

# JOURNAL of MODERN SLAVERY

*A Multidisciplinary Exploration of Human Trafficking Solutions*

Volume 4, Issue 1

Summer 2018

## **The Developments of Trafficking in Women in Post-Revolution Tunisia**

Racha Haffar, M.A.

## **Understanding Child Trafficking within Ghana: Stakeholders' Perspective**

Emma Seyram Hamenoo  
Efua Esaaba Mantey Agyire-Tettey

## **An Economist's Perspective of Kevin Bales' "Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World"**

Jennifer Bossard, Ph.D

## **Cultural Competence of Western Psychotherapists in Helping Sex Trade Survivors: An Initial Exploration**

Daphne Catherine Spyropoulos, B.A.

## **Civil Society Organisations in Counter-Trafficking Governance: When Long-Standing Interactions Lead to Solid Partnerships**

Chloé Brière, PhD, LLM  
Julia Muraszkievicz, PhD, LLM  
Amy Weatherburn, LLB, LLM

# **JOURNAL OF MODERN SLAVERY**

*A Multidisciplinary Exploration of Human Trafficking Solutions*

**Volume 4, Issue 1**  
**Summer 2018**

**Editor-in-Chief**  
Jodi L. Henderson

**Digital Editor**  
Peter F. Zimowski

**Web Design**  
Peter F. Zimowski / David Perry

**Intern**  
Kayla Elkin

## **Advisory Board**

Dr. Kevin Bales  
Tina Davis  
Dr. Mohamed Y. Mattar  
Cory Smith  
Stephen M. Apatow  
Helen Burrows

## **Editorial Board**

Dr. Aidan McQuade  
Benjamin Thomas Greer  
Dr. Zoe Trodd  
Dr. Carter F. Smith  
Dr. Monti Narayan Datta  
Geraldine Bjällerstedt  
Roger-Claude Liwanga  
Marcel van der Watt

**Publisher:** SlaveFree Today

<http://slavefreetoday.org>  
<http://journalofmodernslavery.org>

ISSN: 2574-9897

## TABLE OF CONTENTS

### **The Developments of Trafficking in Women in Post-Revolution Tunisia** **1**

**Racha Haffar, M.A.** (Founder and President of ‘Not 4 Trade’, the first anti-human trafficking NGO in Tunisia. Fulbright Alumna at the University of Kentucky. Double Masters’ degrees in International Relations and International Development and Cooperation from the Universities of Tunis and Palermo).

### **Understanding Child Trafficking within Ghana: Stakeholders’ Perspective** **135**

**Emma Seyram Hamenoo** (Lecturer, Department of Social Work, University of Ghana)

**Efua Esaaba Mantey Agyire-Tettey** (Lecturer, Department of Social Work, University of Ghana)

### **An Economist’s Perspective of Kevin Bales’ “Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World”** **155**

**Jennifer Bossard, Ph.D** (Associate Professor of Economics, Doane University)

### **Cultural Competence of Western Psychotherapists in Helping Sex Trade Survivors: An Initial Exploration** **168**

**Daphne Catherine Spyropoulos, B.A.** (MSc Student, Deree - The American College of Greece)

### **Civil Society Organisations in Counter-Trafficking Governance: When Long-Standing Interactions Lead to Solid Partnerships** **180**

**Chloé Brière, PhD, LLM** (Post-doctoral researcher. After defending her thesis on the external dimension of the EU’s policy against trafficking in human beings, she now works on projects addressing demand for sexual services, and research linked to EU criminal and migration law).

**Julia Muraszkiewicz, PhD, LLM** (Research analyst at Trilateral Research Ltd, where she works on issues of humanitarian crisis, migration, human trafficking and ethics).

**Amy Weatherburn, LLB, LLM** (PhD candidate conducting research on trafficking in human beings for the purposes labour exploitation, analysing the effectiveness of the implementation of the European legal framework and the handling of labour exploitation in law).

# **The Developments of Trafficking in Women in Post-Revolution Tunisia**

**Racha Haffar, M.A.**

Founder and President of 'Not 4 Trade', the first anti-human trafficking NGO in Tunisia.  
Fulbright Alumna at the University of Kentucky. Double Masters' degrees in International  
Relations and International Development and Cooperation from the Universities of  
Tunis and Palermo.

## **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-Nikah<sup>3</sup> 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*<sup>1</sup> 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 Bey<sup>2</sup> 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 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

---

<sup>1</sup> *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.

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

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-Nikah<sup>3</sup> and forced prostitution into the Gulf countries in addition to other examples. I could manage to collect data through conducting interviews with

---

<sup>3</sup> *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.

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.

## **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.<sup>4</sup>

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 in persons and forced labor to describe modern forms of slavery.<sup>5</sup>

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

---

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

<sup>5</sup> 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](https://d3mj66ag90b5fy.cloudfront.net/wpcontent/uploads/2014/11/Global_Slavery_Index_2014_final_lowres.pdf), 6

exploitation of children (including in armed conflict) and descent-based slavery.<sup>6</sup>

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.<sup>7</sup>

Trafficking in Persons refers to slavery in all its forms. The term ‘trafficking’ it self 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’. Even though the phenomenon of trafficking in persons is not new, it is still very little known to the public.<sup>8</sup>

---

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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](http://tunisia.iom.int/sites/default/files/resources/files/IOMTunisia_BaselineStudyTrafficking_English_LR.pdf)>.

## **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.<sup>9</sup>

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.”<sup>10</sup> 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 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:<sup>11</sup>

---

<sup>9</sup> 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.

<sup>10</sup> Ibid, 2.

<sup>11</sup> The original words own translated from the Tunisian Anti-Trafficking bill.

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 it's prostitution or by providing any sexual services including abusing them in pornography through the production of porn or its promotion by any means.<sup>12</sup>

---

<sup>12</sup> 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.

## **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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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 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.

---

<sup>13</sup> 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

<sup>14</sup> *Supra* Note 8

<sup>15</sup> *Supra* Note 13



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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

### **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 as slaves.<sup>19</sup> 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

---

<sup>16</sup> 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.

<sup>17</sup> *Supra* Note 8, 17.

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

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

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.<sup>20</sup>

## **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.”<sup>21</sup>

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,<sup>22</sup> 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 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.<sup>23</sup>

In 1927, The League of Nations was founded after WWI and had the goal of

---

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

<sup>21</sup> 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>>

<sup>22</sup> 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.

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

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.<sup>24</sup>

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.<sup>25</sup>

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 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

---

<sup>24</sup> 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/>>.

<sup>25</sup> 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.

trafficking was further defined (“Trafficking”).<sup>26</sup>

### 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*.<sup>27</sup> 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.<sup>28</sup> 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 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

---

<sup>26</sup> 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>>.

<sup>27</sup> Ifriqiyya was the name of Tunisia during middle ages.

<sup>28</sup> 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/bitstream/handle/1887/4968/second%20chapter%20dissertation.pdf?sequence=5>, 349-357

region.<sup>29</sup> 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.<sup>30</sup>

### **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.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup>

#### **B. Trafficking in Persons in Tunisia**

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

---

<sup>29</sup> 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.

<sup>30</sup> *Supra note 21*

<sup>31</sup> *Supra note 8, 49*

<sup>32</sup> 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).

<sup>33</sup> *Supra Note 8, 49*

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.<sup>34</sup>

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 destination for trafficking in persons.<sup>35</sup>

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

---

<sup>34</sup> 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

<sup>35</sup> *Supra* Note 8, 29

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.<sup>36</sup>

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.<sup>37</sup>

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.<sup>38</sup>

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 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

---

<sup>36</sup> *Supra* Note 8, 32

<sup>37</sup> *Supra* Note 34

<sup>38</sup> *Ibid* 34

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,<sup>39</sup> 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 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

---

<sup>39</sup> *Supra* Note 8, 31



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.<sup>40</sup>

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.<sup>41</sup>

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 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

---

<sup>40</sup> 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>>

<sup>41</sup> 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](http://www.no-trafficking.org/content/pdf/guide_to_the_new_un_trafficking_protocol.pdf)>, 3.

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.<sup>42</sup> 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.<sup>43</sup>

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. Trafficking was identified in *Choucha Camp*<sup>44</sup> 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

---

<sup>42</sup> *Supra* Note 8, 8.

<sup>43</sup> *Ibid*

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

Lebanon, the United Arab Emirates (UAE), and Jordan. Upon arrival, they find themselves forced into prostitution.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> 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 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

---

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

<sup>46</sup> See Appendix V

<sup>47</sup> 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.

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.”<sup>48</sup> 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.<sup>49</sup>

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 rates for girls; less control over fertility; and recourse to prostitution.”<sup>50</sup>

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

---

<sup>48</sup> 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](http://www.cpahq.org/cpahq/cpadocs/Feminization_of_Poverty.pdf)>, 3.

<sup>49</sup> 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>>.

<sup>50</sup> *Supra* Note 48

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.<sup>51</sup>

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.<sup>52</sup> 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 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

---

<sup>51</sup> 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>>

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

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).<sup>53</sup>

In the Tunisian case, "There should be no discrimination between men and women" as stated in the Labor Code,<sup>54</sup> 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.<sup>55</sup> 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 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

---

<sup>53</sup> *Ibid*

<sup>54</sup> Article 5 (a) of the Tunisian Labor Code.

<sup>55</sup> 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](http://www.unfpa.org/sites/default/files/pub-pdf/addressing_violence.pdf)>

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.”<sup>56</sup> 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.

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

---

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

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 Beings<sup>57</sup>, 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 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

---

<sup>57</sup> 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>>



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.”<sup>58</sup>

## **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.<sup>59</sup>

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 webs of this global crime.<sup>60</sup> 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

---

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

<sup>59</sup> 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.

<sup>60</sup> *Supra note 13*

Trafficking known as the White Slave Trade" made the first appearance of the word trafficking in 1904.<sup>61</sup> 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."<sup>62</sup>

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.<sup>63</sup> 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.<sup>64</sup>

## **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-

---

<sup>61</sup> *Supra note 7*, 3.

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

<sup>63</sup> 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.

<sup>64</sup> 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>

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.<sup>65</sup> 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,<sup>66</sup> 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,<sup>67</sup> 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 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.”<sup>68</sup>

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.<sup>69</sup> With the birth of the United Nations in 1945, this Agreement was succeeded by the Convention on the Abolition of Slavery in 1953.

---

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

<sup>66</sup> Ibid

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

<sup>68</sup> *Supra note 18*

<sup>69</sup> *Supra note 18*

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 Slavery<sup>70</sup> that states found themselves obliged to adopt all measures to abolish practices similar to slavery, precisely debt bondage<sup>71</sup> in addition to Serfdom,<sup>72</sup> servile marriage,<sup>73</sup> and the exploitation of children.<sup>74</sup> 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."

## **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

---

<sup>70</sup> 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>

<sup>71</sup> 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.

<sup>72</sup> 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.

<sup>73</sup> 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

<sup>74</sup> 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.

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 of that is the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others,<sup>75</sup> which declares prostitution ‘incompatible with the dignity and worth of the human person’.<sup>76</sup> 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 Traffic<sup>77</sup> remained unchanged, keeping the link between trafficking and commercial sexual exploitation of Caucasian females.<sup>78</sup> The 1921 convention for the Suppression of the Traffic in Women and Children<sup>79</sup> further validates the definition contained in the 1910 Convention; in that way, keeping an emphasis on prostitution as the exploitative purpose of trafficking.<sup>80</sup>

The 1933 International Convention for the Suppression of the Traffic in Women of the Full Age<sup>81</sup> defines trafficking as “the transfer of women across nation-state borders for immoral purposes, regardless of their consent or coercion.”<sup>82</sup> 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

---

<sup>75</sup> 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>

<sup>76</sup> See Preamble of the 1949 Convention.

<sup>77</sup> 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](http://treaties.un.org). 10 January 2015 <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20VII/VII-9.en.pdf>>.

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

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

<sup>80</sup> *Supra Note* 78, 15

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

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

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.<sup>83</sup> While many states condemned the exploitation of prostitution, the regulation of prostitution was considered to be a matter of national choice.<sup>84</sup> The abolitionist movement<sup>85</sup> 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.<sup>86</sup> 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 the four previous white slave traffic agreements.<sup>87</sup> 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

---

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

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

<sup>85</sup> 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.

<sup>86</sup> 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)

<sup>87</sup> 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.

purposes of trafficking in persons.<sup>88</sup>

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.<sup>89</sup> It explicitly connects trafficking in persons with the exploitation of prostitution.<sup>90</sup>

This approach provides a narrow vision to what victims of trafficking really are. 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.<sup>91</sup> This was also a drive for the adoption of the 1979 CEDAW<sup>92</sup> 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.<sup>93</sup> 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.

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.

---

<sup>88</sup> 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.

<sup>89</sup> *Supra Note 84*, p.52

<sup>90</sup> *Supra Note 78*, p.17

<sup>91</sup> *Supra Note 84*, p. 55

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

<sup>93</sup> *Supra Note 84*, p. 94



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.<sup>94</sup>

### **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 Convention<sup>95</sup> and the 1957 Abolition of Forced Labor Convention.<sup>96</sup> These measures have worked on preventing forced labor from putting people into slavery-like conditions. From the ILO standpoint, trafficking is a "degrading misuse of human resources resulting in undignified and unproductive work."<sup>97</sup> 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 Labor<sup>98</sup> shows the emphasis on

---

<sup>94</sup> 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?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/25548176?seq=1#page_scan_tab_contents) 53.

<sup>95</sup> 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>

<sup>96</sup> 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>

<sup>97</sup> 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](http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_768/lang--en/index.htm)>. Vii

<sup>98</sup> 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>



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,<sup>99</sup> 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 instruments was the creation of the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) in 2007 in order to support these conventions.<sup>100</sup>

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

---

<sup>99</sup> 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>

<sup>100</sup> 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>>.

removal of organs). The Palermo protocol entered into force December 25, 2003.<sup>101</sup>

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.<sup>102</sup> "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.<sup>103</sup> 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.<sup>104</sup>

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.<sup>105</sup> 'Trafficking in persons is a complex, multi-faceted problem that intertwines issues of law enforcement, border control, gender, crime, security and human rights'.<sup>106</sup> 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.<sup>107</sup>

---

<sup>101</sup> *Supra* note 94, 53

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

<sup>103</sup> *Supra* note 100

<sup>104</sup> Houdi, 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

<sup>105</sup> *Supra* Note 58

<sup>106</sup> 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=56a5f4f178cd3075a73abcda44dae08f,5>.

<sup>107</sup> *Supra* Note 26

### 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 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).<sup>108</sup>

## **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.<sup>109</sup>

### **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

---

<sup>108</sup> 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>>.

<sup>109</sup> 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.

### Tier Two Watch List.<sup>110</sup>

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.<sup>111</sup> 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.<sup>112</sup>

According to the Ministry of Justice,<sup>113</sup> 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 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

---

<sup>110</sup> 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.

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

<sup>112</sup> 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."

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

government officials and people with power who could use nepotism into setting free some convicts who were pled guilty in sexual abuse.<sup>114</sup>

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.<sup>115</sup> 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.<sup>116</sup> 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.<sup>117</sup> 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 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.<sup>118</sup> As mentioned in the previous section of this chapter, the international instruments signed by Tunisia are thoroughly mentioned in the document of the

---

<sup>114</sup> *Supra* Note 34

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

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

<sup>117</sup> 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

<sup>118</sup> *Ibid*

Ministry of Justice.<sup>119</sup>

## **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.”<sup>120</sup>

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 forms and helps protect different rights related to women, namely:<sup>121</sup>

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.

---

<sup>119</sup> Appendix II, pages 1-3.

<sup>120</sup> 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](http://www.jasmine-foundation.org/doc/unofficial_english_translation_of_tunisian_constitution_final_ed.pdf) ChapterII, Article 21.

<sup>121</sup> 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](http://www.e-justice.tn/fileadmin/fichiers_site_francais/codes_juridiques/Code_penal_12_07_2010_fr.pdf)

## **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 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.<sup>122</sup>

## **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

---

<sup>122</sup> 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](http://cadmus.eui.eu/bitstream/handle/1814/17800/CARIM_ASN_2011_47.pdf?sequence=1)> 14.



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.<sup>123</sup>

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,<sup>124</sup> 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.

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.<sup>125</sup> 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

---

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

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

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

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.<sup>126</sup>

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 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

---

<sup>126</sup> 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.

in April 23, 2013.<sup>127</sup> 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.<sup>128</sup> 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 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.<sup>129</sup>

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

---

<sup>127</sup> 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>.

<sup>128</sup> 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>

<sup>129</sup> *Supra* Note 8, 16.

be a committee working on this.<sup>130</sup> 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.<sup>131</sup> 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.<sup>132</sup> 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 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

---

<sup>130</sup> 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.

<sup>131</sup> Appendix III: Government's agenda in relation to trafficking in persons.

<sup>132</sup> *Supra* Note 126

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 I 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.<sup>133</sup>

In fact, during 2013, there have been 5655 notices of children in potential similar situation of exploitation, where females represented 49.4 percent making

---

<sup>133</sup> 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.

2857 notices.<sup>134</sup> 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 Orfi<sup>135</sup> marriages and for being abandoned after being deceived into these marriages. Once they get pregnant, they find themselves abandoned in the streets with their newborn 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.<sup>136</sup> 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.<sup>137</sup> Consequently, 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

---

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

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

<sup>136</sup> *Supra* Note 8, 69

<sup>137</sup> *Ibid* 8

and un-welcomed by any destination country.<sup>138</sup> 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.<sup>139</sup> 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;<sup>140</sup> 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 Beity<sup>141</sup> alongside other women from different nationalities facing similar situations as the following table demonstrates:

---

<sup>138</sup> 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](http://www.no-trafficking.org/content/pdf/guide_to_the_new_un_trafficking_protocol.pdf)>, 11

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

<sup>140</sup> 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."

<sup>141</sup> 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.<sup>142</sup> 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.<sup>143</sup> 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.<sup>144</sup> In addition, some Dominican women were sold in Tunisian luxurious hotel for prostitution.

---

<sup>142</sup> *Supra* Note 8, 65

<sup>143</sup> *Ibid* 67

<sup>144</sup> 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.<sup>145</sup> 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.<sup>146</sup> 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.<sup>147</sup> In 2009, two women were rescued from being trafficked into forced prostitution in Jordan.<sup>148</sup>

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

---

<sup>145</sup> *Supra* Note 8, 67

<sup>146</sup> 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/>

<sup>147</sup> *Ibid*

<sup>148</sup> 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.<sup>149</sup> 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 coast 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.<sup>150</sup> 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

---

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

<sup>150</sup> *Supra* Note 8, 18.

of demand and shifted it to a national supply.<sup>151</sup>

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.<sup>152</sup>

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,<sup>153</sup> 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.<sup>154</sup>

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

---

<sup>151</sup> 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.

<sup>152</sup> 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](https://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf)

<sup>153</sup> Jihadists: Muslim warriors who take on duties to maintain religion.

<sup>154</sup> Own translated from France 24. "جهد النكاح" في سوريا يعدن إلى بلادهن حوامل "19" 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.<sup>155</sup>

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.<sup>156</sup> Furthermore, the notion of age will be changed from article 231,<sup>157</sup> 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.<sup>158</sup>

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.<sup>159</sup>

---

<sup>155</sup> 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

<sup>156</sup> *Ibid*

<sup>157</sup> Article 231 of Penal Code

<sup>158</sup> 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.

<sup>159</sup> 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.”<sup>160</sup>

#### **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

---

<sup>160</sup> 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.<sup>161</sup> They found themselves 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 Bondage<sup>162</sup> 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 Kafala<sup>163</sup> 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 Interpol<sup>164</sup> 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

---

<sup>161</sup> STDs: Sexually Transmitted Diseases.

<sup>162</sup> 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.

<sup>163</sup> 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.

<sup>164</sup> *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."<sup>165</sup>

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.<sup>166</sup> 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.<sup>167</sup> However, the IOM only identified two Tunisian victims exploited in trafficking abroad (Liberia and USA), mainly in forced prostitution and forced services.<sup>168</sup> In the quest for testimonies from Tunisian victims trafficked abroad, I faced a lot of difficulties in reaching them and

---

<sup>165</sup> 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.

<sup>166</sup> Case number 2278, 14 March 2013, Court of First Instance in Tunis.

<sup>167</sup> See Appendix IV for statistics of Ministry of Interior.

<sup>168</sup> See Appendix V for IOM statistics.

getting their direct stories as my applications in different NGOs and ministries were rejected.<sup>169</sup> 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 interviewed<sup>170</sup> 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 channel<sup>171</sup> when the program 'Labes' shed the light on trafficking cases and their processes. So this victim is one of the 28 mentioned above.<sup>172</sup>

## **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.<sup>173</sup> Another case of an Ivorian woman held in domestic servitude by another senior official of the same institution in Tunis came to surface.<sup>174</sup> 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.<sup>175</sup>

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

---

<sup>169</sup> See Appendix VI for proof

<sup>170</sup> *Supra* Note 8, p.64

<sup>171</sup> February 20 2013.

<sup>172</sup> Check Appendix VII for testimony.

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

<sup>174</sup> *Supra* Note 8, 65.

<sup>175</sup> *Ibid*



and assisted by the IOM was a total of 43 victims.<sup>176</sup> 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.)<sup>177</sup>

I managed to get two testimonies about trafficked Ivorian female victims in Tunisia. The first testimony is by Father David<sup>178</sup>, 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.<sup>179</sup> 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.<sup>180</sup>

## **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

---

<sup>176</sup> 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.

<sup>177</sup> See Appendix V for document handed in April 2015 by IOM

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

<sup>179</sup> Sfax is a city located 270Km southeast of the capital Tunis.

<sup>180</sup> 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.<sup>181</sup>

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

---

<sup>181</sup> 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.<sup>182</sup> 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, UNHCR<sup>183</sup>, 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

---

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

<sup>183</sup> 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,<sup>184</sup> Beity Association,<sup>185</sup> the Tunisian Red Crescent, ATFD, AIESAT,<sup>186</sup> AFTURD,<sup>187</sup> Caritas,<sup>188</sup> and Terre d'Asile.<sup>189</sup> 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.<sup>190</sup>

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.<sup>191</sup> During an interview with Hanen Ben Belgacem,<sup>192</sup> 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

---

<sup>184</sup> Amal Association

<sup>185</sup> Beity Association

<sup>186</sup> AIESAT: L'Association Internationale des Etudiants et Stagiaires Africains à Tunis

<sup>187</sup> AFTURD : Association des Femmes Tunisiennes pour la Recherche sur le Développement

<sup>188</sup> Caritas: Christian Charity

<sup>189</sup> Terre d'Asile: NGO working on immigrants' rights.

<sup>190</sup> 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>>.

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

<sup>192</sup> 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.<sup>193</sup> 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."<sup>194</sup>

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

---

<sup>193</sup> 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>>.

<sup>194</sup> 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.<sup>195</sup> 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.<sup>196</sup> The government does not encourage victims by any kind of policies to come forward ask for prosecution of their trafficking offenders.<sup>197</sup>

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

---

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

<sup>196</sup> 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.

<sup>197</sup> Department, U.S State. «U.S. State Department Trafficking in Persons Report.» June 2013. [www.state.gov](http://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.<sup>198</sup> 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.<sup>199</sup>

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

---

<sup>198</sup> *Supra* Note 195

<sup>199</sup> 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.<sup>200</sup> Tunisian women trafficked abroad for sexual exploitation make a total of 88 victims in 2014.<sup>201</sup> 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

---

<sup>200</sup> See appendix V for full statistics

<sup>201</sup> 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).<sup>202</sup> 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.<sup>203</sup> 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.<sup>204</sup> 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.<sup>205</sup>

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

---

<sup>202</sup> 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.

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

<sup>204</sup> *Supra Note 202*

<sup>205</sup> *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.<sup>206</sup> 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.<sup>207</sup>

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.

## Acknowledgments

I would like to express my deepest gratitude to Professor Samira Mechri for finding the time and putting the effort to supervise my work. Without her valuable guidance, sincere support and trust, I wouldn't have been able to submit this dissertation.

I am greatly thankful to my professors who guided me in the past three years

---

<sup>206</sup> See Appendix II

<sup>207</sup> 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.

I am particularly thankful to the people who showed willingness to help me find my way through this past year into completing this work.

I am sincerely indebted to my family and close friends who have faith in me and supported me throughout the different phases of this endeavour.

Finally, I would like to dedicate this work to my Mother who has made so many sacrifices for our education. I would not be here today without her support. Thank you for believing in me.

