

Fordham International Law Journal

Volume 26, Issue 3

2002

Article 7

Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses

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Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses

Mohamed Y. Mattar

Abstract

The purpose of this Article is to discuss the scope of the problem of trafficking in persons, especially women and children, in the region of the Middle East, and to examine the legislative responses to this problem. This Article will discuss the forms of trafficking in the countries of the Middle East and explain the current legislative responses to the problem of trafficking. This Article will also evaluate the adequacy of these responses, as determined by the minimum standards for eliminating trafficking in persons set forth by the United States Trafficking Victims Protection Act of 2000 ("TVPA"). The Article will also address what countries of the Middle East must do to comply with the provisions stipulated in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime ("Protocol"). The Article will conclude by suggesting necessary legislative changes that must be initiated by these countries to combat trafficking in persons in the region.

TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, IN COUNTRIES OF THE MIDDLE EAST: THE SCOPE OF THE PROBLEM AND THE APPROPRIATE LEGISLATIVE RESPONSES

*Mohamed Y. Mattar**

INTRODUCTION

Trafficking in persons, especially women and children, has been recognized by the international community as a human rights violation that is considered a contemporary form of slavery.¹ Each year, at least 700,000 people, primarily women and children, are trafficked globally and placed into conditions of sexual exploitation and forced labor. Trafficking in persons is one of the fastest growing and most lucrative criminal activities. Several attempts at combating trafficking in persons have been made through international treaty law. The Rome Statute of the International Criminal Court ("Rome Statute"), effective July 1, 2002, explicitly recognizes trafficking in persons as enslavement, which is considered a crime against humanity.² The 2000

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1. See Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, Secs. 102(b)(1)-(2), 114 Stat. 1464, 1466 (2000) [hereinafter TVPA].

2. Rome Statute of the International Criminal Court, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, Italy, June 15-July 16, 1998, U.N. Doc. No. A/CONF.183/9* (1998), art. 7, available at <http://www.un.org/law/icc/statutw/romefra.htm> [hereinafter Rome Statute]. Crimes against humanity are defined under Article 7 of the Rome Statute to include "enslavement", "sexual slavery," "enforced prostitution," and "any other form of sexual violence of comparable gravity." *Id.* The Rome Statute defines "enslavement" to mean "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children." *Id.* The Rome Statute follows Article 7 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which defines slavery as "[t]he status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." Supplementary Convention On The Abolition Of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, art. 7, 18 U.S.T. 3201.

United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime ("Protocol") mandates that States Parties take the necessary measures not only to criminalize the offense of trafficking, but also to prevent trafficking, protect and assist victims of trafficking, and promote international cooperation to combat the problem of trafficking.³ Thus, the Protocol provides a "comprehensive international approach"⁴ to combating trafficking, which surpasses the earlier international trafficking prohibitions under the following Conventions: the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others ("1949 Convention"),⁵

3. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the Work of its First to Eleventh Sessions, U.N. GAOR 55th Sess., Agenda Item 105, U.N. Doc. A/55/383 (2000), Annex II [hereinafter Protocol]. *See also id.* art. 2 "Statement of Purpose." The Protocol's purposes are:

- (a) [T]o prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) [T]o protect and assist the victims of such trafficking, with full respect for their human rights; and (c) [T]o promote cooperation among States Parties in order to meet those objectives.

Id. *See also* Kelly Hyland, *The Impact of the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children*, 8 *HUM. RTS. BRIEF* 30 (2001).

4. Protocol, *supra* n.3, Preamble. The Preamble of the Protocol states that:
 . . . effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking including by protecting their internationally recognized human rights . . .

Id. *See generally* Anne Gallagher, *Human Rights and the New U.N. Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 *HUM. RTS. Q.* 75 (2001) (discussing the purposes and different provisions of the Protocol).

5. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 271, 282 (entered into force July 25, 1951) [hereinafter 1949 Convention]. Article 28 of the 1949 Convention provides that the 1949 Convention shall supersede the following conventions: International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 92 U.N.T.S. 19; the International Convention of the Suppression of the White Slave Traffic, May 4, 1910, 98 U.N.T.S. 101; the International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, *as amended by* the Protocol approved by the General Assembly of the United Nations, Oct. 20, 1947; the International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 53 U.N.T.S. 49. *Id.* at 289.

which criminalized prostitution-related activities,⁶ the 1979 Convention on the Elimination of All Forms of Discrimination Against Women,⁷ which prohibited “all forms of traffic in women”;⁸ and the 1989 Convention on the Rights of the Child,⁹ calling for the prevention of “traffic in children for any purpose or in any form.”¹⁰

Despite these international convention prohibitions against trafficking in persons, the responses to the problem of trafficking differ in the various countries and the different regions of the world. The purpose of this Article is to discuss the scope of the problem of trafficking in persons, especially women and children,¹¹ in the region of the Middle East,¹² and to examine the

6. 1949 Convention, *supra* n.5, at 274. Article 1 of the 1949 Convention provides for the punishment of:

[A]ny person who, to gratify the passions of another:

(1) [p]rocures, entices or leads away, for the purposes of prostitution, another person . . . [or]

(2) [e]xploits the prostitution of another person . . .

Id. Article 2 of the 1949 Convention also makes criminal the action of any person who:

(1) [k]eeps or manages or knowingly finances or takes part in financing a brothel [or] (2) [k]nowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

Id.

7. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 14 (entered into force Sept. 3, 1981) [hereinafter 1980 Convention].

8. *Id.* art. 6. *But see* Susan Jeanne Toepfer & Bryan Stuart Well, *The Worldwide Market for Sex: A Review of International and Regional Legal Prohibition Regarding Trafficking in Women*, 2 MICH. J. GENDER & LAW 83, 101 (1994) (criticizing Article 6).

9. Convention on the Rights of the Child, U.N. GAOR, 44th Sess., Agenda Item 108, U.N. Doc. A/44/736 (1989) [hereinafter Convention on the Rights of the Child].

10. *Id.* art. 35.

11. This Article adopts the term “trafficking in persons, especially women and children” to address the issue of trafficking in human beings. While other terms have been used to address the subject, including “human trafficking,” “trafficking of women and children,” and “trafficking in migrants,” the recent international legal instruments, including the Protocol, *supra* n.3, as well as the Rome Statute, *supra* n.2, both use the term “trafficking in persons, especially women and children.” The term, as such, is more comprehensive, and in the meantime, focuses on women and children as the most vulnerable to trafficking persons. The term also avoids the confusion between trafficking in persons and migrant smuggling. *See generally* Women’s Right Advocacy Program (“WRAP”), *Report from the Roundtable on the meaning of Trafficking in Persons: A Human Rights Perspective*, 20 WOMEN’S RTS. L. REP. 11 (1998) (discussing the definition of trafficking in persons); Janie Chuang, *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65 (1998); Nora V. Demleitner, *Forced Prostitution: Naming an International Offensive*, 18 FORDHAM INT’L L.J. 163 (1994).

12. For the purposes of this Article, the Middle East will include the following

legislative responses to this problem. Countries of the Middle East are countries of destination, origin, and transit for trafficking for the purposes of prostitution, other forms of sexual exploitation, and forced labor, especially domestic servitude. While some countries of the Middle East recognize these forms of trafficking, most legal systems of these countries have not yet specifically criminalized all forms of trafficking, nor do they provide for any protection or assistance to victims of trafficking. This Article will discuss the forms of trafficking in the countries of the Middle East and explain the current legislative responses to the problem of trafficking. This Article will also evaluate the adequacy of these responses, as determined by the minimum standards for eliminating trafficking in persons set forth by the United States Trafficking Victims Protection Act of 2000 ("TVPA").¹³ The TVPA calls on foreign countries to prevent acts of trafficking, protect victims of trafficking, and prosecute cases of trafficking in persons. The Article will also address what countries of the Middle East must do to comply with the provisions stipulated in the Protocol. The Article will conclude by suggesting necessary legislative changes that must be initiated by these countries to combat trafficking in persons in the region.

I. TRAFFICKING IN THE MIDDLE EAST: COUNTRIES OF DESTINATION, ORIGIN, AND TRANSIT FOR THE PURPOSE OF FORCED LABOR AND PROSTITUTION

Trafficking in persons involves recruitment, transportation, transfer, and harboring or receipt of persons,¹⁴ often for the purpose of prostitution or the exploitation of the prostitution of others. Article 3 of the Protocol defines exploitation to include "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of

countries: Algeria, Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, Turkey, the United Arab Emirates, and Yemen.

