

# Michigan Journal of International Law

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Volume 33 | Issue 1

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2011

## Human Rights Legislation in the Arab World: The Case of Human Trafficking

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### Recommended Citation

Mohamed Y. Mattar, *Human Rights Legislation in the Arab World: The Case of Human Trafficking*, 33 MICH. J. INT'L L. 101 (2011).

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# HUMAN RIGHTS LEGISLATION IN THE ARAB WORLD: THE CASE OF HUMAN TRAFFICKING

*Mohamed Y. Mattar\**

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## INTRODUCTION

In the Arab World, human rights legislation has not always enhanced human rights. In fact, many national laws have been adopted that restrict human rights. Some countries' laws regulating nongovernmental organizations (NGOs) do not allow NGOs to receive funding from foreign entities.<sup>1</sup> Media laws impose various limitations on the press.<sup>2</sup> Jordan is the only Arab

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1. Nongovernmental organization [NGO] laws in Egypt, Iran, and Jordan restrict the establishment and operation of NGOs; they strictly control the receipt of foreign funds and allow for significant governmental oversight. The Egyptian Law on Non-Governmental Organizations of 2002, for example, requires approval by the Minister of Social Affairs for receiving funds from third parties, and provides a penalty of imprisonment and a fine for whoever "[r]eceive[s], in his capacity as a chairman or member of an association or NGO, no matter whether such capacity is valid or alleged, funds from abroad or send[s] out abroad any of such funds or collect[s] contributions without the approval of the administrative body." Law No. 85 of 2002 (Law on Non-Governmental Organizations), *Al-Jarida Al-Rasmiyya*, 3 June 2002, arts. 61, 75 Second (3) (Egypt). The Jordanian law states that "in case an association wishes to receive any donation or financing in any form from non-Jordanian persons, it shall file a request to the competent minister seeking the approval of the Council of Ministers" and that "the competent minister has the right to dissolve any association that uses or keeps funds or donations from non-Jordanians contrary to the rules established in art. 17(B)(1)." Law No. 51/2008 (Law on Societies), 16 Sept. 2008, arts. 17(B)(1), 20(B)(2) (Jordan). The Jordanian law provides for punishment of a fine or imprisonment if funds from non-Jordanians are not reported or used in spite of the rejection of the minister. *Id.* art. 26.

2. The Yemeni Law on the Press and Publications restricts media to the roles of "serv[ing] society, form[ing] public opinion and express[ing] . . . different outlooks within the context of Islamic creed, within the basic principles of the Constitution, and the goals of the Yemeni Revolution and the aim of solidifying of national unity." Law No. 25/1990 (Law on the Press and Publications), 22 Dec. 1990, art. 4 (Yemen). Similarly, in Article 103:

Persons employed in radio, television and written journalism and especially those employed in responsible positions in radio and television journalism, owners and editors-in-chief of newspapers, owners of printing presses and publishing houses and journalists, shall be bound to abstain from printing, publishing, circulating or broadcasting:

a) Anything which prejudices the Islamic faith and its lofty principles or belittles religions or humanitarian creeds,

. . . .

d) Anything which leads to the spread of ideas contrary to the principles of the Yemeni Revolution, prejudicial to national unity or distorting the image of the Yemeni, Arab or Islamic heritage.

e) Anything which undermines public moral or prejudices the dignity of individuals or the freedom of the individual by smears and defamation . . . .

*Id.* art. 103. Also, the 2008 draft Egyptian Broadcast Law renders broadcasting activities conducted without a license from the National Audiovisual Broadcasting Regulation Authority subject to punishment by imprisonment and a fine (Article 34), while giving unlimited competencies to the Authority to "design bases and rules according to which licenses and permits are issued" (Article 5(2)) and to suspend and withdraw such licenses (Article 13(2)). *Draft Egyptian Broadcast Law*, ARAB MEDIA & SOCIETY (July 2008), [http://www.arabmediasociety.com/articles/downloads/20080729105525\\_AMS6\\_draft\\_media\\_law\\_english.pdf](http://www.arabmediasociety.com/articles/downloads/20080729105525_AMS6_draft_media_law_english.pdf).

nation to enforce a comprehensive law on combating violence against women.<sup>3</sup> Jordan is also the only country that has a law on access to information.<sup>4</sup>

Despite these gaps in human rights legislation, many Arab countries have passed comprehensive laws to combat human trafficking since the passage of the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (U.N. Protocol)<sup>5</sup> ten years ago. These laws were adopted in compliance with the legislative mandate of the U.N. Protocol,<sup>6</sup> which itself was ratified by most Arab countries.<sup>7</sup> These laws were also drafted to comply with the minimum standards for the elimination of trafficking in persons as articulated in the U.S. Trafficking Victims Protection Act,<sup>8</sup> which requires the U.S. State Department to assess efforts made by foreign governments to combat trafficking in persons.<sup>9</sup> Although states, by passing comprehensive laws, are implementing the U.N. Protocol's legislative mandate, in my judgment, the U.S. assessment has also played a significant role in the antitrafficking legislative movement in the Arab World.

Currently, the countries of the Arab World can be divided into three groups based on the status of their human trafficking laws. The first group encompasses those countries that have already enacted

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3. Law No. 6/2008 (Regarding Protection from Domestic Violence) (Jordan).

4. Law No. 47/2007 (Regarding Access to Information) (Jordan). The law establishes a committee in charge of assuring access to information that operates by receiving complaints from applicants claiming that certain information is not accessible and by reporting annually on the implementation of the law. *Id.* art. 4.

5. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003) [hereinafter U.N. Protocol].

6. *Id.* art. 5.

7. These countries, as of October 21, 2011, are Algeria, Bahrain, Djibouti, Egypt, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Saudi Arabia, Syria, Tunisia, Qatar, Iraq, Jordan, and United Arab Emirates (U.A.E.). 2 MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL ch. XVIII, no. 12(a), <http://treaties.un.org/doc/publication/mtdsg/volume%20ii/chapter%20xviii/xviii-12-a.en.pdf> (last updated Oct. 21, 2011).

8. See Trafficking Victims Protection Act (TVPA) of 2000 §§ 108–109, 22 U.S.C. §§ 7105–7106 (2006).

9. *Id.* § 110(b). Since the U.S. State Department began issuing its annual *Trafficking in Persons (TIP) Report* in 2001, Algeria, Bahrain, Kuwait, Lebanon, Mauritania, Qatar, Saudi Arabia, Sudan, Syria, and U.A.E. have all been placed on Tier 3 at least once. OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERS., U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 65, 80, 220, 227, 252, 302, 311, 335, 345, 367 (11th ed. 2011) [hereinafter TIP REPORT 2011], available at <http://www.state.gov/g/tip/rls/tiprpt/2011/>. The *TIP Report* ranks countries according to their efforts to meet the minimum standards for the elimination of trafficking in persons as required by § 108 of the TVPA, as amended. *Id.* at 11. Tier 3 includes “[c]ountries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.” *Id.* at 51.

anti-human trafficking legislation, including Syria,<sup>10</sup> United Arab Emirates (U.A.E.),<sup>11</sup> Algeria,<sup>12</sup> Bahrain,<sup>13</sup> Djibouti,<sup>14</sup> Egypt,<sup>15</sup> Jordan,<sup>16</sup> Mauritania,<sup>17</sup> Oman,<sup>18</sup> Saudi Arabia,<sup>19</sup> Qatar,<sup>20</sup> and Lebanon.<sup>21</sup> Countries

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10. Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons) (Syria), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/Syria\\_Trafficking-Law\\_2010-arabic.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Syria_Trafficking-Law_2010-arabic.pdf).

11. Law No. 51 of 9 Nov. 2006 (Combating Human Trafficking Crimes) (U.A.E.), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/United-Arab-Emirates\\_Trafficking-Law\\_2006-Ar+En.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/United-Arab-Emirates_Trafficking-Law_2006-Ar+En.pdf).

12. Loi 09-01 du 29 Safar 1430 correspondant au 25 février 2009 modifiant et complétant l'ordonnance no. 66-156 du 8 Juin 1966 portant code penal [Law No. 09-01 Modifying and Completing the Penal Code Enacted by Order No. 66-156 of June 8, 1966], JOURNAL OFFICIEL DE LA REPUBLIQUE ALGERIENNE DEMOCRATIQUE ET POPULAIRE [OFFICIAL GAZETTE OF ALGERIA], 8 Mar. 2009, p. 3 (Alg.), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/Algeria\\_TIP-Amendm-Penal-Code\\_2009-French.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Algeria_TIP-Amendm-Penal-Code_2009-French.pdf).

13. Law No. 1 of 9 Jan. 2008 (Law with Respect to Trafficking in Persons) (Bahr.), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/Bahrain\\_TiP-Law\\_2008-Ar+En.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Bahrain_TiP-Law_2008-Ar+En.pdf).

14. Law No. 210 of 27 Dec. 2007 (Djib.).

15. Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010 (Egypt), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/Law\\_regarding\\_Combating\\_Human\\_Trafficking\\_FINAL1.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Law_regarding_Combating_Human_Trafficking_FINAL1.pdf).

16. Law of 3 Mar. 2009 (Combating Human Trafficking) (Jordan), available at <http://www.protectionproject.org/wp-content/uploads/2010/09/Jordan-Anti-Trafficking-Legislation-2009-and-TIP-Law-2008.pdf>.

17. Act. No. 025 of 2003 (Act on Suppression of Trafficking in Persons), 17 July 2003 (Mauritania), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/Mauritania\\_TraffickingLaw\\_2003-French.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Mauritania_TraffickingLaw_2003-French.pdf).

18. Royal Decree 126/2008 (Decree Promulgating the Law Combating Trafficking in Persons), 23 Nov. 2008, art. 21 (Oman), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/Oman\\_TIP-Law\\_2008-Ar+En.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Oman_TIP-Law_2008-Ar+En.pdf).