## 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](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](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](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](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](http://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>>
  - Doezenia, 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 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%20dissertation.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](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](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](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](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](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](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](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](http://treaties.un.org). 24 January 2015
- <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VII-5&chapter=7&lang=en](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](http://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](http://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](http://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](http://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](http://www.ilo.org). 25 December 2014 <[http://www.ilo.org/ipecc/Informationresources/WCMS\\_IPEC\\_PUB\\_768/lang--en/index.htm](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

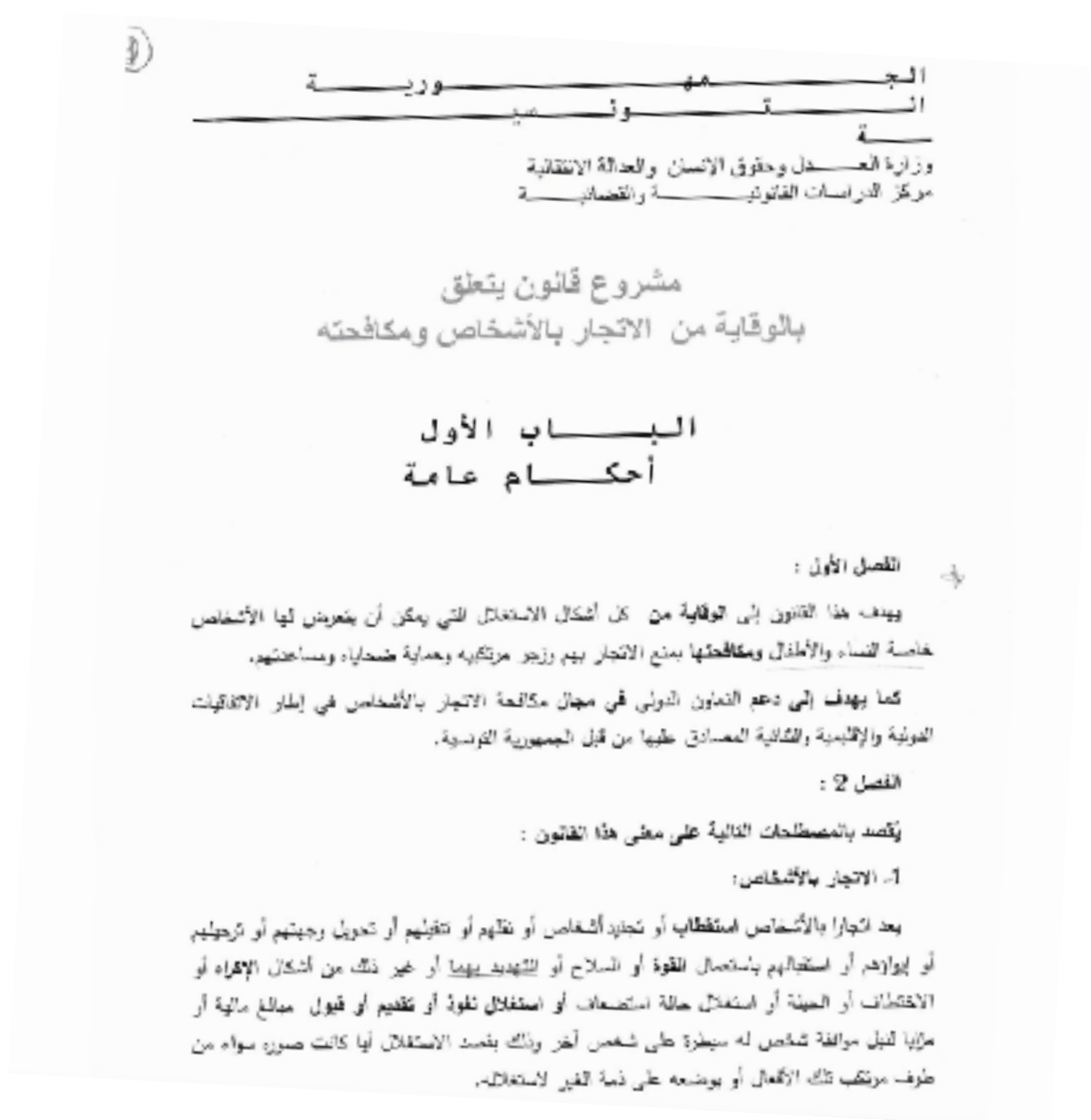
**Appendix VIII:** Victim Testimony 2

**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 السخرة أو الخدمة قسرا أو الاسترقاق أو الممارسات الشبيهة بالرق أو الاستعباد أو التسول أو إزعج الأعضاء أو الأنسجة أو الخلايا أو الأنسج 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 الإيمان أو حالة الحمل لدى المرأة أو حالة قصور ذهني أو بدني يعوق للشخص المعني عن التصدي للجاني.

## 3- السخرة أو الخدمة قسرا :

أي عمل أو خدمة يفرض حوة 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 كنها أو بعضها.

## 5- الممارسات الشبيهة بالرق :

تشمل الحالات التالية :

- إساءة التثيين : الوضع الثاني عن إجبار مدين على أداء عمل أو خدمات بنفسه أو بواسطة شخص آخر تابع له ضمائنا لذين متخذ بدمته إذا كان مقابل ذلك العمل أو تلك الخدمات لا يوقف لسداد هذا الدين أو إذا كانت مدة أو طبيعة العمل أو الخدمات غير محددة.

- القفانة : الوضع الثاني عن إلزام شخص بموجب اتفاق بأن يعيش ويعمل على أرض شخص آخر وإن يقدم عمل أو خدمات لهذا الشخص بعموض أو بغير عوض 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 إهرامية 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 وفقا لشروط لا يستطيع ذلك الشخص التخلص منها أو تغييرها.

#### 7- الاستغلال الجنسي:

الحصول على منافع أيا كانت طبيعتها من خلال تزيين شخص في أفعال 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 مساعها أو ترويجها بأية وسيلة كانت<sup>4</sup>.

#### 8- جماعة إجرامية منظمة :

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

#### 9- وفاسق :

كل تاجر تكون لأي مدة كانت مهما كان عدد أعضائه بقصد ارتكاب جرائم الاتجار بالأشخاص المنصوص عليها بهذا القانون نون أن يلزم وجود تنظيم هيكلي أو توزيع محدد ورمسي 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 ونجت عنها آثار هامة في دولة أجنبية أو ارتكبت في دولة أجنبية وكانت لها آثار هامة في الإقليم الوطني.

#### الفصل 3 :

<sup>4</sup> - كانت مسألة الاستغلال الجنسي لقائنا داخل اللجنة حول ما إذا كان إصدار هذا القانون يترتب عنه إلغاء للتوزيع المنظم للمراء العائلي وزيات اللجنة تؤكد الحسم في هذه المسألة لتجهاات الحكومية المعنية.



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

#### الفصل 4 :

تختص المحاكم العلية 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 طفلاً أو شخصاً عديم الأهلية أو من ذوي الإعاقة.

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

#### الفصل 6 :

لا يؤخذ من ارتكب بدون سوء نية جرماً مرتبطاً ارتباطاً مباشراً بإحدى جرائم الاتجار بالأشخاص التي كان ضحية لها.

#### الفصل 7 :

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

## الباب الثاني :

### في زجر الاتجار بالأشخاص

#### القسم الأول

#### في من يعاقب

#### الفصل 8 :

يعاقب بالسجن مدة عشرة أعوام ويخطية قدرها خمسون ألف دينار كل من يرتكب إحدى جرائم الاتجار بالأشخاص المنصوص عليها بالفصل 9 من هذا القانون.

#### الفصل 9: 2

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

وإذا كان العقاب المستوجب هو الإعدام أو السجن بقية العمر يعرض تلك العقاب بالسجن مدة عشرين عاما.

#### الفصل 10 :

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

وتكون مدة العقوبة خمسة عشر عاما وخطوة قدرها مائة ألف دينار لمكوني ومديري 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 مناهيل 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.

<sup>2</sup> - تم حذف أعمال الدعوة والمساعدة والمساهمة في تسهيل وقوع الجريمة أو الشروع في ارتكابها كما لم يقع إدراج فعل التوسط باعتبارها تشكل كلها مورا من صير المشاركة أو المحاولة والتحصين عليه سلب التمسك سيؤول إلى معاقبة المشارك أو المحاولة في جريمة الاتجار بعقوبة أخف من تلك المملطة على مشارك أو محاول في جريمة حق عام.

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

## الفصل 12 :

يعاقب بالسجن مدة ستة أعوام وبخطية قدرها ثلاثون ألف دينار كل من يتعمد 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 إخفائهم أو ضمان فرارهم أو عدم التوصل للكشف عنهم أو عدم عقابهم أو على الاستفادة بمحصلات أفعالهم،

2 - توفير بأي وسيلة كانت أسلحة أو مواد أو معدات أو وسائل نقل أو تجهيزات أو موزونة 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 خلسة 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 ذمة أشخاص لهم علاقة بجرائم الإتجار بالأشخاص المنصوص عليها بهذا القانون،

5 - إفشاء 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 النشر 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 193 إلى 199 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 ويخطية قدرها خمسة آلاف دينار كل من يمتنع عمدا ولو كان خاضعا  
للسر 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 المؤاخذه الجزائية ضد من قام عن حسن نية بواجب الإشعار.

#### الفصل 14 :

بعد مرتكبا لجريمة إعاقة سير العدالة كل من :

- استعمال 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،
- استعمال 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 ترويعهم في التثبي،
- اعتدى 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،
- اطلع بحكم وظيفته على معلومات تتعلق بنتائج جزائية من أجل جرائم الاتجار بالأشخاص وتعمد إقصاءها لأشخاص يشتبه في تورطهم في تلك الجرائم بغرض إعاقة سير الأبحاث أو عدم كشف الحقيقة أو التفتيش من التتبع والعقاب وذلك دون المساس بحقوق النفاذ.

#### 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 ويخطية 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 المنتسبين لجماعة إجرامية منظمة أو وفاق يهدف إلى ارتكاب إحدى الجرائم المنصوص عليها بهذا القانون أو الجرائم المرتبطة بها، بإبلاغ السُلط ذات النظر بإرشادات أو معلومات مكنت من اكتشاف الجريمة وتقادى تنفيذها.

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

#### الفصل 17 :

يعاقب المنتسب لجماعة إجرامية منظمة أو وفاق أو من كان له مشروع فردي يهدف إلى ارتكاب إحدى الجرائم المنصوص عليها بهذا القانون أو الجرائم المرتبطة بها بنصف العقوبة المقررة أصالة لجريمة الاتجار بالأشخاص أو الجريمة المرتبطة بها إذا مكنت الإرشادات أو المعلومات التي تولوا إبلاغها إلى السُلط ذات النظر بمناسبة البحث الأولي أو التتبعات أو التحقيق من وضع حد لجرائم الاتجار بالأشخاص أو لجرائم 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 وبخطبة 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 خولتها 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 علما ويخطئة 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 بقية العمر ويخطئة 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 الجاني عدة جرائم متباينة، يعاقب لأجل كل واحدة بالفرادة، 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.

وتحرر 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 تلقاء نفسه أو بطلب من النيابة العمومية بوضع المكاسب المنقولة أو العقارية أو الأرصدة المالية الراجعة لذی الشبهة تحت قيد الحجز وتعدد أوجه التصرف فيها أو وضعها عند الاقتضاء تحت الإلتزام.

وعليه تمكن ذی الشبهة بجزء من أمواله يفي بتغطية الضروريات من حاجياته وحاجيات أسرته بما في ذلك المسكن.

كما له الإذن برفع التدابير المشار إليها ولو 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 الإتهام بمجرد انقضاء أجل الاستئناف بالنسبة لوكيل الجمهورية والمظنون فيه أو محاميه .

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

#### الفصل 24 :

يتم سماع الضحايا و الشهود والخبراء والمبلغين فرادى في غياب ذی الشبهة ولا تجري مكافحتهم به أو بغیرهم 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 حالها أو تم تحويلها إلى مكاسب أخرى.

وفي صورة عدم التوصل إلى الحجز الفعلي بحكم بخطية لا تغل في كل الحالات عن قيمة الأموال التي تعلق 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 التسهيلات المخولة له لارتكاب إحدى جرائم الاتجار بالأشخاص.

كما يتحتم الحكم بالمراقبة 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 :

تقتضي 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 جناية.

وكل من يخالف ذلك يعاقب بالسجن من عام إلى خمسة أعوام وبخطية قدرها عشرة آلاف دينار.

والمحاولة موجبة للعقاب.

## القسم السادس

### في طرق التحري الخاصة

## الفصل 30 :

في الحالات التي تقتضيها ضرورة البحث يمكن اللجوء إلى اعتراض اتصالات ذوي الشبهة بمقتضى قرار كتابي معتل من وكيل الجمهورية أو قاضي التحقيق.

يشمل اعتراض الاتصالات الحصول على بيانات المرور والتتبع 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 يسيدها.

وتتمة بيانات المرور في مصدر الاتصال والوجبة المرسلة 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 التعرف 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 معتل.

ويتعين على الجهة المكلفة بتنفيذ الاعتراض إعلام وكيل الجمهورية أو قاضي التحقيق بحسب الأحوال بالترتيبات التي تم اتخاذها لإنجازه والتاريخ الفعلي لانطلاق عملية الاعتراض.

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

## الفصل 31 :

يتعين على الجهة المكلفة بإنجاز الاعتراض القيام بمأموريته بالتسقي 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 والتقارير المتعلقة بعملية الاعتراض بملف مستقل خاص يقع إضافته للملف الأصلي قبل اتخاذ قرار في إجراء البحث أو قبل إصدار قرار في ختم التحقيق.

### الفصل 32 :

تحرر الجهة المكلفة بإنجاز الاعتراض، عند إتمام أعمالها، تقريرا يتضمن وصفا للترتيبات المتخذة والعمليات التي أنجزت ونتائجها يرفق وجوبا بالبيانات التي تسنى جمعها أو نسخها أو تسجيلها وكذلك البيانات التي تمكن من حفظها وقراءتها وفهمها.

إذا لم تترتب عن المعطيات المجمعة من الاعتراض تتبعات جزائية فإنها تتمتع بمقتضيات الحماية وفقا للتشريع الجاري به العمل في مجال حماية المعطيات الشخصية.

### الفصل 33 :

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

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

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

### الفصل 34 :

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

يحجر الكثف عن الهوية الحقيقية للمخترق لأي سبب من الأسباب .

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

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

إذا تسبب الكشف 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 العقوبات الأكثر شدة المتعلقة بالقتل العمد.

#### الفصل 35 :

لا يؤخذ 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 تقاريراً في الغرض إلى وكيل الجمهورية أو إلى قاضي التحقيق كلما دعت الضرورة إلى ذلك، وكذلك عند نهاية عملية الاختراق.

ولا يضمن 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 معتل لمأموري الضابطة العدلية بوضع حدة نفقة تهدف إلى النقاط وتثبيت ونقل وتسجيل كلام وصورة ذوي الشبهة بصفة سرية ودون علمهم بأغراضهم الشخصية أو بأماكن أو عريات خاصة أو صومية.

يتضمن قرار وكيل الجمهورية أو قاضي التحقيق بحسب الأحوال الإذن بدخول الأماكن أو العريات الخاصة ولو خارج الساعات المنصوص عليها بالفصل 35 من مجلة الإجراءات الجزائية ودون علم أو موافقة مالك العربة أو صاحب المكان أو أي شخص له حق طيها.

ويتضمن القرار المذكور جميع العناصر التي من شأنها التعريف بالأغراض الشخصية أو بالأماكن أو العريات الخاصة أو العمومية المعنية بالمراقبة السمعية البصرية والأعمال الموجبة لها ومذتها.

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

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 الأعوان المؤهلين و أهل الخبرة لوضع العدة التقنية.

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.

تحظر الجهة المكلفة بإنجاز المراقبة السمعية البصرية عند إتمام أعمالها تقريراً يتضمن وصفاً للترتيبات المتخذة والعمليات التي أنجزت ومكانها وتاريخها وساعاتها ونتائجها يرفق وجوباً بالتسجيلات السمعية البصرية التي تُبنى جمعها والمفيدة لكشف الحقيقة.

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

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

#### الفصل 38 :

يعاقب بالسجن مدة عشرة أعوام الأشخاص الذين يقتلون عمداً 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.

تعد التسجيلات السمعية أو البصرية بحضور ممثل عن النيابة العمومية بمجرد صدور حكم بات بالإدانة 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 تلتحق بميزانية وزارة العدل.

#### الفصل 41 :

تتكون الهيئة الوطنية لمكافحة الاتجار بالأشخاص من :

- قاض عدلي من الرتبة الثانية على الأقل رئيسا، مباشر كامل الوقت،
  - خبير من وزارة الداخلية،
  - خبير من وزارة الدفاع الوطني،
  - خبير من وزارة الشؤون الخارجية،
  - قاض 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.
- ويقع 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 خصوصاً 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 والمُنهود والمبلغين وكذلك إجراءات مساعدة الضحايا،

- تلقي الإشعارات حول عمليات الاتجار بالأشخاص وإحالتها على الجهات القضائية المختصة،
- إصدار المبادئ التوجيهية الكفيلة بتمكين كافة المتكلمين وبصفة خاصة النازحين التجاريين ومتفدي 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 وتمثيلها 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،
- تنشيط الطنب الذي يحفز جميع أشكال استقلال الأشخاص ونشر الوعي الاجتماعي بمخاطر الاتجار بهم عن طريق الحملات التوعوية والبرامج الثقافية والتربوية وإقامة المؤتمرات والندوات وإصدار النشرات والألئة،
- تنظيم الدورات التدريبية والإشراف على برامج التكوين على الصعيدين الوطني والدولي،
- التعرف والتدابير التي اتخذتها الدولة لمكافحة الاتجار بالأشخاص وإعداد الأجوبة على المسائل التي تطلب المنظمات الدولية إبداء الرأي فيها ذات العلاقة بميدان تدخلها،
- المساهمة في تنشيط 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 والهيئات العمومية المختصة في جمع المعلومات والإحصائيات حول المعامل المرتبطة بمهامها وتنفيذ إجراءات حماية الضحايا والشهود والمبلغين وإجراءات مساعدة الضحايا.

#### الفصل 44 :



تعمل الهيئة الوطنية لمكافحة الاتجار بالأشخاص على تشييط 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 وتنادي 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 المعطيات والمعلومات المجمعة لديها أو استغلالها لأغراض أخرى غير مكافحة الجرائم المعنية بهذا القانون وزجرها.

#### الفصل 45:

تعد الهيئة الوطنية لمكافحة الاتجار بالأشخاص تقريرا سنويا عن نشاطها يتضمن وجوبا 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 :

تتخذ التدابير الكفيلة بالحماية الجسدية للضحايا والشهود ومساعدتي القضاء والمفتري والمبلغين وكل من تكفل بأي وجه من الأوجه بواجب إشعار السلطات ذات الصلة بإحدى جرائم الاتجار بالأشخاص في الحالات التي يكون فيها ذلك لازما.

كما تتسحب التدابير المشار إليها، عند الاقتضاء، على أفراد أسر الأشخاص المشار إليهم بالفقرة المتقدمة وكل من يُخشى 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 الإذن بالاعتقاد الجلسة بغير مكثها المعتاد مع اتخاذ التدابير اللازمة لضمان حق المتهم في الدفاع عن نفسه.

ولهما أن يقررا استنطاق المتهم وتلقي تصريحات من يزبان فائدة في سماعه باستعمال وسائل الإتصال المرئية أو المسبوعة الملائمة دون ضرورة لحضور المعنى بالأمر شخصيا.  
وتتخذ حينئذ التدابير الكفيلة بعدم الكشف عن الأشخاص الواقع سماعهم.

#### الفصل 48 :

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

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

#### الفصل 49 :

يمكن في حالات الخطر العلم للأشخاص المشمولين بالحماية أن يطلبوا عدم الكشف عن هويتهم. ويقدر وكيل الجمهورية أو الهيئة القضائية المتعده وجاهة الطلب في ضوء طبيعة الخطر وجديته وتأثير الإجراء على السير العادي للدعوى العمومية.

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

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

#### الفصل 50 :

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

ويمكن للهيئة القضائية ذات النظر الإذن برفع التدبير المشار إليه بالفصلين 48 و49 من هذا القانون والكشف عن هوية المعنى 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 المعنى بالأمر بقرار الكشف عن هويته ويتلقى جوابه.



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

واستئناف وكيل الجمهورية بحول 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 البت في مطلب الاستئناف في أجل أقصاه ثمانية أيام من تاريخ اتصالها بالملف.

#### الفصل 51 :

لا يمكن في كل الحالات، أن تنال تدابير الحماية من حق المظنون فيه أو نائبه في الإطلاع على مضمون المحاضر وغيرها من أوراق الملف وذلك مع مراعاة أحكام الفصل 104 من مجلة الإجراءات الجزائية.

#### الفصل 52 :

للجهة القضائية المتعہدة 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 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 بالإقصاد عدا 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 المخترق تطبق 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 والهيئات المعنية على توفير المساعدة الطبية اللازمة لضمان التعافي الجسدي والنفسي للضحايا الذين هم في حاجة إلى ذلك.

ويتمتع الضحايا عند الاقتضاء بمجانبة العلاج والتداوي بالهيئات الصحية العمومية.

وتنضبط شروط وطرق التكفل بمصاريف علاج الضحايا بأمر.

#### الفصل 56 :

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

ويراعى في اتخاذ هذه التدابير سن 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 السلطات العمومية بالتنسيق والتعاون مع المنظمات غير الحكومية ومد يد المساعدة لهم عند الاقتضاء لرفع العراقيل التي قد تعيق التوصل بحقوقهم.

#### الفصل 58 :

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

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

ويتم النظر في مطلب الإعانة العائلية مع مراعاة الوضعية الخصوصية للضحية.

#### الفصل 59:

يمكن لضحايا الاتجار بالأشخاص الصادرة لفائدتهم أحكام بآلة التعويض تُعذر 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 عمومياً.

#### 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 العرائل 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 الاتجار بالأشخاص المرتكبة خارج تراب الجمهورية

#### الفصل 61 :

تكون المحاكم التونسية المختصة بالنظر في جرائم الاتجار 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 المتكتم من هذا القانون على تجريم الأفعال 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 يتم التسليم إلا في صورة تلقي السلط التونسية ذات النظر طلبا قانونيا في ذلك، من قبل دولة مختصة بالنظر وفقا لقانونها الداخلي.

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

### الفصل 65 :

إذا تقرر 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 :

تلغى أحكام الفصل 171 ثالثا من المجلة الجزائية.  
ينشر هذا القانون بالرائد 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





<sup>10</sup> - الاتفاقية العربية لمكافحة جرائم تقنية المعلومات التي وقعتها تونس في 21 ديسمبر 2010.

✶ القانون العربي الاسترشادي لمواجهة جرائم الاتجار بالأشخاص الذي اعتمدته مجلس وزراء العدل العرب في دورته 21 بالقرار رقم 601 - د 21 - 2005/11/29 ومجلس وزراء الداخلية العرب في دورته 23 بالقرار رقم 473 - د 2005/23.

- القانون العربي الاسترشادي للتعاون القضائي الدولي في المسائل الجنائية الذي اعتمدته مجلس وزراء العدل العرب في دورته الثانية والعشرين بالقرار رقم 653 - د 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 :

✶ - الاتفاقية الخاصة بالرق لسنة 1926 التي تم الترخيص للانضمام إليها بموجب القانون عدد 32 لسنة 1966 المؤرخ في 3 ماي 1966.

✶ - الاتفاقية الإضافية المتعلقة بإلغاء الرق والاتجار في الرقيق والأنظمة والتقاليد الشبيهة بالرق لسنة 1956 التي تم الترخيص للانضمام إليها بموجب القانون عدد 32 لسنة 1966 المؤرخ في 3 ماي 1966 .

✶ - 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.

✶ - البروتوكول الاختياري الملحق باتفاقية حقوق الطفل بشأن اشتراك الأطفال في النزاعات المسلحة لعام 2000 الذي تم الترخيص في انضمام الجمهورية التونسية إليه بمقتضى القانون عدد 42 لسنة 2002 المؤرخ في 7 ماي 2002.

✶ - نظام روما الأساسي للمحكمة الجنائية الدولية الذي وافقت تونس على الانضمام إليه بمقتضى المرسوم عدد 4 المؤرخ في 19 فيفري 2011 وصادقت على هذا الانضمام بمقتضى الأمر عدد 549 المؤرخ في 14 ماي 2011.

## المحور الثاني

ثانيا : فيما يتعلق بتجريم صور وأشكال الاتجار بالبشر

2-1 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 يعرف 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 بالوقاية من الاتجار بالأشخاص ومكافحته، فإن عدد 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 بـ زجر 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. ولما يلي أهم الجرائم التي يمكن إدراجها في هذا المجال:
- 1. تجريم التسول واستغلال حالة الاستضعاف كاستخدام طفل أو أكثر في التسول (أمر 3 أفريل 1930 والفصل 171 من المجلة الجزائية).
- 2. تجريم اصطناع أو تدليس جواز سفر للخروج 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 الغصب والمساومة (الفصل 283 وما يليه من المجلة الجزائية).
- 7. تجريم التحويل 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 بالولاية العسرية والكفالة والتبني وإخضاعهما لرقابة السلطة القضائية بما يجنب إمكانية الاتجار في الأطفال.
- تنظيم إسناد لقب عائلي للأطفال المهيئين أو مجهولي النسب بموجب القانون عدد 75 لسنة 1998 المؤرخ في 28 أكتوبر 1998 للنضاء 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 السلسلة التشريعية العامة في مجال الطفولة التي تأسست على مبدأ علم يقتضي بأن المجتمع منين 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 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 الإدمان أو حالة الحمل لدى المرأة أو حالة قصور ذهني أو بدني يعوق الشخص المعني عن التصدي للجاني .

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

كما خصص مشروع القانون قسما 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 وفق، إذا ارتكبت الجريمة باستخدام مواد مخررة 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 بالبشر كتعمد إتلاف أو إخفاء وثائق الهوية أو السفر أو الإقامة الخاصة بضحايا الاتجار بالأشخاص أو إعاقة سير العدالة كاستعمال القوة أو التهديد أو عرض عطيا لحمل شخص على الإدلاء بشهادة زور أو لإخفاء الحقيقة لعدم كشف ضحايا الاتجار بالأشخاص أو لحملهم على عدم رفع شكاية أو لرجوعهم في التماس 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 إلخ....

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

\* يركز 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 وتعاظمي البغاء السري والتعش منه أو التوسط فيه أو التحريض عليه (الفصل 226 وما يليه من المجلة الجزائية).
- تنظيم الإجارة على الخدمة في الفصول 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 باطلة. 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 و 5 من مجلة الأحوال الشخصية).

تخضع ممارسة الأنشطة السياحية إلى نصوص قانونية وترتيبية تنظم بحث المؤسسات السياحية واستغلالها وتسهر هيكل عمومية متخصصة على مراقبة تلك المؤسسات من الناحية الفنية وكذلك من الناحية الأمنية لمنع التجاوزات وكشفها وردعها. وتتجه النية إلى تعزيز الإجراءات الوقائية والردعية للنصدي لبعض التصرفات وذلك بتنظيم نشاط الإيواء بالمحلات المنروثة 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 وإحالة على مجلس نواب الشعب في أقرب الأجل. وقد تضمن مشروع القانون المحاور الأساسية للاستراتيجية الوطنية لمكافحة الاتجار بالأشخاص التي تقوم على اعتماد المفهوم المتفق عليه دوليا لهذه الظاهرة كحد أدنى للتعاون في هذا المجال وتجريم 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 الاستراتيجية الوطنية وتنسيق جهود مختلف المصالح والهيكل 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 عاجلة.

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

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

الاتجار بالأشخاص: بعد اتجارا بالأشخاص استغلال أو تجنيد أشخاص أو نقلهم أو تنقلهم أو تحريك وجهتهم أو ترحيلهم أو إيواءهم 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 المصبغة 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 والمؤجرين . 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 صبيغتها الأمرة 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 المنزل ساري المفعول لتضمينه إجراءات حملية خاصة لفائدة هذه الفئة تطبق في أماكن عملهم وخارجها للإحاطة بهم ومنع استغلالهم. ونظرا لخصوصيات هذه الفئة من العملة، عزز المشرع الإجراءات المقررة لفائدتها بتتقيح 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.
  - حجب 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 ثلثها عشرة آلاف دينار على من يخالف أحكام الفصلين المذكورين.
  - كما كرسّت النصوص القانونية والنزيبية الخاصة بقطاع الصحة والأدوية مبدأ احترام الحرية 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 بإدائه 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 :
    - إسلار الدين : الوضع الناشئ عن إجبار مدين على أداء عمل أو خدمات بنفسه أو بواسطة شخص آخر تابع له ضمنا 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.