13. TVPA, *supra* n.1.

14. Protocol, *supra* n.3, art. 3(a). Article 3(c) states, however, that "the recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of [Article 3]." *Id.*

organs.”¹⁵ However, the Protocol does not define any of these forms of exploitation and therefore, existing international conventions on the relevant subjects should be consulted. Exploitation of the “prostitution of others” and “other forms of sexual exploitation” are not defined by any of the existing international conventions. The 1949 Convention merely states that “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.”¹⁶ The Protocol does not require a State Party to criminalize the act of prostitution itself, which the Protocol addresses “only in the context of trafficking in persons,”¹⁷ and thus avoids the issue of “how State[s] Parties address prostitution in their respective domestic laws.”¹⁸ Earlier drafts of the Protocol included forced marriage, pornography, and sex tourism as “forms of sexual exploitation.”¹⁹ Forced labor is defined by the International Labor Organization (“ILO”) Convention 29 Concerning Forced or Compulsory Labour,²⁰ to mean “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”²¹ The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (“1956 Convention”)²² defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”²³ Practices similar to slavery under the

15. Protocol, *supra* n.3, art. 3.

16. 1949 Convention, *supra* n.5, at 272.

17. Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the Work of its First to Eleventh Sessions: Interpretive Notes for the Official Records (*Travaux Préparatoires*) of the Negotiation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, A/55/383/Add.1, Sec. 64 (Nov. 3, 2000) [hereinafter *Travaux Préparatoires*].

18. *Id.*

19. See Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the Work of its First to Eleventh Sessions, U.N. GAOR 55th Sess., Agenda Item 105, U.N. Doc. A/55/383 (2000).

20. Convention Concerning Forced or Compulsory Labour (ILO No. 29), June 28, 1930, 39 U.N.T.S. 55 (entered into force May 1, 1932).

21. *Id.* art. 2(1).

22. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Adopted by a Conference of Plenipotentiaries, Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3 [hereinafter 1956 Convention].

23. *Id.* art. 7(a).

1956 Convention include debt bondage,²⁴ serfdom,²⁵ the institution of marriage²⁶ if the woman is considered property, and the sale of children. Under the 1956 Convention, the sale of children is considered slavery through

[a]ny institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view of the exploitation of the child or young person or of his labour.²⁷

Consequently, the sale of children in the name of intercountry adoption²⁸ may be considered a practice similar to slavery. The *Travaux Préparatoires* to the Protocol indicate that “where illegal

24. *Id.* art. 1(a). “Debt bondage” is defined in Article 1(a) as:

[t]he status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Id.

25. *Id.* art. 1(b). “Serfdom” is defined in Article 1(b) as:

[t]he condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.

Id.

26. *Id.* art. 1(c) (i)-(iii).

27. *Id.* art. 1(d).

28. “Intercountry adoption” or “international adoption” is the practice by which adult citizens of a Nation adopt a child who is a citizen of a different Nation. See generally Jorge L. Carro, *Regulation of Intercountry Adoption: Can the Abuses Come to an End?*, 18 HASTINGS INT’L & COMP. L. REV. 121 (1994) (discussing the practice); Howard E. Bogard, *Who Are the Orphans? Defining Orphan Status and the Need for an International Convention on Intercountry Adoption*, 5 EMORY INT’L L. REV. 571 (1991); Richard R. Carlson, *Transnational Adoption of Children*, 23 TULSA L. J. 317 (1988); Jorge L. Carro, *Regulation of Intercountry Adoption: Can the Abuses Come to an End?*, 18 HASTINGS INT’L & COMP. L. REV. 121 (1994); Comment, *Moppets on the Market: The Problem of Unregulated Adoptions*, 59 YALE L.J. 715 (1950); Paul K. Driessen, *Immigration Laws, Procedures and Impediments Pertaining to Intercountry Adoption*, 4 J. INT’L & POL’Y 257 (1974); Jane T. Ellis, *The Law and Procedure of International Adoption: An Overview*, 7 SUFFOLK TRANSNAT’L. L. REV. 361 (1983); Allen F. Epstein, *International Adoption: The Need for a Guardianship Provision*, 1 B.U. INT’L L.J. 225 (1982); Nicole Bartner Graff, *Intercountry Adoption and the Convention on the Rights of the Child: Can the Free Market in Children be Controlled?*, 27 SYRACUSE J. INT’L L. & COM. 405 (2000); Grove *Independent Adoption: The Case for the Gray Market*, 13 VILL. L. REV. 116 (1967); Lisa M. Katz, *A Modest Proposal? The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, 9 EMORY INT’L L. REV. 283 (1995); Holly C. Kennard, *Curtailing the Sale and Trafficking of Children: A Discussion of the Hague Conference Convention in Respect of Intercountry Adoptions*, 14 U. PA. J. INT’L ECON. L. 623 (1994).

adoption amounts to a practice similar to slavery as defined in article 1, paragraph (d), of the Supplementary Convention on the Abolition of Slavery . . . it will also fall within the scope of the Protocol."²⁹ Baby trafficking, however, is not subject to any explicit international conventional prohibition. The 1993 Hague Convention on Protection of Children and Cooperation in Respect to Intercountry Adoption merely provides that "[n]o one shall derive improper financial or other gains from an activity related to an intercountry adoption."³⁰

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

. . . [Nor] has He made your adopted sons your sons. Such is only your manner of speech by your mouths. But God tells you the Truth, and He shows the right way. Call them by (the names of) their fathers: that is juster in the sight of God.³¹

Id.

Islamic law recognizes *Kafala*, as an alternative to adoption. *Kafala* is a system of fosterage where a child may be placed under the guardianship of a family, but the child continues to retain his lineage.³² This explains why many countries of the

29. *Travaux Préparatoires*, *supra* n.17, at 12.

30. *Hague Conference on Private International Law: Final Act of the 17th Session, Including the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, 32 I.L.M. 1134, art. 32(1) (1993). Article 32(2) provides that "only costs and expenses, including reasonable professional fees of person involved in the adoption, may be changed or paid." *Id.* Additionally, "[t]he directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered." *Id.* art. 32(3). *But see* Kennard, *supra* n.28, at 623 (criticizing the Article).

31. HOLY QUR'AN, Sura XXXIII:4-5 (A. Yusuf Ali trans., 2d ed. 1977).

32. *See, e.g.*, Iranian Act Concerning Protection of Children Without Parents, Art. 1. Article 1 states that:

[e]very wife and husband residing in Iran can take care of a child upon mutual agreement and in accordance with approval of the court and pursuant to the regulations and relating to child supervision (adoption).

Id. *See also* Juvenile Welfare Act (1983) (Iraq); Child Protection and Welfare Ordinance, art. 2 (1985) (Libya). Article 2 of this legislation stipulates:

It is permissible for a family to assume responsibility for the care of welfare beneficiaries residing in social welfare centers for the homeless within the categories and in accordance with the conditions laid down in this Ordinance.

Id. Article 3 lays down the following conditions to be fulfilled by the foster family:

Middle East that follow Islamic law had reservations regarding Article 21 of the 1989 Convention on the Rights of the Child, which recognizes adoption³³—it is inconsistent with Islamic law.³⁴ Unlike other regions where baby trafficking is prevalent,

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- (a) It must be a Libyan and Muslim family;
 - (b) It must be a family consisting of a husband and wife who are committed to sound principles of morality and are capable of providing an appropriate environment for the foster child;
 - (c) Neither of the spouses should be over 50 years of age;
 - (d) The family's economic status should be such as to ensure that the foster child's basic needs will be met throughout the period of the fosterage;
 - (e) Proper hygienic conditions must be assured in the residence of the foster family;
 - (f) In seeking to meet the requirements of fosterage, priority is always given to childless families or families with few children which can accept more than one foster child;
 - (g) The couple must be willing to assume the status of foster parents;
 - (h) The wife's circumstances and the time at her disposal must be such as to ensure that the foster child receives the necessary maternal care, attention and supervision.

Id.

33. Convention on the Rights of the Child, *supra* n.9, art. 21. Article 21 provides: States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;
- (b) Recognize that intercountry adoption may be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it; [and]
- (e) Promote, where appropriate, the objectives of the present Article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Id.