19. Royal Decree No. M/40 of 2009 (Law for Combating Crimes of Trafficking in Persons), *Um Al-Quaran*, 7 Aug. 2009, art. 2 (Saudi Arabia), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/Saudi-Arabia\\_TIP-Law\\_2009\\_Combined.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Saudi-Arabia_TIP-Law_2009_Combined.pdf). Commenting on the law of Saudi Arabia the 2011 *TIP Report* states: "Since the law includes some concepts unrelated to human trafficking, the government must disaggregate law enforcement activity under this law to indicate which prosecutions and convictions are for trafficking." *TIP REPORT 2011*, *supra* note 9, at 312. Saudi Arabian Ministerial Decree 738 states that all forms of trafficking in persons shall be prohibited, including acts such as the sale of employment visas; obtaining consideration to employ a worker; collecting funds from him in exchange for entry, exit, or return visas, or for residency or work permits; breaching contractual obligations; engaging in inhuman or immoral use or treatment, child labor, exploitation of children, and recruitment of children for the purpose of begging. The decree also punishes those who violate the prohibition by disallowing them from bringing in foreign workers for five years, or in the case of repeated violations, permanently. Ministerial Decree No. 738 of 4 July 2004 (Saudi Arabia).

20. Law No. 15 of 2011 (Regarding Combating Human Trafficking) (Qatar), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/Qatar\\_TIP-Law\\_2011-Ar.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Qatar_TIP-Law_2011-Ar.pdf). In addition, Article 321 of the criminal code prohibits transnational slavery, Article 322 prohibits forced labor, and Article 297 prohibits prostitution. *TIP REPORT 2011*, *supra* note 9, at 302.

21. Law 164 of 24 Aug. 2011 (Punishment of Crimes of Trafficking in Persons) (Leb.).

such as Iraq<sup>22</sup> and Kuwait<sup>23</sup> are in the process of drafting laws prohibiting trafficking in human beings. Finally, those countries that still rely on existing provisions in penal codes to prosecute cases of human trafficking<sup>24</sup> include Tunisia,<sup>25</sup> Yemen,<sup>26</sup> Morocco,<sup>27</sup> Libya,<sup>28</sup> and Sudan.<sup>29</sup>

This Essay is divided into three parts. Part I inquires into the definition of human trafficking articulated by various laws passed in the Arab World. Part II addresses how the ultimate goal of victim protection is handled under different Arab human trafficking laws. Part III analyzes the role of civil society in combating human trafficking and the status of this role in Arab antitrafficking laws. The Essay will conclude with a call for the enhancement of civil society's role in promoting human rights, including the rights of trafficking victims. It will also argue that full implementation of human trafficking laws requires consideration of other related human rights legislation.

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22. In Iraq, Article 35 of the constitution explicitly prohibits trafficking in human beings. Article 35, Section 3, Doustour Joumhouriat al-Iraq [The Constitution of the Republic of Iraq] of 2005.

23. In Kuwait, the penal code prohibits slavery in Article 185 and prohibits forced prostitution in Article 201. TIP REPORT 2011, *supra* note 9, at 221.

24. See generally Mohamed Y. Mattar, *Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses*, 26 FORDHAM INT'L L.J. 721, 734–45 (2003).

25. In Tunisia, the penal code provides penalties for forced labor (ten years imprisonment) and prostitution (up to six years imprisonment). Article 232 prohibits procuring the prostitution of others irrelevant of the consent or age of that person, including aiding, protecting, or assisting in the prostitution of others. Law of 9 July 1913 (Penal Code), art. 232 (Tunis.).

26. Article 248 of the Yemeni penal code provides for a ten-year imprisonment term for anyone who “buys, sells, or gives as a present, or deals in human beings, and anyone who brings into the country or exports from it a human being with the intent of taking advantage of him.” Decree Law 12 of 1994 (Concerning Crimes and Penalties), art. 248 (Yemen). Moreover, Article 161 of the Child Rights Law criminalizes the prostitution of children. TIP REPORT 2011, *supra* note 9, at 388.

27. Penal Code art. 467 (prohibiting forced child labor), art. 10 (prohibiting forced labor), arts. 497–499 (prohibiting forced prostitution) (Morocco); Royal Decree 1-59-413 of 26 Nov. 1962 (Morocco). The Moroccan government claims that the Immigration Law of 2003 is also used to prosecute perpetrators of human trafficking. OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERS., U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 242 (10th ed. 2010) [hereinafter TIP REPORT 2010], available at <http://www.state.gov/documents/organization/142979.pdf>.

28. TIP REPORT 2011, *supra* note 9, at 233.

29. In Sudan, Article 155 of the Criminal Act of 1991 punishes the operation of a place of prostitution with up to five years imprisonment, Article 156 prohibits inducing or abducting someone to engage in prostitution, and Article 163 punishes forced labor with up to one year imprisonment or a fine. TIP REPORT 2010, *supra* note 27, at 305.

## I. DEFINING HUMAN TRAFFICKING OR TRAFFICKING IN PERSONS IN ARAB LEGISLATION

### A. *Prevailing Forms of Human Trafficking in the Arab World*

Human trafficking, or trafficking in persons, takes many forms in the Arab World, including slavery,<sup>30</sup> begging, domestic servitude, forced labor,<sup>31</sup> temporary marriage,<sup>32</sup> child marriage,<sup>33</sup> sale of children for the purpose of adoption,<sup>34</sup> prostitution,<sup>35</sup> recruitment into armed forces,<sup>36</sup> and

30. For instance, in Mauritania,

[s]ome women, men and children from traditional slave castes are subjected to slavery-related practices, rooted in ancestral master-slave relationships, which continue to exist in limited fashion in both rural and urban settings. These individuals, held for generations by slave-holding families, may be forced to work without pay as cattle herders and household help.

TIP REPORT 2010, *supra* note 27, at 230; *see also* TIP REPORT 2011, *supra* note 9, at 252.

31. In Egypt, an estimated two hundred thousand to one million street children are recruited into forced begging and prostitution, and children in general are exploited in domestic and agricultural labor. TIP REPORT 2011, *supra* note 9, at 150. Yemeni children are recruited to Saudi Arabia for the purposes of domestic servitude and forced labor. *Id.* at 387.

32. Wealthy men from the Gulf States travel to Egypt to purchase “temporary” or “summer marriages” with Egyptian females often under the age of eighteen. *Id.* at 150.

33. The Egyptian Criminal Court, in a case that involved a seventy-six-year-old Saudi national who married an underage fourteen-year-old Egyptian girl, sentenced the Saudi man to ten years in prison. The court also penalized the girl’s parents, the marriage broker, and the lawyer who executed the marriage contract. TECHNICAL SECRETARIAT, NAT’L COORDINATING COMM. TO FIGHT & PREVENT TRAFFIC IN HUMAN BEINGS, THIRD ANNUAL REPORT 8 (2010) (Egypt) [hereinafter EGYPTIAN THIRD ANNUAL REPORT] (citing Case No. 1658/2010 (Criminal Court, Giza Center)).

34. In a case involving the sale of newborn babies for the purpose of adoption abroad, the Egyptian Criminal Court convicted a midwife and doctor for using their clinic as a den for trafficking children. The parents were acquitted after it was discovered that the wife, after giving birth, was told that her child had died. *Id.* at 7 (citing Case No. 57370/2009 (Criminal Court, Imbaba) (Egypt)). *See also id.* at 8–9 (citing Case No. 5383/2010 (Criminal Court, El Attareen, Alexandria) (Egypt)).

35. In countries like Syria, entertainers are often forced into prostitution. TIP REPORT 2011, *supra* note 9, at 345. Furthermore, out of the large numbers of Iraqi refugees, women in particular may be forced into prostitution by their families through so-called temporary marriages. *Id.*

Family members have coerced girls and women into prostitution to escape desperate economic circumstances, to pay debts, or to resolve disputes between families. Some women and girls are trafficked within Iraq for the purpose of sexual exploitation through the traditional institution of temporary marriages (*muta’a*). Under this arrangement, the family receives a dowry from the husband and the marriage is terminated after a specified period. *Id.* at 197. Iraqi males have also taken advantage of *muta’a* to traffic multiple women into other Iraqi provinces or neighboring countries, especially Syria, for the purposes of forced prostitution. *Id.*

36. In particular, the governments of Somalia, Sudan, and Yemen recruit children to serve in the armed forces or tribal armed forces. *Id.* at 335–36, 387, 396. It should be noted that in Sudan

trafficking of organs.<sup>37</sup> Foreign laborers, especially in the Gulf States, can be subjected to exploitation.<sup>38</sup> Cases of migrant smuggling can easily become human trafficking as, for example, when migrants illegally but voluntarily enter the transit countries of Algeria, Libya, or Morocco on their way to Europe.<sup>39</sup> Legal channels of migration, such as “artist” or “pilgrimage” visa

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[f]orcible recruitment of adults and particularly children, by virtually all armed groups, including government forces involved in Sudan’s concluded north-south civil war was previously commonplace. Since the war formally ended with the signing of the Comprehensive Peace Agreement in 2005, the Government of Southern Sudan’s army, the SPLA, committed to releasing all children from its ranks, including through the signing of an action plan with the UN in November 2009. During the year, UN personnel continued to observe children wearing SPLA uniforms, carrying weapons, and serving at SPLA checkpoints or as bodyguards for senior commanders.

*Id.* at 335.

37. Trafficking of organs is widespread in Egypt, and it is reported that there are about 500 illegal transplants every year although it is illegal to operate on a foreign transplant patient. It is also illegal for a patient to receive an organ from an unrelated donor. THE PROTECTION PROJECT, A HUMAN RIGHTS REPORT ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN: EGYPT 3 (2010), available at <http://www.protectionproject.org/wp-content/uploads/2010/09/Egypt.pdf>.

38. The *TIP Report* notes about labor exploitation in Saudi Arabia:

Recent reports of abuse include the driving of nails into a domestic worker’s body. Although many migrant workers sign contracts delineating their rights, some report work conditions that are substantially different from those described in the contract while others never see the contract at all, leaving them vulnerable to forced labor, including debt bondage. Due to Saudi Arabia’s requirement that foreign workers receive permission from their employer to get an “exit visa” before they are able to leave the country, some migrant workers report that they were forced to work for months or years beyond their contract term because their employer would not grant them the exit permit. Local and international media reported in May and June that some Nepalese domestic workers had been recruited to work in Kuwait and then illegally transported to work in Saudi Arabia against their will.

TIP REPORT 2011, *supra* note 9, at 311. Similarly,

[a]lthough most . . . migrants enter Kuwait voluntarily, upon arrival some are subjected to conditions of forced labor by their sponsors and labor agents, including nonpayment of wages, long working hours without rest, deprivation of food, threats, physical or sexual abuse, and restrictions on movement, such as the withholding of passports or confinement to the workplace. Although Kuwait has a standard contract for domestic workers delineating their rights, many workers report work conditions that are substantially different from those described in the contract; some workers never see the contract at all. Many of the migrant workers arriving for work in Kuwait have paid exorbitant fees to recruiters in their home countries or are coerced into paying recruitment fees in Kuwait that, by Kuwaiti law, should be paid for by the employer—a practice that makes workers highly vulnerable to forced labor once in Kuwait.