- القنانة : الوضع الناشئ عن إلزام شخص بموجب اتفاق بان يعيش ويعمل على أرض شخص آخر وان يقدم عمل أو خدمات لهذا الشخص بعوض أو بغير عوض ودون 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.
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 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 كانت.

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

## 2-3 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 بحالة 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 في 1975/5/14 المتعلق بجوازات السفر ووثائق السفر. وعزز القانون الأساسي عدد 6 لسنة 2004 المؤرخ في 2004/2/4 إجراءات مراقبة هجرة الأشخاص المقررة صلب القانون بتجريم تهريب المهاجرين لغاية إدخالهم إلى التراب التونسي أو إخراجهم منه خلسة مهما كانت الوسيلة المستعملة ويشدد العقاب في صورة حصول وفاق أو تنظيم.
- يجرم الفصل 146 من مجلة الطيران المدني كل قائد طائرة يقوم بركاب أو بإزالة ركاب خلافا للتراتب الجاري بها العمل والفصل 151 من نفس المجلة كل من وضع بنية التدليس علامة حجز على سند نقل.
- يجرم الفصلان 73 و76 من المجلة التأديبية والجزائية البحرية كل شخص يبحر خلسة وكل شخص يساعد بالبحر أو بالبر المسافرين خفية على الإبحار أو النزول بالبر أو يخفيه.

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

- لم يكرس المشرع التونسي في المجلة الجزائية مبدأ المسؤولية الجزائية للشخص المعنوي وإن كان قرر لها في عدة قوانين خاصة (قانون الصرف، البيئة، المنافسة والأسعار...).

- أقر مشروع القانون المتعلق بمكافحة الاتجار بالأشخاص مسؤولية الأشخاص الاعتبارية عن جرائم الاتجار بالأشخاص، إذ جاء بالفصل II 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 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.

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.

### 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 للوقاية 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 أنفا 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.



رفد حدّد الفصل 42 من مشروع القانون المهام الأساسية للهيئة الوطنية لمكافحة الاتجار بالبشر والمتمثلة أساساً في وضع إستراتيجية وطنية تهدف إلى الوقاية من الاتجار بالأشخاص ومكافحته واقتراح الآليات الكفيلة بتنفيذها وتنسيق الجهود في مجال تطبيق إجراءات حماية الضحايا والشهود والمبلغين وكذلك إجراءات مساعدة الضحايا.

### 3-1 اللوائح التنفيذية والإستراتيجيات وخطط العمل والبرامج المتعلقة بمنع ومكافحة الاتجار بالبشر وحماية الضحايا.

\* منذ أن صادقت تونس على بروتوكول منع وقمع ومعاقبة الاتجار بالأشخاص وبخاصة النساء والأطفال تشكلت صلب وزارة العدل لجنة فنية تضم ممثلين عن المتدخلين الحكوميين وممثلين عن منظمات المجتمع المدني والمنظمات الدولية المنتسبة 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 سنوياً. وبعد جهود استمرت منذ سنة 2008 توصلت اللجنة إلى النتائج التالية :

- إعداد مشروع قانون للوقاية من الاتجار بالأشخاص ومكافحته سبق عرضه على انتظار 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 وبتنسيق من وزارة الشؤون الخارجية الأمريكية يعرف ببرنامج "دعم ونقل آليات المساعدة والتوجيه وتبادل الخبرات في مجال مكافحة الاتجار بالأشخاص" (مشروع شار 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،
- التعمّد بالقيام بتقييم موضوعي لفهم أفضل لنطاق وحجم مشكلة الاتجار بالأشخاص في تونس،
- تكريم المتدخلين الرئيسيين وتدريبهم على التصدي للظاهرة،
- التأكيد على أهمية إحداث آلية وطنية للإحالة ( Mécansime 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 وعالة 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 والتدورات وإصدار التشريعات 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 البحث والدراسات لتحديث التشريعات المنظمة للمجالات ذات العلاقة بالاتجار بالأشخاص بما يحقق تنفيذ برامج الدولة في التصدي لهذه الظاهرة.

**3-4 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 المختلفة بتنسيق جهود كافة الأطراف المتخلطة والتعاون فيما بينها لتنفيذ رؤية وطنية لمكافحة هذه الظاهرة.

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

القطاع الخاص شريك في كل البرامج التي نفذت و تنفذ حاليا في تونس ومن بينها برنامج "شغل" الذي تم تنفيذه خلال سنتي 2011-2014، والذي سيواصل 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 وإجراءات المنع

**4-1 تحديد الجهود المبذولة لرفع الوعي بخطورة الاتجار بالبشر، واللغات المخاطبة 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 والهيكل 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.

\* تم 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 (IPEC: International Programme on the elimination of child labour) المنفذ 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 وتبويبها 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 الإحصائيات والدراسات بشأنها.

\* وقد نص 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 الومضة 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 اعتمدتها الدولة بعد الثورة على الحد من الأسباب الاجتماعية والاقتصادية المؤدية إلى الاتجار بالبشر.

#### 5-4 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 يجرمها القانون الإعتداء بالفواحش وبما ينافي الحياء أو التحريض على الفجور والفسق باستعمال تقنيات الاتصال.

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

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

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



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

\* غير أن هذه الجهود تحتاج إلى مزيد الدعم والتنسيق وهو ما يصبو إلى تحقيقه مشروع القانون من خلال تكليف الهيئة الوطنية لمكافحة الاتجار بالأشخاص "بتنظيم 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".

#### 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 آليات 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 الدراسة 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 وتوعية 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 المصبغة التعاقدية للعلاقات المهنية ووضعت مجموعة شاملة من القواعد الحثائية في مجال العمل للقضاء 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 للقبول في العمل وتنظيم تشغيل الأطفال والنساء ليلا والأجر الأدنى المضمون وتشغيل اليد العاملة الأجنبية والمراقبة الإدارية والصحية بأماكن العمل. كما عزز المشرع صيغتها الأمرة 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.

7-4 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 تفاعل مع آلية الإسعاف الاجتماعي المحدثة بموجب القرار عدد 14 الصادر عن المجلس الوزاري المضيق بتاريخ 22 أبريل 2013.

8-4 إمكانية منح الضحايا الأجانب حق الإقامة المؤقتة بالبلاد لحين انتهاء التحقيقات والشفاء والتعافي - 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 ينص هذا القانون إشارة خاصة لضحايا الاتجار بالأشخاص. غير أنه يمكن للسلطات الإدارية من منح استثناءات تقتضيها ظروف إنسانية خاصة.

\* وتنادي 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 الهياكل 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، وسائل 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 وتركيباتها 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 يشمل 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 تنبع المخالفين من أجل تعاطي البغاء السري والنحريرض على الفجور

والتوسط في خفاء الغير والتحيل. وقد سُجل خلال سنة 2013، عدد 177 قضية تم الاحتفاظ بـ 107 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 سماع 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 القائلين عليها، وخبرتهم وكفاءتهم في مجال مكافحة جرائم الاتجار بالبشر.

\* هيكل العدالة الجزائية العادية مختصة بالنظر في قضايا الاتجار بالأشخاص (أعوان المضابطة العدلية المنصوص عليهم بالفصل 10 من مجلة الإجراءات الجزائية وأجهزة القضاء العدلي).

\* تجدر الإشارة إلى أنه من بين التدابير التي تم اتخاذها إحداث خلية لمكافحة الاتجار بالبشر صلب الإدارة الفرعية لنوقاية الاجتماعية بإدارة الشرطة العدلية (مع إمكانية إحداث مصلحة لمكافحة الاتجار بالبشر صلب الهيكلية الجديدة المقترحة للإدارة) تعنى بمباشرة هذا الصنف من القضايا عبر اتخاذ جملة من الإجراءات (تحرير محاضر بحث ضد الفتيات المعروفات بترددن على الدول المستغلبة للنساء للعمل في مجال الدعارة وضد الوسطاء والاحتفاظ بهم وإحالتهم على العدالة وإدراج الذين هم بحالة فرار بالتفتيش، والتنسيق مع نقاط العبور الحوية والبرية للإعلام عن التحركات الحدودية للأشخاص المعروفين بترددنهم على الدول المستغلبة 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 نفسيا واجتماعيا 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.

\* لم تكرر منظومة الإجراءات الجزائية في تونس نظاما خاصا بحماية الضحايا والشهود والمبلغين غير أن مجلة الإجراءات الجزائية نصت على بعض الأحكام المنفردة التي تدعم حماية الضحايا والشهود كتلقي أقوال الشهود فرادى 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 إقضاء الأسماء في غير الصور القانونية (الفصل 254 من المجلة الجزائية).

\* وفي 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 والمختبر والمبلغين وكل من تكفل بأي وجه من الأوجه بواجب إشعار السلطات 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 أقاربه.
- سماع الضحايا والشهود والخبراء والمبلغين فرادى في غياب ذي الشبهة ولا تجري مكافحتهم به أو بغيرهم من الشهود إلا برضاهم. ويمكن للمحكمة المتعده 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 فاضي 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 مكانها المعتاد مع اتخاذ التدابير اللازمة لضمان حق المتهم في الدفاع عن نفسه.
- إخفاء الهوية وذلك بتمكين الأشخاص المشمولين بالحماية في حالات الخطر الملم أن يطلبوا عدم الكشف عن هويتهم. ويقتدر وكيل الجمهورية أو الجهة القضائية المتعده وجاهة الطلب في ضوء طبيعة الخطر وجديته وتأثير الإجراء 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 عرّض حياة الأشخاص المقصودين بالحماية أو مكاسبهم أو حياة أو مكاسب أفراد أسرهم إلى خطر وذلك بالإنصاح 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 réforonement ) للتعرف على ضحايا الاتجار بالبشر تمكن من التحديد الدقيق للضحايا خاصة من بين المهاجرين غير الشرعيين وتوفير الحماية لهم كتنظيم 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.

### 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 ومكنها للغرض 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 جرما مرتبطا ارتباطا مباشرا 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 فرادى في غياب ذي الشبهة ولا تجري مكافحتهم به أو بغيرهم من الشهود إلا برضاهم. ويمكن للمحكمة المتعده في حالات الخطر الملم وإن اقتضت الضرورة ذلك، تلقي تصريحاتهم باستعمال وسائل الاتصال المرئية أو المسموعة الملائمة دون وجوب حضور المعني بالأمر شخصا.
- 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 أن يعينوا محل مخابرتهم لدى وكيل الجمهورية المختص ترابيا.

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

وللضحية الحق في الحصول على الإعاقة العادلة في المادة المدنية وذلك في كل طور من أطوار القضية وفي المادة الجزائية كقائم بالحق الشخصي ويمكن منح الإعاقة العادلة لتنفيذ الأحكام ولممارسة حق الطعن طبق أحكام القانون عدد 52 لسنة 2002 الموزع في 3 جوان 2002 المتعلق بمنح الإعاقة العادلة.

\* كما أقر مشروع القانون المتعلق بالوقاية من الاتجار بالأشخاص ومكافحته جملة 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 الكثيرة بمساعدتهم على تسوية وضعيتهم والحصول على التعويض المناسب عن الأضرار اللاحقة بهم.
- منح الإعاقة العادلة لضحايا الاتجار بالأشخاص لمباشرة الإجراءات القضائية المدنية أو الجزائية المتعلقة بهم.
- يمكن لضحايا الاتجار بالأشخاص الصادرة لفائدتهم أحكام بانه بالتعويض تعذر تنفيذها على المحكوم ضده أن يطلبوا الحصول على تلك المبالغ من صندوق الدولة ويحول الدولة محل الضحايا في استخلاص المبالغ التي وقع صرفها باعتبارها ديناً عمومياً.

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

جاء بالنص 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 قلعة بالمأوى والمنشآت المخصصة للرعاية الصحية والتعافي والتأهيل وإعادة إدماج ضحايا الاتجار بالبشر.

لا توجد حالياً بيانات ومعطيات 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.

بفضل 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 ومعاقة 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 ومعطيات 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 موحدة 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 تفعيلًا 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 وتعزيز 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 إطارات وزارة الشؤون الاجتماعية (العمل الاجتماعي وتقنية الشغل) وموظفي وزارة شؤون المرأة والأسرة (منهم مندوبو حماية الطفولة) وقضاة سواء كانوا من المجلس (قضاة الطفل، قضاة الأسرة أو قضاة تحقيق) أو من النيابة العمومية، وأعاون وزارة الشؤون

## Appendix III

### Government's agenda in relation to trafficking in persons

<p>جمهورية تونس وزارة العدل</p> <p>مشروع برنامج عمل في موضوع الاتجار بالبشر</p>						
الأهداف	الأنشطة الرئيسية	الممثلين	الجهات الراعية	الفترة	الموارد البشرية والمالية	ملاحظات
التحسيس	<ul style="list-style-type: none"> <li>إصدار مطوية تتضمن تعريف جريمة الاتجار بالبشر في التشريعات التونسية وأهم مظاهر مشروع القانون الذي أعدته وزارة العدل.</li> <li>تقديم ندوات ومحاضرات للتوعية بمشروع القانون الشفطي بالتوعية من الاتجار بالأشخاص ومكافحته والتدريب والدعم للشخصيات المعنية بمكافحة الاتجار على القانون.</li> <li>ومشاركة جمعيات المجتمع المدني المعنية بالموضوع.</li> </ul>	<ul style="list-style-type: none"> <li>وزارة العدل</li> <li>الجمعية الأهلية للتضامن</li> <li>مركز الدراسات القانونية والقضائية</li> </ul>	<ul style="list-style-type: none"> <li>الممثلين مع الجهات الراعية المتعددة مع وزارة العدل (مكتب الأمم المتحدة الشفطي بالمغرب والعمارة والعمارة)</li> </ul>	<ul style="list-style-type: none"> <li>مارس - ديسمبر 2015</li> </ul>	<ul style="list-style-type: none"> <li>من الممثلين والجهات الراعية</li> </ul>	
التكوين	<ul style="list-style-type: none"> <li>تقديم ورشات عمل لندوة وطنية وقضاء الشفطي وقضاء الممثلين في مواضيع التدريب، والإشراف، وسبل الوقاية والمشاركة لجهود الاتجار بالبشر، والمشاركة في الشفطات الدولية والإقليمية والوطنية.</li> <li>المساعدة في صياغة بروتوكول التعاون لمكافحة الاتجار بالبشر وصياغة ميثاق شبكة المراقبة العربية لمكافحة الاتجار بالبشر ونظامها الشفطي، وقد نظمت الدورة الأولى في هذا الموضوع في 25-26 فبراير 2015 في القاهرة، جمهورية مصر العربية، من طرف المفوضية العربية لندوة المراقب الوطنية لمكافحة الاتجار بالبشر بالمغرب العربية والشفطة جامعة الدول العربية ومكتب الأمم المتحدة المدني بالمغرب والعمارة ومؤسسة قطر للتربية والعلوم.</li> </ul>	<ul style="list-style-type: none"> <li>وزارة العدل</li> <li>الجمعية الأهلية للتضامن</li> <li>مركز الدراسات القانونية والقضائية</li> </ul>	<ul style="list-style-type: none"> <li>الممثلين مع الجهات الراعية المتعددة مع وزارة العدل (مكتب الأمم المتحدة الشفطي بالمغرب والعمارة والعمارة)</li> </ul>	<ul style="list-style-type: none"> <li>مارس - ديسمبر 2015</li> </ul>	<ul style="list-style-type: none"> <li>من الممثلين والجهات الراعية</li> </ul>	

الأهداف	الأنشطة الرئيسية	الممثلين	الجهات الراعية	الفترة	الموارد البشرية والمالية	ملاحظات
الوقاية	<ul style="list-style-type: none"> <li>عمل على إعداد القانون بخصوص حماية الأطفال والعائلة والعمل، أي الفئات الأكثر تعرضاً للاتجار بالبشر وحمايتهم، بغية الجهات القضائية المختصة بالشفاقة والشفطة للآثار من إكراهية العمودية والمعاملة ومندوب حماية الطفولة ...</li> </ul>	<ul style="list-style-type: none"> <li>الهيئة العمومية</li> <li>المعتمد</li> </ul>				
المظلمة	<ul style="list-style-type: none"> <li>عمل على إعداد القانون بخصوص حماية الأطفال والعائلة والعمل، أي الفئات الأكثر تعرضاً للاتجار بالبشر وحمايتهم، بغية الجهات القضائية المختصة بالشفاقة والشفطة للآثار من إكراهية العمودية والمعاملة ومندوب حماية الطفولة ...</li> <li>وذلك في إطار صلاحيات القانون الذي سيمنح وسائل المظلمة.</li> </ul>	<ul style="list-style-type: none"> <li>الهيئة العمومية</li> <li>المعتمد</li> </ul>				
الحماية	<ul style="list-style-type: none"> <li>يتم الآن برمجة إجراء في المشروع وسيتم ذلك حل صدور القانون المعتمد بالاتجار بالبشر.</li> </ul>					
الإعماج	<ul style="list-style-type: none"> <li>إعجاب القانون الشفطي للاتجار بالبشر مع إعجاب مؤسسات خاصة في العرض وسيتم برمجة ما يترتب لوسائل الإعماج حل صدور القانون.</li> </ul>					

## Appendix IV

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

4

الإحصاءات بالفترة 2012-2014  
بمصر  
وسطاء الإيجار بالنساء

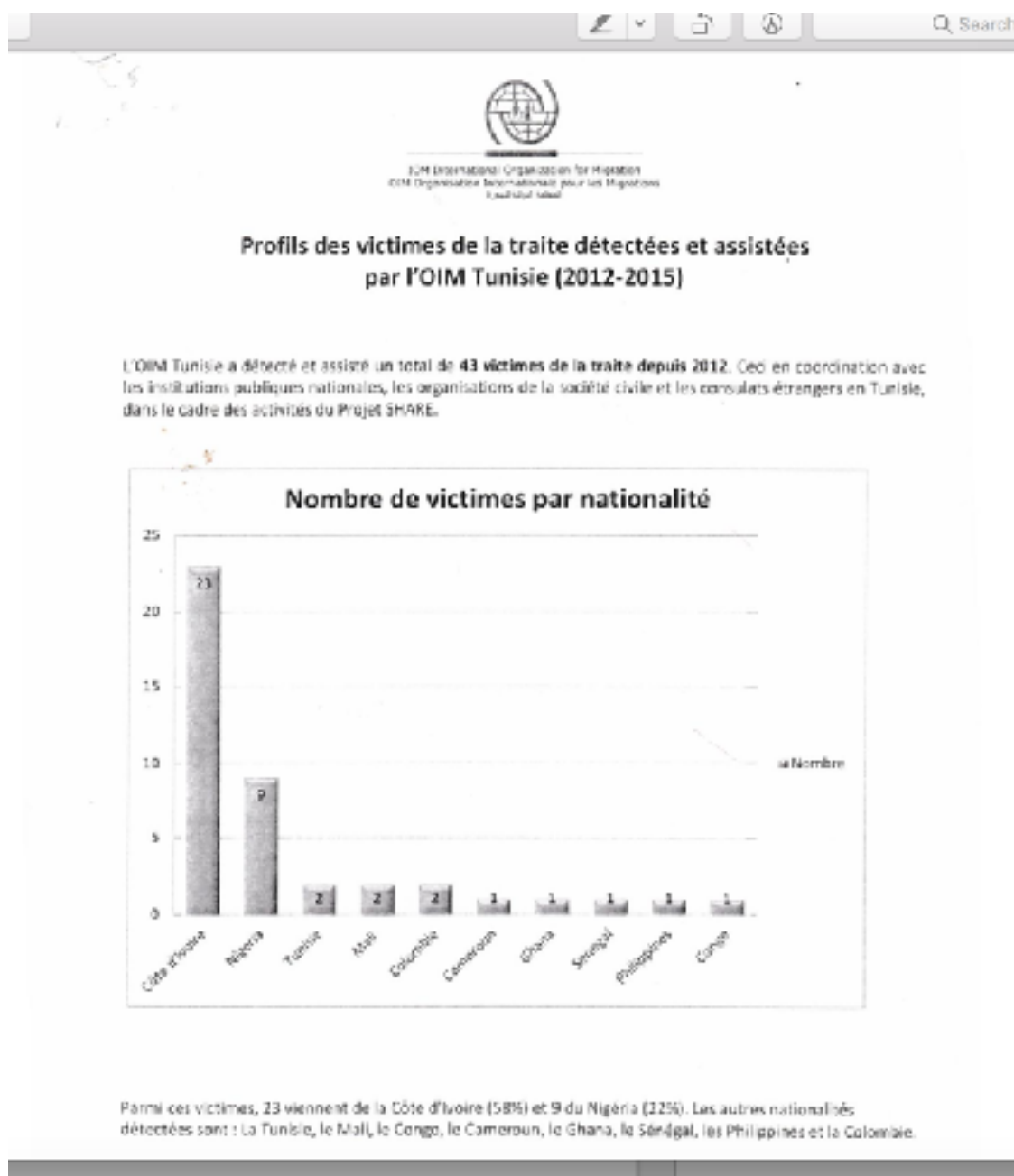
الفترة	سنة 2012	سنة 2013	سنة 2014
العدد	38	24	39

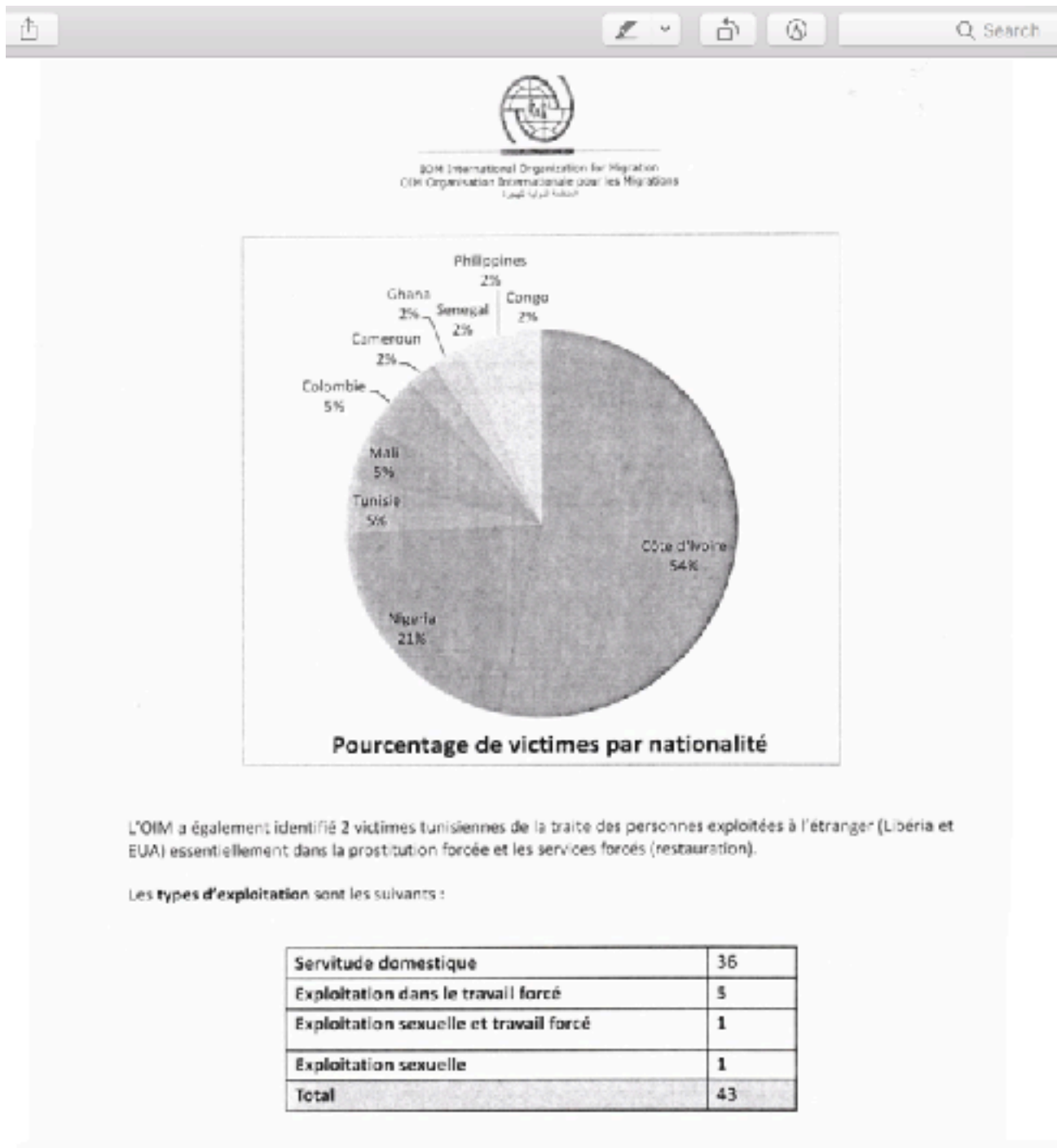
ضحايا الإيجار بالنساء

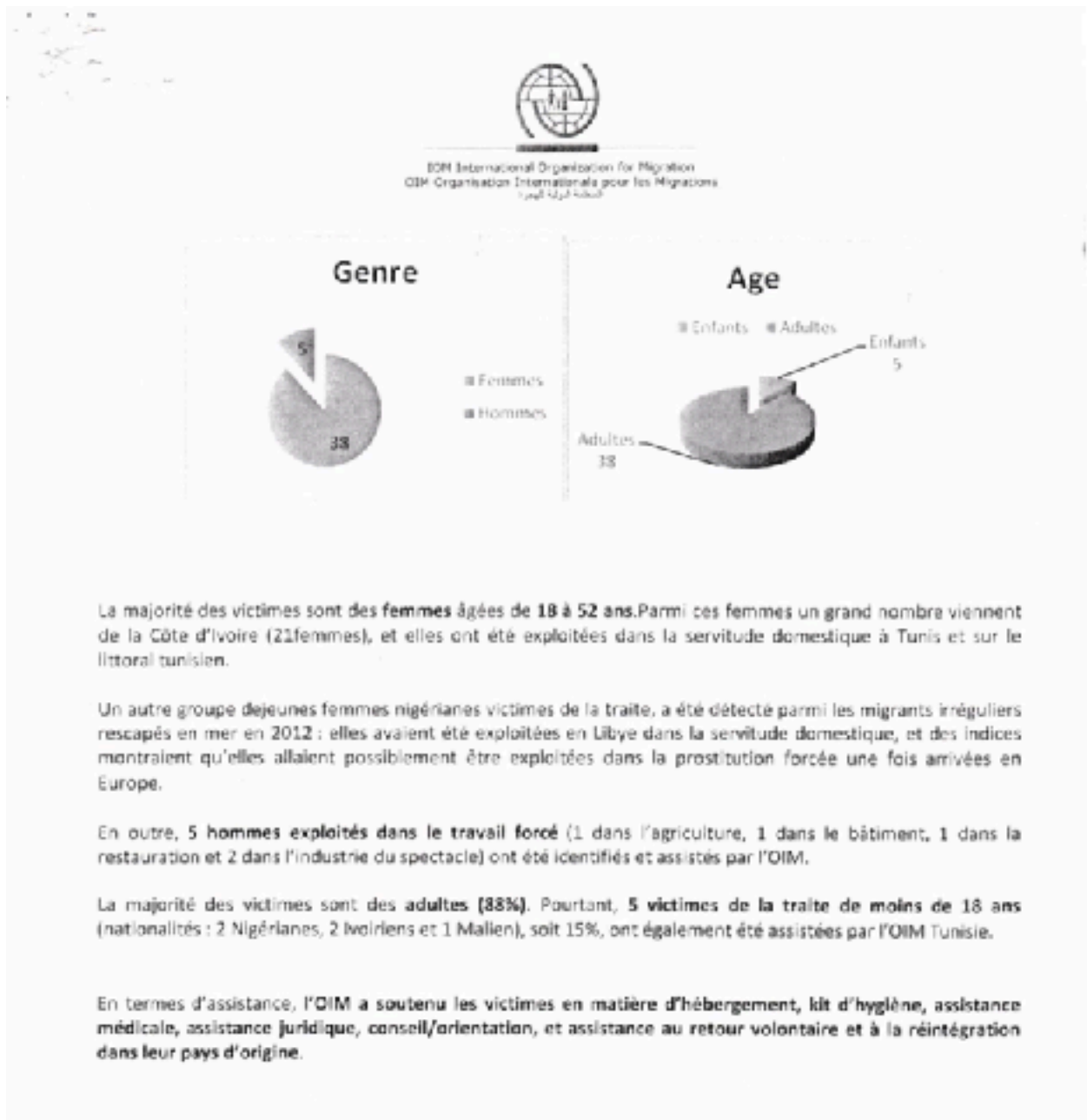
الفترة	سنة 2012	سنة 2013	سنة 2014
العدد	87	177	88

## Appendix V

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







## 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 نتمكن سوى من الاتصال بأربعة منهن و رفضن التصريح و بذلك تعذر عليها الحصول على شهادات هؤلاء الضحايا.

