تعرضوا لها.

لا توجد حاليا بيانات ومعلومات دقيقة عن هذا الموضوع.

5-6 آليات إحالة الضحايا للجهات المعنية بالحماية والمساعدة.

* لا توجد حاليا بيانات ومعلومات دقيقة عن هذا الموضوع.

* يقر مشروع القانون المتعلق بالوقاية من الاتجار بالأشخاص ومكافحته اختصاص الهيئة الوطنية لمكافحة الاتجار بالأشخاص بتوفير الحماية والمساعدة لفائدة الضحايا ومكافحتها للعرض من تسخير كافة المصالح العمومية لتنفيذ تدابير الحماية والمساعدة التي تقررها. كما أسند لها مهمة إصدار المبادئ التوجيهية الكفيلة بالتعرف على ضحايا الاتجار بالأشخاص وتوفير المساعدة اللازمة لهم.

6-6 تدابير الحماية الأمنية والقانونية التي توفرها السلطات الوطنية لحماية ضحايا الاتجار بالبشر.

* لا يوجد حاليا نظام خاص بالحماية الأمنية والقانونية لضحايا الاتجار بالأشخاص.

* يقترح مشروع القانون جملة من التدابير الخاصة بحماية الضحايا تتمثل خاصة فيما يلي:

- إقرار مبدأ عدم مواخذة من ارتكب جرماً مرتبطاً ارتباطاً مباشراً بإحدى جرائم الاتجار بالأشخاص التي كان ضحية لها.
- إقرار مبدأ توفير الحماية الجسدية للضحايا والشهود في صورة وجود ما يدعو إلى ذلك.
- سماع الضحايا والشهود والخبراء والمبلغين إرادى في غياب ذي الشبهة ولا تجري مكافحتهم به أو بغيرهم من الشهود إلا برضاهم. ويمكن للمحكمة المتعينة في حالات الخطر الملم وإن اقتضت الضرورة ذلك، تلقي تصريحاتهم باستعمال وسائل الاتصال المرئية أو المسموعة الملائمة دون وجوب حضور المعنى بالأمر شخصياً.
- إخفاء مقر الإقامة وذلك بتكليف الأشخاص المشمولين بالحماية في صورة دعوتهم إلى الإدلاء بتصريحاتهم لدى مأموري المضابطة العدلية أو لدى قاضي التحقيق أو غيره من الهيئات القضائية أن يعينوا محل مخابرتهم لدى وكيل الجمهورية المختص ترابياً.

علما أنه يمكن للضحية الحصول على المعلومات اللازمة حول كيفية المطالبة بالتعويض من خلال الاتصال بالمرشد القضائي وهو مساعد لركيل الجمهورية يوجد مكتبه بمقر المحكمة الابتدائية.

والضحية الحق في الحصول على الإعانة العدمية في المادة المدنية وذلك في كل طور من أطوار القضية وفي المادة الجزائية ككثام بالحق الشخصي ويمكن منح الإعانة العدمية لتنفيذ الأحكام وممارسة حق الطعن طبق أحكام القانون عدد 52 لسنة 2002 المؤرخ في 3 جوان 2002 المتعلق بمنح الإعانة العدمية.

* كما أقر مشروع القانون المتعلق بالوقاية من الاتجار بالأشخاص ومكافحته حملة من الأحكام الخاصة بوسائل الإنصاف وسبل جبر الضرر والتعويض المتاحة للضحايا نذكر من أهمها :

- تتكفل الهيئة الوطنية لمكافحة الاتجار بالأشخاص بإرشاد الضحايا حول الأحكام المنظمة للإجراءات القضائية والإدارية الكفيلة بمساعدتهم على تسوية وضعيتهم والحصول على التعويض المناسب عن الأضرار اللاحقة بهم.
- منح الإعانة العدمية لضحايا الاتجار بالأشخاص لمباشرة الإجراءات القضائية المدنية أو الجزائية المتعلقة بهم.
- يمكن لضحايا الاتجار بالأشخاص الصادرة لعاقبتهم أحكام باثة بالتعويض تعذر تنفيذها على المحكوم ضده أن يطالبوا بالحصول على تلك المبالغ من صندوق الدولة وتحل الدولة محل الضحايا في استخلاص المبلغ التي وقع صرفها باعتبارها ديناً عمومياً.

9-6 هل توجد لديكم وسائل قانونية أو تدابير أخرى تشريعية أو إدارية تضمن تقديم الترضية الكافية لضحايا الاتجار (التعويض المعنوي).

جاء بالفصل الأول والسابع من مجلة الإجراءات الجزائية أنه يترتب على كل جريمة دعوى عمومية تهدف إلى تطبيق العقوبات ويترتب عليها أيضاً في صورة وقوع ضرر نشأ مباشرة عن الجريمة دعوى مدنية لجبر ذلك الضرر المادي والمعنوي لكل من لحقه شخصياً.