*Id.* at 220. Both countries are placed on Tier 3. *Id.* at 220, 311.

39. TIP REPORT 2010, *supra* note 27, at 59 (Algeria), 213 (Libya), 241 (Morocco). “In many cases, smuggling debts and illegal status leave migrants vulnerable to coercion, resulting



provisions, are often abused to foster the trafficking business.<sup>40</sup> Arab states are destination countries for women and children who work as domestic workers and are exploited through unobserved contracts and salaries that do not meet the basic minimum wage. As a result of these conditions, several countries banned migration to Arab countries when exploitation of workers was reported.<sup>41</sup> However, these restrictions are not known for having a positive effect on the prevention of human trafficking. In addition, the Iraq War has contributed to an increase in human trafficking cases,<sup>42</sup> and Iraqi refugees are subject to exploitation in Syria,<sup>43</sup> Lebanon, and Jordan.<sup>44</sup> It is obvious that trafficking in the Arab World is not limited to any specific type of exploitation. The main question therefore becomes: Are all of these forms explicitly covered in Arab antitrafficking legislation?

### B. The Prohibition of “Trafficking in Individuals” in the Arab Charter on Human Rights

Articles 9 and 10 of the Arab Charter on Human Rights<sup>45</sup> prohibit human trafficking and trafficking in human organs. According to Article 9:

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in cases of forced prostitution and forced labor; employers of irregular migrants sometimes withhold payment or travel documents, which represent risk factors for trafficking.” *Id.* at 213. Similarly, the 2011 *TIP Report* explains, “[m]en, women, and an increasing number of children from sub-Saharan Africa, South Asia, and the Philippines enter Morocco voluntarily but illegally with the assistance of smugglers; once in Morocco, some of the women and older girls are coerced into prostitution or, less frequently, forced into domestic service. TIP REPORT 2011, *supra* note 9, at 265.

40. Pilgrimage visas, whether for Hajj or Umrah, may be exploited for trafficking in Saudi Arabia. TIP REPORT 2010, *supra* note 27, at 285. The 2011 *TIP Report* states:

The [Lebanese] government’s *artiste* visa program, which in 2010 facilitated the entry of 5,595 women from Eastern Europe, Morocco, Tunisia, and Algeria on three-month visas to work as dancers in the adult entertainment industry, serves to sustain a significant sex trade and enables forced prostitution through such practices as withholding of passports and restrictions on movement.

TIP REPORT 2011, *supra* note 9, at 227.

41. For instance, in October 2009, Indonesia banned the employment of domestic workers in Kuwait. TIP REPORT 2010, *supra* note 27, at 203. Ethiopia banned its citizens from working in Syria as domestic workers, but that has not stopped the migration flow into Syria. *Id.* at 313. Similarly, the Indian government does not allow its female nationals under the age of forty to accept domestic work in the Middle East. *Id.* at 176.

42. TIP REPORT 2011, *supra* note 9, at 197 (“The large population of internally displaced persons and refugees moving within Iraq and across its borders are particularly at risk of being trafficked.”).

43. *Id.* (“Some Iraqi parents have reportedly collaborated with traffickers to leave children at the Iraqi side of the border with Syria with the expectation that traffickers will arrange for them forged documents to enter Syria and employment in a nightclub.”).

44. *Id.* at 196. (“Iraqi women and girls are subjected to conditions of trafficking within the country and in Syria, Lebanon, Jordan, Kuwait, the United Arab Emirates, Turkey, Iran, Yemen, and Saudi Arabia for forced prostitution and sexual exploitation within households.”).

45. Arab Charter on Human Rights, League of Arab States, May 22, 2004, *reprinted in* 12 INT’L HUM. RTS. REP. 893 (entered into force Mar. 15, 2008).

No one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each state party. Trafficking in human organs is prohibited in all circumstances.<sup>46</sup>

Article 10 of the Arab Charter states:

- (a) All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances.
- (b) Forced labor, trafficking in human beings for the purpose of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict are prohibited.<sup>47</sup>

A similar prohibition against human exploitation is provided in Article 11 of the Cairo Declaration on Human Rights in Islam, which states that “[h]uman beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them.”<sup>48</sup>

First, it is to be noted that the Arab Charter distinguishes between “slavery” and “trafficking in human beings” but prohibits both.<sup>49</sup> While slavery requires exercise of the right of ownership over another, trafficking is about control or undue influence rather than buying and selling.<sup>50</sup> Although the conventional view is that trafficking is a form of modern-day slavery, legally the distinction between trafficking and slavery is clear. Second, the Arab Charter also distinguishes between prostitution and the exploitation of

46. *Id.* art. 9.

47. *Id.* art. 10.

48. World Conference on Human Rights, Preparatory Committee, 4th sess., June 14–25, 1993, *Cairo Declaration on Human Rights in Islam*, art. 11(a), U.N. Doc. A/CONF.157/PC/62/Add.18 (June 9, 1993).

49. Arab Charter on Human Rights, *supra* note 45, art. 10.

50. Consequently,

it is not sufficient to simply conceptualize trafficking in persons in the Muslim world as a form of slavery, especially because slavery, at least in the traditional sense, has been outlawed throughout the Muslim world. The essence of trafficking in persons is exploitation, many forms of which still exist in the Muslim world in clear violation of Islamic principles. Trade in human beings, buying and selling them should be condemned, as well as any case of control, undue influence, or exploitation of human beings.

U.N. OFFICE OF DRUGS AND CRIME [UNODC], COMBATING TRAFFICKING IN PERSONS IN ACCORDANCE WITH THE PRINCIPLES OF ISLAMIC LAW 54 (2010) (report prepared by Mohamed Y. Mattar).

prostitution of others, prohibiting both forms of trafficking.<sup>51</sup> Prostitution is prohibited by the domestic law of Arab countries.<sup>52</sup> Unlike the Arab Charter, the U.N. Protocol prohibits only the exploitation of prostitution of others.<sup>53</sup> Third, although Article 10(b) of the Arab Charter does not explicitly use the term labor trafficking, Article 10 makes it clear that “all forms of trafficking” are prohibited, including “forced labour.”<sup>54</sup> Finally, the Arab Charter highlights specific forms of trafficking, including the “exploitation of children in armed conflict,”<sup>55</sup> “trafficking in human organs,”<sup>56</sup> and subjecting a person to “medical or scientific experimentation.”<sup>57</sup> In doing so, the Arab Charter recognizes the significance of these forms of exploitation and establishes that they all must be abolished.

It is my contention that Articles 9 and 10 should be interpreted in accordance with Articles 6 and 7 of the U.N. Protocol. This is what Article 43 of the Charter requires when it states:

Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set forth in the international and regional human rights instruments which the States parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities.<sup>58</sup>

Consequently, interpreting Articles 9 and 10 in light of Article 43 implies that it is not enough for an Arab state to prohibit or criminalize trafficking in human beings; international law also requires that a state provide assistance and protection to victims of trafficking. Thus, although the Arab Charter does not explicitly mention protection and assistance to victims of trafficking, these obligations are implied under Article 43 by reference to those obligations in Part II of the U.N. Protocol.<sup>59</sup>

51. Arab Charter on Human Rights, *supra* note 45, art. 10(b).

52. The act of prostitution is illegal, based on provisions of Islamic Law, in all countries of the Middle East, except for Lebanon and Turkey. The penal codes of Middle Eastern countries thus prohibit prostitution and prostitution-related activities. *See* Mattar, *supra* note 24, at 734–45.

53. U.N. Protocol, *supra* note 5, art. 3(a).

54. Arab Charter on Human Rights, *supra* note 45, art. 10.

55. *Id.* art 10(b).

56. *Id.* art 9.

57. *Id.*

58. *Id.* art. 43; *see also* U.N. Protocol, *supra* note 5, arts. 6–7; Convention on the Rights of the Child [CRC], art. 39, Nov. 20, 1989, 1577 U.N.T.S. 3 (“States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”); Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], art. 6, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”).

59. U.N. Protocol, *supra* note 5, arts. 6–8.

In a unique provision, the Syrian law applies this principle, stating that in all cases where the law is silent, and there is no explicit provision therein, the relevant substantive rules embodied in international laws and conventions in force for Syria shall apply.<sup>60</sup> Therefore, one can argue that although the Syrian law does not explicitly provide for the right of compensation to victims of trafficking, victims would have such a right as stipulated by Article 6 of the U.N. Protocol. This conclusion is supported by the fact that a right to compensation is guaranteed under the general rules of civil liability.<sup>61</sup> Adopting a more restrictive approach, the law of Oman states that in the absence of a specific provision, the provisions of the penal code or of the criminal procedures law shall apply.<sup>62</sup> One could argue, however, that any international convention the state is a party to is also considered part of the law in place in that country.

### *C. The Definition of Human Trafficking in the Various Specific Trafficking Laws*

There are two distinct terms used in Arab legislation to describe movement of people for the purpose of exploitation. Some laws employ the term “trafficking in persons,”<sup>63</sup> while others use “human trafficking.”<sup>64</sup> The Arab Charter uses “trafficking in individuals.”<sup>65</sup>

In 2003, Mauritania took the lead in passing antitrafficking legislation that criminalized trafficking in persons.<sup>66</sup> Influenced by the League of Arab States Model Law to Combat the Crime of Trafficking in Persons,<sup>67</sup> the U.A.E. passed in 2006 a human trafficking law that was also limited to criminalization.<sup>68</sup> In defining the crime of trafficking in persons, the law

60. Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons), art. 19 (Syria).

61. For civil action as a model of victim compensation, see UNODC, *COMBATING TRAFFICKING IN PERSONS: A HANDBOOK FOR PARLIAMENTARIANS*, at 53–56, U.N. Sales No. E.09.V.5 (2009) (by Mohamed Y. Mattar).

62. Royal Decree 126/2008 (Decree Promulgating the Law Combating Trafficking in Persons), 23 Nov. 2008, art. 21 (Oman).

63. *See, e.g.*, Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons) (Syria); Law No. 1 of 2008 (Law with Respect to Trafficking in Persons) (Bahr.); *cf.* Arab Charter on Human Rights, *supra* note 45, art. 10 (using the term “trafficking in human beings” twice).