منسقة مركز التوجيه و الاستماع  
أميرة نغزاي

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.**

# **Understanding Child Trafficking within Ghana: Stakeholders' Perspective**

**Emma Seyram Hamenoo**

Lecturer, Department of Social Work, University of Ghana

**Efua Esaaba Mantey Agyire-Tettey**

Lecturer, Department of Social Work, University of Ghana

## **Introduction**

Human trafficking though internationally defined (UN, 2000), needs a national definition relevant to its occurrence within the territorial jurisprudence of the nation experiencing it.<sup>1</sup> In Ghana, the Human Trafficking Act <sup>2</sup> broadly defines human trafficking as:

*the recruitment, transportation, transfer, harbouring, trading or receipt of persons within and across national borders by a) the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or b) giving or receiving payments and benefits to achieve consent. Exploitation shall include at the minimum, induced prostitution and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Placement for sale, bonded placement, temporary placement, placement as service where exploitation by someone else is the motivating factor shall also constitute trafficking (Article1: Clause 1-3).*

This definition provides no distinction between the trafficking of adults and the trafficking of children. Although article 42 of the Human Trafficking Act (2005) makes reference to the possibility of children being victims of human trafficking, it falls short of an explicit definition of the concept, setting the scene for multiple definitions, with the inevitable difficulties that emerge from such legal imprecision.

---

<sup>1</sup> (UN, 2000, article 5)

<sup>2</sup> Human Trafficking Act (2005 as amended in 2010)

Article (1) clause (4), of the Human Trafficking Act (2005) states that:

where children are trafficked, the consent of the child, parents or guardian of the child cannot be used as a defence in prosecution under this 'Human Trafficking' Act, regardless of whether or not there is evidence of abuse of power, fraud or deception on the part of the trafficker or whether the vulnerability of the child was taken advantage of.

Taken in isolation, the above reference in Article 1, Clause 4, is not enough to enable anti-trafficking agencies to identify child victims within Ghana. It is in this regard that we set out to explore the understanding of child trafficking within Ghana, from the perspective of anti-trafficking agencies with some responsibility for implementing or responding to the Human Trafficking Act.

The importance of a shared understanding, endorsed in law (for instance <sup>3</sup>), as to what constitutes child trafficking *within* a country cannot be over emphasized. Studies have shown that lack of clarity or existence of human trafficking definitions jeopardizes services rendered to victims. For instance, in their study, Skilbrei and Tveit<sup>4</sup> concluded that the definition of human trafficking, as outlined by the Palermo Protocol<sup>5</sup>, could be applied to other social problems such as economic migration. Their study, which focused on sex trafficking in Norway, found that the identification of victims of sex trafficking in a society where commercial sex work exists (illegally) is a difficult task for law enforcement and welfare workers. While economic migrants who engage in commercial sex work do so voluntarily, victims of sex trafficking have no choice with respect to sexual exploitation. The only criterion that could help identify the victims of sex trafficking from economic migrants is the consent of those involved. But because the Palermo Protocol<sup>6</sup> over-ruled the issue of consent in human trafficking, both categories of sex workers were treated sometimes as victims of human trafficking and at other times as economic migrants, to the detriment of those trafficked and in need of assistance.<sup>7</sup>

---

<sup>3</sup> Ibid no 2

<sup>4</sup> Skilbrei and Tveit (2008)

<sup>5</sup> Ibid no 1

<sup>6</sup> Ibid no 1

<sup>7</sup> Ibid no 4

Further, in article (3) sub-paragraph (c) of the Palermo Protocol <sup>8</sup> on child trafficking, the focus suggests that *'the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means 'force or other forms of coercion' set forth in sub-paragraph (a)'*, having in mind that *'any person under eighteen years of age'* is a child according to article (3) sub-paragraph (d), is in isolation, clear. However, the ambiguity in article (3) of the Palermo Protocol comes to light when considered alongside child labour, with emphasis on exploitation as the core incriminating element of child trafficking. Thus, without consideration for consent (which is the case when the best interest of a child has to be protected), it is easy to confuse child trafficking with child labour and vice versa in some situations.

The definition of a child as used in the Palermo Protocol<sup>9</sup> has been described as a westernized definition that excludes the working child.<sup>10</sup> Western societies, according to<sup>11</sup> perceive childhood as a blissful moment in one's life where protection and provision are the guardian's responsibility. To this effect, the Palermo Protocol's (2000) definition of child trafficking may be irrelevant in Africa.<sup>12</sup>

The importance of a uniform definition of human trafficking is also seen in the quest to obtain statistics on its occurrence and the number of existing victims. As noted by Makisaka<sup>13</sup>, though human trafficking is recognized globally as a crime, the number of people trafficked each year is not known. Research attributes the absence of accurate statistics on human trafficking to definitional inconsistencies at both the international and national level, which makes the identification of trafficking cases and reporting problematic.<sup>14</sup> While certain activities may be counted as trafficking by the standards of the Palermo Protocol (2000), individual countries may differ in qualifying those same activities as trafficking. For instance in Iran, where adulthood is attained at the age of 9-years for girls and 15-years for boys, children of these ages could be given into marriage,

---

<sup>8</sup> Ibid no 1

<sup>9</sup> Ibid no 1

<sup>10</sup> (Manzo, 2005)

<sup>11</sup> Goldson (1997)

<sup>12</sup> Ibid no 10

<sup>13</sup> Makisaka (2009)

<sup>14</sup> Ibid no 4



and it would be legal.<sup>15</sup> In Ghana, this same act, considered in the light of the Human Trafficking Act of Ghana, constitutes trafficking, because it considers people below the age of 18-years as children and child marriage as an offence.

In short, the difficulty in identifying victims of trafficking is caused by the lack of clarity in defining human trafficking.<sup>16</sup> Given this lack of certainty, human trafficking is perceived as a hidden crime<sup>17</sup> be it at the international level or the national level. It is in this light that we set out to explore whether or not there is a consensus between anti -trafficking agencies within Ghana on what constitute child trafficking.

## **Methodology**

The study was carried out in the Accra Metropolis of the Greater Accra region and the Krachi district of the Volta Region of Ghana. The Accra Metropolis was selected because it is the seat of governmental anti-trafficking agencies collaborating with International Non-Governmental Organizations (INGOs) and Local Non-Governmental Organizations (NGOs) to rescue and return trafficked children. The Volta Region, on the other hand, is one of the areas serving as both an origin and a destination for many of the children trafficked for labour on Lake Volta and has NGOs that collaborates with the stakeholders from the Greater Accra metropolis.

The selection of participating organizations was based primarily on access. First, all Governmental anti-trafficking agencies were identified and approached to participate using existing contacts. All the agencies approached agreed and participated. Although there are a number of INGOs involved in anti-trafficking activities in Ghana, one of them is most widely known and its activities as representing what most INGOs involved in fighting human trafficking do. This organization's agreement to be part of the study influenced the researchers' choice in selecting partner local NGOs situated in the Volta region, from where most trafficked children are rescued within Ghana. A number of fishermen were also conveniently selected for the study.

A total of 14 adults were interviewed. For the agencies, the individuals identified by their various heads to represent their organizations form the working base of each of the selected organization. Thus, these individuals are the experts who go to the field to rescue, educate and likely to prosecute possible offenders.

---

<sup>15</sup> (Shapouri, 2007)

<sup>16</sup> (Tyldum and Brunovskis, 2005)

<sup>17</sup> Ibid no 16

They are thus seen as constituting a body that has in its custody the needed information for the study.

The study adopted a phenomenological approach based on the desire to grasp the individual meaning accorded child trafficking as stakeholders in the fight against it. Phenomenological approach is described as a qualitative enquiry 'interested in analytical and descriptive experiences of phenomena by individual in their everyday world'.<sup>18</sup> Though not victims of trafficking, understanding how stakeholders encounter the definition of child trafficking as per the Human Trafficking Act is as important as how effective they work with victims. The study thus made use of in-depth interviewing because of the questions it sought to explore.<sup>19</sup> The following questions were thus raised: a) how do the various anti-trafficking agencies define child trafficking within Ghana? And b) do their definitions agree with the Human Trafficking Act (2005)? This method was chosen in order to generate rich data that fits the Ghanaian context.<sup>20</sup>

The interviews were conducted in English at the selected organizations. Most of the people interviewed apart from the unit heads of the institutions shared office space. To ensure the interviews were conducted in a conducive atmosphere, participants arranged for personal spaces upon prior notice of the interviewing date for the interview to take place. This enhanced privacy and quality of the audio recording which was permitted by participants. Each interview lasted between forty to sixty minutes. The fishermen were however interviewed ashore Lake Volta in Ewe (the local language of the people of the Volta region of Ghana) which was later translated into English by the authors who are fluent in both languages. The fishermen were identified through the help of the chosen local NGO that is negotiating the release of some children working in bondage under the fishermen.

---

<sup>18</sup>(Eddles-Hirsch, 2015, p.251)

<sup>19</sup> (Silverman, 2006, p.7)

<sup>20</sup> (Patton, 1990)

## Participants Summary

Stakeholders	Participant's Position	Number of Participants
International Non-Governmental Organization	Field Manager – Anti-trafficking Unit	1
	Unit Administrator	1
	Central Region Field Coordinator	1
	Volta Region Field Coordinator	1
Security Agency	Anti-trafficking Field Officer	1
	Supervisory Officer	1
Governmental Ministry	Staff (child protection division)	1
Local NGO – rescues, shelter and reintegrate trafficked children	Manager	1
	Field officer	1
	Shelter managers	2
Fishermen		3
		Total 14

### *Ethical Consideration*

Ethical approval was secured from Queen's University, Belfast for the study as part of a dissertation, and care was taken to adhere to high ethical standards throughout the study. Respondents were provided with accessible information and informed consent was obtained from all interviewees. Data were stored securely and confidentiality was guaranteed. Therefore, in this paper, the names of the individuals interviewed are replaced with their various organizations who have agreed to be identified in the study.

## Results

The outcome of the study throws light on the interpretation of the Human Trafficking Act (2005) by individual anti-trafficking agencies within Ghana. The various interpretations point to considerable disagreement on what constitute child trafficking for labour purposes and child trafficking within Ghana. These disagreements, the study found comes from the lack of explicit definition of child trafficking by the Human Trafficking Act (2005).

Legally, the Human Trafficking Act (2005) is the criminal code that defines Trafficking in Persons and provides guidelines for its prevention and provision for trafficked victims. Although Chapter Two of the Human Trafficking Act (2005) provides the definition of human trafficking, further provisions refer to children who are regarded as 'persons below the age of 18 years.'<sup>21</sup>

Deductively, child trafficking according to the Human Trafficking Act (2005) is trafficking of persons below the age of 18 years. For an intervention strategy, the Human Trafficking Act (2005) stipulates that reported or alleged human traffickers (not only child traffickers) must be arrested by the police or private persons without an arrest warrant (Article 11-13), taken through legal proceedings, and, if found guilty, 'imprisoned for not less than five years' (Article 2). For victim protection, the Act mandates '*the ministry*' to provide temporal care which includes material support, counseling and other rehabilitation needs of the victims (Article 15-16). Meanwhile, the Human Trafficking Act is silent on which government ministry, of the many in Ghana, has the mandate to do so. In the long term, the Human Trafficking Act recommends the reintegration of trafficked victims with their families depending on the victims' agreement (Article 17). The Human Trafficking Act (2005) however, does not provide alternative intervention for victims who may not want to return to their families. As noted by one of the agencies involved in the study, enough is yet to be done by the government to eradicate child trafficking within Ghana.

Countering child trafficking in Ghana is the duty of the government. Government enacted the Human Trafficking Act since 2005, but it is not playing any active role in educating people about it. Government's actions are only on paper, and not in practice. As for the Act, it is not working.... The Act is only on paper; in theory, for people to know Ghana has a law on Human Trafficking. The issue of countering child trafficking seems a long way from now... (Local NGO).

---

<sup>21</sup> Ibid no 2

As stated earlier, it is a near impossibility for any social problem to be tackled when its definition is blur. According to the Local NGO, the Human Trafficking Act 'is not working', meaning, it has no effect on eradicating the problem. It is this concept of the Act not 'working' that the current paper is exploring with a single question which is - what is child trafficking within Ghana?

### **Child trafficking definition based on age and movement**

In considering the views of anti-trafficking agencies on what counts as child trafficking within Ghana, opinions varied, with most failing to recognize child victims as a distinct group of people deserving individual attention by the Human Trafficking Act (2005) as is evident in the following:

As far as the Human Trafficking Act (2005) is concerned, we do not have 'child trafficking'. What we have is human trafficking. Whether the person is a child or an adult, the person is a human being. Although children are the most vulnerable, they are humans so we combine all as human trafficking - (Security Agency)

According to the security agency, although children are most at risk of being trafficked, there is no separate definition for their trafficking, because they (children) like adults are humans. This suggestion contradicts the Human Trafficking Act (2005) which though silent on child trafficking definition used age differences as the distinguishing factor between adults and children. In agreement with the Human Trafficking Act, the International Non-Governmental Organization (INGO) acknowledged age as the distinguishing factor between child trafficking and the trafficking of adults.

Trafficking within Ghana and outside Ghana are the same. The difference is that, there is a difference between child trafficking and adult trafficking. They are two different categories, and the age of the person is the differential point (INGO).

The two interview extracts above indicate how anti-trafficking agencies within Ghana contradicts each other over what child trafficking is. While the INGO identifies the need to pay particular attention to children as a separate category of people, the security agency, does not see the need for such categorization.

### **Child trafficking definition based on endangerment**

A third agency, a governmental institution referred to here as '*The Ministry*' perceives child trafficking in terms of geographical movement, and suggests exploitation as the purpose of trafficking but not in all cases.

Trafficking has to do with movement ... of a person from one place to another. But the fact that a person has been engaged in hazardous labour or exploitative labour does not mean the person has been trafficked.... The distinction between children engaging in exploitative labour and trafficking has to do with the movement. ... parents could also use their children for hazardous or exploitative labour and that will not amount to trafficking...(The Ministry).

The Ministry does not consider the sole engagement of children in exploitative activities as child trafficking, because, in their view, the child could be engaged in such activities by his/her parents. The relationship between the exploiter and the exploited is thus important to the Ministry.

### **Child engagement, not exploitation**

Depending on the circumstance; anything that has the potential of endangering the life of the victim, the growth of the victim and the education of the victim is exploitation. As far as Africa is concerned, in our various communities, we are all brought up to be handy with some craft practiced in one's community. For example in my community, we are farmers so those days, weekends; we go to the farm to weed. If that has no potential of endangering my life, has no negative impact on my growth and education, I do not think that can be considered as exploitative - Security Agency.

The above assertion does not exclude parents from the list of possible traffickers as the Ministry would like to. The inclusion of parents as possible traffickers, as evidence suggests, is another point of disagreement or inconsistency in the definitions of child trafficking used by governmental anti-trafficking agencies. Having said that, the INGO is indifferent with regards to the conditions that constitute child trafficking. Generally, it considers 'giving a child out to go and work in exchange for money or some gain' as trafficking, irrespective of *who* gave the child out. The Ministry's position is different.

...parents do not sell their children... A lot of parents give out their children, but not selling them. To sell means you are outrightly giving your child out for money or for other economic benefits. But it is just like a contractual arrangement between the traffickers and the parents that - my child will come and stay with you, you will take the child to work, and at the end of the day, you will impart some skill to the child and you give me some remittances. It's just like someone traveling to the United Kingdom or the United States of America and remitting some money to the parents. So it's rather parents contracting their children and not selling - the Ministry.

### **The Traffickers**

In minimizing child trafficking within Ghana, the identification of traffickers is just as important as the identification of victims. When it comes to child trafficking on Lake Volta, as might be predicted from the evidence above, there is disagreement on whether or not parents who give out their children for rewards could be classified as traffickers. That notwithstanding, the security agency is of the view that the fishermen who use the children on Lake Volta cannot escape the tag of a trafficker.

On Lake Volta, where children are used in fishing, we consider the fishermen mostly as the traffickers. Human trafficking is an organized crime. One person does not carry out human trafficking. They partner with other people. There are those who serve as intermediaries; who recruit the victims and provide them to the traffickers - Security Agency.

If the Security Agency sees child trafficking as an organized crime, carried out in groups, who do the stakeholders perceive as the other possible traffickers? As indicated below, the Security Agency, does not rule out the possibility of parents being traffickers. In a more nuanced approach, they see the role played by a parent in the trafficking of his/her child as determining of whether or not such parent is a trafficker.

The Human Trafficking Act does not exempt parents if they play a role in the recruitment leading to the exploitation of the victim - Security Agency.

To some extent, the INGO shares this view, but has some reservation on parents being legally identified as such. This is because they recognise that, for some parents, this may reflect a socio-economic necessity. They also recognise

that, having entered into an arrangement which some parents might prefer to have avoided, many parents do not receive the agreed 'rewards' from fishermen to whom they handover their children, and only depend on promises to keep their children in bondage.

Parents could be seen as traffickers, but even if we consider them as such, the structures are not in place for us to implement the law as we should, so the issue now is, are you prosecuting them because you think or know that they are traffickers? By definition they are, but we do not look at them with that criminal eye because you empathize with their situation. If you look at the background of the children, majority of parents who give out their children are really in need and it is like the only choice they had was to give out their children for some economic benefit. For some parents, it is not even the money, as some even do not get anything at all. They just rely on promises from fishermen that never come - (INGO).

This illustrates the ambivalence in the position of the INGO on parents' involvement in child trafficking on Lake Volta. The INGO attributes the lack of clarity to the unavailability of rescue shelters to implement the Human Trafficking Act (2005). The construction of child trafficking therefore depends on the stakeholder's role and its associated conflicts of interest. While the INGO that works directly with child victims, is sure children are given out for gain, the Ministry; a governmental institution, which advances the course of women and children, will not classify parents as traffickers. From a law enforcement perspective, the security agency includes parents in the list of possible traffickers.

The position of parents in the trafficking of their children is further stressed by some of the fishermen to whom the children are supplied. According to Fisherman 1 ...

...before someone becomes 'gbovi' (lit. child servant), it means the parents have difficulties with life; and they are not able to provide for the family. Therefore if someone in need of a work hand approaches them for the labour of their child, they willingly give that child out. An agreement is signed and the duration of 'aboyomenɔɔ' (lit. servitude), say 3, 4, or 5 years is decided within the agreement and the amount of money to be paid to the parents for the child's labour. Sometimes parents ask for part payment of the money in advance. After the fulfillment of these conditions, the child is taken by the fisherman from his parents to where he is supposed to work (Fisherman 1).



Although that quote from the fisherman does not suggest a lifelong custody of the child by the one who uses the trafficked child, the study found the orientation to child victims on Lake Volta to be similar to how goods are, once purchased and used. In other words, their humanity is reduced to that of commodities.

...we use children because they are a source of cheap labour. I started fishing with 6 children using them as fishing hands. I realized the work was progressing more than working with adults. When you work with adults because they get drunk before going to work, they lazy about and do not do much (Fisherman 2).

When the work is not going on as fast as it has to, the 'afeto' (lit. master) beats the 'gbovi' (lit. child servant) to hurry up. It is common to use the paddle. In the process some also get drowned and die. They usually get drowned from diving to remove trapped nets. Uncommonly, some get drowned through severe beatings. When children die, the fisherman is fined a huge sum of money by the parents of the children. It gets rough when the fisherman is unable to pay.... Usually, the case is settled at home, the police never come in, but in a severe case, the police are involved and the fisherman is arrested. If the fisherman is able to make his way out with the police, the case can become that of a natural death (Fisherman 3).

Defined as a source of cheap labour, fishermen admit they do not have patience for their child servants. Whatever needs to be done by a fisherman to get a child servant to work is done, and this sometimes leads to their death. Money is exchanged for the lost life and without this money the police are brought in with the hope of seeking justice. Even at death there are cases of the police covering up for the fishermen as suggested above. Given the brutalities involved in the condition of service for these child fishers, some scholars like Manzo<sup>22</sup> may refer to them as slaves, but in Ghana, the term trafficked victim is commonly used.

## Discussions

The findings signal important differences between anti-trafficking agencies as to what constitutes intra-country trafficking. While the spokespersons of some anti-trafficking agencies perceived child trafficking as a problem affecting a distinct category of individuals (children) in Ghana, others were of the view that,

---

<sup>22</sup> Manzo (2005)

though children are most vulnerable to trafficking, there is no need for a distinction between their trafficking and that of adults. This assertion should not be, as children are found entangled in many social and cultural practices that are synonymous in nature. In a society where children are engaged in labour as a way of socialization, without a clear definition of child trafficking, children engaged in labour could be perceived as trafficked leading to the diversion of resources meant for trafficked victims' rehabilitation as well as the non identification of victims. As indicated<sup>23</sup> the lack of timely identification of victims of trafficking among other factors is due to 'the lack of a precise, consistent, unambiguous and standard operating definitions as to what constitutes the act of trafficking, trafficker, trafficked person and child'.

Geographically, some anti-trafficking agencies see no difference between cross border trafficking and within border trafficking of children. Although both cross border and within border trafficking have the exploitation of the victim and the means of obtaining the victims sometimes in common, cross border trafficking involves the movement through more than one territorial area.<sup>24</sup> The practice implication in this situation would be the possibility of rescue missions disregarding the effect of moving to an unfamiliar geographical location on the victim and this could have emotional implications towards recovery. This is in agreement with Rafferty<sup>25</sup> who observed that, 'when children are trafficked away from their families, friends and communities, their development and survival is seriously threatened'.

Also, by definition, cross border trafficking involves at least two countries. For the victims, this means that not just one state, but two or more states (source, destination and transit) each with their own legal infrastructures, are implicated, with all the inherent challenges regarding clarification of roles and intervention protocols (ILO & CPCR, 2006). The distinction between cross border and within border trafficking is thus important to ensure the children are provided with adequate intervention. The lack of distinction, thus suggests a limited understanding of child trafficking within Ghana by the anti-trafficking agencies.

Further, anti-trafficking agencies made reference to the Human Trafficking Act (2005) when constructing their individual definitions of child trafficking. The inconsistencies found in these individual definitions can be traced to the Human Trafficking Act (2005) which, as previously pointed out, does not explicitly define child trafficking, though there are subordinate clauses that made reference to it.<sup>26</sup>

---

<sup>23</sup> Rafferty (2015, p.159)

<sup>24</sup> (IOM, 2004)

<sup>25</sup> Ibid no 23

<sup>26</sup> Ibid no 2

The problem of the variation in what constitutes child trafficking can only be resolved when the legal instrument is clear on it, without which the assertion of Gibbs, Walters, Lutnick, Miller and Kluckman<sup>27</sup> stands. In their study on child sex trafficking, Gibbs et al<sup>28</sup> noted that though the existence of child trafficking has well been established, its understanding is still vague.

The issue of parents exchanging their children for gain was a central focus in the definitions of child trafficking within Ghana used by anti-trafficking agencies. While some expressed the view that parents exchange their children for gain without hesitation, others vehemently defended parents as not sellers of their children for gain, but as 'contracting' them for remittances. In his study on child trafficking in India, Fernandes<sup>29</sup> identified parents who played an active role in giving their children out to traffickers as traffickers themselves. He also described the giving of children by parents into trafficking as 'child sale'. It is therefore not out of place to classify parents who exchange their children for gains as traffickers. The current situation of stakeholders having diverse opinion on the role of parents is not healthy to the needed collaboration in tackling the problem. As noted <sup>30</sup> the best approach in handling child trafficking is collaboration between agencies. Collaboration can only thrive when there is a consensus on what the collaboration is about.

Arriving at a definite conclusion on the identification of parents and other blood relatives of children who participate in their recruitment into trafficking is important to the definition of child trafficking within Ghana and its prevention. Without clearly ruling out family ties between child victims of trafficking and their exploiters, the culture of kin fostering by the members of the extended family will always be a hindrance in prosecuting relatives who traffick children within their families.