34. Some Muslim countries expressed general reservations on any provision of the Convention, which is incompatible with Islamic law. This is the case with Afghanistan, Mauritania, Qatar, Saudi Arabia and Iran. Other countries are more specific in refer-

there is no demand for adopted children in the Middle East.

Children, however, are trafficked to countries of the Middle East to serve as camel jockeys, and often placed into situations of compulsory or forced labor in slave-like conditions, which are frequently accompanied by physical abuse. Reports indicate that children as young as three are either sold by their parents in exchange for as little as US\$500, or kidnapped, and taken to the United Arab Emirates, Saudi Arabia, and other Gulf States, where camel racing is a popular sport among the wealthy.³⁵ These children are trafficked from Sudan, Pakistan, Bangladesh³⁶, India, Nepal, and Sri Lanka.³⁷ Camel jockeys are deemed useless when they surpass seven years of age, or when they weigh more than thirty-seven pounds.³⁸ They are then left on the streets by their traffickers.³⁹ These children are underfed to maintain their low weight, and often fall off the camels, resulting in serious injuries and even death.⁴⁰

The other form of labor trafficking, which poses a significant problem in countries of the Middle East, is domestic service. Women migrate in great numbers to countries of the Middle East. For instance, the Jordanian Ministry of Labor estimated that a total of 25,656 female migrants were working in Jordan, 21,322 of who were from Sri Lanka, and 4,334 from the Philippines.⁴¹

Domestic servants come from Bangladesh, the Philippines, Sri Lanka, India, Indonesia, Ethiopia, Somalia and Nepal to work in different countries of the Middle East, especially Bahrain, Jordan, Lebanon, Oman, and Saudi Arabia. The Inter-

ring in particular to Article 21. This is the case with Egypt, Indonesia, Jordan, Kuwait, Oman, Syria and the United Arab Emirates.

35. Stewart Bell, *'Camel Kids' the New Slaves: Where the Very Wealthy Seek Out the Very Young for the Sake of Sport*, NAT'L POST, June 15, 2002, at B1.

36. U.S. DEP'T OF STATE, VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000: TRAFFICKING IN PERSONS REP. (2002), available at <http://state.gov/g/tip/rls/tiprpt/2002/> (last visited Feb. 20, 2003) [hereinafter TIP REPORT].

37. *Jockeys for Jeddah Tumble to Safety*, STATESMAN (INDIA), Jan. 6, 2002.

38. Amal Jayasinghe, *Death in the Desert for Pakistan's Camel Children*, AG. FR. PRESSE, July 21, 2002.

39. Nadeem Qadir, *Promised Paradise Turns to Hell for Child Camel Jockeys*, AG. FR. PRESSE, Aug. 15, 2002.

40. Somini Sengupta, *Child Traffickers Prey on Bangladesh*, N.Y. TIMES, Apr. 29, 2002, at A6.

41. Melanie Orhant, *Embassies Urge Greater Policing of Agencies that Traffic Migrant Workers*, JORDAN TIMES, Jan. 22, 2001.

national Organization for Migration (“IOM”) estimates that 12,000 to 14,000 Ethiopian women are employed in Lebanon, mostly in domestic service.⁴² In Oman, there are approximately 35,000 Sri Lankan workers employed in the garment industry and domestic service.⁴³

It is reported that domestic servants are required to work twelve to sixteen hours a day with little or no pay, are rarely given free time, are malnourished and often abused verbally and physically, and suffer from sexual exploitation.⁴⁴ Out of fear, domestic servants often do not complain or report cases of sexual exploitation or abuse to the appropriate authorities.⁴⁵ Employers often hold the domestic servants’ passports and other travel documents, thus preventing them from leaving their jobs for other work, or returning home.⁴⁶

Some forms of marriage in the Middle Eastern countries have been used to legitimize prostitution and other forms of sexual exploitation. Most notably, the Islamic institutions of early marriage and temporary marriage have been questioned as amounting to the exploitation and abuse of women. Marriage becomes an institution of slavery under Article 1 of the 1956 Convention when:

- (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or groups; or
- (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
- (iii) A woman on the death of her husband is liable to be inherited by another person.⁴⁷

Islamic law condemns these practices. While a woman is

42. *Ethiopian Women Working in Lebanon Are Beaten: IOM*, AG. FR. PRESSE, Feb. 28, 2001.

43. John Lopez, *New Drive to Win More Jobs for Lankans Abroad*, *TIMES OF OMAN*, June 23, 2002.

44. U.S. DEP’T OF STATE, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES — 2001* (Mar. 4, 2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/nea/> [hereinafter *COUNTRY REPORTS*] (discussing Bahrain).

45. Alastair Lawson, *Dhaka Discusses Women Migrants*, *BBC NEWS*, Oct. 20, 2002.

46. *COUNTRY REPORTS*, *supra* n.44 (discussing Jordan).

47. 1956 Convention, *supra* n.22, art. 1(c)(i)-(iii).

paid a *Mahr*⁴⁸ as consideration, which is necessary for the validity of the formation of the marriage, such consideration is paid to her and not “to her parents, guardian, family or any other person or groups.”⁴⁹ Islamic law freed women who were considered property subject to “transfer” and “inheritance” in pre-Islamic society. Although Islamic law does not provide for a minimum age of marriage, it requires legal capacity, which assumes maturity and puberty. The 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages⁵⁰ advises States to prescribe a minimum age of marriage,⁵¹ although it does not explicitly ban child marriage.⁵² Legal systems of countries of the Middle East differ as to the minimum age for marriage. The Civil Code of Iran, for instance, merely prohibits marriage before the age of maturity.⁵³ The Personal Status Law of Yemen sets the minimum age for marriage of both males and females at fifteen.⁵⁴ The Personal Status Law of Kuwait prohibits registration of a marriage contract of a female under fifteen

48. See, e.g., *Aziz v. Aziz*, 488 N.Y.S. 2d 123, 123-24 (1985); see also *Dajani v. Dajani*, 207 Cal. App. 3d 1387, 1389-90 (1988) (discussing the validity of the *Mahr* in American courts).

49. 1956 Convention, *supra* n.22, art. 1(c)(i)-(iii).

50. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *opened for signature* Nov. 7, 1962, 521 U.N.T.S. 231 (entered into force Dec. 9, 1964) [hereinafter *Marriage Convention*].

51. *Id.* art. 2. Article 2 provides:

States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

Id.

52. See Ladan AsKari, *The Convention on the Rights of the Child: The Necessity of Adding a Provision to ban Child Marriages*, 5 ILSA J. INT'L & COMP. L. 123, 127 (1998). It can be argued, however, that the practice of child marriage violates Article 2(2) of the Convention on the Rights of the Child, which mandates States Parties to “take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.” *Id.* Child marriage may also violate Article 24(3), which states: “States Parties shall take all effective and appropriate measures with a view to abolishing traditional practice prejudicial to the health of children.” *Id.* It may also violate Article 37(a), which states: “States Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” *Id.*

53. See Civ. C., art. 1041 (Iran).

54. See PERS. STAT. L., art. 15 (Yemen).

years of age or a male under seventeen years of age.⁵⁵ The minimum age of marriage in Jordan is sixteen years for a male and fifteen years for a female.⁵⁶ In Syria, the minimum age of marriage is eighteen for a male and seventeen for a female.⁵⁷ And in Egypt, the minimum age of marriage is set at eighteen for males and sixteen for females. Early marriages and child marriages are forbidden under Islamic law and the existing legal systems.

Temporary marriage has been used to disguise prostitution in some countries of the Middle East. Whether the institution of temporary marriage itself constitutes a valid form of marriage under Islamic law has been subject of debate between the *Shi'a* and the *Sunni*.⁵⁸ While the *Sunni* only recognize permanent marriage, the *Shi'a*, in countries like Iran, allow for an alternative form of marriage, which may be limited for a certain period of time.⁵⁹ In temporary marriages, the marriage itself may be entered into orally, without witnesses or registration. Moreover, women in temporary marriages have no right to divorce; nor are they entitled to inheritance. Meanwhile, men may terminate the agreement at any time. It has been argued that temporary marriages make women vulnerable to sexual exploitation and are very often used as a legitimate means to force women into prostitution.⁶⁰ There have been reports of temporary marriages between daughters from poor Egyptian families and wealthy Arabs from the Gulf States.⁶¹ Similar reports have documented the kidnapping of women under the guise of temporary marriages to force them into prostitution in Algeria.⁶² There have also been reports of forced marriages in Egypt. In once case, an Arab man married twenty-two Egyptian women and forced them into prostitution. The man visited Egypt every few months and persuaded the women's families to permit the marriages by giving them money and presents. Once married in his native coun-

55. See PERS. STAT. L. No. 51, art. 26 (1984) (Kuwait).

56. See PERS. STAT. ACT, art. 5 (1976) (Jordan).

57. See PERS. STAT. C., art. 16 (Syria).

58. See Tamilla F. Ghodsi, *Tying a Slipknot: Temporary Marriages in Iran*, 15 MICH. J. INT'L L. 645, 645 (1994).

59. See *id.* at 646.

60. *Economic Woes Give Temporary Marriages a Boost in Iran*, AGENCE FRANCE PRESSE, Nov. 3, 2002.