64. *See, e.g.*, Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010 (Egypt).

65. Arab Charter on Human Rights, *supra* note 45, art. 10.

66. Act. No. 025 of 2003 (Act on Suppression of Trafficking in Persons), 17 July 2003 (Mauritania).

67. MODEL LAW TO COMBAT THE CRIME OF TRAFFICKING IN PERSONS (League of Arab States 2006) [hereinafter ARAB LEAGUE MODEL LAW] (adopted by the Council of the Arab Ministers of Justice, Session 21, Decision 601, November 21, 2005, and by the Council of Arab Ministers of Interior in its Session 23, Decision 473, in 2006).

68. For the shift from criminalization to protection of the victim, see *infra* Part III.

followed the U.N. Protocol's definition. Countries such as Algeria, Bahrain, and Oman adopted the same approach in Arab trafficking legislation.<sup>69</sup> Additional laws delineate other forms of exploitation. For instance, the Egyptian law expands the forms of exploitation that may constitute the crime of trafficking. It adds to "exploitation of acts of prostitution and all forms of sexual exploitation," such forms of exploitation as "exploitation of children in such acts" and "in pornography," "begging," and removal of "tissues or a part thereof."<sup>70</sup> The law of Saudi Arabia for combating trafficking in persons includes "begging" and "subjecting a person to medical tests,"<sup>71</sup> while the Penal Code of Algeria adds begging to the forms of human trafficking.<sup>72</sup> The law of Lebanon defines exploitation to entail "committing an act punishable by law," "prostitution or exploitation of the prostitution of others," "sexual exploitation," "begging," "recruitment of children in armed conflict," "forced involvement in terrorist acts," and "removal of human organs or tissues."<sup>73</sup> The law of Qatar includes explicitly "exploitation of children for sexual purposes, pornography, and begging."<sup>74</sup> Thus, it emphasizes the particular problem of trafficking in children.

The draft antitrafficking law of Iraq makes exploiting human beings in military or terrorist activities a crime of human trafficking.<sup>75</sup> The Syrian law, without specifying any form of trafficking, provides for a very general definition of "illegal acts and purposes" in "consideration for material or moral gain or a promise thereof or offer of privileges or attempt to achieve any of these or others."<sup>76</sup> However, Article 5 of the Syrian law states that sexually abusing a child, including using the child in pornography, "shall be considered trafficking in persons."<sup>77</sup>

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69. Loi 09-01 du 29 Safar 1430 correspondant au 25 février 2009 modifiant et complétant l'ordonnance no. 66-156 du 8 Juin 1966 portant code penal [Law No. 09-01 Modifying and Completing the Penal Code Enacted by Order No. 66-156 of June 8, 1966], JOURNAL OFFICIEL DE LA REPUBLIQUE ALGERIENNE DEMOCRATIQUE ET POPULAIRE [OFFICIAL GAZETTE OF ALGERIA], Mar. 8, 2009, p. 3 (Alg.); Law No. 1 of 2008 (Law with Respect to Trafficking in Persons) (Bahr.); Royal Decree 126/2008 (Decree Promulgating the Law Combating Trafficking in Persons), 23 Nov. 2008, art. 21 (Oman).

70. Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010, art. 2 (Egypt).

71. Royal Decree No. M/40 of 2009 (Law for Combating Crimes of Trafficking in Persons), *Um Al-Quaran*, 7 Aug. 2009, art. 2 (Saudi Arabia).

72. Law 09-01 Modifying and Completing the Penal Code Enacted by Order No. 66-156 of June 8, 1966, art. 303 *bis* 4 (Alg.).

73. Law 164 of 24 Aug. 2011 (Punishment of Crimes of Trafficking in Persons) (Leb.).

74. Law No. 15 of 2011 (Regarding Combating Human Trafficking), art. 2 (Qatar).

75. Draft Anti-Trafficking Law, art. 1 (Iraq).

76. Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons), art. 4 (Syria). Commenting on the Syrian Law, the *TIP Report* states that it is "a comprehensive anti-trafficking law" and that it "provides a legal foundation for prosecuting trafficking offenses and protecting victims;" however, it "does not lay out a clear definition of human trafficking." TIP REPORT 2011, *supra* note 9, at 345.

77. Legislative Decree No. 3 of 2010, art. 5 (Syria).

Egyptian Law No. 64 of 2010 includes the most comprehensive definition of human trafficking.<sup>78</sup> The definition is based on a general conceptualization of human trafficking as a transaction in persons. Article 2 of the law provides that a “person who commits the crime of human trafficking shall be considered one who deals in any manner in a natural person.”<sup>79</sup> The Egyptian law was explicit in including both domestic and transnational trafficking. Article 2 states that the above acts shall be considered as trafficking “whether within the country or across its national borders.”<sup>80</sup> This emphasis by the Egyptian legislature was important in recognizing the prevalence of internal trafficking within the country.

As to illegal means, there are two approaches taken by Arab trafficking laws. One, represented by the Egyptian law, follows the U.N. Protocol in defining illegal means broadly to include “exploitation of a position of vulnerability.”<sup>81</sup> The other, modeled by the Syrian antitrafficking law, does not require illegal means to establish the crime of trafficking in persons. Article 4(1) of the Syrian law defines the crime by requiring acts and illegal purposes, while Article 4(2) states that the criminal nature of the acts mentioned above shall not change whether they were committed by force or threat of

78. Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010, art. 2 (Egypt).

79. Article 2 states in full:

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

*Id.*

80. *Id.*

81. *Id.* (including the term “exploitation of a position of . . . need,” which one may interpret to mean economic vulnerability); *see also* Law No. 1 of 2008 (Law with Respect to Trafficking in Persons), art. 1(a), (Bahr.). Defining trafficking in persons, the U.N. Protocol states:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or 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.

U.N. Protocol, *supra* note 5, art. 3.

force, by resorting to violence or persuasion, by exploitation of ignorance or vulnerability, by deception, fraud, or abuse of office, or by conspiring with or providing assistance to one who has authority over the victim.<sup>82</sup> Further, Article 4(3) states that “in all cases consent of the victim is irrelevant.”<sup>83</sup> According to this model, illegal means are not elements in the crime of trafficking, but instead, they are aggravated circumstances that may enhance the penalty.

The position of the U.N. Protocol is rather unfortunate in that it links the issue of victim consent to the means used. The U.N. Protocol states that the consent of the victim to exploitation in any of the forms of human trafficking “shall be irrelevant” *only* in cases where illegal means have been used (unless the victim is a child, in which case consent is irrelevant regardless of the means used).<sup>84</sup> The law of Bahrain adopts a similar approach to the issue, making consent completely irrelevant for cases involving persons under eighteen years of age.<sup>85</sup> Unlike the U.N. Protocol, the Algerian law is even more restrictive in stating that consent of the victim is irrelevant only when illegal means are used without making a broader consent exception for children.<sup>86</sup>

One of the challenges in filing a lawsuit in cases of human trafficking is the statute of limitations. In the law of Algeria, the crime of human trafficking is a misdemeanor.<sup>87</sup> Consequently, and in accordance with Article 8 of

82. Legislative Decree No. 3 of 2010, art. 4(1)–(2) (Syria).

83. *Id.* art. 4(3).

84. U.N. Protocol, *supra* note 5, art. 3(b)–(c).

85. Bahrain’s law states:

Recruitment, transportation, transfer, harbouring, or receiving of persons who are less than eighteen years of age or who are in a condition or personal state in which their consent or freedom of choice cannot be guaranteed shall be deemed as trafficking in persons if the intent is to exploit them even if such act is not accompanied by any of the means provided for in the preceding paragraph.

Law No. 1 of 2008, art. 1(a) (Bahr.).

86. Loi 09-01 du 29 Safar 1430 correspondant au 25 février 2009 modifiant et complétant l’ordonnance no. 66-156 du 8 Juin 1966 portant code penal [Law No. 09-01 Modifying and Completing the Penal Code Enacted by Order No. 66-156 of June 8, 1966], JOURNAL OFFICIEL DE LA REPUBLIQUE ALGERIENNE DEMOCRATIQUE ET POPULAIRE [OFFICIAL GAZETTE OF ALGERIA], Mar. 8, 2009, art. 303 *bis* 4 (Alg.).

87. CODE PÉNAL [C. PÉN.] art. 5 (Alg.); Law 09-01 Modifying and Completing the Penal Code Enacted by Order No. 66-156 of June 8, 1966, art. 303 *bis* 4 (Alg.). Criminal sanctions for human trafficking in the law of Algeria are imprisonment from three to ten years and a fine. *Id.* The law enhances the penalty to imprisonment from five to fifteen years and a higher fine in cases involving a victim who is in a position of vulnerability because of her age, disease, or physical or mental incapacitation, as long as these circumstances are apparent or known to the offender. *Id.*

The law of Algeria enhances the penalty to imprisonment from ten to twenty years in cases involving an offender who is a spouse of the victim, one of her ascendants or descendants, a guardian or has an authority upon her, a public official, or if he commits the act against more than one person. *Id.* art. 303 *bis* 5. As to the circumstances surrounding the act of traf-

the law of criminal procedures, the limitation period is three years.<sup>88</sup> However, the exception to the applicable statute of limitations contained within Article 8 should be applied to the crime of human trafficking. This exception provides that “the public action shall not be extinguished by passage of time in cases of felonies and misdemeanors that are qualified as terrorist or destructive acts, as transnational organized crimes, as corruption, or as embezzlement of public funds.”<sup>89</sup>

These laws apply to a national who commits the crime of human trafficking within a state’s territory. However, the Egyptian law extends its jurisdiction to non-nationals who commit the act of trafficking abroad if the crime was committed on any means of transportation that was registered in Egypt; if one of the victims was Egyptian; if the preparation for the crime or

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ficking itself, these include the commission of the crime while carrying a weapon or threatening to use it, and the involvement of organized crime or a transnational crime. *Id.* Article 18 of the Penal Code of Algeria provides for the following sanctions that may be imposed upon a legal person, which apply to cases in which the legal person is responsible for a crime of human trafficking: fine; termination of the legal person; house arrest for a period not to exceed five years; prohibition of the legal person from public procurement for a period not to exceed five years; confiscation of any instruments used in committing the crime; publishing of a judgment implicating it in a crime; and surveillance of the offender for a period not to exceed five years. C. PÉN. art. 18 *bis* (Alg.).