The extended family in Ghana is a source of social support to many family members in times of need. According to Kumado and Gockel<sup>31</sup>, a Ghanaian extended family is like a social security net that serves as a buffer to the unemployed, the physically challenged, the aged, the economically deprived and children in need of care. In recent times however, the role of the extended family has dwindled, due partly to a shift in Ghanaian social institutions, from being community oriented to being more individualistic and market-led. This

---

<sup>27</sup> Gibbs, Walters, Lutnick, Miller and Kluckman (2015)

<sup>28</sup> Ibid no 27

<sup>29</sup> Fernandes (2005)

<sup>30</sup> **Coppola and Cantwell (2016)**

<sup>31</sup> Kumado and Gockel (2003)

contemporary life style leads many Ghanaians to depend on 'semi-formally institutionalised social security systems'.<sup>32</sup> These semi-formalised institutions are however the preserve of the economically fit.<sup>33</sup> There are no long term child care alternatives for the economically poor in Ghana. In addition, there are no child care benefits or state support to families with children. The care and education of children are therefore the sole responsibility of parents. In the absence of these social support schemes, kin fostering - which is still an integral part of the Ghanaian contemporary society - offers parents, especially the economically poor, child placement options with relatives and non-relatives.

In the views of some scholars<sup>34</sup> kin fostering is a transfer of care responsibilities for a child by biological parents to blood relatives. However, fostering a child is not limited to blood relatives. Children are also placed in the care of non-blood relatives.<sup>35</sup> Traditionally, placing a child in the care of kin or a wealthy non-relative does not involve any legal procedure.<sup>36</sup> The security of the child is based on the goodwill of the practice and the trust parents have in the person to whom they are transferring custody. According to scholars<sup>37</sup> although some children do not get the best of care in fostering, many get access to education and the provision of their basic needs.

A further study carried out in West Africa by Sossou and Yogtiba<sup>38</sup>, suggests that the extended family system, which encourage the culture of kin fostering by blood relatives, serves as an avenue for child trafficking. According to them<sup>39</sup> kin fostering, based on good will, has 'lost its dignity' due to the exploitation of fostered children by relatives. They<sup>40</sup> asserted that, not only are children in Ghana and other West African countries exploited in forced labour on cocoa plantations, mines and quarries, some are also used as beggars, street hawkers, head porters and as means of restitution under a cultural practice called *trokosi*, in Ghana.<sup>41</sup>

---

<sup>32</sup> Ibid no 31: 2

<sup>33</sup> Ibid no 31

<sup>34</sup> Kuyini et al. (2009)

<sup>35</sup> Ibid no 34

<sup>36</sup> Ibid no 34

<sup>37</sup> Ibid no 34

<sup>38</sup> Sossou and Yogtiba (2009)

<sup>39</sup> Ibid no 38

<sup>40</sup> Ibid no 38

<sup>41</sup> Ibid no 38

Based on the findings of the current study of fishermen asserting that parents exchange their children for financial gain and the argument raised by Sossou and Yagtiba<sup>42</sup> on the exploitation by family members, it stands to benefit both child victims of trafficking and anti-trafficking agencies if the Human Trafficking Act is amended for the second time. The amendment is needed to indicate child trafficking to constitute exploitation of children by others irrespective of their relationship. When the issue of relationship is ruled out, identification of traffickers will be easier and prosecution of offenders will be speedily done.

Further, the suggestion by the Ministry that child trafficking could be compared to travelling abroad (United States of America or United Kingdom) trivialises the issue of child trafficking. No matter how much money parents make out of trafficking children, child trafficking is an infringement upon the child's right to live and develop under parental guidance. Taken away from his or her familiar environment, trafficked children are also denied their right of association. It is a setback in the attempt to understand child trafficking for such a view to be held.

## Conclusion

From the findings of the study, the absence of a specific definition of child trafficking by the Human Trafficking Act (2005) in Ghana has fueled contradictory views among anti-trafficking agencies on what constitutes child trafficking. The study found disagreements between anti-trafficking agencies over whether trafficked children need to be considered as a separate category of victims, and about the most appropriate ways of intervening. To this effect, the security agency was of the view that Ghana does not have any definition for child trafficking. The INGO on the other hand identifies child victims of trafficking as a distinct group of people, but sees no difference between child trafficking within and across the borders of Ghana.

In contrast to the security agency's views, whilst the Ministry agreed that parents do 'traffic' their children, it was not prepared to legally identify them as 'traffickers'. As said by the Local NGO, the Human Trafficking Act is not 'working'. Lessons from the study of Skilbrei and Tveit<sup>43</sup> in Norway should inform us that, without clear definitions, scarce resources meant for the rehabilitation of rescued trafficked victims could be used on other category of needy children at the neglect of the victims. Having a precise definition of child trafficking will thus

---

<sup>42</sup> Ibid no 38

<sup>43</sup> Ibid no 4

enhance the identification of the victims and guide the development of the needed intervention strategy.

### **Recommendation**

Given the discrepancies the study noted in the definition of child trafficking within Ghana by the selected anti-trafficking agencies, it is a matter of urgency to ascertain the effect of these contradictions on trafficking interventions within Ghana.

The study highly recommends a further amendment of the Human Trafficking Act (2005) to include an explicit definition of child trafficking, without recognition of the relationship between the victim and the exploiter.

It is further recommended that the government set up a coordinating body to supervise the activities of the various agencies involved in anti-trafficking activities both at the governmental and the private sector. The coordinating council should also be tasked to develop a working model in identifying, rescuing, rehabilitating, returning and reintegrating child victims of trafficking within Ghana.

### **Study Limitations**

The study had some limitations worthy of mentioning. It is important to note that not all anti-trafficking agencies as far as countering child trafficking in Ghana is concerned were involved in the study. Though the study endeavored to include the most recognized international non-governmental organization, there are other international non-governmental organizations that were not consulted. Though their exclusion may not have a significant impact on the study results, given time and resources, their voice would have also been included.

Further, there are other local non-governmental organizations who are not partnering with any international organizations in the fight against child trafficking in Ghana. The views of those included in the study might therefore not be representative of all local non-governmental organizations.

## References

- Bjerkan, L. (2005). *A life of one's own: Rehabilitation of victims of trafficking for sexual exploitation*. (Joint No. FAFO 477). Norway: Allkopi As.
- Coppola, J.S & Cantwell, Renee (2016). Health professional role in identifying and assessing victims of human labour trafficking. *The Journal for Nurse Practitioners*. vol. 12, no. 5
- Eddles-Hirsch, K. (2015). Phenomenology and educational research. *International Journal of Advanced Research*, vol. 3, no.8, pp. 251-260
- Fernandes, G. (2005). *Manual for Social Workers dealing with child victims of trafficking and commercial sexual exploitation*, Government of India.
- Gibbs, D.A; Walters, J.L.H; Lutnick, A. Miller, S & Kluckman, M (2015). Services to domestic minor victims of sex trafficking: Opportunities for engagement and support. *Children and Youth Services Review* no. 54, pp. 1-7
- Goldson, B. (1997). Childhood, an introduction to historical and theoretical analysis. In P. Scraton (Ed.), *Childhood in crisis* (pp. 1-26). London: Routledge.
- Government of Ghana.(2003). *Criminal code (Amendment) Act*, Consolidated Act edn, Ghana.
- International Labour Organization (ILO), &Center for the Protection of Children's Rights Foundation (CPCR). (2006). *Rehabilitation of the victims of child trafficking: A multidisciplinary approach*. (TICSA II). Bangkok: ILO.
- IOM. (2004). IOM's counter trafficking activities. Retrieved August, 2008, from [http://www.un.org.queens.ezp1.qub.ac.uk/events/women/iwd/2004/brochure\\_web.pdf](http://www.un.org.queens.ezp1.qub.ac.uk/events/women/iwd/2004/brochure_web.pdf)
- Kumado, K. &Gockel, F., Augustine 2003, "A study of social security in Ghana", [Online], . Available from: <http://library.fes.de/pdf-files/bueros/ghana/50022.pdf>.
- Kuyini, B.A., Alhassan, A., Razak, Tollerud, I., Weld, H. & Haruna, I. 2009, "traditional kinship foster care in northern Ghana: the experience and views of Children, carers and adults in Tamale", *Child and Family Social Work*, vol. 14, no. 4, pp. 440-449.
- Lie, M., &Ragnhild, L. (2008). Introduction to the theme issue on human trafficking. *Journal of Gender, Technology and Development*, 12(1), 1-4.
- Makisaka, M. (2009). Human trafficking: a brief overview. Retrieved January, 2011 from [http://www.siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human\\_Trafficking.pdf](http://www.siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human_Trafficking.pdf)

- Manzo, K. (2005). Exploiting West Africa's children: Trafficking, slavery and uneven development. *Area*, 37(4), 393-401.
- Patton, M., Q. (1990). *Qualitative evaluation and research methods* (2nd ed.). London: SAGE.
- President & Parliament. (2005). *Human Trafficking Act, 2005*, December (5th ed.). Accra :Government Printer, Assembly Press,
- Queen's University, B. (2003). Code of good conduct in research. Retrieved May, 31, 2010, from [http://www.qub.ac.uk/rrs/webpages/download/code\\_conduct\\_research\\_Oct03.doc](http://www.qub.ac.uk/rrs/webpages/download/code_conduct_research_Oct03.doc)
- Rafferty Yvonne (2015). Challenges to the rapid identification of children who have been trafficked for commercial sexual exploitation. *Child Abuse and Neglect*
- Republic of Ghana & UNICEF (1998). *The Children's Act. (Act 560 ed.)*. Government Printer, Assembly Press: Accra.
- Shapouri, S. (2007). Ending child sexual abuse and exploitation: A guide for child protection in Iran. *Whittier J. Child Advocate*, 7(1), 63-110.
- Silverman, D. (2006). *Interpreting qualitative data* (3rd ed.). London: SAGE.
- Skilbrei, M., & Tveit, M. (2008). Defining human trafficking through empirical work: Blurred boundaries and the consequences. *Journal of Gender, Technology and Development*, 12(1), 9-30.
- Sossou, M. & Yogtiba, J., A. 2009, "Abuse of Children in West Africa: Implication for Social Work Education and Practice", *British Journal of Social Work*, vol. 39, pp. 1218-1234
- Thanh-Dam, T. (2008). Human trafficking and new patterns of migration. *Journal of Gender, Technology and Development*, 12(1), 5-8.
- The people of Ghana. (1992). *The constitution of the republic of Ghana*. Retrieved June, 18th, 2010, from [http://www.judicial.gov.gh/constitution/chapter/chap\\_5.htm](http://www.judicial.gov.gh/constitution/chapter/chap_5.htm)
- Tyldum, G., & Brunovskis, A. (2005). Describing the unobserved: Methodological challenges in empirical studies on human trafficking. *International Migration*, 43(1/2), 17-34.
- United Nations. (2000). Protocol to prevent, suppress and punish trafficking in person, especially women and children, supplementing the United Nations convention against transnational organised crime. Retrieved January, 20th, 2010, from [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf)



## **Appendix**

### **Interview Guide for Stakeholders**

1. What does child trafficking mean to you?
2. Is your agency aware of child fishing on Lake Volta?
3. Does your agency regard all forms of child fishing as child trafficking?
4. How has the Human Trafficking Act been able to handle child fishing on Lake Volta?
5. Do you share in the opinion that children are sold by parents into fishing on Lake Volta?
6. Did the above opinion influence the enactment of the Human Trafficking Act?
7. If yes how has the Human Trafficking Act addressed child fishing on Lake Volta?
8. Is the Human Trafficking Act as its wording stands contextually specific to the occurrence of child trafficking of all forms in Ghana?
9. If yes, how do you perceive parents who give out their children to fishermen?
10. As an individual or a cooperate body, how did you contribute to the enactment of the Human Trafficking Act?
11. Were your views considered in the formulation of the Human Trafficking Act?

# **An Economist's Perspective of Kevin Bales' "Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World"**

**Jennifer Bossard, Ph.D**

Associate Professor of Economics  
Doane University

## **I. Introduction**

Bookends. They support and protect the books that lie in between. They preserve the content of the books, regardless of how good or bad it may be. If a book is deemed unsatisfactory, it can be replaced with a better one. In this paper, I show how consumers act as bookends for the production of goods and services. Between their initial desire for a product and their final purchase of that product, consumers support, protect, and preserve supply chains. Just as books can be good or bad, so too can supply chains - good ones are characterized by gainful employment and sustainability while bad ones are characterized by slavery and ecocide. If a supply chain is deemed unsatisfactory, then consumers, positioned at both ends of the production process, can use their influence to replace a bad one with a better one.

To show how consumers bookend the production process and how they can impact supply chains, I use evidence from Kevin Bales' *Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World* (2016).<sup>1</sup> In it, Bales describes the production process of a variety of products that contain slavery and ecocide, emphasizing the relationship between slavery, ecocide, and consumerism. In one part of the book, he describes a four-step process that illustrates how consumerism leads to slavery and ecocide, and in another part, he describes a supply chain that begins with slavery and ecocide and ends with the final consumer. In this paper, I begin by summarizing the four-step process and the supply chain and then link the two to show how consumers are found at the beginning and the end of the production process. I then describe the 'books' of slavery and ecocide and conclude with the 'bookends,' suggesting ways that consumers can impact the supply chain to reduce, and possibly eliminate, slavery and ecocide.

---

<sup>1</sup> Bales, Kevin. *Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World*. Spiegel & Grau. New York. 2016.

## II. Four-Step Process

In chapter two of *Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World*, Bales outlines a four-step process that illustrates how consumerism leads to slavery. The process begins with consumers, who initiate the production process with their demand for products. Whether it's a smart phone, a granite countertop, or jewelry, the desires of consumers are almost unending. Businesses reinforce these desires through advertising, claiming the product they develop "will transform our lives and, suddenly, we can't live without it"<sup>2</sup>. To produce these products, natural resources are needed, which are found all over the world. Throughout the book, Bales describes these natural resources: coltan for cell phones is found in The Congo<sup>3</sup>, granite for countertops is found in India<sup>4</sup>, and gold for jewelry is found in Ghana.<sup>5</sup> For most countries, having natural resources is a blessing because they bring jobs and money. However, if proper infrastructure, laws, and law enforcement are not in place, then having natural resources can actually be a curse.

In Step 2, Bales describes the "resource curse" found in countries abundant in natural resources but lacking in economic prosperity and law enforcement. As people compete to find and control the natural resources, law enforcement is needed to maintain order. However, corrupt government workers spend more time accumulating weapons and wealth than protecting people. At the same time, government leaders try to stay in power because, as Bales says, "for every bloated dictator there are ten lean and hungry outsiders who also know how to use guns, and they lust for the money flowing down the product chain"<sup>6</sup>. For people living in the country, civil war creates unrest, the deterioration of infrastructure limits their access to education and health care, and, without protection, they are defenseless. These conditions leave people and the environment vulnerable to being exploited.

Bales describes the third step as one of stability and order, at least for the local gangs. After all, he says, "a little chaos is good for criminal business, but too much is disruptive, even for warlords"<sup>7</sup>. Gangs begin to function like businesses - establishing hierarchies, conquering territories, and focusing on profits. In order to

---

<sup>2</sup> Ibid., 18.

<sup>3</sup> Ibid., 16.

<sup>4</sup> Ibid., 4.

<sup>5</sup> Ibid., 159.

<sup>6</sup> Ibid., 18-19.

<sup>7</sup> Ibid., 19.

maximize profits, they employ the cheapest labor they can find: slave labor. Instead of pointing their guns at other gangs, they point them at their enslaved workers, who are used to extract the natural resources. This stability allows businesses to thrive and gang leaders to prosper.

In the final step, gang leaders grow their businesses by increasing production. To do this, they need more natural resources and workers and therefore, more slaves. Bales describes the areas of the country where this occurs as "lawless, impoverished, unstable" - conditions that allow people to be enslaved and the environment to be destroyed.<sup>8</sup>

This four-step process, which begins with consumerism ends with slavery and ecocide, can be summarized as follows. Consumers initiate the production process with their desire for products (Step 1). Competition for natural resources, combined with a corrupt government, create conditions for slavery and ecocide (Step 2). Local people are enslaved and forced to extract the natural resources (Step 3). And finally, as gangs increase production, they find new sources of natural resources and workers, destroying ecosystems and enslaving people in the process (Step 4).

### **III. Eleven-Step Supply Chain**

In chapter three, Bales outlines an eleven-step supply chain that begins with slavery and ecocide and ends with the consumer. He refers to each step as a "link" in the chain, and for each link, he identifies the main people and describes their involvement. The supply chain he describes is for electronics, but below I generalize the steps to represent a supply chain that can be applied to many products.

The first link of the chain includes workers who extract the natural resources. These people are enslaved and only appear in the supply chain because "they were forced to, ... they have no choice".<sup>9</sup> They are the ones who suffer the most from the production of the final product. Bales refers to the people at the next link of the supply chain as "thugs and criminals".<sup>10</sup> They are the ones who enslave the workers and consist of people in rebel groups and armies, as well as moneylenders and corrupt government officials. At the higher ranks, their motive is to gain money, wealth, and power. Common soldiers are found at the lower ranks and in some cases, include people who are enslaved themselves, "trapped in a cruel

---

<sup>8</sup> Ibid.

<sup>9</sup> Ibid., 52.

<sup>10</sup> Ibid., 53.

system and trying to survive it".<sup>11</sup> In addition to exploiting people, the thugs and criminals also exploit the environment, damaging and destroying local ecosystems. As the natural resources are extracted and moved, the thugs and criminals leave the ecosystem in shambles. Most of the slavery and ecocide along the supply chain is found at these two links - at the source of the natural resources. I provide a more detailed account of this later in the paper when I describe the 'books' of slavery and ecocide.

The next people along the supply chain are those who buy and transport the natural resources. Bales refers to this group as the "mineral-dealing middlemen and their pilots and truck drivers, their bookkeepers and other employees".<sup>12</sup> Unlike the thugs and criminals, the middlemen and their employees tend to be educated and do not "carry weapons or dress in combat fatigues".<sup>13</sup> They are aware of the slavery and ecocide, often buying on location and seeing the conditions firsthand. As a result, according to Bales, they are "*willing accomplices* in the crimes of slavery and ecocide".<sup>14</sup> The middlemen deliver the minerals to the people at the next link - exporters and businessmen at trading houses who purchase minerals from many different middlemen, some tainted with slavery and ecocide and some clean. Since tainted minerals are cheaper to buy and clean minerals command a higher price when sold, there is an incentive to buy tainted minerals, mix them with clean minerals, and sell them all as clean. Even though these people do not typically see the slavery and ecocide firsthand and therefore "don't dirty their own hands with the violence of slavery or the destruction of the environment," they are usually aware of it and therefore complicit in "*aiding and abetting* the crimes of slavery and ecocide".<sup>15</sup> It is here where the supply chain typically leaves the country and goes overseas.

The next five links along the supply chain include people who work at the companies that use the minerals to manufacture and assemble the parts that go into the final products. Some of these companies care about whether slavery and ecocide are a part of the supply chain and some do not. Bales labels the companies that do not take steps to address the problem of slavery and ecocide along the supply chain as "*morally culpable*," even if they are not "guilty of slavery or ecocide in any direct way".<sup>16</sup> For companies that do take steps to address the

---

<sup>11</sup> Ibid.

<sup>12</sup> Ibid., 54.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid., 57.

problem of slavery and ecocide along the supply chain, claiming so poses a challenge because it is difficult to prove the minerals they use are clean. This is in part because as minerals move along the supply chain they are combined, so an assembled part likely contains minerals from several sources, making it nearly impossible for companies to claim with certainty that the entire part contains exclusively clean minerals. Some organizations have emerged to help verify that no slavery or ecocide was present when the natural resources were extracted, but certain complications, including government corruption, create problems. All of this makes it difficult for companies with social responsibility statements to make precise statements that address slavery and ecocide, and therefore, according to Bales, those statements are usually "nothing more than cobbled-together vague generalizations".<sup>17</sup> In addition, some companies are concerned that posting these statements will have the unintended consequence of casting doubt about the cleanliness of their supply chain. Because of the challenges in identifying and addressing the problem of slavery and ecocide along the supply chain, it is difficult to assign levels of responsibility and culpability to the people who work at these companies. However, Bales makes it clear that given all the evidence of slavery and ecocide in supply chains, companies that do not take any responsibility share in the culpability.

The people at the tenth link of the supply chain are those who work at the retail stores that sell the final product. As with the companies that use the minerals to assemble parts, some retailers care about slavery and ecocide along the supply chains of the products they sell, and some do not. Some have social responsibility statements, and some do not. Of those that do, their statements tend to be difficult to find on their websites and the language used is vague. It is understandable why this is the case, especially for larger retailers that sell hundreds or even thousands of other products, each with their own supply chains. Proving the supply chains of all those products is clean would likely be infeasible, if even possible.

Many people mistakenly believe the supply chain ends with the retailer but, according to Bales, the last link is the end consumer who purchases the product. In other words, "it ends with you and me".<sup>18</sup> Fortunately, there are many things we, as end consumers of a product, can do to impact the supply chain. I provide a more detailed account of what consumers can do when I describe the 'books' of slavery and ecocide.

This eleven-step supply chain, which begins with slavery and ecocide and ends with the final consumer, can be summarized as follows. First, enslaved workers are used to extract natural resources and throughout the production

---

<sup>17</sup> Ibid.

<sup>18</sup> Ibid., 62.

process the environment is destroyed (Steps 1&2). The natural resources are purchased and transported by middlemen (Step 3). Exporters and businessmen at trading houses purchase and combine natural resources from many sources - some tainted with slavery and ecocide and some clean (Step 4). Natural resources are used in the assembly of parts that go into final products (Steps 5-9). Retailers sell the final product (Step 10). Consumers purchase the final product (Step 11).

#### **IV. The Books and the Bookends**

The four-step process and eleven-step supply chain each shows the relationship between slavery, ecocide, and consumerism. The four-step process *begins* with consumers and *ends* with slavery and ecocide:

Step 1: Consumers initiate the production process with their desire for products.

Step 2: Competition for natural resources, combined with a corrupt government, create conditions for slavery and ecocide.

Step 3: Local people are enslaved and forced to extract the natural resources.

Step 4: As gangs increase production, they find new sources of natural resources and workers, destroying ecosystems enslaving people in the process.

Conversely, the eleven-step supply chain *begins* with slavery and ecocide and *ends* with consumers:

Steps 1&2: Enslaved workers are used to extract natural resources and throughout the production process the environment is destroyed.

Step 3: The natural resources are purchased and transported by middlemen.

Step 4: Exporters and businessmen at trading houses purchase and combine natural resources from many sources - some tainted with slavery and ecocide and some clean.

Steps 5-9: Natural resources are used in the assembly of parts that go into the final product.

Step 10: Retailers sell the final product.

Step 11: Consumers purchase the final product.

Alone, the four-step process and the eleven-step supply chain each tells part of the story of slavery, ecocide, and consumerism. When combined, they reveal that the consumer is at the beginning *and* end of the production process, with

slavery and ecocide in between. In Table 1, I link the four-step process and the eleven-step supply chain to illustrate how consumers bookend the slavery and ecocide story.

Table 1: The Bookends (Consumerism) and the Books (Slavery and Ecocide)

Four-Step Process	Step 1: Consumers initiate the production process with their desire for products.	The First Bookend: Consumers Desire Products
	Step 2: Competition for natural resources, combined with a corrupt government, create conditions for slavery and ecocide.	The Books: Slavery and Ecocide
	Step 3: Local people are enslaved and forced to extract the natural resources.	
	Step 4: As gangs increase production, they find new sources of natural resources and workers, destroying ecosystems enslaving people in the process.	
Eleven-Step Supply Chain	Steps 1&2: Enslaved workers are used to extract natural resources and throughout the production process the environment is destroyed.	The Books: Slavery and Ecocide
	Step 3: The natural resources are purchased and transported by middlemen.	
	Step 4: Exporters and businessmen at trading houses purchase and combine natural resources from many sources – some tainted with slavery and ecocide and some clean.	
	Steps 5–9: Natural resources are used in the assembly of parts that go into the final product.	
	Step 10: Retailers sell the final product.	
	Step 11: Consumers purchase the final product.	The Last Bookend: Consumers Purchase Products

The books of slavery and ecocide are found in both the four-step process and the eleven-step supply chain - the story unfolds in the second step of the first



process and ends in the tenth step of the supply chain. The scene of the story is set with the conditions that allow slavery and ecocide to thrive. The main characters are the slaves and the environment, with the thugs, criminals, and gangs serving as the antagonists. The supporting characters are the people found in Steps 3-10 of the supply chain, as they do not initiate slavery and ecocide, or even witness it firsthand, but are usually aware of it to some extent. The stories of these books are supported at each end by consumers - with their desire for products on one end and their purchase of those products on the other end. In the following sections, I describe the 'books' of slavery and ecocide and the 'bookends' of the consumers, again using evidence from *Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World*.

## **V. The Books: Slavery and Ecocide**

As noted in the four-step process, the conditions created by the resource curse leave people and the environment vulnerable to being exploited. Before the workers are exploited, they are first enslaved. Bales identifies three common ways that people are enslaved: 1) peonage, 2) trickery, and 3) capture. He describes peonage as a situation where someone is falsely accused of a crime and to be freed, they must work as their punishment.<sup>19</sup> Local government officials collude with gang leaders to determine the number of workers needed and arrest people accordingly. People are also enslaved through "trickery" via debt bondage, where a worker cannot leave their job because they are indebted to their boss.<sup>20</sup> This happens when someone hears about a job opportunity, travels to the location of the job, but when he arrives he realizes he can only work if he has tools, which he does not. Without money, he gets a loan from his boss, who sells him the tools. Over time, the worker borrows money for other things, such as food and lodging, and his debt increases. His income grows at a slower rate than his debt, preventing him from being able to pay off the loan. With no way out, he is enslaved. The last method of enslavement is capture, which, as the name suggests, is when a person is simply taken against their will.

Once enslaved, these people live and work in deplorable conditions. Throughout the book, Bales describes these conditions for many slaves around the world. In the eleven-step process, he describes the conditions for miners enslaved at the Bisie mine in The Congo where cassiterite has been mined for decades. Most of the work is done by men and boys who work without safety equipment. Without safety goggles, their eyes are damaged from shards of rocks. Without helmets, they

---

<sup>19</sup> Ibid., 24-25.