ويقتضي الفصل 82 من مجلة الالتزامات والعقود أنه من تسبب في ضرر غيره عمداً منه واختياراً بلا وجه قانوني سواء كان الضرر حسياً أو معنوياً فعليه جبر الضرر الناشئ عن فعله إذا ثبت أن ذلك الفعل هو الموجب للضرر مباشرة ولا عمل بكل شرط يخالف ذلك.

10-6 تحديد عدد الضحايا الذين قدمت لهم بالفعل خدمات الحماية والمساعدة بأشكالها المختلفة، مع تحديد سن كل ضحية وجنسها وجنسياتها ونوع الخدمة التي تم تقديمها إليها.
لا توجد حالياً بيانات ومعطيات دقيقة عن هذا الموضوع.

غير أن وزارة الشؤون الاجتماعية قامت بمراسلة مراكز الإحاطة والتوجيه الاجتماعي لإعطاء تعليمات بخصوص إحداث وحدات تعنى بحماية ضحايا الاتجار بالبشر.

11-6 قائمة بالمأوى والمنشآت المخصصة للرعاية الصحية والتعافي والتأهيل وإعادة إدماج ضحايا الاتجار بالبشر.

لا توجد حالياً بيانات ومعلومات دقيقة عن هذا الموضوع

11-7 هل توجد نصوص قانونية أو برامج لحماية المبلغين والشهود بشأن جرائم الاتجار بالبشر ومرتكبيها.

سبق الإجابة عن هذا السؤال في جزء منه بالعدد 1-6 أعلاه المتعلق بالتشريعات أو النصوص القانونية المتاحة الخاصة بحماية الضحايا والشهود.

المحور السابع

سابعاً : فيما يتعلق بالتعاون الدولي في مجال مكافحة الاتجار بالبشر

1-7 وسائل التعاون القضائي والأمني الدولي المتاحة بنظامكم القانوني لمكافحة جرائم الاتجار بالبشر والتشريعات المنظمة لها.

يفضل اتفاقيات التعاون الأمني والتضامني الدولية والإقليمية والثنائية تتيح المنظومة القانونية التونسية عدة وسائل للتعاون القضائي والأمني الدولي لمكافحة جرائم الاتجار بالبشر ومنها: المساعدة القانونية المتبادلة في المسائل الجنائية، تسليم المجرمين، التحقيقات المشتركة، نقل الإجراءات، الاعتراف بالأحكام الجزائية الأجنبية وتنفيذها، مصادرة عائدات الجرائم الخ...

2-7 الأسس القانونية التي يتم الارتكاز إليها في الاستجابة لطلبات التعاون القضائي والأمني في مجال مكافحة جرائم الاتجار بالبشر.

- القانون الوطني في صورة عدم وجود اتفاقيات دولية أو إقليمية أو ثنائية للتعاون الأمني والقضائي.
- بروتوكول منع وقوع ومعاقبة الاتجار بالأشخاص وبخاصة النساء والأطفال المكمل لاتفاقية الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية.
- اتفاقية الرياض العربية للتعاون القضائي.

3-7 عرض التجارب السابقة في التعاون القضائي والأمني في قضايا الاتجار بالبشر، سواء مع الدول العربية أو الأجنبية.

لا توجد حالياً بيانات ومعلومات دقيقة عن هذا الموضوع.

4-7 مقترحاتكم بشأن تعزيز التعاون العربي لمكافحة جرائم الاتجار بالبشر.

- تعزيز قنوات الاتصال بين السلطات المختصة في مجال مكافحة الاتجار بالبشر لا سيما في مجال تبادل المعلومات والبيانات والتدابير الحدودية وأمن الوثائق وطرق وأساليب الاتجار بالبشر.
- دعم جهود الدول العربية على غرار تونس في إنشاء قواعد بيانات وإحصائيات وطنية مرحة لرصد حالات الاتجار بالبشر وأنواعها وخصائصها.