88. CODE DE PROCÉDURE PÉNALE [C. PR. PÉN.] art. 8 (Alg.).

89. *Id.* art. 8 *bis*. According to the U.N. Protocol, human trafficking can constitute a transnational organized crime:

Article 1: Relation with the United Nations Convention against Transnational Organized Crime

This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

....

3) The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

....

Article 5: Criminalization

1) Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

U.N. Protocol, *supra* note 5, arts. 1, 5.

In this regard, the Organized Crime Convention requires that “[e]ach State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.” United Nations Convention Against Transnational Organized Crime art. 11(5), *opened for signature* Nov. 15, 2000, T.I.A.S. No. 13,127, 2225 U.N.T.S. 209. The crime of trafficking in persons is not subject to a statute of limitation in Islamic law. UNODC, *supra* note 50, at 44. This conclusion may be based on the tradition of the Prophet that “a right of a Muslim does not extinguish by lapse of time.” *Id.*



its planning, direction, supervision, or financing occurred in Egypt; if the crime was committed by an organized criminal group engaged in criminal activities in more than one state, including Egypt; if the crime caused harm to any citizen or resident, to the security, or to any of the interests of Egypt within the country or abroad; or, if the one who committed the crime in Egypt was found after the crime was committed and was not extradited.<sup>90</sup>

#### D. Prosecuting Demand

Most antitrafficking laws around the world are silent as to the liability of the purchaser or user of the services provided by victims of trafficking. Few laws provide for prosecution of the client who buys sexual services from a trafficking victim.<sup>91</sup> The Syrian law is the only Arab law that provides for the liability of purchasers, users, or clients. In this regard, the law explicitly states that anyone who has knowledge of the act of trafficking and benefits materially or morally from the services provided by the victim of trafficking shall be subject to imprisonment from six months to two years in addition to a fine.<sup>92</sup> This approach should be applauded because discouraging demand by adopting appropriate legislative measures to prosecute the user is an effective means of combating human trafficking.<sup>93</sup> Preventative measures, while imperative, are not sufficient.

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90. Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010, art. 16 (Egypt).

91. For an example of a law that does prohibit buying sexual services from a trafficking victim, see Criminal Code, art. 418(a)(4) (Maced.); *see also* Council of Europe Convention on Action Against Trafficking in Human Beings art. 18, *opened for signature* May 16, 2005, C.E.T.S. No. 197 (entered into force Feb. 1, 2008), *available at* <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>.

92. Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons), art. 9 (Syria).

93. Article 9 of the U.N. Protocol makes it clear that addressing the demand for the services of trafficking victims is an essential part of effectively preventing and combating trafficking in persons:

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

U.N. Protocol, *supra* note 5, art. 9(5); *see also* Office of the High Comm'r for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 7, U.N. Doc. E/2002/68/Add. 1 (2002) (Addendum to the Report of the U.N. High Comm'r for Human Rights). Regarding the issue of demand, *see also* Mohamed Y. Mattar, *Incorporating the Five Basic Elements of a Model Antitrafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention*, 14 TUL. J. INT'L & COMP. L. 357, 407–12 (2006).

## II. THE STATUS OF THE VICTIM IN ARAB LEGISLATION COMBATING HUMAN TRAFFICKING

### A. *Shifting the Focus from Criminalization of the Act of Trafficking to Protection of Victims*

The Model Law of the Arab League is limited to criminalization, and does not cover protection, except in Article 12, which states that the competent authorities shall adopt measures to ensure protection of victims, of those who report the crimes stipulated in the law, and of those who are affected by these crimes, including witnesses, experts, and members of their families.<sup>94</sup> In October 2007, I organized a workshop with the League of Arab States that concluded with a recommendation to expand the Model Law to include protection and assistance.<sup>95</sup> There is reluctance on the part of some Arab legislatures to use the term “victim” when referring to the trafficked person. For instance, the Egyptian law uses the term “defendant” instead.<sup>96</sup> The U.A.E. law is totally silent as to the protection of victims.<sup>97</sup> Nonetheless, Article 14 of the Model Law to Combat Human Trafficking of the Gulf States Cooperation Council (GCC) provides for a number of protective measures to be taken during investigation or trial.<sup>98</sup>

### B. *Defining the Trafficked Person as a Victim*

The Egyptian antitrafficking law is unique in defining a victim of trafficking as:

[A] natural person who suffered any material or moral harm, in particular bodily, psychological or mental harm; or economic loss if

94. ARAB LEAGUE MODEL LAW, *supra* note 67, art. 12.

95. The League of Arab States official meeting on the “Status of Anti-Trafficking Legislation in the Arab World” was held in Cairo, Egypt, in October 2007. *See* TA Capacity Building, THE PROTECTION PROJECT, <http://www.protectionproject.org/activities/ta-capacity-building> (last visited Oct. 22, 2011).

96. Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010 (Egypt).

97. Law No. 51 of 9 Nov. 2006 (Combating Human Trafficking Crimes) (U.A.E.).

98. MODEL LAW TO COMBAT HUMAN TRAFFICKING art. 14 (Gulf States Cooperation Council [GCC] 2006) [hereinafter GCC MODEL LAW] (prepared by the Expert Committee Meeting at the General Secretariat, Riyadh, Saudi Arabia, March 19–21, 2006). The protective measures include the following: (1) informing the victim of his or her legal rights in a language that he or she understands; (2) allowing the victim the opportunity to declare his or her status as a victim of trafficking in persons as well as his or her legal, physical, mental, and social status; (3) presenting the victim to the competent doctor if the victim needs medical or psychological care, or if he or she so requests; (4) placing the victim in a medical or psychological rehabilitation center or shelter if his or her medical or mental condition or age requires it; (5) placing the victim in a shelter, if necessary, that is established for this purpose; (6) providing security protection by accommodating the victim in one of the centers established for this purpose; (7) ensuring that if there is a “necessity” for the victim to stay in the state during the period of investigations or trial, the public prosecutor or the competent court shall decide that. *Id.*

the harm or loss was caused directly by one of the crimes stipulated in this law.<sup>99</sup>

This specification is based on the definition of a victim of a crime outlined in the U.N. Declaration on the Rights of Victims of Crimes and Abuse of Power.<sup>100</sup> The other laws defining the term “victim” are the Syrian law and the Lebanese law.<sup>101</sup> These laws differ regarding their emphasis on the victim of trafficking rather than the crime itself.<sup>102</sup> For instance, the Syrian law calls for employing female officers to conduct investigations that involve female victims of trafficking,<sup>103</sup> and provides that victims of trafficking shall not be detained in places that are inappropriate with their status as victims of crimes;<sup>104</sup> that medical care provided shall include the necessary physical, psychological, and financial assistance;<sup>105</sup> and that in all cases the privacy of the victims shall be protected.<sup>106</sup> The law also calls for protecting the safety of those who report a trafficking crime and of witnesses, expert witnesses, and members of their families.<sup>107</sup>

Only four laws explicitly provide that a victim of trafficking should not be punished. This principle is expressed in several ways, and is sometimes

99. Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010, art. 1(3) (Egypt).

100. Cf. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, ¶ 1, U.N. Doc. A/RES/40/34/Annex (Nov. 29, 1985).

101. Law 164 of 24 Aug. 2011 (Punishment of Crimes of Trafficking in Persons), art. 1 (Leb.) (defining a victim of trafficking as “any natural person who is the subject of trafficking in persons or who the competent authorities consider on reasonable basis as victim of trafficking in persons, regardless of whether the identity of the perpetrator of the crime was known or whether he was arrested or tried or convicted”); Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons), art. 1 (Syria) (defining a victim as “a person who the act of trafficking occurred upon him or he was subject to it”).

102. The law of Syria explicitly provides for the goals of the law and identifies four objectives, namely:

- 1) prevention and combating of trafficking in persons, paying special attention to women and children who are victims of trafficking; 2) protection of victims of trafficking, providing assistance and care to them while fully respecting their human rights; 3) enhancing international cooperation against the offenders of the crimes of trafficking in persons; and 4) establishing a legislative foundation for a social culture that contributes to the prevention of this crime and addresses ways to deal with its impact.

Legislative Decree No. 3 of 2010, art. 2 (Syria).

103. *Id.* art. 15(2)(A).

104. *Id.* art. 15(2)(B).

105. *Id.* art. 15(2)(C).

106. The protection of privacy is also included in Article 15(2)(D), which states that the names of the victims shall not be disclosed and neither shall their shelters nor any other information that may identify them or members of their families. *Id.* art. 15(2)(D). The law also states that advice and information, especially regarding their legal rights, shall be provided in a simple language that the victim understands. *Id.* art. 15(2)(E).

107. *Id.* art. 16.

referred to as a principle of noncriminalization, immunity, excuse, nonliability, or more accurately, nonpunishment.<sup>108</sup> The Egyptian law provides for the principle of nonpunishment of a victim in Article 21 by stating that “[t]he victim shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was directly related to being a victim.”<sup>109</sup> An identical provision appears in Article 4 of the Qatari law.<sup>110</sup> Moreover, Article 25 of the Qatari law specifically exempts a victim from all penalties stipulated in Law No. 4 of 2009 regarding violations of entry, residency, and *kafalah* laws by aliens.<sup>111</sup> Article 586(8) of the Criminal Code of Lebanon provides that “a victim shall be exempted from punishment if he proves that he was compelled to commit acts punishable by law or if he violated the conditions of residency or work.”<sup>112</sup> Similarly, the Jordanian law gives public prosecutors the authority not to pursue investigation or prosecution of a victim of trafficking for any of the crimes stipulated in the trafficking law.<sup>113</sup> However, it must be noted that the authority is discretionary and the law does not provide any guidance on when it should be exercised.<sup>114</sup>

The principle of nonpunishment of a victim is also clearly expressed in the Qur’an, which states: “But force not your maids to prostitution when they desire chastity . . . . But if anyone compels them, yet, after such compulsion, is Allah, Oft-Forgiving Most Merciful [to them].”<sup>115</sup> Therefore, while Qur’anic legislation adopts a duress or compulsion standard, the Egyptian law follows what one may call a causation standard—a causal relation between the act committed by a victim of trafficking in violation of the law and the act of trafficking itself.