<sup>20</sup> Ibid., 31.

break bones from falling on the rocks, or rocks falling on them. Without masks, they breathe in dust, causing their lungs to fill with "microscopic sharp-edged rock dust" and then "bleed and form scar tissue".<sup>21</sup> Eventually, their "lungs can't bring oxygen to the body" and they suffocate to death.<sup>22</sup> Workers are also susceptible to scabies, rashes, and infectious diseases because they live in tight quarters and sleep together in the tunnels of the mines.

Slaves are subject to abuse by their captors as gang members use fear and intimidation to keep them in line. They threaten violence and death to those who are not working hard enough or who are suspected of stealing minerals. Bales recalls one person who told him that if anyone is "suspected of swallowing precious minerals," they will "cut open their bellies".<sup>23</sup> Although most slaves are male, some females are enslaved for cooking, cleaning, and sex.<sup>24</sup> They are repeatedly raped by gang members and even male slaves. And with many men, few women, and no protection, sexually transmitted diseases spread. Many slaves are under the influence of drugs - drugs they are forced to take to induce passivity or drugs they choose take to cope with these deplorable conditions. Working under the influence of drugs also makes workers even more at risk for injury.

Over time, these conditions take their toll. Bales describes slaves as, "exhausted, hollow-eyed children, wasted sinewy men, and women with blank stares".<sup>25</sup> Enduring these conditions may tempt someone to try to escape, but that can result in beatings or death.

The "thugs and criminals" that Bales identifies in the supply chain are generally the same people as the "gangs" and "criminals" he identifies in the four-step process. They are the ones who enslave people and force them to mine the natural resources that they sell to accumulate money, wealth, weapons, and power. Just as easy as it is for them to exploit people, it is just as easy for them to exploit the environment. While mining the natural resources, they destroy the land. And after they have extracted all the valuable natural resources and leave to find more, they leave the local ecosystem in shambles. Bales describes the ecocide at the Red Mountain and the Black Mountain in The Congo where cassiterite has been mined. He describes it as a "hollowed-out pile of debris drenched in human waste, toxic chemicals, and blood"<sup>26</sup> where "the trees have all been cut down, boulders and

---

<sup>21</sup> Ibid., 49.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., 47.

<sup>24</sup> Ibid., 49.

<sup>25</sup> Ibid., 47.

<sup>26</sup> Ibid.

rubble, mud and gravel are everywhere, and no plants grow".<sup>27</sup> He continues to say that, "from a distance it doesn't look like a city ... just thousands of discarded plastic bags" and "open pits ... filled with rainwater and sewage, wriggling with mosquito larvae and parasites".<sup>28</sup> The ecosystem has been significantly altered, impacting the flora and fauna that can survive in the area.

Damage to the environment expands beyond the location of the natural resources that are being mined, impacting people as well. In a different part of the book, Bales describes the slavery and ecocide found along the supply chain for gold, noting how ecocide creates long-term health problems for people in the surrounding area. When mining for gold in Ghana, mercury is used to adhere to the gold, allowing the gold to be more easily found. In this process, mercury contaminates the water, which flows downstream and is subsequently used for gardens and farm animals. Bales describes the dangers of mercury - it can damage internal organs as well as cause "nerve damage, high blood pressure, and a host of other symptoms, including having your skin die and peel off in layers".<sup>29</sup> It can also cause birth defects and "permanent nerve damage" in children.<sup>30</sup> Ecocide causes local people to be more susceptible to being exploited "as their normal livelihoods disappear".<sup>31</sup> Just as slave labor is used because it is cheaper to force a worker to work than to pay them, leaving the environment in shambles is cheaper than preventing environmental destruction or repairing the environment when the natural resources is complete.

The story of slavery and ecocide is unsettling and unacceptable. Fortunately, it can be re-written. Anyone along the supply chain can make different choices and alter the impact of the production process on people and the planet. If we recall what Bales said about the supply chain, then we know that it does not end with the retailer but with the consumer. Instead of relying on other people along the supply chain to change their behavior, consumers can use their influence to replace the bad supply chains with better ones.

## **VI. The Bookends: Consumers**

Consumers initiate the production process with their desire for products. Usually, they do not see the beginning of the supply chain where the natural

---

<sup>27</sup> Ibid., 48.

<sup>28</sup> Ibid., 47.

<sup>29</sup> Ibid., 142.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid., 53.

resources are extracted and therefore, may not be aware of the slavery and ecocide there. However, as more evidence is available and consumers become aware of the presence of slavery and ecocide in the supply chains of *some* products, they have a responsibility to determine if slavery and ecocide are present in the supply chains of the products *they* purchase and, if so, stop purchasing those products. Below, I propose five actions consumers can take to influence businesses and impact the supply chains of the products they desire. These actions include: 1) reevaluate initial desire for the product, 2) expand preferences to include information about the production process, 3) consider how important the price of a product is, 4) ask questions and conduct research, and finally, 5) abstain from purchasing products that may contain slavery or ecocide.

First, a consumer can reevaluate their initial desire for a product. They can think about whether or not they *need* a product - many products that are considered 'necessities' are not actually needed. They can also reevaluate products they *want* to determine what role advertising has played in convincing them they desire that product. If a consumer reevaluates their desire and decides not to purchase, then they are certain that they are not contributing to the slavery or ecocide.

If a consumer does plan to purchase a product, the next step is to determine their preferences related to the product, such a color, style, size, etc. Consumers can expand these preferences to include information about the production process. For example, some companies are fair trade certified, which means they do not use slavery or ecocide in their supply chain. There are several fair trade certifying organizations, including Fairtrade International, UTZ Certification, and Fair Trade USA that verify that a company's supply chain is clean. One way companies communicate this information to consumers is to add the organizations fair trade logo to the packaging of their products. Businesses can also be 'B Corps' certified or have a filing status of 'Benefit Corporation,' both of which indicates that the company has adopted a 'triple bottom line' business model, meaning they make decisions not solely on profit, but also on their impact on people and the planet.

Consumers can also consider how important the price of the product is. For most people, given similar products, the driving factor that influences which one they purchase is price. However, low prices can result from companies along the supply chain engaging in slavery and ecocide. After all, it is cheaper to engage in slavery and ecocide than paying workers a fair wage and restoring the environment once the natural resources are extracted. Low prices don't necessarily mean slavery or ecocide was used in the supply chain, and some products with slavery and ecocide in the supply chain may not be the lowest price, but low prices can serve as a signal to the consumer that they need to investigate further. Also, it is more expensive for companies to use fair trade certifying organizations or engage in triple bottom line practices, and those costs are usually passed on to consumers in

the form of higher prices. Because those labels instantly inform consumers that the production process is free of slavery and ecocide, if the consumer wants to be sure they are purchasing a clean product, the information may be worth the higher price.

If it is not clear whether a product's supply chain is clean, then a consumer can ask questions and conduct research. This can be done by asking questions at the retail store or contacting the company that produced the final product. The consumer can also go to the company's website to see if they have a social responsibility statement. This should not be inconvenient for most consumers who have access to the internet on their smart phone (which, ironically, was probably produced with cassiterite). When several companies produce the same or similar product, consumers can research the different companies to determine which ones are committed to cleaning their supply chains of slavery and ecocide. When a company indicates that they are trying to keep a 'clean' supply chain, customers can purchase products from them.

Finally, consumers can take the ultimate stand against slavery and ecocide by abstaining from purchasing products from companies that cannot prove that their supply chain is clean. This may be the ultimate sacrifice - not purchasing a product they desire. If a consumer cannot abstain, then they need to accept the possibility that for some products they buy, they are "mining by proxy" every time they purchase that product.<sup>32</sup>

By engaging in these five actions, consumers use their influence to impact the supply chains of the products they purchase. Acting alone, one consumer may not make a difference, but when many consumers alter their behavior, businesses will take notice. When consumers stop purchasing their products and it becomes less profitable for businesses to use slavery and ecocide, then companies will have an incentive to address the problem. In doing so, consumers will become the protagonist of the story.

## VII. Conclusion

Using evidence from Kevin Bales' *Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World*, I have demonstrated how consumers bookend the production process and how their decision to purchase a product impacts supply chains. After summarizing the four-step process and eleven-step supply chain that both contain slavery, ecocide, and consumers, I showed how consumers are at both the beginning and the end of the production process. I then characterized the 'books' of slavery and ecocide, describing how people are enslaved, the conditions they endure while enslaved, and how the environment is

---

<sup>32</sup> Ibid., 245.

impacted. I concluded with consumers as the 'bookends,' identifying five actions they can take to impact the supply chains that they support, protect, and preserve. By *supporting* businesses that have clean supply chains, consumers can *protect* the workers who extract the natural resources and *preserve* the environment and ecosystems at the source of those natural resources.

# **Cultural Competence of Western Psychotherapists in Helping Sex Trade Survivors: An Initial Exploration**

**Daphne Catherine Spyropoulos, B.A.**

MSc Student, Deree - The American College of Greece

## **Abstract**

Sex-trafficking survivors that come from the Developing world and who become free in the west, can receive help from western psychotherapists. A therapist who is able to provide help to a former sex-slave of this origin is answering to a need for culturally competent mental health professionals. To serve this goal, the author analyses the example of Nigerian women who become free in the west and provides information about their background that could be useful in session. Parallel to this discussion, the question of whether cross-cultural differences can be overcome in therapy in an ethical way arises.

## **Cultural Competence of Western Psychotherapists in Helping Sex Trade Survivors: the Example of Nigerian Women**

Being a western therapist who is working with a sex-trade survivor that was born in a different continent than their own can be similar to operating on a tumor that is not visible to the naked eye. Much like a surgeon who is working blindly to outsmart the mass, a western therapist is called to help in unknown cultural territory. Tala, a 24-year-old Nigerian woman who had survived sex trafficking, was sent to a refugee camp after the authorities found her wandering the streets of a Greek village in 2016. Despite the increased efforts of therapists to help her, she shared next to nothing and she denied all offers made to her. A physical examination showed signs of rape and abuse but when asked by the police, she still did not disclose information.

Tala's story survived through the recollections of a Ghanaian woman who met her in the camp. Two weeks after her arrival, Tala confided in her the decision she had made to return to the house where she had escaped from. It was then that the woman realized that the girl had never escaped slavery; she was still held psychologically captive through a mind-game in which she was convinced that spirits would kill her family back in Nigeria. Although a Christian herself, the Ghanaian woman was aware of the religious and/or spiritual beliefs, including juju,

across the African continent that were used by traffickers to manipulate survivors. In a ritual in which they took pieces of Tala's hair and some saliva, they swore her to abide to everything they said and to never expose them to legal agents. Tala was thus coerced to perform sex work in Europe to help her family out. If she broke this spiritual contract, her father and her younger brother who both lived in Nigeria would be fatally tormented, not by humans but by the spirits surrounding them. Tala left the camp a few days later and she has not returned since.

To mental health professionals who work with foreign sex trafficking survivors, disappearance of the client is something not uncommon. Literature depicts such few cases of former sex slaves that were able to follow consistent post-traumatic therapy, that practitioners have minimal guidance in helping these clients. Being able to help a Nigerian woman who survived sex trafficking in a western country however can show the potential of psychotherapy to surpass cross-cultural impediments and is worthy of scientific attention.

A question often expressed to mental health professionals by clients is "How can you know what I am going through? Have you been through anything similar?" At first caught off guard, therapists grow confident with time in responding that for what they may lack in experience, they make up in empathy. After all, does a cardio surgeon need to have survived a heart attack to be able to operate?

This response however is radically brought down when a therapist is confronted with the absolute unknown. Human trafficking, the enlistment, commission, transmission and admission of humans through blackmailing, power games, fraudulent activities, kidnapping, physical and emotional abuse, as well as the control of one individual over another and his or her abuse for financial gains of the former, that can be organized to sell sex workers, low cost workers, slaves, as well as organ donors<sup>1</sup> is, undoubtedly, a source of uneasiness to the western therapist. In accepting to see a Nigerian female that has escaped international sex trade, a psychologist is immediately reminded of the fact that all their scientific expertise is only applicable to the western world. Can he, a human who has not been through similar experiences, be of help to a survivor of man-made torture? In undertaking the challenging task of helping a survivor of human trafficking who has been exploited as a sex worker, a therapist of the western world must realize the inextricable bounds between the former's behavior and their cultural background.<sup>2</sup> Trafficked girls of Asian origin form an excellent example of a population whose reactions to trafficking are lamented by their culture. Emerging

---

<sup>1</sup> L. (n.d.). United Nations Office on Drugs and Crime. Retrieved from <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

<sup>2</sup> Marshall H. Segall. "Culture and Behavior: Psychology in Global Perspective." *Annual Review of Psychology* 37 (1986): 523-64.



from a background that historically values males and views girls as a tradable commodity and having been raised to place contributing to their families' finances to the highest regard, Asian girls not only consent to be trafficked for sex work but also refuse to return home when they haven't accrued sufficient income. These practices along with the stigma of having been raped or having worked as prostitutes that drives these women's families to reject them, keeping them in a helpless situation.<sup>3</sup>

Nigerian women who have survived sex trafficking, form another example of women who report to have gained little from western therapists who are uninformed of their ethnic and cultural roots.<sup>4</sup> Something important to mention however, is that they have become free in a country such as the United States, where funded recovery programs exist.<sup>5</sup> This is an opportunity that they may not have had in their homeland. To help a Nigerian woman, a western mental health professional should grow "culturally competent", which means appreciate the gravity and the impact of these women's culture in their lives, be able to communicate in a language that they both understand, acknowledge the significance of the women's decision to ask for help given their traditional background, as well as ensure that all therapeutic approaches the professional applies are tailored specifically to their needs.<sup>6</sup>

Additionally to developing cultural competence which is considered a more technical approach of the issue, "cultural humility" moves deeper into decreasing cross-cultural differences between the therapist and the Nigerian female client. This term illustrates a power-shifting approach that serves to be a check on the therapist's power and trusts the expertise of the client on her own experiences instead of assuming that the therapist better understands what she has been through. The western therapist is thus called to focus on building a relationship

---

<sup>3</sup> Rita Chi-Ying Chung. "Cultural Perspectives on Child Trafficking, Human Rights & Social Justice: A Model for Psychologists." *Counselling Psychology Quarterly* 22, no. 1 (2009): 85-96. doi:10.1080/09515070902761230.

<sup>4</sup> C. S. Rosen, C. J. Greene, H. E. Young, and F. H. Norris. "Tailoring Disaster Mental Health Services to Diverse Needs: An Analysis of 36 Crisis Counseling Projects." *Health & Social Work* 35, no. 3 (2010): 211-20. doi:10.1093/hsw/35.3.211.

<sup>5</sup> Rebecca J. Macy, and Natalie Johns. "Aftercare Services for International Sex Trafficking Survivors: Informing U.S. Service and Program Development in an Emerging Practice Area." *Trauma, Violence, & Abuse* 12, no. 2 (2010): 87-98. doi:10.1177/1524838010390709.

<sup>6</sup> C. S. Rosen, C. J. Greene, H. E. Young, and F. H. Norris. "Tailoring Disaster Mental Health Services to Diverse Needs: An Analysis of 36 Crisis Counseling Projects." *Health & Social Work* 35, no. 3 (2010): 211-20. doi:10.1093/hsw/35.3.211.

with the Nigerian woman that will allow for her to openly share her thoughts and feelings without fear of being judged.<sup>7</sup>

To help this cultural dialogue, mental health professionals should not only research information about their clients' pathological symptoms but also about these women's ethnic, cultural and moral background.<sup>8</sup> An example of a therapist applying cultural information to the treatment of their client is that of Vindbjerg and his team who suggested that Arab refugees have a distinct symptom of Post-Traumatic Stress Disorder that is not included in current psychological manuals. That is, they consciously avoid uncomfortable feelings following a traumatic event. While western populations organically cannot remember information about a distressing event they have experienced<sup>9</sup>, displaced Arabs try to abide to their culture according to which they should not acknowledge their pain. Vindbjerg and his colleagues suggest that even psychological disorders differ among ethnic groups. A war survivor who meets the criteria for a Post-Traumatic Stress Disorder diagnosis for example, does not suffer equally to a New Yorker who can be diagnosed with the same disorder after surviving a robbery. It is not only the nature of the traumatic event but also what preceded it that affects the experience of distress. War survivors are often familiarized to trauma through consistent and repeated exposure to physical and emotional torment, sexual abuse and the mourning of loved ones. They also suffer the death of their community as well as the extinction of their hopes and dreams for the future.<sup>10</sup>

In helping an individual who has been through ongoing conflict, a therapist should keep in mind that they may never have experienced normality in the way that it is defined in the west. Their experiences with trauma however, should not underestimate their capacity to live a normal life. In fact, instead of addressing their clients' experiences as something to be overcome, therapists could shift their focus and view them as a source of considerable strength, resilience and appreciation of peace, unknown to someone who was brought up in a different environment.

---

<sup>7</sup> Teeta T. Tormala, Sita G. Patel, Ellen E. Soukup, and Annette V. Clarke. "Developing Measurable Cultural Competence and Cultural Humility: An Application of the Cultural Formulation." *Training and Education in Professional Psychology* 12, no. 1 (2018): 54-61.

<sup>8</sup> Michael Knipper. "Joining Ethnography and History in Cultural Competence Training." *Culture, Medicine, and Psychiatry* 37, no. 2 (2013): 373-84. doi:10.1007/s11013-013-9315-1.

<sup>9</sup> Erik Vindbjerg, Jessica Carlsson, Erik Lykke Mortensen, Ask Elklit, and Guido Makransky. "The Latent Structure of Post-traumatic Stress Disorder among Arabic-speaking Refugees Receiving Psychiatric Treatment in Denmark." *BMC Psychiatry* 16, no. 1 (2016). doi:10.1186/s12888-016-0936-0.

<sup>10</sup> Erik Vindbjerg, Jessica Carlsson, Erik Lykke Mortensen, Ask Elklit, and Guido Makransky. "The Latent Structure of Post-traumatic Stress Disorder among Arabic-speaking Refugees Receiving Psychiatric Treatment in Denmark." *BMC Psychiatry* 16, no. 1 (2016). doi:10.1186/s12888-016-0936-0.

As follows, a psychotherapist trained and working in a country such as the United States of America can in fact help a Nigerian woman that was un-enslaved in America. To facilitate such an attempt, this article presents information about the Nigerian culture that may be useful in therapy, along with suggestions on how they can help create an effective therapeutic relationship between the therapist and the client.

As other refugees, some Nigerian women are susceptible to sexual exploitation mainly due to their scarce economic resources, their neglected place in society as well as the patriarchal culture they have been brought up in, that has raised them to be subservient to their surrounding males.<sup>11</sup> They also form one of the many groups of people being trafficked from Africa due to globalization and due to some characteristics of the African continent. Political corruption, unethical leaders, recurring wars and crises, financial and public health devastations are only a few of the reasons that leave African citizens no choice but to sell their bodies for money.<sup>12</sup> Feelings of financial powerlessness lead parents to send their children abroad for a safe future while in these children end up being sexually abused<sup>13</sup> and women to travel to America and to European countries in pursuit of professional opportunities, where they are instead trapped and enslaved into sex work.<sup>14</sup>

In Nigeria, poverty combined with gender related inequity and discrimination<sup>15</sup>, leads women to seek employment and to be cross-border human trafficking.<sup>16</sup> The financial demands of poor multi-membered homes<sup>17</sup>, along with the custom of impoverished Nigerian families to send their children as foster members of rich families across the African continent<sup>18</sup>, has radically worsened the bane of slavery and sex trade in the country. With more than half a million women

---

<sup>11</sup> Natividad G. Chong. "Human Trafficking and Sex Industry: Does Ethnicity and Race Matter?" *Journal of Intercultural Studies* 35, no. 2 (2014): 196-213.

<sup>12</sup> Browne Onuoha. "The State Human Trafficking and Human Rights Issues in Africa." *Contemporary Justice Review* 14, no. 2 (2011): 149-66.

<sup>13</sup> Aderanti Adepoju. "Review of Research and Data on Human Trafficking in Sub-Saharan Africa." *International Migration* 43, no. 1-2 (2005): 75-98. doi:10.1111/j.0020-7985.2005.00313.x.

<sup>14</sup> Ademola K. Fayemi. "The Challenges of Prostitution and Female Trafficking in Africa: An African Ethnico-Feminist Perspective." *The Journal of Pan African Studies* 3, no. 1 (2009): 200-13.

<sup>15</sup> Nlierum S. Okogbule. "Combating the "New Slavery" in Nigeria: An Appraisal of Legal and Policy Responses to Human Trafficking." *Journal of African Law* 57, no. 1 (2013): 57-80.

<sup>16</sup> Oluyemi O. Fayomi. "Women, Poverty and Trafficking: A Contextual Exposition of the Nigerian Situation." *Journal of Management and Social Sciences* 5, no. 1, 65-79.

<sup>17</sup> Linus Akor. "Trafficking of Women in Nigeria: Causes, Consequences and the Way Forward." *Corvinus Journal of Sociology and Social Policy* 2, no. 2 (2011): 89-110.

<sup>18</sup> Victoria I. Nwogu. "Nigeria: Human Trafficking and Migration." *Forced Migration Review* 25 (2006): 32-33.

being trafficked for sex to the United States and to Europe annually<sup>19</sup>, Nigerians form the largest group of people from countries under-development that are being sold in the west, while financial gains from human trafficking in Nigeria are only surpassed by profits made by gun and narcotic trade.<sup>20</sup> Commercial paths that are accessible through the Sahara facilitates human trafficking and renders Nigeria a location of slave emission and passage<sup>21</sup>, as well as a terminal that accepts slaves to work.<sup>22</sup>

A well-established type of human trafficking is also formed by Nigerian “baby factories”. With femaleness, directly associated to being able to get pregnant in Nigerian culture, infertile couples from Nigeria secretly purchase newborns and pretend that they are their own. Not uncommon is the tendency for couples from the west to take advantage of such a system and to buy children, instead of going through an adoption process. Selling babies is a way to make a large amount of money in a quick manner and thus human traffickers either impregnate enslaved women and make them give up their babies, or trap women who have gotten pregnant without being married, a morally punishable condition in Nigeria, and force them to sell their newborns in these baby factories.<sup>23</sup> With the babies that are not purchased, traffickers create a group of humans who can also grow to be trafficked for sex.<sup>24</sup> These babies don’t need to reach an adult age before being exploited, since child-sex trafficking is a common practice in the country. Children and especially girls who have, surprisingly, attended school, who have been away from their parents, in foster homes or in arranged marriages and who have already been sexually abused are considered profitable sex workers for traffickers.<sup>25</sup>

The “right to be trafficked”, also known as “le droit de l’homme” is another force that facilitates child and teenage sex trafficking. A common belief in Africa teenagers, is that they have the right to claim independence from their oppressing parents’ control. For this reason, children among others flee from Togo in West

---

<sup>19</sup> Linus Akor. "Trafficking of Women in Nigeria: Causes, Consequences and the Way Forward." *Corvinus Journal of Sociology and Social Policy* 2, no. 2 (2011): 89-110.

<sup>20</sup> Victoria I. Nwogu. "Nigeria: Human Trafficking and Migration." *Forced Migration Review* 25 (2006): 32-33.

<sup>21</sup> Neil Howard. "Promoting 'Healthy Childhoods' and Keeping Children 'At Home': Beninese Anti-Trafficking Policy in Times of Neoliberalism." *International Migration* 51, no. 4 (2013): 87-102. doi:10.1111/imig.12043.

<sup>22</sup> Nlierum S. Okogbule. "Combating the "New Slavery" in Nigeria: An Appraisal of Legal and Policy Responses to Human Trafficking." *Journal of African Law* 57, no. 1 (2013): 57-80.

<sup>23</sup> Olusesan Ayodeji Makinde, Clifford Obby Odimegwu, and Stella O. Babalola. "Reasons for Infertile Couples Not to Patronize Baby Factories." *Health & Social Work* 42, no. 1 (2016): 57-59. doi:10.1093/hsw/hlw054.

<sup>24</sup> Olusesan Ayodeji Makinde. "Infant Trafficking and Baby Factories: A New Tale of Child Abuse in Nigeria." *Child Abuse Review* 25, no. 6 (2015): 433-43. doi:10.1002/car.2420.

<sup>25</sup> Nigeria. (n.d.). Retrieved from <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282722.htm>

Africa and land to Nigeria where they voluntarily agree to be trafficked as a pathway to freedom. A tendency mostly present after extended periods of dictatorship “the right to be trafficked” is seen as an emancipating act while it actually ends up in sex slavery.<sup>26</sup>

Either being groomed to enter the international sex trade or already knowing what they will be doing but willing to commit to it anyway in exchange for money sent to their families, Nigerian women contact “madams”. These are previously imprisoned prostitutes who have been able to pay-off their debts to their own traffickers and to purchase girls to become their slaves. Central to the Nigerian sex trafficking system that is run by entire families and that is often undetectable by authorities, madams present themselves to susceptible women as the helpers that pay the cost of their transportation and that grant them travel documents that will allow them to leave Nigeria and work for an unspecified while to pay them off.<sup>27</sup> In what seems to be a fair business deal, trafficked women actually agree to work in order to pay off a debt of thousands of dollars for many years.<sup>28</sup>

It is in these early stages of trafficking that culture is used to render Nigerian women captive for years on end and it is these tactics that a western therapist should be educated about when attempting to help them. Based on traditional African religion that employs mystic powers and spiritual practices such as voodoo<sup>29</sup>, traffickers collect a Nigerian woman’s hair, pubic hair and nail clippings, they blend it with animal products such as a chicken’s leg and pieces of plants and place them in paper wrapping, to create a “juju”, a spiritual ritual that makes women swear that they will not abandon their work obligations and that they will not reveal information about the trafficking network they have witnessed to authorities. If they break this promise they will die, become gravely ill or suffer a family catastrophe through magic powers.<sup>30</sup> In addition to the unimaginable fear that Nigerian women feel after having sworn to spirits that they will not attempt to escape, a fear often overlooked by political, legal, medical and psychiatric professionals of the western world that work with trafficking<sup>31</sup>, other factors

---

<sup>26</sup> Charles Hounmenou. "Exploring Child Prostitution in a Major City in the West African Region." *Child Abuse & Neglect* 59 (2016): 26-35. doi:10.1016/j.chiabu.2016.07.003.

<sup>27</sup> Charles Piot. "The “Right” to Be Trafficked." *Indiana Journal of Global Legal Studies* 18, no. 1 (2011): 199-210.

<sup>28</sup> Marina Mancuso. "Not All Madams Have a Central Role: Analysis of a Nigerian Sex Trafficking Network." *Trends in Organized Crime* 17, no. 1-2 (2013): 66-88. doi:10.1007/s12117-013-9199-z.