61. *Id.*

62. See ECPAT International (last visited November 2002), available at <http://www.ecpat.net> (providing relevant statistics and information).

try, he divorced his new wives and forced them into prostitution.⁶³

Some Middle Eastern countries are destinations for the trafficking of women and children for the purpose of prostitution. Women and children are brought to these countries under the guise of legitimate employment, only to later find themselves in situations of forced prostitution. In 1999, thirty-one Filipino women in Saudi Arabia were arrested and charged with possessing illegal residency permits. It was reported that these women, all of whom had been promised jobs as domestic servants, had been trafficked into the country and forced into prostitution.⁶⁴ There have also been reports that women from Bangladesh, many under the age of eighteen, are forced into prostitution in Kuwait, Bahrain, and Saudi Arabia.⁶⁵ In addition, Egypt, Lebanon, Morocco, Syria, and the United Arab Emirates are also destination countries for women who have been trafficked for the purpose of prostitution from South East Asia, Central Asia, Eastern Europe, and Africa. Egypt also serves as a transit point for women who are trafficked from Eastern Europe — specifically Moldova, Ukraine, and Russia — to Israel for prostitution.⁶⁶ Prostitution rings based in Tehran have been broken in Iran, where Iranian girls were being sent to France, Britain, Turkey, the United Arab Emirates, Kuwait, and Qatar.⁶⁷ Trafficking for the purpose of prostitution in the Middle East is not limited to women from other regions. Countries of the Middle East such as Algeria,⁶⁸ Egypt,⁶⁹ Iran, Jordan,⁷⁰ Morocco,⁷¹ and Turkey⁷² are countries of origin for women trafficked within the Middle East

63. *Rich Arab Marries 22 Egyptian Women*, DEUTSCHE PR.-AGENTUR, Aug. 29, 2002.

64. *Filipinas Sneaked in as Pilgrims to Work in Mid-East*, STRAITS TIMES, Nov. 3, 1999.

65. Alastair Lawson, *Dhaka Discusses Women Migrants*, BBC NEWS, Oct. 20, 2002.

66. HUMAN RIGHTS REPORT ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, A COUNTRY BY COUNTRY REPORT ON A CONTEMPORARY FORM OF SLAVERY 175 (2d ed. 2002).

67. *Iran Busts Prostitution Ring Sending Girls to France and Britain*, AGENCE FRANCE PRESSE, May 22, 2002.

68. DONNA M. HUGHES, LAURA JOY SPORCIC, NADINE Z. MENDELSON & VANESSA CHIRGWIN, FACTBOOK ON GLOBAL SEXUAL EXPLOITATION (1999), available at <http://www.catwinternational.org> (citing International Organization for Migration, *European Race Audit Bulletin* no. 25, Institute of Race Relations, London, Nov. 25, 1997).

69. See *Rich Arab Marries 22 Egyptian Women*, *supra* n.63.

70. *Turkey: Foreign Prostitutes Raise Fear of AIDS*, INTER PRESS SERVICE, July 4, 1992.

71. TIP REPORT, *supra* n.36.

72. Kevin Donovan, *Sex, Drugs, and Booze Hit Saudi Warfront*, TORONTO STAR, Feb. 7, 1991.

and to countries of Western Europe for the purpose of prostitution.

II. ABSENCE OF A SPECIFIC ANTI-TRAFFICKING LAW:
LIMITED LEGISLATIVE APPROACH TO TRAFFICKING
AS A PROSTITUTION-RELATED ACTIVITY

Existing legislation does not explicitly recognize all of the above-referenced forms of trafficking, and also does not provide for adequate protection for victims of trafficking. Forced labor is prohibited by the constitutions of some Middle Eastern countries. For instance, the Constitution of Jordan provides that “[c]ompulsory labour may not be imposed on any person.”⁷³ The Constitution of the United Arab Emirates states that “no person shall be enslaved.”⁷⁴ Similarly, under the Constitution of Turkey “[n]o one shall be forced to work.”⁷⁵ However, many countries of the Middle East do not recognize domestic service as a form of labor trafficking on the basis that domestic servants come to the region to work voluntarily. Nonetheless, in many instances of domestic service, consent may be non-existent or at least defective. The Protocol makes it clear that the consent of a victim of trafficking is “irrelevant”⁷⁶ in the cases where the domestic servant is illegally recruited

. . . 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.⁷⁷

One may argue that many cases of trafficking in persons for domestic service include one or more of these means, making domestic service involuntary, and, therefore, a form of trafficking. In addition, in most Middle Eastern countries, labor law does not apply to domestic work, and domestic servants, therefore, fall outside the scope of the protection provided by labor law.

Trafficking for the purpose of prostitution is addressed by

73. JORDAN CONST. ch. II, art. 13-1 (1952) (stating that compulsory labor may be imposed on a person in a state of necessity or as a result of conviction by a court of law).

74. U.A.E. CONST., art. 34/3 (1971).

75. TURK. CONST. ch II, art. 18 “Prohibition of Forced Labour” (1982).

76. Protocol, *supra* n.3, art 3(b).

77. *Id.* art. 3(a).

individual legislatures, as part of the penal codes or the criminal codes of individual Middle Eastern countries. The act of prostitution itself is illegal in all countries of the Middle East,⁷⁸ except for Lebanon and Turkey.⁷⁹ In fact, Lebanon legalizes prostitution and allows the establishment of brothels in specified areas.⁸⁰ Women in prostitution must be at least twenty-one years of age,⁸¹ and must undergo medical examinations.⁸² Islamic law provides a basis for the prohibition of the act of prostitution in many of

78. Practicing prostitution is illegal in the following countries around the world: Afghanistan, Albania, Algeria, American Samoa, Armenia, Australia, the Bahamas, Bahrain, Belarus, Botswana, Brunei, Burundi, Cambodia, Cameroon, China, Christmas Island, Comoros, Egypt, Eritrea, Gabon, Gambia, Ghana, Guinea, Honduras, Hungary, Iceland, Iran, Iraq, Jamaica, Jordan, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Lichtenstein, Lithuania, Macua, Malaysia, Maldives, Mali, Malta, Mauritania, Micronesia, Mongolia, Morocco, Mozambique, Northern Mariana Island, Oman, Pakistan, Papua New Guinea, Philippines, Puerto Rico, Qatar, Romania, Russian Federation, Rwanda, St. Pierre and Miquelon, St. Vincent and Grenadines, Saudi Arabia, Singapore, Slovenia, Somalia, South Africa, Sri Lanka, Sudan, Syria, Thailand, Tunisia, Ukraine, United Arab Emirates, United States, Vanuatu, and Yemen. See Protection Project, *available at* <http://www.protectionproject.org/main1.htm> (citing individual statutes prohibiting prostitution).