Another important principle that the Egyptian law refers to is identification of victims of trafficking. In this regard, Article 23 provides that “[i]n all stages of evidence collection, investigation or trial of the crimes of human trafficking, efforts shall be made to identify the victim . . . to determine his or her identity, nationality, and age to ensure that he [or she] is far removed from his [or her] perpetrators.”<sup>116</sup>

108. Mattar, *supra* note 93, at 357, 380–83.

109. Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010, art. 21 (Egypt).

110. Law No. 15 of 2011 (Regarding Combating Human Trafficking), art. 4 (Qatar).

111. *Id.* art. 25.

112. Law 164 of 24 Aug. 2011 (Punishment of Crimes of Trafficking in Persons), art. 1 (Leb.).

113. Law of 3 Mar. 2009 (Combating Human Trafficking), art. 12(a) (Jordan).

114. *Id.*; *see also* 2011 Draft Law to Combat Human Trafficking, art. 17 (Qatar) (limiting the application of the nonpunishment principle to the violation of the law of entry and residence of aliens).

115. QUR’AN 24:33 (A. Yusuf Ali trans. 1983), available at [http://www.harunyahya.com/Quran\\_translation/Quran\\_translation24.php](http://www.harunyahya.com/Quran_translation/Quran_translation24.php); UNODC, *supra* note 50, at 41.

116. Law No. 64 of 2010, art. 23 (Egypt).

*C. Aggravated Circumstances: When the Trafficked Person Is a Female*

The Arab League Model Law provides for enhanced penalties in aggravated circumstances.<sup>117</sup> The list of these aggravated circumstances, as drawn from a variety of Arab antitrafficking laws, includes instances when the act of trafficking is committed or facilitated by a public official; is transnational in nature; is committed by an organized criminal group; is committed using a weapon; is committed by the spouse of the victim or one of her close relatives; is committed by more than one person; results in a serious harm to the victim; or causes harm to the disabled.<sup>118</sup> However, there is no consensus as to whether the penalty should be enhanced when the victim is a female. Some Arab human trafficking laws state that a penalty may be enhanced if the crime is committed against a child, a woman, or a person with special needs. For example, Article 4 of the GCC Model Law enhances the penalty “if the crime is committed against children, women, or persons with special needs.”<sup>119</sup> Similarly, Article 4 of the Saudi Arabian law enhances the penalty “if the crime is committed against a woman or people of special needs,”<sup>120</sup> or “if the crime is committed against a child, even if the perpetrator is not aware that the victim is a child.”<sup>121</sup> Article 8 of the Syrian law provides that a penalty shall be enhanced “if the crime is committed against women or children or person[s] with special needs.”<sup>122</sup> Article 4 of Bahrain’s law states that aggravating circumstances in a crime of trafficking persons include the victim being “below fifteen years of age, a female or a person with special needs.”<sup>123</sup> The law in Jordan states in Article 7(b)(2) that a penalty for the

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117. The following conditions are mentioned, among others, as leading to aggravated circumstances:

- 1) If the crime is committed against children, women, or persons with special needs;
- 2) If the crime is committed by an organized criminal group whose purpose, or one of its purposes is the commission of the crime of trafficking in persons, and the offender is one of its members;
- 3) If the crime is transnational in nature.

ARAB LEAGUE MODEL LAW, *supra* note 67, art. 4.

118. See Law No. 1 of 2008 (Law with Respect to Trafficking in Persons), art. 4, (Bahr.); Law No. 64 of 2010, art. 6 (Egypt); Law of 3 Mar. 2009, art. 7 (Jordan); Royal Decree 126/2008 (Decree Promulgating the Law Combating Trafficking in Persons), 23 Nov. 2008, art. 9 (Oman); Royal Decree No. M/40 of 2009 (Law for Combating Crimes of Trafficking in Persons), *Um Al-Quaran*, 7 Aug. 2009, art. 4 (Saudi Arabia); Law No. 51 of 9 Nov. 2006 (Combating Human Trafficking Crimes), art. 2 (U.A.E.).

119. GCC MODEL LAW, *supra* note 98, art. 4(2).

120. Royal Decree No. M/40 of 2009, art. 4(2) (Saudi Arabia).

121. *Id.* art. 4(3).

122. Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons), art. 8(1) (Syria).

123. Law No. 1 of 2008, art. 4(2) (Bahr.).

crime of human trafficking shall be enhanced “if the victim is a female, a minor, or a person with special disability.”<sup>124</sup> Similarly, Article 15 of the Qatari law enhances the penalty “if the victim is a female, a child, a person with a disability, or incapacitated.”<sup>125</sup>

Other laws, like the Egyptian law, do not consider trafficking in women an aggravated circumstance, only enhancing the penalty to life imprisonment “if the victim was a child, was incapacitated or was a person with disabilities.”<sup>126</sup> Similarly, Article 9 of the law of Oman does not consider trafficking in females to be an aggravated circumstance, but if the victim is a child or a person with special needs it enhances the standard penalty of three to seven years with a sentence of imprisonment lasting not less than seven years nor exceeding fifteen years, plus an increased fine.<sup>127</sup> The Lebanese law considers a pregnant woman a vulnerable victim and enhances the penalty only in such cases.<sup>128</sup> One may consider enhancing the penalty in trafficking cases that involve a female as an example of positive discrimination that is allowed under the Arab Charter for Human Rights.<sup>129</sup> However, this proposition runs counter to the established principles in comparative models that focus on the conditions of vulnerability of females and males rather than gender status as grounds for enhancing the penalty.<sup>130</sup>

#### *D. The Rights of Victims of Trafficking in Accordance with Arab Legislation*

Arab countries, to varying extents, have recognized a variety of victims’ rights in their antitrafficking laws. For example, the Egyptian law guarantees the following rights for victims of trafficking: the right to safety; the right to identity; the right to information; the right to be heard in court; the right to legal assistance; the right to personal security;<sup>131</sup> the right to return to one’s homeland;<sup>132</sup> and the right of an Egyptian victim of trafficking abroad to be returned to Egypt.<sup>133</sup> The Egyptian law explicitly provides that:

The State shall guarantee the protection of the victim and shall work to create the appropriate conditions for his assistance, health,

124. Law of 3 Mar. 2009 (Combating Human Trafficking), art. 7(b)(2) (Jordan).

125. Law No. 15 of 2011 (Regarding Combating Human Trafficking), art. 15 (Qatar).

126. Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010, art. 6(6) (Egypt).

127. Royal Decree 126/2008 (Decree Promulgating the Law Combating Trafficking in Persons), 23 Nov. 2008, art. 9(A) (Oman).

128. Law 164 of 24 Aug. 2011 (Punishment of Crimes of Trafficking in Persons), art. 1 (Leb.).

129. Arab Charter on Human Rights, *supra* note 45, art. 3(3).

130. *See, e.g.*, Mattar, *supra* note 93, at 371, 385–88 (discussing the vulnerability doctrine).

131. Law No. 64 of 2010, art. 23 (Egypt).

132. *Id.* art. 22.

133. *Id.* art. 25.

psychological, educational, and social care; and rehabilitation and reintegration into the society, within the framework of liberty and human dignity. . . .<sup>134</sup>

It is not clear to what extent the Egyptian law adopts the principle of non-discrimination between a citizen and a noncitizen. Articles 21–24 apply all measures of protection to both citizens and noncitizens; however, Article 26 provides that “the competent authorities shall provide care, education, training, and rehabilitation programs to the Egyptian victims.”<sup>135</sup>

Beyond Egypt, other Arab countries also protect trafficking victims’ rights in varying degrees. Bahrain’s law provides for a number of protective measures for trafficking victims that must be considered during investigations or court proceedings.<sup>136</sup> These include the right to information, or informing the victim of his or her legal rights in a language he or she understands, and the right to medical and psychiatric care.<sup>137</sup> The Bahraini law explicitly states that “the victim shall be examined by a specialist physician if he so requests or if it transpires that he is in need of medical or psychiatric care,” and requires “[a]dmitting the victim into a medical or psychiatric centre or a welfare centre if it transpires that his medical or psychological condition or age so requires.”<sup>138</sup> Syrian law also provides that victims of trafficking should be entitled to receive information regarding their legal rights “in a language that they understand.”<sup>139</sup> The Syrian law states that victims of trafficking have the right to privacy, including the right to secrecy of name, place where they are receiving care, or any other information that may reveal their identities.<sup>140</sup> Similar laws guaranteeing rights for victims of trafficking are found in Saudi Arabia and Oman.<sup>141</sup>

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134. *Id.* art. 22. The law further provides that:

The State shall provide appropriate premises to host the victims of the crimes of human trafficking, which shall be separate from those of the perpetrators and shall allow them to receive their families and lawyers, as well as representatives of the competent authorities, all without prejudice to the various safeguards set forth in this regard in the Child Law or any other law.

*Id.* art. 24.

135. *Id.* arts. 21–24, 26.

136. Law No. 1 of 2008 (Law with Respect to Trafficking in Persons), art. 5 (Bahr.).

137. *Id.*

138. *Id.* art. 5(3)–(4).

139. Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons), art. 15(E) (Syria).

140. *Id.* art. 15(D).

141. Royal Decree 126/2008 (Decree Promulgating the Law Combating Trafficking in Persons), 23 Nov. 2008, art. 5 (Oman); Royal Decree No. M/40 of 2009 (Law for Combating Crimes of Trafficking in Persons), *Um Al-Quaran*, 7 Aug. 2009, art. 15 (Saudi Arabia).

## 1. The Right to Shelter

The GCC Model Law dictates that shelter should be provided for victims of trafficking.<sup>142</sup> Most trafficking laws provide that victims of trafficking are entitled to accommodation in safe places such as shelters.<sup>143</sup> The Bahraini law, for example, allows for “admitting the victim into a special center for the provision of shelter or . . . with a licensed authority to undertake providing accommodation thereto if it is found that this is required.”<sup>144</sup> However, few shelters are established for human trafficking victims and incidences from the U.A.E. or Bahrain show that they are restricted to only women and children.<sup>145</sup>

## 2. The Right to Residency Status

The laws of Bahrain, Oman, and Saudi Arabia have followed the GCC Model Law when providing protective measures for victims of trafficking. It is to be noted, however, that the three laws differ as to the right of a victim of trafficking to residency status in the destination country. The Omani law does not grant a trafficking victim such a right.<sup>146</sup> The Saudi Arabian law on the other hand states that “[i]f the victim is a foreigner and it is necessary for him to stay in the Kingdom during the investigation procedures, the prosecution or the competent court would assess the matter.”<sup>147</sup> However, according to Article 7 of Bahraini law, the Minister of Social Development must form a “Committee for the Assessment of the Status of Foreigners who are Victims of Trafficking in Persons.”<sup>148</sup> The law is more detailed in that it

142. GCC MODEL LAW, *supra* note 98, art. 14(5).

143. Law No. 1 of 2008, arts. 5(5), 9 (Bahr.); Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010, art. 24 (Egypt); Law of 3 Mar. 2009 (Combating Human Trafficking), art. 7 (Jordan); Royal Decree No. M/40 of 2009, art. 15(5) (Saudi Arabia).