<sup>29</sup> Victoria I. Nwogu. "Nigeria: Human Trafficking and Migration." *Forced Migration Review* 25 (2006): 32-33.

<sup>30</sup> Marina Mancuso. "Not All Madams Have a Central Role: Analysis of a Nigerian Sex Trafficking Network." *Trends in Organized Crime* 17, no. 1-2 (2013): 66-88. doi:10.1007/s12117-013-9199-z.

<sup>31</sup> Anthony W. Dunkerley. "Exploring the Use of Juju in Nigerian Human Trafficking Networks: Considerations for Criminal Investigators." *Police Practice and Research* 19, no. 1 (2017): 83-100. doi: 10.1080/15614263.2017.1347786.

burden them. Rape, physical abuse and threats of being sent to an uncertain origin without any money as well as a conviction that police agents are corrupt and are working with the traffickers<sup>32</sup>, destroy altogether these women's capacity to break free. Lastly, Nigerian women's beliefs that to the western world, their bodies are ideologically fastened to violence due to the African continent's tried history with colonialism<sup>33</sup>, makes them even more unwilling to seek help from citizens of countries that perceive of them in such a derogative way.

This is the background from which some Nigerian women seen by an American or European mental health professional may have derived from. In handling such a case, a therapist faces additional challenges. The first is that Nigerian women who have been trafficked for sex work often do not disclose their traumatic experiences out of fear of the "juju". Their lack of capacity to commit to therapy along with the fragmented reports of their personal history, confronts a therapist with a number of challenges: they know the psychopathological symptoms but they do not know what has caused them. Even if a therapist's intuition leads them to suspect what has preceded, their personal exposure to safer environments may not allow for their imagination to reach tortures of a Nigerian woman. This means that the safety and security of the therapist's background may render them unable to empathize entirely with their clients. This situation is only made worse by the social and legal uncertainty of their client's future that may have them displaced and out of therapy, at a time when stability in the therapeutic relationship is crucial.<sup>34</sup>

Having insecure status in a country is understandably a very different experience to having secure status for trafficking survivors in terms of psychotherapy as well, even though symptoms of a disorder may be similar.<sup>35</sup> In psychotherapy, being a trafficked sex worker is also very different from being a trafficked non-sex worker. Even though both groups may exhibit similar depressive or anxiety disorders and especially Post-Traumatic Stress Disorder, the severity of their symptoms along with the distress that they have endured is profoundly

---

<sup>32</sup> Marcel Van Der Watt, and Beatri Kruger. "Exploring 'juju' and Human Trafficking: Towards a Demystified Perspective and Response." *South African Review of Sociology* 48, no. 2 (2017): 70-86. doi: 10.1080/21528586.2016.1222913.

<sup>33</sup> Anthony W. Dunkerley. "Exploring the Use of Juju in Nigerian Human Trafficking Networks: Considerations for Criminal Investigators." *Police Practice and Research* 19, no. 1 (2017): 83-100. doi: 10.1080/15614263.2017.1347786.

<sup>34</sup> Woods, Tryon P. "Surrogate Selves: Notes on Anti-trafficking and Anti-blackness." *Social Identities* 19, no. 1 (2013): 120-34. doi:10.1080/13504630.2012.753348.

<sup>35</sup> Jill Domoney, Louise M. Howard, Melanie Abas, Matthew Broadbent, and Sian Oram. "Mental Health Service Responses to Human Trafficking: A Qualitative Study of Professionals' Experiences of Providing Care." *BMC Psychiatry* 15, no. 1 (2015). doi:10.1186/s12888-015-0679-3.

distinct.<sup>36</sup> Besides the type of work that the women were engaged in, a therapist must also pay attention to the time they spent in trafficking as well as the extent of the cruelty that they have endured. A victim of extreme sexual violence can exhibit more severe symptoms of Post-Traumatic Stress Disorder. Similarly, more time in trafficking is associated to higher levels of depression and anxiety and a longer time lapse from the cessation of their trafficking is linked to milder depressive and anxiety symptoms but to un-subsiding Post-Traumatic Stress Disorder symptoms.<sup>37</sup> The question of whether these women's different needs after their escape have been met through social support should also be examined by the therapist.<sup>38</sup>

Post-Traumatic Stress Disorder in Nigerian women, brings to the forefront the concept of trauma, a form of which is sex-work trafficking on its own. To be considered a trauma, the 5th edition of the Diagnostic and Statistical Manual of Mental Disorder claims that a lived experience should include near death experiences, grave physical harm or sexual exploitation. In the case of sex trafficking, all these criteria are often met. Not establishing a Post-Traumatic Stress Disorder diagnosis on its own, migration and geographical displacement is also considered traumatic by scholars, in that it robs a human from the protective shield formed by their country's cultural beliefs and traditions.<sup>39</sup> Vulnerable to developing psychological disorders in all fronts, Nigerian trafficked women challenge a therapist to understand and accept the reasons that keep them from opening up more in session.<sup>40</sup>

Psychoanalytic, Psychodynamic and Cognitive Behavioral are some of the modalities established by and for the west in treating psychological and psychiatric distress.<sup>41</sup> But how would the psychological trauma experienced by a Nigerian woman be treated within their own country and what are the beliefs there, in

---

<sup>36</sup> Stacy J. Cecchet, and John Thoburn. "The Psychological Experience of Child and Adolescent Sex Trafficking in the United States: Trauma and Resilience in Survivors." *Psychological Trauma: Theory, Research, Practice, and Policy* 6, no. 5 (2014): 482-93. doi:10.1037/a0035763.

<sup>37</sup> Atsuro Tsutsumi, Takashi Izutsu, Amod K. Poudyal, Seika Kato, and Eiji Marui. "Mental Health of Female Survivors of Human Trafficking in Nepal." *Social Science & Medicine* 66, no. 8 (2008): 1841-847. doi:10.1016/j.socscimed.2007.12.025.

<sup>38</sup> Mazeda Hossain, Cathy Zimmerman, Melanie Abas, Miriam Light, and Charlotte Watts. "The Relationship of Trauma to Mental Disorders Among Trafficked and Sexually Exploited Girls and Women." *American Journal of Public Health* 100, no. 12 (2010): 2442-449. doi:10.2105/ajph.2009.173229.

<sup>39</sup> Melanie Abas, Nicolae V. Ostrovski, Martin Prince, Viorel I. Gorceag, Carolina Trigub, and Siân Oram. "Risk Factors for Mental Disorders in Women Survivors of Human Trafficking: A Historical Cohort Study." *BMC Psychiatry* 13, no. 1 (2013). doi:10.1186/1471-244x-13-204.

<sup>40</sup> Gesine Sturm, Thierry Baubet, and Marie Rose Moro. "Culture, Trauma, and Subjectivity: The French Ethnopsychanalytic Approach." *Traumatology* 16, no. 4 (2010): 27-38. doi:10.1177/1534765610393183.

<sup>41</sup> Becca C. Johnson. "Aftercare for Survivors of Human Trafficking." *Journal of the North American Association of Christians in Social Work* 39, no. 4 (2012): 370-89.

regards to human trafficking? While psychotherapy for human trafficking survivors is not established in Nigeria, close family ties are often initiated in helping a member overcome their suffering, with a male leader or a trusted healer undertaking the role of decreasing tension through spiritual or ritual based practices. In the case of sex trafficking, one cannot assume that a family would accept back a survivor of human trafficking, even more so collaborate to help them overcome distress.<sup>42</sup> Even though family bonds might provide security to any other mental illness sufferer, the knowledge that this type of support might be non-existent after working as a sex slave might be even more agonizing to a woman. In reality, Nigerian tradition views mental illness as a form of possession by external deadly forces that western medicine and psychotherapy can do little about. To help them overcome, practitioners named “Babalawos” are enlisted. Babalawos plan excursions to mountains in which, along with the sufferers, they perform a series of rituals such as using holy water to send the spirits away.<sup>43</sup> The mentally ill are also considered to be people bound to die and to be reincarnated, but who are afraid to follow through with a suicide promise they have made with other Nigerian people. More specifically, some Nigerian people promise to die as a form of spiritual practice but people who are considered mentally ill are the ones who have stepped back of this promise out of fear. To heal them, palm readers agree to absolve them from the obligation to die and thus alleviate their pain.<sup>44</sup>

In all the cases mentioned above, mental illness is perceived as a force of unknown origin that can only be dealt with through spiritual practices. Had a Nigerian woman that had survived sex trafficking returned home and exhibited symptoms of Post-Traumatic Stress Disorder that are observable to others, such as seeming excessively startled when surprised or not being able to sleep<sup>45</sup>, these could be addressed through spiritual guidance. This would be the case in the event that her family would accept her back and not send her away out of shame for her work in prostitution. The ethical stance of Nigerians on human trafficking is equivocal, with the Christian church viewing it as an expression of gluttony and greed for money that can be overcome by an equitable distribution of funds among

---

<sup>42</sup> Mazeda Hossain, Cathy Zimmerman, Melanie Abas, Miriam Light, and Charlotte Watts. "The Relationship of Trauma to Mental Disorders among Trafficked and Sexually Exploited Girls and Women." *American Journal of Public Health* 100, no. 12 (2010): 2442-449. doi:10.2105/ajph.2009.173229.

<sup>43</sup> O. A. Pela. "Psychotherapy: Practical Issues and Problems in Nigeria - 12 Months Experience." *The Individual and the Group*, 1982, 341-46. doi:10.1007/978-1-4684-8154-9\_43.

<sup>44</sup> O. F. Aina. "'Psychotherapy by Environmental Manipulation' and the Observed Symbolic Rites on Prayer Mountains in Nigeria." *Mental Health, Religion & Culture* 9, no. 1 (2006): 1-13. doi:10.1080/13674670512331322612.

<sup>45</sup> P. O. Ebigdo, and U.H. Ihezue. "Belief in Reincarnation (the "ogba Nje" Phenomenon) and Its Significance for Psychotherapy in Nigeria." *Zeitschrift Fur Psycho-somatische Medizin* 27, no. 1 (1981): 84-91.



the population<sup>46</sup> and the Catholic denouncing abuse. The Pentecostal church also disagrees with trafficking and the Aladura sometimes promotes abuse in beating people who have been possessed by evil spirits.<sup>47</sup> Even though opinions are expressed theoretically, little is known about how Nigerian churches or Nigerian healers would specifically handle sex trafficking female survivors.

In this absence of concrete cross-cultural guidance, a therapist can rely on western therapeutic means to treat Nigerian women. By using diagnostic manuals, scientific research and pharmacological approaches, they can deal with the symptoms and the manifestations that these describe. The question of whether a mental health professional of the west should enter into a discussion about Nigerian traditions of witchcraft and spiritual beliefs as well as the extent to which they can negotiate such customs remains to be explored. As mental health professionals of a different cultural background, should we try to convince Nigerian women that spirits will not haunt them or should we try to work with these values and find a way out that still follows their cultural beliefs? Should we for instance emphasize the belief that they have a right to a new life as would the healers releasing sufferers from the burden to die and be reincarnated? And if we do try to influence their values, are we being ethical?<sup>48</sup> A level of openness and dialogue is central to building a therapeutic relationship here. If used on its own, western psychotherapy could lead to a diagnosis of delusional thinking in women who think they are controlled by spirits and would attempt to treat them for schizophrenia. But acknowledging the Nigerian cultural background of such beliefs could lead the therapist to a different diagnosis.

Unfortunately to the western therapist, the exact level of liberty and dialogue to be established in therapy between foreign spiritual values has not yet been proposed by academic literature. Within this deficiency in research however, a therapist who is working with a Nigerian former sex slave can find value in the information provided above. Since a client's perceptions of his or her life is central to therapy, a professional should focus on both perceived and existing threats to their client. While Nigerian women's fear of spiritual condemnation and torture may appear implausible to the western observer, not only is this fear magnificent to

---

<sup>46</sup> Mazeda Hossain, Cathy Zimmerman, Melanie Abas, Miriam Light, and Charlotte Watts. "The Relationship of Trauma to Mental Disorders among Trafficked and Sexually Exploited Girls and Women." *American Journal of Public Health* 100, no. 12 (2010): 2442-449. doi:10.2105/ajph.2009.173229.

<sup>47</sup> George O. Folarin. "Lk 12:13-21 in the Context of Human Corruption." *Asia Journal of Theology* 24, no. 2 (2010): 312-24.

<sup>48</sup> Don Akhilomen. "Addressing Child Abuse in Southern Nigeria: The Role of the Church." *Studies in World Christianity* 12, no. 3 (2006): 235-48. doi:10.3366/swc.2006.0018.

them but it is also combined with the real threat that sex trafficking victims face by traffickers who are looking to get them back.<sup>49</sup>

Much like treating a patient who is constantly afraid for their life due to a terminal illness, therapists treat Nigerian women who perceive the threat of death as imminent. In this capacity, a therapist has the dual role, both to provide a safe space that nurtures security to these women and to fight against their own feeling of uncertainty that may arise due to legal, political and security issues that are pending for an extended timeframe. Aggravated by a feeling of being rejected from otherwise closely-bonded families and of finding themselves among foreign, suspicious populations, these women face rejection both from their past and from their future.<sup>50</sup>

Treating a sex trafficking female survivor is one of the most challenging, yet inspiring tasks a western therapist can undertake. Even though research on how to help a Nigerian woman with such experiences, while respecting her cultural backgrounds is limited and inconclusive, persevering on this goal is an achievement on its own. Trying to establish a successful cross-cultural therapeutic alliance despite the challenges, not only could help sex trade survivors but also depicts the potential of psychology to counteract man-made challenges.<sup>51</sup>

---

<sup>49</sup> P. O. Ebigo, and U.H. Ihezue. "Belief in Reincarnation (the "ogba Nje" Phenomenon) and Its Significance for Psychotherapy in Nigeria." *Zeitschrift Fur Psycho-somatische Medizin* 27, no. 1 (1981): 84-91.

<sup>50</sup> Nlierum S. Okogbule. "Combating the "New Slavery" in Nigeria: An Appraisal of Legal and Policy Responses to Human Trafficking." *Journal of African Law* 57, no. 1 (2013): 57-80.

<sup>51</sup> Victoria I. Nwogu. "Nigeria: Human Trafficking and Migration." *Forced Migration Review* 25 (2006): 32-33.

# **Civil Society Organisations in Counter-Trafficking Governance: When Long-Standing Interactions Lead to Solid Partnerships**

**Chloé Brière, PhD, LLM**

Post-doctoral researcher. After defending her thesis on the external dimension of the EU's policy against trafficking in human beings, she now works on projects addressing demand for sexual services, and research linked to EU criminal and migration law.

**Julia Muraszkiewicz, PhD, LLM**

Research analyst at Trilateral Research Ltd, where she works on issues of humanitarian crisis, migration, human trafficking and ethics.

**Amy Weatherburn, LLB, LLM**

PhD candidate conducting research on trafficking in human beings for the purposes labour exploitation, analysing the effectiveness of the implementation of the European legal framework and the handling of labour exploitation in law.

## **Acknowledgements**

This paper follows the panel presented at the EUIA V conference in May 2016. The authors would like to thank Ms Sarah De Hovre (PAG-ASA) and Ms Patricia Le Coq (Myria (Federal Migration Centre)) for their contribution to the panel and for comments received on the papers.

## Abstract

Civil society involvement in counter-trafficking governance has substantially evolved, and today reaches an unprecedented level. The present paper aims at discussing different aspects of their involvement and their unique position across multiple levels of governance: i) their role in drafting legal instruments; ii) their role in EU's policy and iii) their impact in securing the rights of victims, using the example of the trafficked person's right not to be punished. We highlight that civil society actors, at all multi-governance levels from the global to the local, play an integral role in securing an effective comprehensive counter-trafficking response.

## 1. Introduction

Civil society actors comprise non-governmental organisations, charities, foundations and trusts, composed of citizens and/or professionals who work in isolation or collectively to raise awareness and instigate policy change for common interests often linked to matters of social justice. Their involvement in the prevention and the fight against human trafficking has often preceded the involvement of national authorities<sup>1</sup> and inter-governmental organisations. Moreover, they often contribute to raising awareness of the need to develop and implement ambitious counter-trafficking activities, and they constantly remind of the importance of adapting them to the mutations of the phenomenon. Finally, they have a unique expertise in this field, since they are often the only actors with an experience of what is functioning (or not) on the ground. Their cooperation with relevant stakeholders at international, regional and national level is thus of paramount importance. Moreover, their diversity allows them to occupy a unique position, in which they are able to interact, on multilateral and/or bilateral basis, with any of the actors taking part in the global counter-trafficking governance. Henceforth we have observed that the integration of civil society organisations in global counter-trafficking governance has substantially evolved throughout the years.

The present paper aims at discussing different aspects of the integration of civil society organisations in the global counter-trafficking governance. Each section provides an illustration of their unique position across multiple levels of governance: i) the role of civil society in drafting international legal instruments; ii) their role and integration in the EU's counter-trafficking policy and iii) their contribution to the impact in securing the rights of trafficked persons, using the

---

<sup>1</sup> GALLAGHER, A., *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, Human Rights Quarterly, Vol. 23, No. 4, 2001, p. 1002

example of the trafficked person's right not to be punished.

The paper will pinpoint the strengths and weaknesses in the current involvement of civil society organisations in preventing and combating trafficking in human beings at all levels of governance. On the basis of our analysis, we will eventually highlight best practices to be promoted and/or propose ideas to improve the involvement of civil society organisations, as their involvement is crucial, at all multi-governance levels from the global to the local, to securing an effective counter-trafficking response.

## **2. The integration of civil society in counter-trafficking governance**

The development of counter-trafficking governance in the late 1990's as one of the aspects of global migration governance has facilitated a wide-ranging number of institutions addressing human trafficking. Their interactions aim at developing a common comprehensive approach, stimulating the development of synergies and avoiding the duplication of efforts. The crucial role of civil society in combating human trafficking was made clear in 2002 in the *United Nations Human Rights Commissioner Principles and Guidelines on Human Rights and Human Trafficking*, wherein the need to engage with civil society actors is highlighted.<sup>2</sup>

Importantly, civil society organisations offer a unique perspective and experience on the way to address trafficking in human beings. Without a doubt, they have played a big role within counter-trafficking efforts. Such involvement can take very diverse forms, and varies depending their status, objectives and means. The expression "civil society organisations" (hereinafter CSOs)<sup>3</sup> as employed in the present article, covers a large variety of organisations acting independently of government: whereas some act at local/national level, operating shelters for victims, or engaging in discussions on the national counter-trafficking legislation and policy, others are active at a transnational level, where they engage in lobbying actions, research activities or capacity-building projects. The diversity of their missions is well established, and some organisations and/or networks of CSOs conduct tasks ranging from the detection and assistance of trafficking victims to the conduct of raising-awareness campaigns. In addition to these concrete tasks, CSOs have been increasingly recognised as essential partners for the elaboration and implementation of counter-trafficking policies. Public

---

<sup>2</sup> UNHCR Principles and Guidelines on Human Rights and Human Trafficking, 2002.

<sup>3</sup> The authors use civil society organisations (CSOs) to also mean non-governmental organisations (NGOs).

stakeholders, active at global, regional or national level, rely on their valuable input and associate them to their discussions and policies.<sup>4</sup>

Yet despite some advancements, the integration of civil society in global, regional and national counter-trafficking efforts is still an emerging topic.<sup>5</sup> CSOs advocating for a comprehensive approach to counter-trafficking, can contribute to agenda setting and strongly influence the drafting processes of international legal frameworks that enunciate the key concepts and thus the direction and focus of efforts to combat trafficking in human beings. Collaboration with CSOs is now standard practice in many countries, although the extent of their involvement varies considerably.<sup>6</sup> Regional organisations, which have acknowledged their expertise, are more than willing to engage with them in diverse fora in order to benefit from their comments and feedback. This move is particularly noticeable in Europe, where specific platforms have been established. The EU Civil Society Platform against trafficking in human beings, has over 100 European member organisations. The Europe-wide Platform serves as a forum for CSOs working at European, national and local levels. The Alliance against Trafficking in Persons, in which numerous CSOs participate, has for instance been established under the patronage of the Organisation for Security and Cooperation in Europe (OSCE).<sup>7</sup> CSOs also assist the GRETA (Council of Europe) when it monitors the compliance of national legislation and policies with regional standards.<sup>8</sup>

Overall, the importance of the long-standing support and involvement of CSOs, has engendered a vast amount of expertise and experience, and fostered links and cooperation, not only amongst the CSOs themselves, but also with intergovernmental organisations and national governments. As a result, their involvement is not only foreseen in policy documents, but also in legally binding

---

<sup>4</sup> For instance, several CSOs, namely Amnesty International, Anti-Slavery International, ECPAT, ICMEC, La Strada International, Save the Children and Terre des Hommes, are part of the OSCE's Alliance against Trafficking in Persons, a broad forum that helps developing effective joint strategies, and innovative and coordinated approaches to strengthen the prevention and combat against trafficking. See also the example of Belgium, where CSOs have officially been recognized as members of the national coordinating body (see Royal Decree of 21 July 2014, *Moniteur Belge*, 1<sup>st</sup> September 2014).

<sup>5</sup> Global: De Burca, G., *The EU in the negotiation of the UN Disability Convention*, Jean Monnet Working Paper 14/09; Regional: Gallagher, A., "Recent Legal Developments in the Field of Human Trafficking: A Critical Review of the 2005 European Convention and Related Instruments", *European Journal of Migration and Law*, 2006, 8, p. 163-189 at p. 173; National: L.E. v. Greece, Appl. No. 71545/12, 21 January 2016

<sup>6</sup> See ILO, Strengthening action to end forced labour Report IV(I) 2013, p. 19, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_217752.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_217752.pdf) on role of CSOs in playing a key role in awareness raising, victim assistance and prevention measures.

<sup>7</sup> The full list of its participants can be found here: <http://www.osce.org/secretariat/107221>.

<sup>8</sup> C.R.J.J. Rijken, S. Jansen-Wilhelm and E.J.A. de Volder, "Taking stock of GRETA's Monitoring Function", not published.

instruments.<sup>9</sup> However, despite the growing importance of civil societies in trafficking agenda setting, there is a dearth of research on their role and influence. Thus further research is encouraged, including questions such as: how do the groups influence the agendas of big organisations such as the EU or UN? Why do some of their issues become included and not others? Why are they influential at certain times but not others? And what are the important factors determining whether a civil society is heard? Taking this into account, the remainder of this paper will broach some of these questions and consider the role of civil society at varying levels of counter-trafficking governance: international (section 3), regional (section 4) and national (section 5).

### **3. Global counter-trafficking governance: The role of civil society in drafting international legal instruments**

This section will determine the integration of civil society in the global debate on human trafficking by examining the regulatory role and influence of CSOs on the drafting processes of international legal frameworks, a role that has been central to the negotiation of other human rights instruments.<sup>10</sup>

The entry into force of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter the Palermo Protocol) saw the beginning of significant developments in the international law of human trafficking and has been the subject of much scholarly debate regarding its effectiveness and achievements.<sup>11</sup> The drafting of the Palermo Protocol saw a significant unprecedented and influential contribution from NGO actors, who assisted in providing more information regarding the phenomenon of human trafficking, something that may be considered as a lacuna in the knowledge

---

<sup>9</sup> Convention on Action against THB, Article 27 (3); Directive 2004/81/EC, Article 5, role of civil society when giving information TCNs; Directive 2011/36/EU, Article 18, role of CSOs in prevention; Article 12 (5) Convention on Action against THB, Assistance to victims; Convention on Action against THB, Article 35, Co-operation with civil society & Article 5(6); OSCE Action Plan 2005, V. Partnerships.

<sup>10</sup> De Burca, G., *The EU in the negotiation of the UN Disability Convention*, Jean Monnet Working Paper 14/09.

<sup>11</sup> Gallagher, A., *The International Law of Human Trafficking*, (Cambridge University Press, 2010); Parkes, C., 'The Trafficking Protocol Has Advanced the Global Movement against Human Exploitation: The Case of the United Kingdom,' *Anti-Trafficking Review*, no. 4 (2015): 150–55; Gallagher, A., 'Two Cheers for the Trafficking Protocol,' *Anti-Trafficking Review*, no. 4 (2015): 14–32.

of the drafters.<sup>12</sup> Such involvement contributed to the development of a broad international definition of trafficking in persons.

Nearly 15 years after the adoption of the Palermo Protocol, two more significant binding instruments that will impact upon the next 20 years of counter-trafficking law and policy making were adopted. The International Labour Organisation (ILO) Protocol of 2014 to the Forced Labour Convention, 1930 (No. P029) and Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) (hereinafter the ILO Forced Labour Protocol and Recommendation) also received significant input from civil society actors that guaranteed that a number of key provisions were included to ensure that all victims of human trafficking are provided with the support and assistance firmly based on a holistic human rights integrated approach.

The involvement of civil society is at the core of the ILO's tripartite system (governmental representatives, workers' organisations and employers' organisations), presenting a particular model of CSO regulation and integration that is embedded throughout the entire decision-making process.<sup>13</sup> CSO engagement is explicitly recognised in the 1919 ILO Constitution,<sup>14</sup> demonstrating that civil society has a significant regulatory legitimacy in ILO governance.<sup>15</sup> As such a number of 'recognised' CSOs have a consultative relationship with the ILO. These represented CSOs are mandated to advocate for a wide range of issues, including the promotion of human rights, poverty alleviation, social security, professional rehabilitation, gender issues and youth matters.<sup>16</sup>

---

<sup>12</sup> The polarisation of the debate regarding how the issue of prostitution was to be dealt with in the human trafficking paradigm and the definition of trafficking amongst civil society actors must be noted, but did not do too much damage to the overall result: see Gallagher, A., 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis,' *Human Rights Quarterly* 23 (2001): 975–1004, p. 1003.

<sup>13</sup> Conference of NGOs in Consultative Relationship with the United Nations, *NGO participation arrangements at the UN and in other agencies of the UN System*, 2006, p.3, available at: [https://www.itu.int/council/groups/stakeholders/Resources/Non-Paper%20on%20NGO%20Participation%20in%20the%20UN%20System3%20\\_CONGO\\_.pdf](https://www.itu.int/council/groups/stakeholders/Resources/Non-Paper%20on%20NGO%20Participation%20in%20the%20UN%20System3%20_CONGO_.pdf).

<sup>14</sup> Article 12 (3), ILO Constitution, 1919, available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO).

<sup>15</sup> Van den Bossche, P., 'Regulatory Legitimacy of the Role of NGOs in Global Governance: Legal Status and Accreditation in NGO Involvement' in Vedder, A., (ed.) *International Governance and Policy: Sources of Legitimacy*, (Martinus Nijhoff Publishers, 2007) p.150.