- تشجيع تبادل الخبرات القانونية والتقنية لمكافحة جرائم الاتجار بالبشر.
- تعزيز التعاون الأمني والقضائي في مجال منع ومكافحة جرائم الاتجار بالبشر.
- تعزيز التعاون بين الدول العربية في مجال مكافحة الجرائم التي لها صلة بالاتجار بالبشر كغسل الأموال وتهريب المهاجرين.
- إنشاء قاعدة بيانات موحدة بين الدول العربية بشأن الاتجار بالبشر.
- إنشاء شبكة عربية إقليمية لتبادل المعلومات والخبرات في مجال مكافحة الاتجار بالبشر تعمل تحت مظلة جامعة الدول العربية وذلك تفعيلا لما ورد بالهدف الاستراتيجي الخامس من المحور الثامن من الإستراتيجية العربية الشاملة لمكافحة الاتجار بالبشر الخاص بضمان تنسيق جهود مكافحة في المنطقة العربية.
- إنشاء صندوق لدعم وتأهيل وإعادة إدماج ضحايا جرائم الاتجار بالأشخاص وذلك بوحدة مكافحة الاتجار بالبشر يتم تمويله من قبل الدول العربية.
- دعم المبادرة العربية لبناء القدرات الوطنية لمكافحة الاتجار بالبشر من خلال تكثيف البرامج التدريبية والاجتماعات الإقليمية وورش العمل لمساعدة الجهات الوطنية المعنية بالدول العربية على استكمال منظومة مكافحة الاتجار بالبشر وتبادل الخبرات والتجارب في مجال حماية الضحايا ومزيد بناء قدرات العاملين في مجال إدارة المعلومات والتقارير الوطنية والإقليمية والدولية الخاصة بمكافحة الاتجار بالبشر.

المحور الثامن

ثامنا : فيما يتعلق بتعزيز القدرات الوطنية اللازمة لمكافحة الاتجار بالبشر :

1-8 جهود تعزيز القدرات الوطنية لمنع ومكافحة الاتجار بالبشر وحماية الضحايا.

تم في إطار المرحلة الأولى لمشروع "دعم و نقل آليات المساعدة والتوجيه وتبادل الخبرات في مجال مكافحة الاتجار بالبشر" (Share) الذي تم تنفيذه خلال سنتي 2011-2014 بالتعاون بين وزارة العدل التونسية ومنظمة الهجرة الدولية تنفيذ برنامجا خاصا يهدف إلى تعزيز القدرات الوطنية لمكافحة الاتجار بالأشخاص

2-8 دور منظمات المجتمع المدني في منع ومكافحة الاتجار بالبشر، وكيفية تعزيز هذا الدور.

منظمات المجتمع المدني شريك فاعل في برنامج "شار"

3-8 الجهات المختصة بتدريب الكوادر البشرية على منع الاتجار بالبشر.

تم في إطار مشروع "شار" تنظيم سلسلة من الدورات التكوينية بلغ عددها 6 خلال سنة 2013 في تونس العاصمة وفي الجهات، وذلك بهدف التعرف على الضحايا والتوجيه والمراحل المتعلقة خاصة بمساعدة وحماية الضحايا.

وقد انتفع أكثر من 100 شخص بالتكوين في مجال مكافحة الاتجار بالأشخاص من بين إضرات وزارة الشؤون الاجتماعية (العمل الاجتماعي وتقنية الشغل) ومرضى وزارة شؤون المرأة والأسرة (منهم مندوبو حماية الطفولة) وقضاة سواء كانوا من المجلس (قضاة العطف، قضاة الأسرة أو قضاة تحقيق) أو من النيابة العمومية، وأعان وزارة الشؤون

Appendix III

Government's agenda in relation to trafficking in persons

جمهورية تونس
وزارة العمل

مشروع برنامج عمل في موضوع الاتجار بالمسنر

الأهداف	الأنشطة الرئيسية	الممثلون	الجهات الراعية	الفترة	الموارد البشرية والمالية	ملاحظات
التصميم	<ul style="list-style-type: none"> إصدار نظوية تضمن تعريف مبررة الاتجار بالبشر في العلاقات الثنائية وأنها مطور مشروع القانون الذي أعدته وزارة العمل. تطوير نوات ومعايير لتعريف مشروع القانون المطبق بالرقابة من الاتجار بالأسنان والكمامات والتشريك ولتأمين التصميم مطبوعاً للمساعدة على القانون- ومشاركة جمعيات المجتمع المدني لمهنة بالموضوع. 	<ul style="list-style-type: none"> وزارة العمل الجمعية لأطباء النساء مركز الدراسات القانونية والقضائية 	<ul style="list-style-type: none"> التعاون مع الجهات الراعية المتعددة مع وزارة العمل (مكتب الأمم المتحدة للتخطيط والتعاون والتنمية) وغيرها 	مارس - نيسان 2015	من الشائكين والجهات الراعية	
التكوين	<ul style="list-style-type: none"> تطوير ورشات عمل للتدريب وبناء القدرات والتفكير والتفكير الجماعي في مواضيع التعريف، والأكثر، وسائل الرقابة والمراقبة لتزويد الأتجار بالبشر، والمشاركة في الفعاليات الإقليمية والمحلية. المساعدة في صياغة بروتوكول عربي لمكافحة الاتجار بالبشر وصياغة ميثاق الشبكة العربية لمكافحة الاتجار بالبشر ونظامها القانوني، وقد نظمت الدورة الأولى في هذا الموضوع الأخير بتاريخ 25-25 فيفري 2015 في القاهرة جمهورية مصر العربية من طرف المفوضية العربية لدراسة الفيزياء البشرية لجامعة تونس الحرة ومكتب الأمم المتحدة للتعاون والتنمية وغيرها ومؤسسات قطر لتربية والأهل. 	<ul style="list-style-type: none"> وزارة العمل الجمعية لأطباء النساء مركز الدراسات القانونية والقضائية 	<ul style="list-style-type: none"> التعاون مع الجهات الراعية المتعددة مع وزارة العمل (مكتب الأمم المتحدة للتخطيط والتعاون والتنمية) وغيرها 	مارس - نيسان 2015	من الشائكين والجهات الراعية	