79. The act of prostitution is legal in the following countries around the world: Andorra, Angola, Antigua/Barbuda, Argentina, Aruba, Azerbaijan, Bangladesh, Barbados, Belgium, Belize, Benin, Bermuda, Bhutan, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Burma, Canada, Cape Verde, Cayman Islands, Central African Republic, Chad, Chile, Colombia, Democratic Republic of Congo, Republic of Congo, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial New Guinea, Estonia, Ethiopia, Eruopa Island, Falkland Islands, Faroe Islands, Fiji, Finland, France, French Guiana, French Polynesia, French So and Antarctica Lands, French and South Antigua, Gaza Strip, Georgia, Germany, Guatemala, Guinea-Bissau, Guyana, Haiti, Hong Kong, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kiribati, Latvia, Lesotho, Liberia, Luxembourg, Macedonia, Madagascar, Malawi, Marshall Islands, Martinique, Mauritius, Mayotte, Mexico, Moldova, Monaco, Montenegro, Montserrat, Namibia, Nauru, Nepal, Netherlands, Netherlands Antilles, New Caledonia, New Zealand, Nicaragua, Niger, Niue, Norfolk Islands, North Korea, Norway, Palau, Panama, Papua New Guinea, Paracel Islands, Paraguay, Peru, Pitcairn Island, Poland, Portugal, Reunion, St. Kitts and Nevis, St. Lucia, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovak Republic, So. Georgia and So. Sandwich Islands, South Korea, Spain, Suriname, Svalbard, Swaziland, Switzerland, Taiwan, Tajikistan, Tanzania, Togo, Tokelau, Tonga, Trinidad and Tobago, Turkey, Turkmenistan, Turks/Caicous Island, Tuvalu, Uganda, United Kingdom, Uruguay, Uzbekistan, Venezuela, Vietnam, Virgin Islands (UK), Virgin Islands (U.S.), Wallis and Futuna, Yugoslavia, Zambia, and Zimbabwe. See Protection Project, *available at* <http://www.protectionproject.org> (citing statutes regulating prostitution, and further stating that in many of these countries, prostitution is subject to special regulations).

80. See Law of 6 February 1931, art. 7 (Leb.).

81. See *id.* art. 17.

82. See *id.* art. 22.

the countries of the Middle East. Prostitution is considered a form of adultery for which the Qur'an provides the sentence of lashing. The relevant text is Surah XXIV:2, which states:

. . . as for the adulteress and the adulterer, flog each of them with a hundred stripes, and let not compassion with them keep you from (carrying out) this Law of God, if you believe in God and the last, and let a group of the believers witness their chastisement.⁸³

Some countries of the Middle East, specifically Saudi Arabia, strictly apply this rule.⁸⁴

The penal codes or the criminal codes of the countries of the Middle East also prohibit prostitution-related activities, including procurement of a person into prostitution, living on the profits of prostitution, and maintaining a brothel. Regarding procurement of a person into prostitution, the Criminal Code of Algeria prohibits aiding, assisting, or protecting others, and procuring or enticing a person into prostitution.⁸⁵ In Bahrain, the

83. See HOLY QUR'AN, *supra* n.31, XXIV:2. The Prophet defined the scope of the application of the Qur'anic verse by applying the flogging sentence to cases involving unmarried men or women, while applying a sentence of stoning to those who are married. See generally Matthew Lippman, *Islamic Criminal Law and Procedure: Religious Fundamentalism v. Modern Islamic Law*, 12 B.C. INT'L & COMP. L. REV. 29 (1989) (discussing Islamic law crimes and punishment).

84. This rule is also applied in Pakistan. According to Article 2 of the 1979 *Zina* [Enforcement of the Hudood] Ordinance:

[w]hoever is guilty of *Zina* shall be liable to . . . (a) if he or she is *muhsan* [married] be stoned to death at a public place, or (b) if he or she is not *muhsan* [married] be punished, in a public place, with whipping numbering 100 stripes.

Id. It must be noted that Islamic law requires very strict proof of the act of prostitution — “at least 4 Moslem male adults witnesses [must] . . . give evidence as eye-witnesses of the act of penetration necessary to the offense.” *Id.* art. 8. See generally Julie Dror Chadbourne, *Never Wear Your Shoes After Midnight: Legal Trends Under Pakistani Zina Ordinance*, 17 Wis. INT'L L.J. 170 (1999) (discussing punishment under Pakistani law).

Likewise, in accordance with Article 88 of the Iranian Penal Code of 1979 “[t]he punishment for fornication for a woman or a man who does not qualify as ‘married’ is one hundred lashes.” *Id.* Article 83 of the Code provides that “[t]he punishment for fornication in the following situations is stoning: (a) fornication by a married man . . .” *Id.*

Similarly, Article 307 of the Criminal Code of Mauritania stipulates:

[A]ny adult Muslim of either sex found guilty of the crime of *Zina* . . . shall be punished publicly, if the person is unmarried, by whipping with 100 lashes and one year of imprisonment . . . Nevertheless, the penalty of death by stoning . . . shall be imposed upon a guilty party who is married or divorced.

Id.

85. See CRIM. C., art. 343 (Alg.). The Algerian Criminal Code states that any per-

Criminal Code prohibits forcing a person to commit prostitution by means of coercion, threat, or deceit.⁸⁶ The Code also penalizes any person who aids, facilitates, or incites a male or a female to practice lewdness or prostitution.⁸⁷ Similarly, the Criminal Code of Egypt criminalizes procurement for the purpose of prostitution by means of deceit, violence, threat, abuse of power, or other unlawful means.⁸⁸ Likewise, the Iranian Criminal Code

son who commits the following acts is punishable by imprisonment and by a fine: "aids, assists or protects in any manner whatsoever, the prostitution of others or the solicitation for the purposes of prostitution . . ." *Id.* Article 344 of the Algerian Criminal Code increases the penalties established in Article 343 to imprisonment for five to ten years and a fine of 1,000 to 40,000 DA, when:

- (1) The offense was committed against a minor under the age of eighteen;
- (2) The offense was accompanied by threats, duress, violence, assault, abuse of authority, or fraud;
- (3) The party guilty of the offense carried a weapon, either concealed or in plain sight;
- (4) The party guilty of the offense was the spouse, father, mother, or guardian of the victim, or belongs to one of the categories enumerated in Article 337;
- (5) The party of the offense is one who is assigned, as part of his employment, to participate in either the fight against prostitution, the protection of health, or the maintenance of public order;
- (6) The offense was committed against several persons;
- (7) The victims of the offense were delivered into prostitution or incited to deliver themselves into prostitution outside of Algerian territory;
- (8) The victims of the offense were delivered into or incited to deliver themselves into prostitution territory upon their arrival or shortly after their arrival in Algerian territory; and
- (9) The offense was committed by several perpetrators or accomplices.

Id.

86. *See* CRIM. C., art. 325.1 (Bahr.). Article 325 of the Code states:

- (1) Every person who forces a male or a female to commit acts of immorality or prostitution by way of coercion, threat or deceit shall be liable for imprisonment for a period of no less than 2 years and no more than 7 years.
- (2) If the victim is less than 18 years of age, the punishment shall be a prison sentence for a period not exceeding 3 years and no more than 10 years.

Id.

87. *See id.* art. 1(a) (stating that "any person who aids, facilitates, or incites a male or female to practice lewdness or prostitution shall be punished with a fine and imprisonment of 1 to 3 years.").

88. *See* CRIM. C., art. 2 (Egypt). The Code states as follows:

- (a) Who manipulates, inveigles or entices a person, either male or female, to commit lewdness or prostitution by deceit, force or threat or by misusing of authority or by any other way of compulsion,
- (b) Who retains a person, by any such ways, either a male or a female without his/her consent in a brothel, shall be punished by a period of punishment not less than one year and not more than five years and a fine not less than one hundred to five hundred pounds.

Id.

penalizes any person who promotes or facilitates immorality or prostitution.⁸⁹ The Criminal Code of Kuwait prohibits inducing or assisting a male or female to commit acts of lewdness and prostitution.⁹⁰ The Criminal Code of Lebanon prohibits forcing a female by means of misrepresentation, violence, threat, undue influence, or duress into acts of prostitution,⁹¹ and the procurement of a female under the age of twenty-one.⁹² The Criminal Code of Morocco prohibits soliciting for the purposes of prostitution,⁹³ and aiding, assisting, or protecting the prostitution of others.⁹⁴ The Code also prohibits enticing a person into prostitution⁹⁵ or serving as an intermediary between persons engaged in prostitution and those who exploit or remunerate the prosti-

89. *See* CRIM. C., art. 639 (Iran). Article 639 states that the following people are subject to imprisonment:

- (A) A person who founds or administers a place of immorality or prostitution;
- (B) A person who promotes or facilitates immorality or prostitution.

Note — If, in addition, the designation of procurement applies to the above, the perpetrator will be sentenced to the punishment for procurement, in addition to the above-mentioned punishment.

Id.