<sup>16</sup> Conference of NGOs in Consultative Relationship with the United Nations, *NGO participation arrangements at the UN and in other agencies of the UN System*, 2006, p.4, available at: [https://www.itu.int/council/groups/stakeholders/Resources/Non-Paper%20on%20NGO%20Participation%20in%20the%20UN%20System3%20\\_CONGO\\_.pdf](https://www.itu.int/council/groups/stakeholders/Resources/Non-Paper%20on%20NGO%20Participation%20in%20the%20UN%20System3%20_CONGO_.pdf).



In 2013, the ILO sought to address the need to modernise and address gaps in the protection of forced labour.<sup>17</sup> The subsequent negotiation and drafting process of the ILO Forced Labour Protocol and Recommendation has been hailed to be indicative of ‘ILO tripartism functioning at its best and a clear demonstration that treaty-making has not gone out of fashion.’<sup>18</sup> The diversity of actors involved reflects that many civil society actors, both from within the ILO tripartite structure and external CSOs were engaged with the issue.<sup>19</sup>

Although CSOs did not contribute to the detailed discussion regarding proposed amendments, representatives made opening statements that reflected their views regarding some of the essential elements that should be incorporated, including the provision of appropriate remedies including compensation,<sup>20</sup> and the non-punishment of victims who have been compelled to commit unlawful activities. In addition, the NGO Walk Free outlined the advocacy initiatives undertaken in order to secure the support of Member States for a strong Protocol and supplementary Recommendation that could provide a contemporary framework to tackle forced labour.<sup>21</sup> All civil society representatives emphasised the importance of adopting a legally binding Protocol and an accompanying Recommendation.<sup>22</sup>

The content of the proposed Protocol considered the importance of providing redress for victims of forced labour by referring to access to compensation as a form of effective remedy. A suggested amendment to the text attempted to address the limiting nature of compensation, stating for ‘provision of effective remedies, including rehabilitation, adequate compensation and guarantees of non-repetition.’<sup>23</sup> Consultation with civil society actors raised the issue of establishing specific compensation funds for forced labour victims. The proposed Recommendation required Member States to implement measures aimed at

---

<sup>17</sup> ILO, Conclusions adopted by the Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation (Geneva, 11-15 February 2013), available at: [http://www.ilo.org/global/standards/WCMS\\_212068/lang--en/index.htm](http://www.ilo.org/global/standards/WCMS_212068/lang--en/index.htm).

<sup>18</sup> Andrees, B., ‘How a landmark treaty on forced labour got passed’ 25 September 2014, available at: <http://iloblog.org/2014/09/25/how-a-landmark-treaty-on-forced-labour-got-passed/>.

<sup>19</sup> The International Labour Office presented the draft text instruments to representatives from international CSOs including International Young Christian Workers (IYCW) and the World Solidarity Movement (WSM), NGO Walk Free, Anti-Slavery International and the Global Alliance Against Traffic in Women (GAATW), International Domestic Workers Federation (IDWF), Human Rights Watch, *ibid*, paras 53-57.

<sup>20</sup> *Ibid*, para. 53. IYCW & WSM.

<sup>21</sup> *Ibid*, para. 54.

<sup>22</sup> *Ibid*, paras 53-57.

<sup>23</sup> ILO, Strengthening action to end forced labour: Report IV(2A), 27 March 2014, p.20, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_239813.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_239813.pdf).

‘ensuring access to existing compensation schemes, or establishing victim compensation funds in appropriate cases.’<sup>24</sup> Article 1 and Article 4 of the final text of the Protocol show that the discussion of the Committee prevailed with compensation being explicitly listed as an example of a remedy. However, for civil society actors, such as Human Rights Watch, the lack of an emphasis on the requirement of governments to ensure that victims have access to compensation, through the provision of compensation funds, is a missed opportunity in strengthening key protections<sup>25</sup> as is the lack of focus on the diversity of victim’s needs, and the need to secure effective remedies, not just limited to compensation in the final wording in the Protocol and Recommendation.

The drafting process of the Protocol and Recommendation offered the opportunity to strengthen the regulation of businesses to ensure that they take measures to prevent forced labour in their supply chain. This was a notion overwhelmingly supported by workers and government representatives.<sup>26</sup> The proposed Recommendation stated that, as part of preventative measures, Member States should make ‘efforts to reduce the trade in and demand for goods and services that have been produced or delivered using forced or compulsory labour.’<sup>27</sup> However, the extent of the obligations on Member States was weakened following the negotiations in the Committee,<sup>28</sup> and the final Recommendation requires Member States to implement preventative measures, according to their national circumstances, by ‘providing guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they address the risks of forced or compulsory labour in their operations or in products, services or operations to which they may be directly linked.’<sup>29</sup> It is clear thus that the final text gives states a large degree of flexibility. Moreover, the obligation is weak as it only calls for guidance and support, which is less rigorous

---

<sup>24</sup> ILO, Strengthening action to end forced labour: Report IV(2B), 27 March 2014, p.16, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_239814.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_239814.pdf).

<sup>25</sup> Ibid.

<sup>26</sup> ILO, Strengthening action to end forced labour: Report IV(2A), 27 March 2014, p.52, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_239813.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_239813.pdf).

<sup>27</sup> ILO, Strengthening action to end forced labour: Report IV(2B), 27 March 2014, p.14, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_239814.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_239814.pdf).

<sup>28</sup> ILO, Provisional Record No.9(Rev.), Fourth item on the agenda: Supplementing the Forced Labour Convention, 1930 (No. 29), to address implementation gaps to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour -- Report of the Committee on Forced Labour, Record of Proceedings, 20 June 2014, paras 8678-891, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_246188.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246188.pdf).

<sup>29</sup> R203 - Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), Recommendation on supplementary measures for the effective suppression of forced labour.

than for instance change in legislation. Again, for civil society, the final text represented a missed opportunity to secure the accountability of the private sector in ensuring that their supply chains are free from forced labour.<sup>30</sup>

A final element of the negotiations supported by civil society actors was the need to acknowledge the dominance of forced labour in the private economy, particularly amongst informal economic sectors where regulation is absent. This was supported during the consultation by workers organisations.<sup>31</sup> Both the Protocol and Recommendation stipulate that the preventative measures should be broadened to cover ‘all workers in all sectors of the economy’<sup>32</sup> thus implicitly, not making any distinction between formal and informal economic sectors.<sup>33</sup>

This section has shown that the tripartite formation of the ILO ensures that civil society actors are included. The drafting process gives civil society opportunities to feed into the consultations of the ILO. The subsequent conclusions on the role of businesses and the need for increased recognition of the private economy, shows the weight that is given to the issues raised by civil society in this consultative stage. In addition, civil society undertake advocacy and lobbying efforts in advance of the Committee stage. They are then able to maintain a formal role in final drafting proceedings and reinforce the main points that they feel should be considered in these final stages. The focus on the ILO Protocol and Recommendation negotiations demonstrates that CSOs can impact on the direction of law and policy making and have significant visibility in the governance process.

Using the ILO Protocol and Recommendation negotiations as an example of the involvement of CSO in international governance, the involvement at all stages is key to ensuring meaningful participation. An aspect of the role of CSOs that has not been assessed is the impact of their involvement in the implementation of counter-trafficking measures, which, will require synergy from the macro level down to the regional and local level, and will be considered in the following sections.

---

<sup>30</sup> Human Rights Watch, Global treaty to protect forced labour victims adopted, 11 June 2014, available at: <https://www.hrw.org/news/2014/06/11/global-treaty-protect-forced-labor-victims-adopted>.

<sup>31</sup> ILO, Strengthening action to end forced labour: Report IV(2A), 27 March 2014, p.25, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_239813.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_239813.pdf).

<sup>32</sup> Protocol, article 2(c)(i), Recommendation 4(e) R203 - Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), Recommendation on supplementary measures for the effective suppression of forced labour.

<sup>33</sup> ILO, Strengthening action to end forced labour: Report IV(2A), 27 March 2014, p.26, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_239813.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_239813.pdf).

#### **4. Regional counter-trafficking governance: The European Union's recognition and promotion of civil society organisations as key actors**

The unique perspective and experience of CSOs on the way to address trafficking in human beings has been progressively acknowledged by the European Union (hereafter the EU), and since the early 2000's, there has been a growing consensus on the importance of involving a more diverse group of actors in the EU's counter-trafficking governance. This consensus led to two concrete consequences: the creation of mechanisms through which the EU institutions can interact with CSOs on the one hand, and the insertion of references to CSOs' involvement in EU instruments on the other hand.

Two mechanisms, i.e. the Experts Group on Trafficking in Human Beings, and the EU Civil Society Platform against Trafficking in Human Beings, have been established, allowing the European Commission to involve CSOs in the elaboration of the EU's counter-trafficking policy, and they will be analysed successively.

In 2002, the Brussels Declaration recommended the setting up by the European Commission of an Experts Group, comprising notably representatives from CSOs.<sup>34</sup> The main function of this group is to advise the Commission on the development of EU action in the field of trafficking. The Experts Group publishes reports and issues opinions on various aspects of the EU action against THB and meets yearly with the EU Anti-Trafficking Coordinator and other relevant Commission's services on matters related to THB. Since its creation in 2003, the Experts Group has always counted among its members, representatives of CSOs with an established expertise in the field of THB.<sup>35</sup> In its current composition, the Experts Group counts no less than 5 members with a professional background in CSOs.<sup>36</sup> Although the group is composed of eminent personalities with a certain experience and expertise in the field of trafficking, its role remains purely consultative. Yet some of its Opinions have contributed to substantially shaping the EU's counter-trafficking policy, as for instance in its Opinion 7/2010, in which the Experts Group proposed a European Strategy and Priority Actions on Combating and Preventing THB.<sup>37</sup>

---

<sup>34</sup> Brussels Declaration on Preventing and Combating Trafficking in Human Beings, Council Doc. No. 14981/02, 29.11.2002, 22 pages at p. 6.

<sup>35</sup> Decision of 27 August 2003 appointing the members of the Group, OJ C 205, 30.8.2003, p. 3.

<sup>36</sup> For more details, please consult: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2722&Lang=FR>.

<sup>37</sup> Experts Group, Opinion No 7/2010, Proposal for a European Strategy and Priority Actions on combating and preventing trafficking in human beings and protecting the rights of trafficked and exploited persons, 58 pages.

The second mechanism deserving our attention is the EU Civil Society Platform Against Trafficking in Human Beings. This platform is envisaged as a forum for CSOs working at European, national and local levels, enabling the EU institutions to engage in constructive dialogue with them.<sup>38</sup> Its creation was announced in 2012 in the Strategy towards the eradication of trafficking in human beings,<sup>39</sup> and became effective in 2013. Today the platform meets every two years, bringing together over 100 CSOs working in the field of THB in the Member States and in four neighbouring priority countries (Albania, Morocco, Turkey and Ukraine). The meetings take the form of conferences, during which workshops are organised, and address developments in the EU counter-trafficking policy, as well as the emerging trends in the field.<sup>40</sup> In addition, the Commission has created an EU Civil Society e-platform, in order to enable the continuity of the discussions beyond the biannual meetings in Brussels and to broaden the participation of CSOs by including a higher number of organisations.<sup>41</sup>

After few years of existence, one may wonder about the added-value of such platform. Do the CSOs attending these meetings really enjoy an opportunity to voice their opinions and potentially influence the EU counter-trafficking policy? The answer to such question is by definition very difficult to give. It is not only very sensitive, but it is also very subjective. Each CSO/participant would have its own expectations and its own perception about the successes and/or shortcomings of the platform. Nevertheless, researchers, such as Dr. Shaparov, have attempted to find an answer to this crucial question,<sup>42</sup> and have obtained contrasted results. Some participants have expressed a positive feedback, stressing that it provided them several opportunities, such as the possibility to partner other organisations, to contribute to the EU anti-trafficking strategy and policies, or to meet Commission's officials and engage in face-to-face dialogue. In an opposing view, other respondents expressed a more negative feedback: the meetings are described as being about "ticking the 'engagement' box", there was no opportunity to influence the agenda, there is no working plan beyond one meeting, and no concrete

---

<sup>38</sup> Commission launches EU Civil Society Platform against THB, 31 May 2013, IP/13/484.

<sup>39</sup> Commission, "*The EU Strategy towards the Eradication of Trafficking in Human Beings, 2012 – 2016*", COM (2012) 286 final, 19.06.2012, p. 12.

<sup>40</sup> During its meeting in October 2015, discussions addressed children as high risk group of trafficking, emerging concerns (Syrian refugee crisis, and sham marriages); and finally demand, reduction and prevention initiatives. Source: <http://www.renate-europe.net/archives/3606>

<sup>41</sup> Commission, *Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings*, 17.10.2014, SWD (2014) 318, p. 13.

<sup>42</sup> His research has been presented in November 2015 during a conference, and the references are made to his Power Point presentation, available at: <https://thbregionalimplementationinitiative.files.wordpress.com/2015/10/sharapov-eu-civil-society-platform-against-trafficking.pdf>.

outcomes resulting from these meetings.<sup>43</sup> Additional research supports the sensitiveness of the appreciation of the platform's added-value. Participants have indeed expressed a more positive assessment, and have reported the coordination of several CSOs to convey agreed messages in the different workshops organised.

It is hard to draw a definitive conclusion on whether or not CSOs play an important part in the policy-making process at the EU level. Contrary to the international level, the European Union remains a bit of a blind spot concerning empirical coherent studies on the influence of CSOs on the counter-trafficking policy. The diversity of the CSOs active in the counter-trafficking field within Europe complicates the analysis: one cannot compare the influence exercised by an CSO representing a network of local and national CSOs, such as la Strada International or Terre des Hommes, and used to interact with institutional partners, with the influence exercised by a CSO operating a shelter for victims and concentrating its actions at the local level.

The recognition of CSOs as key actors in counter-trafficking efforts by the EU has led to a second consequence: the insertion within EU instruments of provisions foreseeing the involvement of CSOs in national counter-trafficking governance. Whereas the next section (section 5) will address in detail how CSOs are involved in a given EU Member State in the implementation of a specific provision, the next paragraphs will examine the provisions in EU instruments on the CSOs' involvement at national level.

As said earlier, for the EU, combatting THB supposes a comprehensive approach, and efforts to that end shall not remain exclusively in the hands of public authorities and shall involve a larger group of actors, including CSOs. The Directive 2011/36/EU<sup>44</sup> invites national authorities to encourage and work closely with CSOs.<sup>45</sup> In addition to their cooperation in prevention of THB,<sup>46</sup> the text also provides for the close cooperation of CSOs with national rapporteurs or equivalent mechanisms.<sup>47</sup> The Directive 2004/81/EC also envisages that CSOs may be entitled to inform third country national victims of THB about the possibility to obtain a residence permit if they cooperate with national competent authorities,<sup>48</sup>

---

<sup>43</sup> *ibidem*, slide 10.

<sup>44</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, *OJ L* 101, 15.04.2011, p. 1.

<sup>45</sup> Directive 2011/36/EU, Preamble, Recital 6.

<sup>46</sup> Directive 2011/36/EU, Article 18 (2).

<sup>47</sup> Directive 2011/36/EU, Article 19. See also Commission, *The EU Strategy towards the Eradication of Trafficking in Human Beings, 2012 – 2016*", *supra*, p. 11.

<sup>48</sup> Directive 2004/81/EC, Article 5.



and to offer them access to their programmes aimed at the recovery of a normal social life by trafficking victims.<sup>49</sup> These provisions share a common characteristic: they are drafted in rather vague terms and are often complemented by guidelines to be found in policy documents, such as the EU strategy.<sup>50</sup>

The European Union may nevertheless distinguish itself through its capacity to fund projects involving CSOs, located within or outside the EU territory, and through programmes established in diverse fields, such as the fight against crime, migration or development cooperation.<sup>51</sup> Although this funding is often (if not always) of a short-term nature, EU-funding allows CSOs to gain a certain independence from national subsidies and it enables them to deepen their expertise on trafficking in human beings.<sup>52</sup> In turn, by expanding their expertise the CSOs are in a stronger position to advocate, influence policy making nationally and regionally and contribute effectively to counter-trafficking measures. Furthermore, the funding also supports the involvement of CSOs in EU governance, since the conduct of joint projects allows CSOs to develop links with partners located in other countries, or active at another level of governance, and to benefit from their experience.

However, the influence of the EU's in promoting the involvement of CSOs is difficult to assess. The obligations of its Member States stem from other sources, such as the Council of Europe's Convention<sup>53</sup> or the United Nations' Protocol,<sup>54</sup> and some organisations monitor more closely than the EU the implementation of these obligations.<sup>55</sup> Provisions addressing the issue are often of a "soft" nature, leaving a broad margin of discretion to the States. In the end, the involvement of

---

<sup>49</sup> Directive 2004/81/EC, Article 12 (1).

<sup>50</sup> Commission, EU strategy, *supra*, p. 5 (multidisciplinary policy, including CSOs) p. 6 (national referral mechanisms), and p. 16 (consultation of CSOs by National Rapporteurs). See also the reference to CSOs in the mid-term implementation report of the EU Strategy, 17 October 2014, SWD (2014) 318 final.

<sup>51</sup> Examples of EU funding programmes: Regulation (EU) No. 516/2014 establishing the Asylum, Migration and Integration Fund (...), OJ L 150, 20.05.2014, p. 168 & Regulation (EU) No. 513/2014 establishing as part of the Internal Security Fund the instrument for financial support for police cooperation, preventing and combating crime (...), OJ L 150, 20.05.2014, p. 93.

<sup>52</sup> See for instance the TRACE project (Trafficking as a Criminal Enterprise – [www.trace-project.eu](http://www.trace-project.eu)), funded under the FP7 programme. Two CSOs, La Strada International and the Animus Association, were involved together with universities and public authorities from different EU Member States.

<sup>53</sup> E.g. CoE's convention, Art. 35 and Explanatory report §352-353.

<sup>54</sup> E.g. UN Protocol, Arts. 6 §3 & 9 § 3.

<sup>55</sup> See in particular the monitoring carried out by the GRETA (CoE), which meets representatives of CSOs for the evaluation of each national policy, assesses their involvement and addresses recommendations to States parties. The EU may have one distinctive advantage: the possibility to launch infringement proceedings against Member States that would not correctly transpose and implement the Directive 2011/36/EU.

CSOs in national counter-trafficking efforts depends to a large extent to the national context, and justifies in-depth and precise examples.

## **5. National counter-trafficking governance: The impact of CSOs in securing the protection and non-prosecution of victims**

This section looks at a different level of protection that can be offered by CSOs, namely at a national level. It is rooted in the notion that CSOs can help safeguard the various rights trafficked persons are entitled to and we focus on the principle of non-prosecution or non-application of penalties to human trafficking victims, as an example. The principle is embedded in numerous legal instruments and discourses. From a European Union perspective the right is encoded in Article 8 of Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and protecting its victims:

### **Non-prosecution or non-application of penalties to the Victim**

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

The Council of Europe Convention Against Trafficking in Human Beings also contains a similar clause<sup>56</sup> as does the Association of Southeast Asian Nations (ASEAN) Convention Against Trafficking in Persons, Especially Women and Children.<sup>57</sup> The importance of the principles is well accounted for in numerous documents, however in brief we can recall some of the underpinning arguments. For Hoshi the need to include principles of non-criminalisation arises because of the exacerbated traumatisation of a victim, when he/she is treated as criminal.<sup>58</sup> Whilst Piotrowicz rationalises the non-punishment principles by having concern

---

<sup>56</sup> The Article stated: 'Each party shall, in accordance with the basic principles of its legal system, provide for the possibility of non-imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.'

<sup>57</sup> Similarly the new legally binding ILO Protocol - ILO Protocol of 2014 to the Forced Labour Convention, 1930 (No. P029) – obliges States to ensure that competent authorities are entitled not to prosecute victims for unlawful activities that they have been compelled to commit. The principle is accounted for by the secondary victimisation that trafficked persons experience when they are prosecuted or penalised

<sup>58</sup> Hoshi, B. (2013). 'The Trafficking Defence: A proposed model for the non-criminalisation of trafficked persons in international law.' *Groningen Journal of International Law*, 1(2), 54-72



for the notion that liability of the victim is: ‘significantly diminished or extinguished because of the personal circumstances, in particular their situation of being under the control of the traffickers.’<sup>59</sup> Indeed we must emphasise that in being compelled to commit crimes by their trafficking situation the victims are not acting as a “free agent” but their acts are controlled by an outside force.

In order to ensure that victims of trafficking are not prosecuted or penalised for crimes related to their trafficking situation, as soon as there is a reasonable suspicion that they might have been trafficked there must be a careful assessment of the circumstances of their case. Relevant authorities ought to consider whether the victim committed the crime as a result of compulsion associated with their trafficking situation. Here, and beyond, CSOs can lend their expertise to law enforcement bodies. Due to their expertise and direct contact with trafficked persons, CSOs are often in an ideal place to help determine if the ethos of non-prosecution or non-application of penalties to the victim should apply in a given case. Yet, their advice is not always sought or even taken on board.<sup>60</sup> Such were the circumstances in the ECtHR case on human trafficking *L.E. v. Greece* (January 2016).<sup>61</sup> On arrest L.E. asserted that she was a human trafficking victim. The prosecution in the Athens Criminal Court overruled this claim. Importantly, in doing so it did not consider a testimony provided by an NGO (Nea Zoi). The ECtHR’s ruling in this case, amongst other things, found that ‘Greece was also found to have failed to conduct an effective investigation; the national court proceedings were also found to be deficient. There were various aspects that were unsatisfactory: the testimony provided by the director of Nea Zoi, who was in continuing contact with the applicant and reported that she was a victim of trafficking, was not initially included in the record...’<sup>62</sup>

To eradicate a problem like prosecuting and punishing victims of human trafficking is a challenging task. It requires a concerted effort that not only includes law enforcement persons but in the opinion of this paper, also civil society. The same logic also applies to other rights that trafficked persons are entitled to such as: compensation, right to assistance and access to justice to name but a few.

---

<sup>59</sup> Piotrowicz, R. (2015). ‘Human Trafficking and the Emergence of the Non-Punishment Principle.’ [Forthcoming], p.6

<sup>60</sup> See for example, Group of Experts on Action against Trafficking in Human Beings (GRETA), (2012). *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*, Strasbourg, paragraphs 90 and 219

<sup>61</sup> *L.E. v. Greece*, Appl. No. 71545/12, 21 January 2016

<sup>62</sup> Stoyanova, V. (2016). ‘L.E. v. Greece: Human Trafficking and States’ Positive Obligations.’ [Online] <https://strasbourgobservers.com/2016/02/02/l-e-v-greece-human-trafficking-and-states-positive-obligations/>

There are numerous factors that make civil society organisations better placed than others bodies in identifying when the principle of non-prosecution or non-applications of penalties ought to apply. Firstly, they may be the only persons who are able to elucidate the entire story from the potential victim. This is on account of the time spent in, for example, a safe house and the ability to establish a deeper feeling of trust. Furthermore, CSOs can be indispensable with regard to victim identification, which is one of the more challenging elements of the successful implementation of the non-prosecution or non-application of penalties principle. The police that come into contact with trafficked persons who commit crime, e.g., those dealing with drug cases, may not be trained to know about trafficking in persons and the specific nuances that make up the crime.<sup>63</sup>

A poor identification process and the failures at first instance to actively consider applicability of the non-prosecution or non-application of penalties principle need to be ameliorated, so that a more victim-centered approach prevails. It is contended that involving and listening to civil society persons, will allow victims a better chance of accessing their rights.

## 6. Conclusion

Overall, this paper has shown that the involvement of CSOs both in decision-making and in the implementation of counter-trafficking policies is of vital importance at all levels.

Globally, nearly 17 years after the adoption of the Palermo Protocol, civil society actors have provided significant input in the drafting of two more extremely significant binding instruments that will have an impact upon the future of counter-trafficking law and policymaking. The input from civil society actors in the drafting of the ILO Forced Labour Protocol and Recommendation has ensured that a number of key provisions are included to ensure that all victims of human trafficking are provided with the support and assistance required of a holistic integrated approach to global counter-trafficking governance.

At a regional level, we have seen positive development with regard to the EU's cooperation with CSOs. First of all, the creation of an expert group partially composed of representatives of CSOs and/or experts with an experience in a NGO active in the fight against THB, plus the EU Civil society. Even though it is difficult to assess whether these mechanisms allow them to exercise any influence on the EU political agenda, it is important to demonstrate that CSOs are recognised as crucial partners, to be consulted. This latter involvement of CSO demonstrates

---

<sup>63</sup> Piotrowicz, R. (2013). *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*, OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, para.66 p.25

an important recognition of their legitimacy and their expertise in combating trafficking in human beings. However, this paper suggests that more empirical research needs to be undertaken to better understand CSO ability to influence the EU on human trafficking issues.

Secondly the role of CSO involvement can also be demonstrated by the granting of funding (national or EU-funding) to these actors to allow them to carry out their activities. The EU an important contributor here, but not the only one, see for instance USA, through USAID or through Dpt of State, see also the funds provided by individual states to CSOs established in other countries (example of Norway or Switzerland).

In the national context, the influence and degree of involvement of CSOs in counter-trafficking efforts varies. In some countries, their involvement can be a long-standing and well-accepted practice, accompanied with the attribution of regular subsidies. In contrast, in others, CSOs may depend grants from external donors. These parameters impact on their capacity to engage in counter-trafficking activities. They also impact on their ability to influence the national policies and legislations, as well as the actions of international and regional organisations. Best practice to be promoted: the attribution of stable funding solutions for these CSOs, in order to enable them to focus on substantial activities, and not to waste time seeking funds. Further policy goals would be to encourage strong partnerships between civil society and law enforcement, as multi-stakeholder collaboration is required to develop and implement counter-trafficking projects.<sup>64</sup>

Furthermore in the national context this paper recognised the pivotal role that CSOs can play in ensuring that the rights safeguarded in international documents, are achieved in practice. The CSOs have a unique bond with persons, which ideally places them to recognise if they are victims and what assistance and rights they should be given, e.g., the right not to be penalised.

In conclusion, the presence of NGO actors in key decision making meetings, globally at ILO Committee Meetings and regionally at the European Commission Expert group demonstrates the added value of their presence and contribution to the development of anti-trafficking policy. A concrete determination of their added-value will require further study of their involvement and the extent to which their views and positions are taken into consideration.

---

<sup>64</sup> COM, mid-term implementation report of the EU strategy, p. 11