الأهداف	الأنشطة الرئيسية	الممثلون	الجهات الراعية	الفترة	الموارد البشرية والمالية	ملاحظات
الوقاية	<ul style="list-style-type: none"> عمل على إعداد القانون بخصوص حماية الأطفال والمرأة والعمل، أي تلك الأكثر عرضة للاتجار بالبشر واستخدامه بغير الجهات القضائية المختصة بالمحكمة والفتح للتحقيق (الهيئة العمومية والمحاكم ومندوبي حماية الطفولة...) 	<ul style="list-style-type: none"> الهيئة العمومية المحاكم 				
المعاقبة	<ul style="list-style-type: none"> عمل على إعداد القانون بخصوص حماية الأطفال والمرأة والعمل، أي تلك الأكثر عرضة للاتجار بالبشر واستخدامه بغير الجهات القضائية المختصة بالمحكمة والفتح للتحقيق (الهيئة العمومية والمحاكم ومندوبي حماية الطفولة...) وذلك في إطار صدور القانون الذي سيتم وسائل المعاقبة. 	<ul style="list-style-type: none"> الهيئة العمومية المحاكم 				
الحماية	<ul style="list-style-type: none"> بمقتضى القانون برمجة إجراء في الموضوع وسيتأكد من صدور القانون المعظم بالاتجار بالبشر. 					
الإعماج	<ul style="list-style-type: none"> إعداد القانون المنظم للاتجار بالبشر مع غياب مؤسسات خاصة في العرض وسيتضمن برمجة ما يوزع لوجيات الإعماج على صدور القانون. 					

Appendix IV

Statistics handed by Ministry of Interior, January 2015 by Najet Jaoudi about trafficked Tunisian women in the Gulf and Lebanon.

4

الإتجار بالنساء ببلدان الخليج العربي ولبنان
وسطاء الإتجار بالنساء

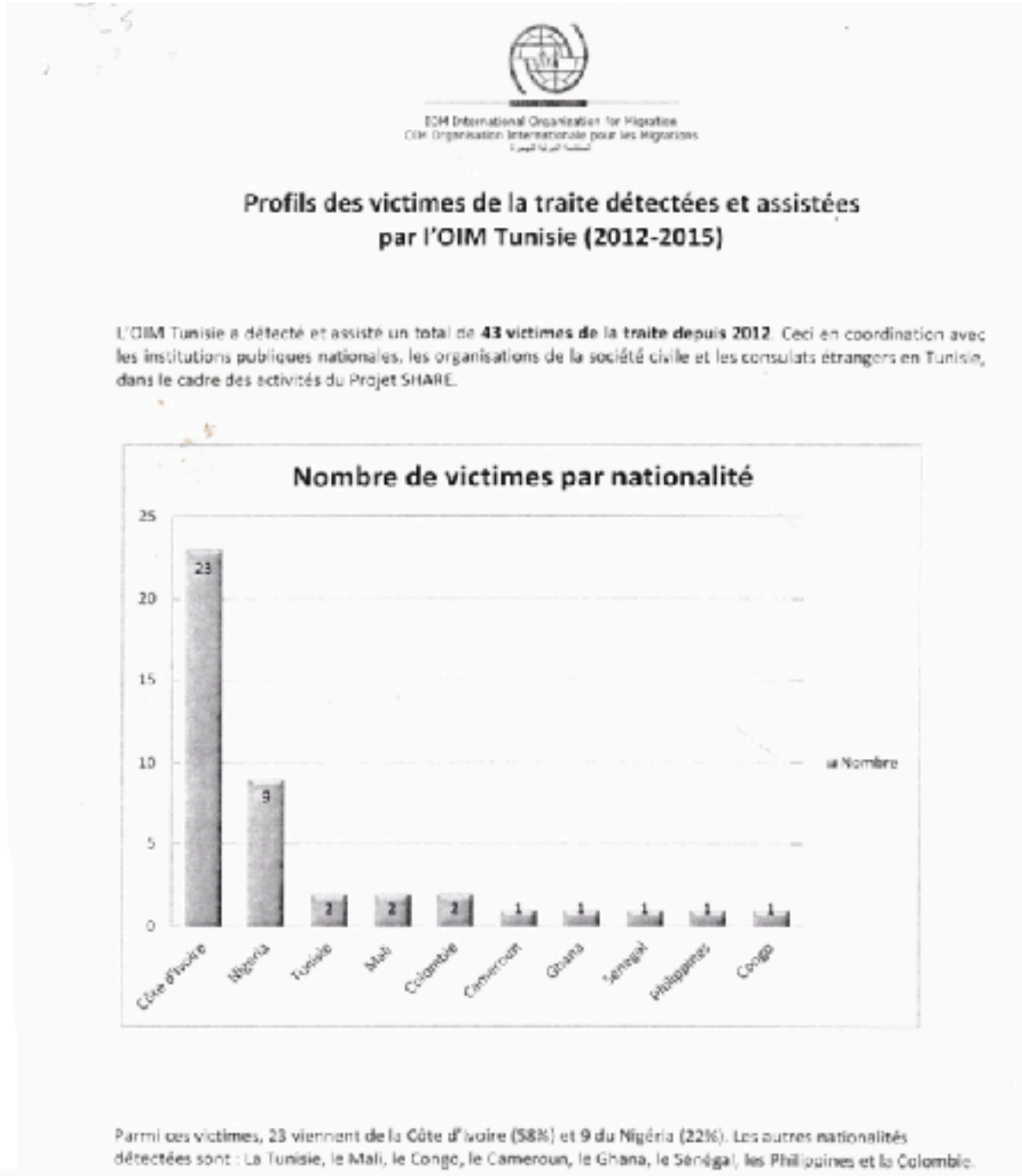
الفترة	سنة 2012	سنة 2013	سنة 2014
العدد	38	24	39