90. *See* CRIM. C. art. 200 (Kuwait). Article 200 states:

Whoever induces a male or a female to commit acts of lewdness and prostitution, or assists to commit these acts by any means, shall be subject to imprisonment for a period of time that does not exceed one year, and a fine that does not exceed one thousand Dinars or by either penalty. If the victim is less than eighteen years old, the penalty shall be imprisonment for a period of time not to exceed two years, and a fine not to exceed two thousand Dinars, or be either penalty.

Id.

91. *See* CRIM. C., art. 524 (Leb.). Article 524 states:

[A] person shall be sentenced to imprisonment for at least a year and fined for no less than two hundred Pounds if he induces a woman or a girl who has not reached the age of 21, even with her consent, or a woman or a girl who is over the age of 21, using misrepresentation, violence, threats, or influence or other means of duress.

Id.

92. *See id.*

93. *See* CRIM. C. art. 498 (Morocco). Article 498 states:

. . . unless the act constitutes a more serious offense, any person who knowingly commits any of the following acts shall be punished by imprisonment for six months to two years and a fine of 250 to 10,000 Dirhams.

Id.

94. *See id.* art. 498(1). Article 498(1) states that punishment is applicable to anyone who “[a]ids, assists, or protects the prostitution of others or the solicitation for the purposes of prostitution.” *Id.*

95. *See id.* art. 498(4). Article 498(4) states that punishment is applicable to anyone who “[e]ngages, entices, or supports a person for the purpose of engaging in prostitution or debauchery, or delivers a person into prostitution or debauchery, notwith-

tution.⁹⁶ In Sudan, the act of inducing or assisting another to practice prostitution is similarly prohibited.⁹⁷ The Criminal Code of Tunisia prohibits procuring,⁹⁸ including aiding, protecting, or assisting in the prostitution of others.⁹⁹ In Turkey, the Criminal Code prohibits seducing a virgin by falsely promising to marry her.¹⁰⁰ The Criminal Code of the United Arab Emirates prohibits inducing or enticing a male or female into prostitution.¹⁰¹

Living on the profits of prostitution is also prohibited. In Bahrain, for instance, the Criminal Code prohibits living off the money transacted in one's own prostitution or in the prostitution of another.¹⁰² Similarly, in Iran, the Criminal Code prohib-

standing the consent of such person and notwithstanding that such person is of legal age." *Id.*

96. *See id.* art. 498(5). Article 498(5) states that punishment is applicable to anyone who "[s]erves as an intermediary, in any capacity whatsoever, between persons engaging in prostitution or debauchery and individuals who exploit or remunerate the prostitution or debauchery of others." *Id.*

97. *See* CRIM. C., art. 156 (Sudan). Article 156 states:

[w]hoever seduces any person by inducing or taking, or assists in the taking or abduction of such a person, or hires him to commit the offence of adultery or homosexuality or practicing prostitution or gross indecency or obscene acts, or acts contrary to public morality, shall be punished with whipping not exceeding 100 lashes or with imprisonment for a term not exceeding five years, and if the person so seduced is a minor or a person of unsound mind, or if the exercise of any such acts is intended to be committed outside Sudan, he shall be punished with whipping not exceeding 100 lashes and with imprisonment for a term not exceeding seven years.

Id.

98. *See* CRIM. C. art. 232(4) (Tunis.). Article 234(4) states that punishment is applicable to anyone who "[e]ngages, entices, or supports a person for the purpose of engaging in prostitution or debauchery, or delivers a person into prostitution or debauchery, notwithstanding the consent of such person and notwithstanding that such person is of legal age." *Id.*

99. *See id.* art. 232(1). Article 232(1) states that punishment is applicable to anyone who "[i]n any manner whatsoever, knowingly aids, protects, or assists the prostitution of others or the solicitation for the purposes of prostitution." *Id.*

100. *See* CRIM. C. art. 423 (Turk.). Article 423 states: "[w]hoever seduces a virgin by saying that he will marry her and deflowers her will receive from six months to two years imprisonment." *Id.*

101. *See* CRIM. C. art. 363 (U.A.E.). Article 363 states that punishment is applicable to anyone who:

. . . induces a male or a female or entices him or her by any means to commit lewdness or prostitution or assist him to do so, shall be imprisoned for a period not less than a year and a fine. If the age of the victim is less than 18, he shall be imprisoned for a period not less than two years and fined.

Id.

102. *See* CRIM. C., *supra* n.86, art. 326. Article 326 states:

its living on income derived from prostitution and encouraging or protecting persons in the performance of prostitution.¹⁰³ Likewise, living on the earnings of another's prostitution is prohibited under the Criminal Code of Kuwait.¹⁰⁴ Living off the money transacted during prostitution is also prohibited under the Criminal Code of Lebanon.¹⁰⁵ In Morocco, sharing the profits from the prostitution of others¹⁰⁶ and living with a person

. . . [a] prison sentence for no more than 5 years shall be the penalty for:
 (1) Every person, whether a male or a female, who totally or partly relies in his livelihood on what he earns from engaging in prostitution or immorality.
 (2) Every person who totally or partly relies in his livelihood on what others earn from engaging in prostitution or immorality through his influence or authority thereupon or by encouraging them to indulge in prostitution or immorality, whether this is achieved by obtaining his funds with his consent and without consideration, or by obtaining such funds as a tribute in consideration of providing protection, or in consideration of not causing any harm thereto.
 (3) Every person who protects another engaged in immorality or prostitution in consideration of a benefit of whatever kind.

Id.

103. See CRIM. C., *supra* n.89, art. 213. Article 213 states:

(I) The following persons will be sentenced to prison from 6 months to two years:

- (1) Whoever is partially or totally living on income derived from prostitution; or
- (2) Persons protecting or encouraging prostitutes to engage in their profession.

(II) Persons encouraging or facilitating the travel of women abroad even with their consent to engage in prostitution, will be imprisoned from one to three years.

If the woman in question is below 18, the offender will receive maximum sentence.

Id.

104. See CRIM. C., *supra* n.90, art. 202. Article 202 states:

[W]hoever, a man or a woman, derives his or her livelihood, totally or partially, on the earnings of another person from practicing lewdness and prostitution, by influencing or controlling, or seducing them to practice lewdness, either by receiving their money by consent, and without consideration, or receiving their money by bullying in return for protection or not assaulting them, shall be punished by imprisonment for a period of time not to exceed two years, and by a fine not to exceed two thousand Dinars or by either penalty.

Id.

105. See CRIM. C., *supra* n.91, art. 527. Article 527 provides:

. . . a person who does not have a job due to the fact that he relied on making a living, totally or partially, through the prostitution of another, shall be subject to imprisonment from six months to two years, and a fine from twenty thousand to two hundred thousand Pounds.

Id.

106. See CRIM. C., *supra* n.93, art. 498(2). Article 498(2) prohibits a person from

regularly engaged in prostitution is prohibited under the Criminal Code.¹⁰⁷ The Criminal Code of Oman penalizes any person who lives partly or wholly on the proceeds of prostitution.¹⁰⁸ Dependence upon the earnings from a female's prostitution for one's livelihood is similarly prohibited under the Criminal Code of Qatar.¹⁰⁹ The Criminal Code of Syria also prohibits living on the profits of prostitution.¹¹⁰ The Criminal Code of Tunisia prohibits sharing in the money transacted during the prostitution of others.¹¹¹

Maintaining a brothel also constitutes a criminal offense. For example, the Criminal Code of Algeria prohibits keeping, managing, causing to operate, financing, or contributing to the financing of an establishment for the purpose of prostitution.¹¹²

sharing "in any manner whatsoever, in the profits from the prostitution of others or receiv[ing] subsidies from a person regularly engaged in prostitution." *Id.*

107. *See id.* at 498(3). Article 498(3) prohibits a person from "liv[ing] with a person regularly engaged in prostitution." *Id.*

108. *See* CRIM. C. art. 221 (Oman). Article 221 states:

[A] person shall be imprisoned from three months to three years and fined from twenty to a hundred Riyals, if he depends in his living, totally or partially, on the earnings of others from practicing lewdness or prostitution under their protection or by their influence.

Id.

109. *See* CRIM. C. art. 207 (Qatar). Article 207 states:

... every male who depends in his living, totally or partially on what a female earns from prostitution with knowledge thereof, shall be subject to imprisonment for a period not to exceed a year, and a fine not to exceed one thousand Riyals or both penalties.

Id.