144. Law No. 1 of 2008, art. 5(5) (Bahr.).

145. TIP REPORT 2011, *supra* note 9, at 81, 368.

146. Royal Decree 126/2008 (Oman).

147. Royal Decree No. M/40 of 2009, art. 15(7) (Saudi Arabia).

148. The functions of the Committee according to the Law of Bahrain, Article 7:

The Committee shall have access to all reports related to the victim and the right to hear all his statements or these [*sic*] of his representative. The functions of the Committee shall be as follows:

1. Implementing Sub-clause 7 of Article (5) of this Law.
2. Co-ordinating with the Ministry of the Interior for the repatriation of the victim to his home country of which he is a national or to his place of residence in any other country if he so requests.
3. Making recommendations in case there is a need for a victim to stay in the Kingdom and adjust his legal status with a view to enabling him to get employment. Such recommendation shall be submitted to the Minister of the Interior for his



empowers the committee to examine the needs of a victim for repatriation to his or her country of origin<sup>149</sup> or for a job if the victim must remain in Bahrain for an extended period.<sup>150</sup> However, such employment recommendations are subject to review no less often than once every six months.<sup>151</sup> It is to be noted that the Egyptian law is silent as to the residency status of a victim of trafficking.

### 3. The Right to Compensation

There are various models for compensating victims of trafficking. One is filing a civil action. For instance, the law of Jordan provides that a person “injured because of one of the crimes stipulated in this law may seek compensation in accordance with the general principles in the laws in force.”<sup>152</sup> The law of Oman, in an attempt to enhance a victim’s access to justice, provides that a victim of trafficking shall be exempted from the fees of a civil action that he or she files asking for compensation for the harm resulting from the exploitation.<sup>153</sup>

General rules applicable to compensation may also apply to victims of trafficking. For instance, Article 3 of the Algerian Code of Criminal Procedure, gives crime victims the right to file a civil action and Article 239 states that anyone who wants to use the right conferred by Article 3, and who claims to be a victim of a crime or misdemeanor can file the civil action in the same session as the criminal proceeding already in progress.<sup>154</sup> Also, a person who suffers harm as a result of a crime may file a separate civil action asking for compensation in accordance with Article 124 of the Algerian Civil Code, which provides that any act that causes harm to another gives rise to compensation.<sup>155</sup> The law of Qatar provides in Article 10 that the

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approval, and in case of approval, it shall be subject to a review once every six months as a maximum in accordance with the same procedures.

Law No. 1 of 2008, art. 7 (Bahr.). Article 5 requires that

[t]he following actions shall be taken in the stage of investigation or court proceedings in respect of a crime of trafficking in persons:

....

7. Contacting the Chairman of the committee provided for in Article 7 of this Law if the victim is a foreigner and it transpires that he is in need of a job, with a view to removing any obstacles in this regard.

*Id.* art. 5.

149. *Id.* art. 7(2).

150. *Id.* art. 5(7).

151. *Id.* art. 7(3).

152. Law of 3 Mar. 2009 (Combating Human Trafficking), art. 12 (Jordan).

153. Royal Decree 126/2008 (Decree Promulgating the Law Combating Trafficking in Persons), 23 Nov. 2008, art. 17 (Oman).

154. C. PR. PÉN. arts. 3, 239 (Alg.).

155. CODE CIVIL [C. CIV.] art. 124 (Alg.).

criminal court with jurisdiction to decide a case of human trafficking shall also have jurisdiction to decide a civil action that may arise as a result of the criminal action.<sup>156</sup>

Another model of compensation involves establishing a state fund. An early draft of the law of Bahrain provided that “a government fund shall be established”<sup>157</sup> to provide for the necessary funding for the implementation of the policies specified in the law.<sup>158</sup> However, this provision was deleted in its entirety in the final version of the law.<sup>159</sup> The Egyptian law provides for the establishment of a state fund “to assist victims of human trafficking” and “to provide financial assistance to the victims who have suffered harm resulting from any of the crimes stipulated in this law.”<sup>160</sup> It is significant to note that in addition to “[t]he proceeds of the fines sentenced for the crimes stipulated in this law, as well as the properties, objects, and means of transportation forfeited [which] shall be allocated directly to the fund,”<sup>161</sup> the law allows the fund to “accept contributions, grants, and donations from national and foreign entities.”<sup>162</sup>

#### 4. The Right to Be Heard in Court

A victim of human trafficking should be entitled to the right to be heard during all stages of criminal and civil proceedings. Implementation of this right, as stated by the Egyptian law, requires that the victim’s views should be considered<sup>163</sup> and that he or she has “[t]he right to legal assistance, in particular the right to counsel.”<sup>164</sup> The court or public prosecutor may assign a lawyer in accordance with the rules prescribed in the criminal procedures law,<sup>165</sup> and should take necessary measures to protect the victim’s safety as well as the safety of any witness testifying on the victim’s behalf.<sup>166</sup> This also requires informing the victim of his or her rights in accordance with the relevant administrative, legal, and judicial regulations.<sup>167</sup> In an unprecedented step, the faculty of law at Alexandria University established the first law clinic in the history of Egyptian legal education, providing legal assistance

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156. Law No. 15 of 2011 (Regarding Combating Human Trafficking), art. 10 (Qatar).

157. Bahrain, Draft Law on the Prevention of Human Trafficking, 2006, art. 11.

158. *Id.*

159. *See* Law No. 1 of 2008 (Law with Respect to Trafficking in Persons) (Bahr.).

160. Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010, art. 27 (Egypt).

161. *Id.*

162. *Id.*

163. *Id.* art. 23(d).

164. *Id.* art. 23(e).

165. *Id.*

166. *Id.* art. 23(f).

167. *Id.* art. 23(c).

to victims of violence, including human trafficking.<sup>168</sup> Establishing similar legal clinics in other law schools in Arab universities would enhance the access of these victims to justice, and therefore must be encouraged.

### III. FINDING A ROLE FOR CIVIL SOCIETY IN ENHANCING THE IMPLEMENTATION OF HUMAN TRAFFICKING LEGISLATION

#### A. *State's Obligation of Cooperation with Civil Society: The U.N. Mandate*

Any effective antitrafficking legislation should provide for the establishment of an interagency taskforce that coordinates government efforts and foresees the implementation of the law. The difficult question is whether such an agency should allow for the participation of NGOs and other elements of civil society. In legislation combating human trafficking, the role of civil society in providing victims with appropriate protection is not always clear. The U.N. Protocol establishes an "obligation of cooperation," requiring that states cooperate with NGOs and other elements of civil society.<sup>169</sup> In accordance with Articles 6 and 9 of the U.N. Protocol, states parties must take appropriate protective as well as preventive measures in cooperation with civil society.<sup>170</sup> The question becomes, how does Arab legislation address this obligation?

#### B. *The Absence of a Role of Civil Society in Arab Human Trafficking Legislation*

The GCC Model Law, while providing for coordination among state agencies, is silent about coordination between these state agencies and members of civil society.<sup>171</sup> Similarly, the law of the U.A.E. makes it a func-

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168. Regarding the legal clinic at the Alexandria University Faculty of Law, see Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Rep. of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Preliminary Note on the Mission to Egypt (11–21 April 2010)*, ¶ 6, Human Rights Council, U.N. Doc. A/HRC/14/32/Add.5 (May 20, 2010) (by Joy Ngozi Ezeilo).

169. U.N. Protocol, *supra* note 5, art. 9(3) ("Policies, programmes and other measures established in accordance with this article [on prevention of trafficking in persons] shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.").

170. *Id.* arts. 6, 9.

171. Article 16 provides for the establishment of a National Committee for Combating Trafficking in Persons to:

- 1) prevent and combat trafficking in persons; 2) protect victims of trafficking in persons from revictimization and monitor their situation; 3) prepare research, information, media campaigns, social, and economic initiatives to prevent and combat trafficking in persons; and 4) coordinate with the state agencies regarding information and statistics related to trafficking in persons.

GCC MODEL LAW, *supra* note 98, art. 16.

tion of the National Committee for Combating Human Trafficking to coordinate “between different state bodies including Ministries, Departments, Establishments and Authorities related to the combating of human trafficking,”<sup>172</sup> but does not make any reference to NGOs. Article 23 of the Omani law provides that the National Committee for Combating Trafficking in Persons<sup>173</sup> shall coordinate among all competent national authorities “and relevant international organizations to set up measures and procedures capable of combating transnational trafficking crimes.”<sup>174</sup> The law of Jordan gives the National Committee to Protect from Human Trafficking the authority to cooperate with all agencies to implement programs for the physical, mental, and social rehabilitation of victims and those who are affected by the crime of human trafficking, and supervise the hosting of these persons in the places that were established for this purpose.<sup>175</sup> NGOs are not represented on these national committees. The Saudi Arabian law is also silent as to any role for NGOs.

The Syrian law is clearer with regard to the role of civil society, stating that “the concerned authorities shall take measures to ensure providing victims of trafficking the appropriate protection . . . in cooperation, whenever necessary, with official institutions, popular organizations, trade unions, and NGOs that are concerned with the issue.”<sup>176</sup> The only reference in the Egyptian law to institutions other than the government is in Article 26, which states that “the competent authorities shall provide care, education, training, and rehabilitation programs to the Egyptian victims, whether through governmental or non-governmental institutions.”<sup>177</sup>

In Bahrain, Article 8 of the law on human trafficking calls for the establishment of the Committee for Combating Trafficking in Persons with the purpose of coordinating among government departments, but does not call for coordination with civil society.<sup>178</sup> Although the functions of the Bahraini committee do not include coordination with civil society, the law does require the Minister of Social Development to nominate “representatives of three civil societies” to the committee, a model of civil society participation that should be applauded.<sup>179</sup>

172. Law No. 51 of 9 Nov. 2006 (Combating Human Trafficking Crimes), art. 13(4) (U.A.E.).

173. Established in accordance with Article 22 of the Law Combating Trafficking in Persons. Royal Decree 126/2008 (Decree Promulgating the Law Combating Trafficking in Persons), 23 Nov. 2008, art. 22 (Oman).