ضحايا الإتجار بالنساء

الفترة	سنة 2012	سنة 2013	سنة 2014
العدد	87	177	88

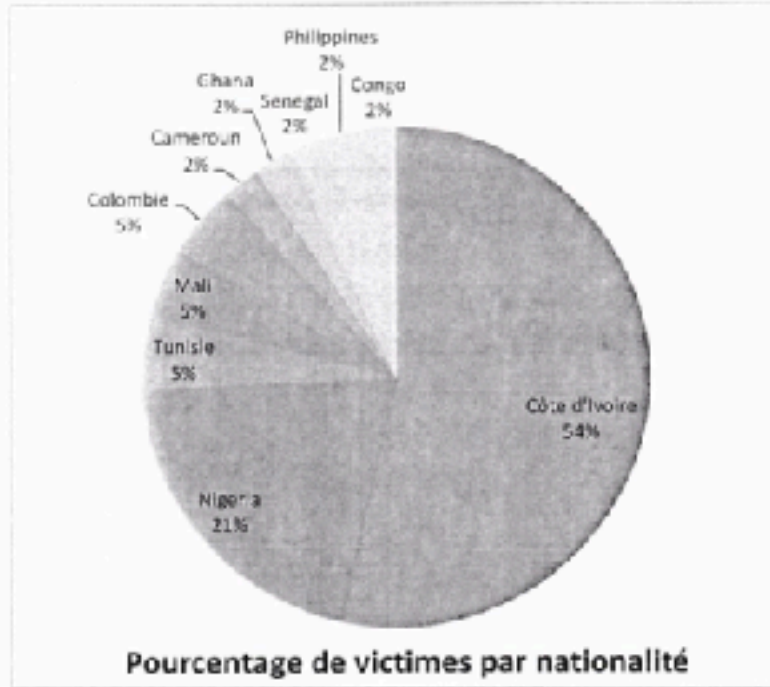
Appendix V

Statistics handed by the IOM in April 2015 about the profiles and numbers of victims of trafficking assisted in Tunisia (2012-2015)