110. CRIM. C., Law No. 10, art. 5 (Syria). This Law states that:

... [o]ne who enters another into the United Arab Republic or facilitates such entry to commit prostitution, is subject to imprisonment for a period not less than a year and not more than five years, and a fine of 100-500 Pounds in the Egyptian States, and a fine of a thousand to five thousand Pounds in Syria.

Id.

111. *See* CRIM. C., *supra* n.98, art. 232(2). Article 232(2) prohibits a person from "shar[ing], in any manner whatsoever, in the profits from the prostitution of others or receiv[ing] subsidies from a person regularly engaged in prostitution." *Id.*

112. *See* CRIM. C., *supra* n.85, art. 346. Article 346 states that:

... [a] penalty of imprisonment for two to five years and a fine of 1,000 to 40,000 DA shall be imposed upon any person who, while keeping, managing, causing to operate, financing, or contributing to the financing of a hotel, furnished house, inn, drinking establishment, restaurant, club, dance club, place of live entertainment, or related premises, or any other place open to the public or used by the public, regularly allows or tolerates one or more persons to engage in prostitution within such establishment or its related premises, or to seek clients for the purposes of prostitution in such establishment.

Similarly, the Criminal Code of Bahrain prohibits the establishment or operation of a brothel.¹¹³ In Egypt, the Criminal Code penalizes operating or managing a place of lewdness or prostitution.¹¹⁴ Similarly, renting or offering a house or other premises to be used for lewdness or prostitution is forbidden.¹¹⁵ The Criminal Code of Oman penalizes anyone who manages or assists in the establishment of a place of prostitution.¹¹⁶ Also, the Criminal Code of Kuwait prohibits establishing or managing a brothel.¹¹⁷ The Criminal Code of Qatar prohibits establishing a place for prostitution.¹¹⁸ Finally, the Criminal Code of Sudan

Id.

113. See CRIM. C., *supra* n.86, art. 328. Article 328 states:

(1) Every person who establishes or runs premises for purposes of immorality or prostitution, or assists in any manner in the establishment or running thereof, shall be liable for a prison sentence of no less than 2 years and no more than 5 years.

(2) A court judgement shall be passed for the closure of the premises and confiscation of whatever may be found therein such as properties and furniture without prejudice to the rights of *bona fide* third parties.

(3) For the purpose of this Article, premises used for acts of immorality or prostitution are such premises that are normally used for indulgence of other persons in acts of prostitution or immorality.

Id.

114. See CRIM. C., *supra* n.88, Sec. 8.1, art. 10. Article 10 states that "a place which was used for practicing lewdness or prostitution by a third party is considered to be a brothel even if the one who practices such transaction therein is one person." *Id.*

115. See *id.* Sec. 9.1, art. 14. Article 14 states that those:

... [w]ho advertise, by any way of advertisement, an invitation which includes seduction to practice lewdness or prostitution or drawing the attention to such matter, shall be punished by a period of imprisonment not to exceed three years and a fine not more than one hundred, or either of these two punishments.

Id.

116. See CRIM. C., *supra* n.108, art. 222. This Article states that a "person shall be subject to the same penalty provided for in the previous Article, if he manages a place for lewdness and prostitution, or assists in its establishment or management." *Id.*

117. See CRIM. C., *supra* n.90, art. 203. Article 203 states:

... [w]hoever establishes or manages a brothel for lewdness and prostitution or assists by any means in its establishment or management, shall be punished by imprisonment for a period of time not to exceed three years and a fine not to exceed three thousand Dinars, or by either penalty.

Id.

118. See CRIM. C., *supra* n.109, art. 194. According to Art. 194 of the Qatari Criminal Code:

[A]ny person who buys, sells, leases or, by any other means, possesses another or has the authority to act in his regard, with the intention to use such person or exploit him for the purpose of prostitution or any other purposes which are against morals or considered illegal, and with the knowledge of the probability

prohibits running or renting a place for prostitution.¹¹⁹

Within the context of prohibiting prostitution-related activities, trafficking is also forbidden. For instance, the Criminal Code of Qatar forbids leading a person to engage in sex with another or enticing that person to reside in an establishment for the purpose of practicing prostitution, whether in Qatar or in another country.¹²⁰ In Turkey, the Criminal Code penalizes anyone who transports a virgin or a woman who has not reached the age of twenty-one from one place to another for the purpose of prostitution.¹²¹ The Criminal Code of Egypt penalizes any person who aids the entry of another person into Egypt for the purpose of practicing lewdness or prostitution.¹²² Similarly, the Criminal Code of Algeria imposes penalties in cases of international trafficking when the "victims of the offense [are] delivered into prostitution . . . outside the Algerian territory."¹²³ The Criminal Code of the United Arab Emirates prohibits transporting any person as a slave into or out of the country.¹²⁴ Finally, the Criminal Code of Syria criminalizes transporting or facilitat-

of such usage for these purposes, is subject to imprisonment for a period not to exceed ten years.

Id.

119. See CRIM. C., *supra* n.97, art. 155. Article 155 states as follows:

(1) Whoever runs a place for prostitution, or rents premises or allows their use, knowing that they are used as a place for prostitution, shall be punished with whipping not exceeding 100 lashes and with imprisonment for a term not exceeding five years, and an order may be made for the closing of the premises or forfeiture thereof.

(2) Whoever is convicted for the second time under the provision of sub-section (1) shall be punished with whipping not exceeding 100 lashes and with imprisonment for a term not exceeding ten years together with forfeiture of such place.

(3) Where the offender is convicted for the third time, he shall be punished with death or life imprisonment, together with forfeiture of premises.

(4) In all cases, judgment of forfeiture of the premises shall not be passed unless the premises are owned by the offender or used with his knowledge.

Id.

120. See CRIM. C., *supra* n.109, art. 205.

121. See CRIM. C., *supra* n.100, art. 436.

122. See CRIM. C., *supra* n.88, Sec. 11.1 art. 5.

123. See CRIM. C., *supra* n.85, art. 344(7). The Criminal Code penalizes trafficking when "[t]he victims of the offense were delivered into prostitution or incited to deliver themselves into prostitution outside of Algerian territory." *Id.*

124. See CRIM. C., *supra* n.101, art. 346. Article 346 of the Code provides: "Whoever brings into our out of the country any person intending to possess or dispose of, and whoever possesses or purchases or sells or offers for sale or transacts in any manner of any person as a slave, shall be punished with provisional imprisonment." *Id.*

ing the entry of someone into the country to commit prostitution.¹²⁵

This limited criminal law approach is inadequate in addressing all aspects of trafficking in persons. Criminalization of the offense of trafficking in persons should include all forms of trafficking, whether for the purpose of prostitution, forced labor, or other forms of slavery. Trafficking in persons should be recognized as a separate offense. While using existing laws related to prostitution as a means to prosecute traffickers may be necessary in the absence of a more comprehensive anti-trafficking legislation, trafficking in persons must be recognized as a separate offense. Trafficking must also be recognized as a serious crime.¹²⁶ In many Middle Eastern countries, the punishment for trafficking in persons, as activity related to prostitution, is light. For example, the Criminal Code of Qatar states:

[A] person who leads a female or attempts to lead her to practice sex with another person or to entice her to reside in, or frequently go to, a prostitution establishment with the purpose of practicing prostitution, whether inside the country or outside, shall be subject to imprisonment for a period not to exceed three years, or a fine not to exceed three thousand Riyals, or both.¹²⁷

According to the Criminal Code of Turkey:

[W]hoever transports from one place to another a virgin or a woman who has not yet reached the age of twenty-one, for the purpose of prostitution, even with [the victim's] consent, or makes use of force and violence or threats, or by using the influence of their authority, or by fraud on a virgin or a woman who has reached twenty-one years of age, for the purpose of seduction or procurement or transportation, will be sentenced to between one and three years of imprisonment

125. See Law No. 10, *supra* n.110, art. 5. Article 5 states:

Who enters a person or facilitates the entry of such a person into the Republic of Syria for the purpose of practicing lewdness or prostitution, shall be punished by a period of imprisonment not less than one year and not more than five years and fined from one to five hundred Pounds.

Id.

126. The United Nations Convention Against Transnational Organized Crime defines a "serious crime" as "any crime for which the punishment is four years or more of imprisonment. See United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex 1, 55 U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/45/49 (Vol. 1) (2001).