174. *Id.* art. 23(2).

175. Law of 3 Mar. 2009 (Combating Human Trafficking), art. 5(7) (Jordan).

176. Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons), art. 15 (Syria).

177. Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, May 2010, art. 26 (Egypt).

178. Law No. 1 of 2008 (Law with Respect to Trafficking in Persons), art. 8(3) (Bahr.).

179. *Id.* art. 8. For the two models of civil society participation, the representation model and the consultation model, see UNODC, *supra* note 61, at 107–09.

It should also be noted that Arab antitrafficking laws address preventative measures only as a part of the functions of interagency task forces.<sup>180</sup> These measures include conducting research, collecting information, carrying out media campaigns and participating in international conferences related to human trafficking,<sup>181</sup> amending existing legislation related to human trafficking,<sup>182</sup> creating a database of information and statistics on the subject,<sup>183</sup> conducting training programs for those who are in charge of implementation of the human trafficking law,<sup>184</sup> and ensuring the implementation of the law by the competent government authorities.<sup>185</sup> Again, these laws should have allowed for a civil society role in implementing these measures.

In defining the functions of Arab interagency task forces, the Arab laws do not distinguish between coordination and reporting, and do not emphasize reporting as one of the most important means of enforcement mechanisms. For instance, Bahrain's law makes it a function of the Committee for Combating Trafficking in Persons to participate with the appropriate government authorities in the preparation of reports to be presented to U.N. committees, but it does not provide for a self-reporting mechanism where the Committee itself would publish an annual or periodical report to be submitted to the Parliament.<sup>186</sup> However, the Bahraini law entrusts the Committee with submitting a report to the Minister of Foreign Affairs on the implementation of international conventions to which the Kingdom is a party.<sup>187</sup> The U.A.E. law includes preparation of reports on the measures taken by the government to combat human trafficking as a function of the National Committee to Combat Human Trafficking,<sup>188</sup> but does not provide for the issuance of an annual report. Additionally, for the reasons detailed in the previous Sections, it is essential that NGOs and other elements of civil society be consulted in any report that assesses the scope of the problem and the appropriate responses.<sup>189</sup>

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180. See, e.g., Legislative Decree No. 3 of 2010, art. 18 (Syria); Law No. 51 of 9 Nov. 2006 (Combating Human Trafficking Crimes), art. 13 (U.A.E.).

181. Law No. 51 of 9 Nov. 2006, art. 13 (U.A.E.).

182. Royal Decree 126/2008 (Decree Promulgating the Law Combating Trafficking in Persons), 23 Nov. 2008, art. 23(9) (Oman).

183. Legislative Decree No. 3 of 2010, art. 18 (Syria).

184. Royal Decree 126/2008, art. 23(7) (Oman).

185. Law No. 1 of 2008 (Law with Respect to Trafficking in Persons), art. 8 (Bahr.).

186. *Id.*

187. *Id.* art. 8(5).

188. Law No. 51 of 9 Nov. 2006 (Combating Human Trafficking Crimes), art. 13 (U.A.E.).

189. See *supra* Parts III.A–B.

### C. *The Five Elements of Civil Society: Moving Beyond Government Institutions*

It is imperative that the role of civil society in combating human trafficking is expanded. Civil society may be represented by what I call "A.C.M.N.R." The *A* stands for *academic institutions*, which have an important role in educating both officials and the public about human trafficking. For example, it is worth mentioning that the Arab University of Beirut has included a course on combating human trafficking in its women's studies program,<sup>190</sup> the Royal Police Academy of Bahrain teaches a course on the crime of human trafficking and organizes workshops on the issue,<sup>191</sup> and the Naïf Arab University for Security Sciences holds regular training on the issue.<sup>192</sup> These academic programs, I believe, will contribute to the knowledge of the new generation and induce them to advocate for the abolition of human trafficking and human exploitation. The *C* stands for *corporations*. With the rise of globalization and multinational corporations, we should emphasize the importance of corporate social responsibility in curtailing social ills, including illicit or illegal corporate practices and the misuse of technology. However, the role of the private sector is not explicitly included in any Arab legislation on trafficking. The *M* stands for the *media*, which has a duty to report on the problem of human trafficking to raise public awareness. The *N* stands for *NGOs*, which are instrumental in assisting victims of trafficking and providing them with the necessary services and care. And finally, the *R* stands for *religious institutions*. Sheik Youssef el Qaradawi, an eminent Islamic scholar, issued a fatwa in March 2008 stating that the sponsorship rule<sup>193</sup> that prevails in some countries is

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190. The course was added in Spring 2011 to the curriculum of the Diploma in Women's Studies at Beirut Arab University. Dr. Abdullah Abdul Karim Abdullah & Dr. Faten Hussein Hawwa, Syllabus, Combating Trafficking in Women, [http://www.protectionproject.org/wp-content/uploads/2011/04/Components-of-Course\\_WT.doc](http://www.protectionproject.org/wp-content/uploads/2011/04/Components-of-Course_WT.doc).

191. See, e.g., *Royal Police Academy Organises Human Trafficking Workshop*, BAHRAIN NEWS AGENCY (Feb. 18, 2009), <http://www.bna.bh/portal/en/news/431108>.

192. For example, a training program on "Prosecutorial Techniques in the Judicial Legal System in Saudi Arabia: The Case of Human Trafficking," was held at Naïf Arab University of Security Sciences [NAUSS] in Riyadh, Saudi Arabia, on the dates of January 11–13, 2009. Likewise, on the dates of May 3–7, 2008, NAUSS hosted a UNODC training program on "Trafficking in the Gulf Area: the National, Regional, and International Frameworks." *NAUSS and UNODC—Three Day Workshop: Strengthening International Cooperation in Fighting Terrorism*, NAUSS, [http://www.nauss.edu.sa/En/News/UniversityNews/Pages/news\\_12022011.aspx](http://www.nauss.edu.sa/En/News/UniversityNews/Pages/news_12022011.aspx) (last visited Oct. 22, 4, 2011). The university has signed a memorandum of understanding and cooperation with UNODC. *Memorandums of Understanding and Cooperation*, NAUSS, <http://www.nauss.edu.sa/En/NationalCooperation/Pages/MemorandumsofUnderstandingandCooperation.aspx> (last visited Oct. 22, 2011).

193. The "sponsorship rule" provides an employer sponsoring a worker with a variety of rights that may infringe on the rights of the employee. For example, foreign workers' travel documents are withheld by employers; an employee then may not leave his employer and seek another employment without approval, nor is the employee allowed to leave the country for any reason without first obtaining the approval of the employer. This may violate the worker's right to free movement. See UNODC, *supra* note 50, at 24–25.

inconsistent with the teachings of Islam and should be abolished.<sup>194</sup> He explained that the “[s]ponsorship system nowadays produced visas market[s], leaving tens [*sic*] of workers living in sub-human conditions, as a large number of labourers are accommodated in small areas. It is really a shame and also it is against the Islamic principles which call for respecting human rights.”<sup>195</sup> In a more recent fatwa, the president of the World Islamic Sciences and Education University, Abdul Nasser Abu Basal, stated that human trafficking, if organized and conducted at a large scale, warrants the application of the *hudud* punishment for highway robbery.<sup>196</sup> In this part of the world, where Islam and Christianity come together and play a significant role in the lives of all Arabs, we have to think about how we can replicate the wisdom of religious scholars and use the good principles of religion to prohibit human exploitation and human trafficking.

### CONCLUSION

One should ask four main questions in assessing efforts made by countries to combat trafficking in persons: Does a country have specific antitrafficking legislation that not only criminalizes the act of trafficking but also provides victims of trafficking with the necessary protection, assistance, and care? Does a country have a specialized interagency task force to coordinate efforts by the various concerned government bodies as well as by elements of civil society? Does the government of a country issue an annual report that examines the scope of the problem and evaluates the appropriate government and nongovernment responses? And does the government of a country have a national action plan to implement the legislative mandates of human trafficking laws?

The next step for these efforts is to move beyond specific anti-trafficking legislation to trafficking-related legislation. By the latter, I mean a number of laws that have to be considered to address the root causes of the problem of trafficking and the vulnerability of the trafficking victims. For example, if we believe in a role for civil society, as this Essay has empha-

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194. Nour Abuzant, *Call for ‘Review’ of Sponsorship System*, GULF TIMES, Mar. 14, 2008, [http://www.gulf-times.com/site/topics/article.asp?cu\\_no=2&item\\_no=207225&version=1&template\\_id=57&parent\\_id=56](http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=207225&version=1&template_id=57&parent_id=56).

195. *Id.*

196. See Hani Hazaimah, *Religious Leaders Support Battle Against Human Trafficking*, JORDAN TIMES, July 5, 2011, <http://www.jordantimes.com/?news=39147>. The article states:

Abdul Nasser Abu Basal, president of the World Islamic Sciences and Education University, noted that the penalty for human trafficking, when it becomes organised and comprehensive, is the same as the punishment for robbery.

Citing a verse in Surat Al Maida of the Holy Koran and a Hadith by the Prophet Mohammad, he said this penalty also applies to those who force women, children and the elderly to donate organs in exchange for money.

*Id.*

sized, we have to ask ourselves how NGO laws can be amended and improved so that NGOs can work freely in the Arab World. As indicated, there is an international obligation on states to cooperate with NGOs and other elements of civil society when a state is building a shelter, providing for medical care, or forming a job-training program for victims of trafficking.<sup>197</sup> Implementation of this international obligation requires new laws that truly recognize NGOs and other elements of civil society as essential partners in any economic, social, or political development. Similarly, it is imperative that media laws in the Arab World are reviewed to ensure that journalists have the freedom to report on factors that contribute to human trafficking. Other trafficking-related laws include child protection laws, laws on violence against women, laws that enhance access to justice, laws that guarantee access to information, and labor laws that do not discriminate against foreign labor and provide protection to all forms of labor, including domestic work. Only when human rights are enhanced and fully protected and guaranteed for the people of the Middle East will human trafficking be successfully confronted and eliminated.

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197. See *supra* Part III.A.