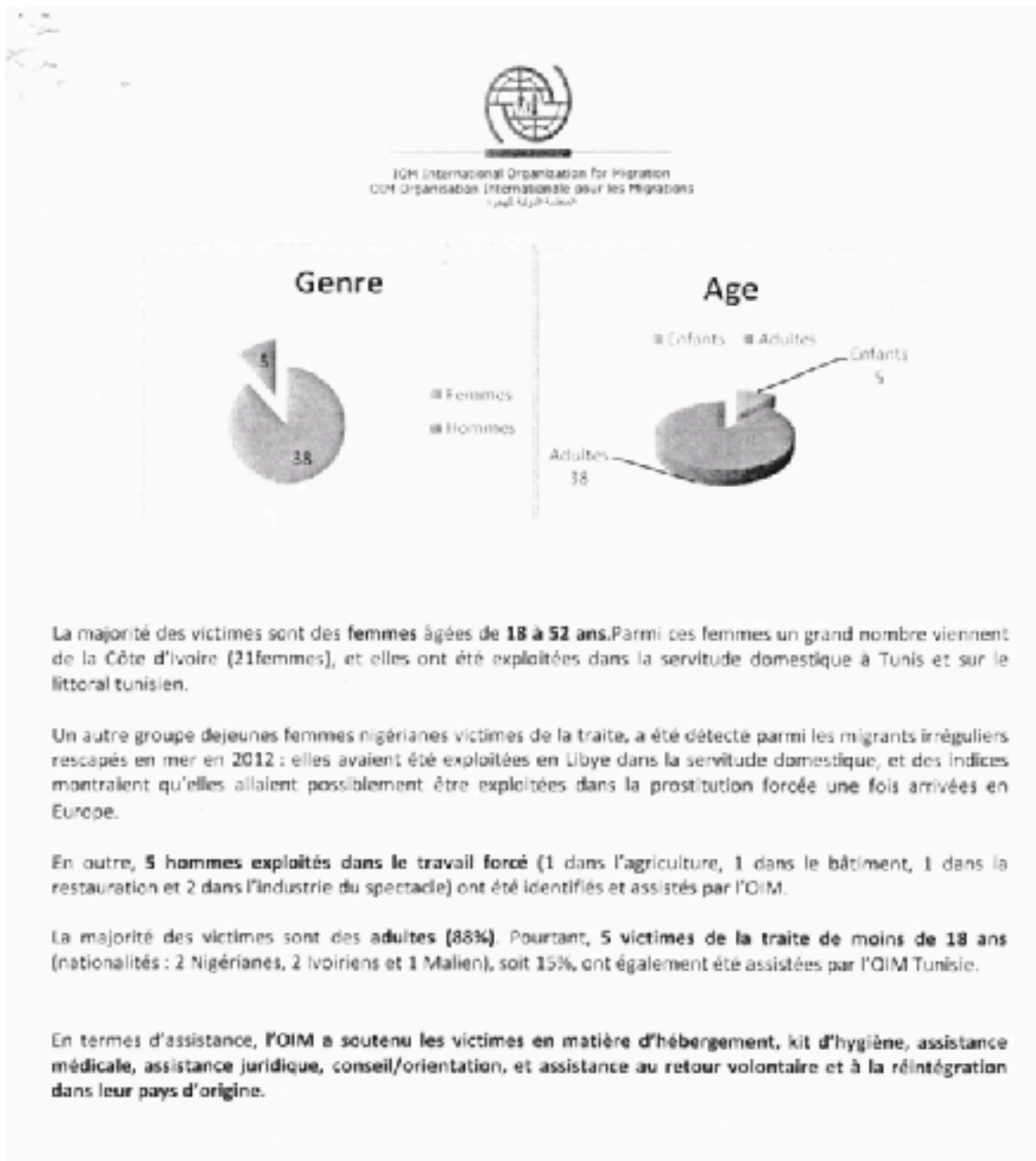
IOM International Organization for Migration
 OIM Organisation Internationale pour les Migrations
 المنظمة الدولية للهجرة



L'OIM a également identifié 2 victimes tunisiennes de la traite des personnes exploitées à l'étranger (Libéria et EUA) essentiellement dans la prostitution forcée et les services forcés (restauration).

Les types d'exploitation sont les suivants :

Servitude domestique	36
Exploitation dans le travail forcé	5
Exploitation sexuelle et travail forcé	1
Exploitation sexuelle	1
Total	43



Appendix VI

Certificate from the ATFD as a proof for not being able to get through to victims testimonies

الجمعية التونسية للنساء الديمقراطيات
Association Tunisienne des Femmes Démocrates

شهادة امتناع عن التصريح

تونس في 09 ديسمبر 2014

يشهد مركز التوجيه و الاستماع للنساء ضحايا العنف بالجمعية التونسية للنساء الديمقراطيات بأن السيدة "رشا حفار" قد توجهت إلينا منذ تاريخ 04 نوفمبر 2014 قصد تمكينها من الحصول على تصريحات من النساء ضحايا الاتجار الوافدات على مركزنا و نظرا لندرة هذه الحالات فلم تتمكن سوى من الاتصال بأربعة منهن و رفضن التصريح. و بذلك تعذر عليها الحصول على شهادات هؤلاء الضحايا.

منسقة مركز التوجيه و الاستماع
أميرة نغزوي

الجمعية التونسية
للنساء الديمقراطيات

Appendix VII

Victim Testimony 1

The testimony as taken from original source, IOM:

L., a 20 year old young woman, was engaged before her departure for Dubai. She comes from a middle class family and stopped her studies in order to follow a beautician training course. One of her Tunisian friends, who had lived some time in Dubai before returning to Tunisia, praised the economic opportunities there. She said she knew a woman who worked with her brother in the labor migration of Tunisians to Dubai. L. then gets into contact with this woman who reassures her and her fiancé, on the seriousness of the job offer in a beauty center. Recruitment criteria are physical beauty and being young. The visa and contract of L. are quickly prepared. The contract states that she will work in a beauty salon owned by the woman in question. She does not advance any travel expenses. These will be deducted from the salary she receives in Dubai. L. left Tunisia in November 2012. Upon arrival, she is received by a Syrian man. He allows her to use his phone to contact her fiancé. She tells the latter she was taken to a house hosting Tunisian, Moroccan and Algerian women and not into a hotel, as originally intended. For some time, L. remains unemployed. They were preparing her papers and her badge, she explains to her fiancé.

Time goes by and L. no longer answers her boyfriend when he calls at night. The few times she picked up the phone, it was after 3am when she was drunk. However, L. did not drink alcohol before leaving for Dubai. L. told him that she worked from 22pm to 03am, with a break at midnight. It was difficult, according to her fiancé, to know whether she consented or not to exercise that activity at night. Worried, the fiancé of L. called the woman who hired L. asking for explanations. She said that alcohol was prohibited at the workplace of L., and that it was not her, but the man who employed her. Later, L. called her boyfriend at night, drunk and crying, telling him about humiliating working conditions. Her calls are interrupted and she is still under control. She was able to talk to him three times in three months. It is forbidden for women to go out, call or use Internet telephony (Skype). The fiancé of L. contacted her employer, without success.

They eventually got back to him via Facebook and suggested that he should recruit beautiful young women between 20 and 28 in Tunisia for 100 dinars per head (50 Euros). In just three weeks, the network could have recruited 28 women. Some young women working with L. returned to Tunisia on February 10th, while some others were transported to Turkey. He learnt that his fiancée was in Lebanon.

He learned that the contract signed by L. was falsified and in English, misunderstood by his fiancée. L. was supposed to come back with the others, at the end of her contract, but her employer decided differently. As of February 12, he could no longer get in touch with his fiancée. L. was detained by Tunisian authorities upon her return to Tunisia. In this case, all the elements are present to conclude, a priori, to a case of trafficking into sexual exploitation. L. was recruited and transferred from one country to another on the basis of deception about the nature and conditions of the work. Her movements and external communications were monitored. She was housed with women of different nationalities in one place, with the presence of alcohol as a means of control used by traffickers to enslave their victims. The fact that L. could earn money does not change her status as alleged victim. In order not to disturb the families and relatives of their victims, but also for better control, traffickers sometimes offer to pay them. This salary doesn't make them any lesser victims of trafficking.

Upon her return from Lebanon, L. was arrested for illegal prostitution and considered a criminal. She may be convicted for an offense that she was probably forced to commit. She no longer has the support of her fiancé and risks the rejection of her family if they discovered her activities.

Measures must be taken to sensitize police and Justice Officers, the Media and the general public, to not re-victimize these young women by condemning or stigmatizing them.

Appendix VIII

Victim Testimony 2

The second testimony of Father David from Caritas NGO in Sfax- the original one as provided by ATFD in French:

Je suis très heureux d'être invité par l'ATFD pour rendre témoignage sur la situation des domestiques ivoiriennes ici à Sfax en Tunisie. Je dis merci à tous les membres de l'ATFD pour cette belle occasion qui nous permet d'être la voix des sans voix, de celles qui sont confinées dans les maisons et ne peuvent pas sortir par peur d'être violentées une fois encore par leurs maîtres et maîtresses. Ceci dit, ce que j'essaie d'exprimer ici est né de mon expérience d'écoute et d'observation auprès de celles que nous appelons « petites bonnes ivoiriennes ». C'est plus un partage qu'un texte scientifique !

Le P. David préside l'enterrement d'un migrant au cimetière chrétien de Sfax. Ces derniers mois j'ai reçu six coups de fil de six filles différentes, sans compter celles et ceux qui contactent mes autres confrères, car le phénomène touche aussi les garçons. Comme c'est un témoignage, je me borne sur ce qui me concerne.

Elles m'appellent et on se donne rendez-vous soit à la paroisse soit au 52 (c'est ainsi que beaucoup appellent le presbytère car l'adresse est 52 Av. Taieb Mehiri). Les histoires de celles que j'ai rencontrées diffèrent rarement : elles sont ivoiriennes et plus précisément d'Abidjan, elles portent des prénoms chrétiens et sont arrivées ici par un réseau qui semble très organisé. Le mode opératoire aussi varie peu, et celui qui revient souvent est le suivant : la fille va à la plage de Grand Bassam, un garçon l'aborde, dépense sans compter et finalement ne demande rien en échange. Une à deux semaines plus tard, il appelle la fille et lui fait savoir qu'il a besoin de son aide. Il a un frère en Italie qui est un homme d'affaires, il voyage beaucoup et il a besoin de quelqu'un de confiance pour surveiller de près ses affaires ; il a pensé à elle car elle a l'air sérieuse. Il est prêt à payer son billet d'avion d'Abidjan-Tunis, car elle n'a pas besoin de visa pour rentrer en Tunisie. Mais elle doit contribuer par la modeste somme de cent mille francs CFA (environ 155 €). Dès qu'elle arrive en Tunisie, un autre frère sera là et se chargera d'organiser le reste du voyage.

La fille se laisse emballer et c'est le début d'un voyage en enfer : arrivée à Tunis, quelqu'un l'attend à l'aéroport ; dès l'aéroport l'escroc récupère tout ce qu'elle a sur elle comme argent . Il l'a conduit dans un appartement où elle trouve d'autres filles entassées. Toutes espèrent un jour regagner l'Europe. Mais pour cela

il faut de l'argent. C'est la raison que le démarcheur avance pour les plonger dans toutes sortes de trafic : prostitution, serveuses dans un café, bonne dans un foyer etc.

Pour celles qui sont envoyées dans une famille sfaxienne le démarcheur leur fait savoir que c'est lui qui a payé son billet d'avion et il réclame 5 mois d'avance sur le travail que va effectuer la fille. La fille est payée entre 450 et 500 Dinars tunisiens, soit entre 225 et 250 € le mois. S'il prend 5 mois de salaire cela lui fait soit 1125 € ou 1250 €. Or, un billet d'avion Abidjan-Tunis aller/retour dépasse rarement les 600 € ! A cela il faut ajouter tout l'argent récupéré sur elle à l'aéroport qui est souvent la cotisation de la famille, fruit de la vente du terrain de tel frère ou oncle pour l'aider à atteindre l'Eldorado.

Le pire c'est le travail que la fille doit effectuer pour rembourser cet argent empoché par le démarcheur : Elle est la première à se lever dans la maison et la dernière à se coucher et la plupart du temps ce sont de grandes maisons, en plus avec 2 à 3 voitures une pour madame, l'autre pour monsieur et la troisième pour conduire les enfants à l'école et c'est la pauvre qui doit se lever tôt pour laver ces voitures, arroser le jardin, nettoyer la maison, préparer les enfants pour l'école. Elle travaille entre 14h et 16h par jour. Ce qui fait que la plupart d'entre elles, au bout des 5 mois elles sont fatiguées, pour ne pas dire fanées et demandent à partir d'elles-mêmes avec zéro dinar : elle a travaillé pour un autre. Partir d'accord, mais où aller ? Retour à la case de départ. Soit elle retourne chez son démarcheur et là elle est exposée à tous les chantages ou bien elle trouve une autre famille et recommence le même travail avec le même calvaire car elle est exposée à toutes sortes de violences : physiques, sexuel, psychologique.

En 2013, l'une d'entre elles était décédée : il n'y avait pas de chauffage dans sa chambre et pour se chauffer elle a allumée le charbon de bois et le lendemain on a trouvé son corps sans vie.

Au mois de mars 2014, je suis allé visiter une autre fille hospitalisée à Sfax et souffrant gravement du VIH avec un enfant de trois ans en charge.

Malgré tout cela les familles en Côte-d'Ivoire continuent de croire au miracle et envoient de l'argent pour ces filles afin d'aller au bout de leur objectif : l'Europe. Par exemple : cette année en quelques mois, j'ai reçu des virements successivement de 800, 550 et 525 DT pour trois filles de la part de leurs familles pour qu'elles continuent leurs voyages et ce ne sont pas des familles aisées. La plupart, pour envoyer ces sommes, sont obligés de vendre terrains et produits agricoles pour soutenir leur fille : véritable investissement dans le vide.

Toute tentative que nous avons menée pour encourager les filles à retourner au pays a été vaine. Elles perçoivent leur retour comme un échec et préfèrent traîner les pieds ici et s'exposer à tous les dangers.

Appendix IX

Victim Testimony 3

Third Testimony of a Malian victim as originally taken from Amal NGO:

This is a presentation of a case of a young African victim of trafficking into domestic servitude.

K. is a young Malian who initially suffered a border smuggling network. In fact, the network promised to help her cross borders to settle in a country of Europe. But they convinced her that before they reach Europe, they will pass through Tunisia first where she should work as a hairdresser in a beauty salon with a formal contract. To be able to cover the expenses of her movement from Mali to Tunisia and then to Europe. Upon her arrival to the Tunisian land, K. found herself at a wealthy family, her papers were confiscated by the recruiter and she was not allowed to go out or to leave. She worked day and night without stopping. This situation went on for months, until the time when she was spotted by a member of the church who helped her to contact the authorities concerned.

Appendix X

Upon request, audio file available from author.