127. See CRIM. C., *supra* n.109, art. 205.

and be fined from nine thousand to ninety thousand Liras.¹²⁸

The Criminal Code of Egypt states:

Whoever enters a person or facilitates the entry of such a person into the Arab Republic of Egypt for the purpose of practicing lewdness or prostitution, shall be punished by a period of imprisonment not less than one year and not more than five years and a fine from one to five hundred Pounds.¹²⁹

Traffickers must be subject to a serious sentence, comparable with the gravity of the offense of trafficking. Since the function of criminal law is primarily to proscribe crimes and determine punishments for such crimes, providing assistance to victims of trafficking would ideally require enacting a special anti-trafficking act that protects women and children from all forms of trafficking.¹³⁰ As indicated by the 2002 United States Department of State *TRAFFICKING IN PERSONS REPORT* ("TIP REPORT"),¹³¹ very few countries provide for such assistance.

III. THE MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING IN PERSONS UNDER THE UNITED STATES TRAFFICKING VICTIMS PROTECTION ACT OF 2000 AS THEY APPLY TO COUNTRIES OF THE MIDDLE EAST

The TIP REPORT contains information on severe forms of trafficking¹³² in only some countries of the Middle East.¹³³ The

128. See CRIM. C., *supra* n.100, art. 436.

129. See CRIM. C., *supra* n.88, Sec. 11.1, art. 5.

130. Some countries address trafficking as part of separate comprehensive acts. Examples of these acts include: the 1995 Sexual Offenses Act (1995) (Ant. & Barb.); Criminal Code Amendment (Slavery and Sexual Servitude) Bill (1999), *amending* the Criminal Code Act of 1995 (Austl.); Women and Girls Act (1973) (Brunei); Combating Trafficking in Persons and Sexual Exploitation of Children Law, No. 3(1) (2000) (Cyprus); Suppression of Immoral Traffic in Women and Girls Act (1956) (India); Child Trafficking and Pornography Act, No. 22 (1998) (Ireland); Women and Girls Protection Act (1949) (Lesotho); Women and Girls Protection Act (1973) (Malay.); Sexual Offenses Act (1947) (S. Afr.); Prostitution Prevention and Suppression Act, B.E. 2514 (1996) (Thail.); TVPA, *supra* n.1.

131. See TIP REPORT, *supra* n.36, at 3.

132. See *id.*. See also TVPA *supra* n.1, at 1470. The TVPA requires that the Secretary of State submit a report with respect to the status of "severe forms of trafficking in persons." *Id.* The TVPA defines "severe forms of trafficking" as:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for

TIP REPORT places the countries of Bahrain, Iran, Lebanon, Qatar, Saudi Arabia, Turkey and the United Arab Emirates in Tier 3.¹³⁴ These countries do not fully comply with the minimum standards and are not making significant efforts to bring themselves into compliance. Only the country of Morocco is placed in Tier 2 and none of the countries of the Middle East are placed in Tier 1.¹³⁵

Section 108 of the TVPA sets forth four minimum standards¹³⁶ and seven criteria¹³⁷ for compliance and Section 110

the purpose of subsection to involuntary servitude, peonage, debt bondage, or slavery.

Id. The TVPA merely requires that the TIP REPORT include:

(A) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments fully comply with such standards;

(B) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not yet fully comply with such standards, but are making significant efforts to bring themselves into compliance; and

(C) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance.

Id. See generally Michael R. Candes, *The Victims of Trafficking and Violence Protection Act of 2000: Will it Become the Thirteenth Amendment of the Twenty-First Century?* 32 U. MIAMI INTER-AM. L. REV. 571 (2001) (discussing the TVPA); see also Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29 (2001) (discussing the TVPA).

133. See TIP REPORT, *supra* n.36, at 17 (finding that the TIP REPORT does not provide information on severe forms of trafficking in persons in the countries of Algeria, Egypt, Iraq, Jordan, Kuwait, Libya, Oman, Syria, Tunisia, and Yemen).

134. *Id.*

135. See *id.* The TIP REPORT places the following countries in Tier 1: Austria, Belgium, Canada, Colombia, Czech Republic, France, Germany, Hong Kong, Italy, Lithuania, Macedonia, the Netherlands, Poland, Portugal, Republic of Korea, Spain, Switzerland, and the United Kingdom.

136. See TVPA, *supra* n.1, Sec. 108. The four standards of compliance are:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping, or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(3) adds three factors¹³⁸ for the elimination of trafficking in per-

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

Id.

137. *Id.* The seven criteria that should be considered as indicative of serious and sustained efforts to eliminate severe forms of trafficking in persons are:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons that take place wholly or partly within the territory of the country.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates and prosecutes public officials who participate in or facilitate severe forms of trafficking in persons, and takes all appropriate measures against officials who condone such trafficking.

Id.

138. *Id.* Sec. 110(3). Section 110(3) of the Act lists three factors that must be taken into consideration when determining whether or not the government of a country is making significant efforts to bring itself into compliance with the minimum standards for the elimination of trafficking. These factors are:

(1) The extent to which the country is a country of origin, transit, or destination for severe forms of trafficking;

(2) The extent of noncompliance with the minimum standards by the government and, particularly, the extent to which officials or employees of the government have participated in, facilitated, condoned, or are otherwise complicit in severe forms of trafficking; and

sons.

The first standard requires the TIP REPORT to examine the issue of criminalization, i.e., whether a particular country prohibits “severe forms of trafficking in persons.” This standard requires an examination of two important issues: first, whether the country has a law specifically recognizing trafficking in persons as a criminal offense; and second, whether such law prohibits all forms of trafficking in persons.¹³⁹ In applying this standard to countries of the Middle East, the TIP REPORT notes that countries of Bahrain,¹⁴⁰ Iran,¹⁴¹ Lebanon,¹⁴² Morocco,¹⁴³ Saudi Arabia,¹⁴⁴ Turkey,¹⁴⁵ and the United Arab Emirates¹⁴⁶ do not have specific laws against trafficking in persons, but have related laws that can be used against traffickers. The TIP REPORT makes no reference to the severity of punishment for trafficking in persons or related crimes in the countries of the Middle East.

In assessing whether countries of the Middle East protect and assist victims of trafficking,¹⁴⁷ the TIP REPORT notes that governments of many of the countries of the Middle East do not provide for any victim protection and assistance programs. These countries include: Bahrain,¹⁴⁸ Iran,¹⁴⁹ Lebanon,¹⁵⁰

(3) What measures are reasonable to bring the government into compliance with the minimum standards in light of the resources and capabilities of the government.

Id.

139. *See id.* at 1480.

140. TIP REPORT, *supra* n.36, at 26 (stating that in Bahrain, “[t]he Penal Code does not specifically prohibit trafficking in persons.”).

141. *Id.* at 62 (stating that “Iranian law does not specifically prohibit trafficking in persons; however, there are other statutes that could be used to prosecute traffickers.”).

142. *Id.* at 70 (discussing that “Lebanon does not have legislation criminalizing trafficking in persons”).

143. *Id.* at 77 (stating that in Morocco, “[n]o law specifically prohibits trafficking; however, the government utilizes a number of other statutes to prosecute traffickers.”).

144. *Id.* at 89 (explaining that in Saudi Arabia, “[t]here are no laws specifically related to trafficking”).

145. *Id.* at 103 (stating that “Turkey has no law against trafficking”).

146. *Id.* at 106 (explaining that “[t]he United Arab Emirates does not have a law criminalizing trafficking in persons”).

147. TVPA, *supra* n.1, Sec. 108(b)(2).

148. TIP REPORT, *supra* n.36, at 26 (explaining that in Bahrain, “[t]he government does not provide assistance to victims”).

149. *Id.* at 62 (stating that in Iran, “[t]he government has not undertaken any measures to protect victims of trafficking”).

150. *Id.* at 70 (explaining that in Lebanon, “[t]he government does not provide foreign workers with relief from deportation, shelter or access to legal, medical or psychological services”).

Qatar,¹⁵¹ Saudi Arabia,¹⁵² Turkey¹⁵³ and the United Arab Emirates.¹⁵⁴ The Government of Morocco “provides in-kind support” to non-governmental organizations (“NGOs”), both foreign and domestic, who provide services to victims of trafficking.¹⁵⁵

In inquiring into whether countries of the Middle East adopt preventive measures to deter trafficking,¹⁵⁶ the TIP REPORT notes that governments of countries of the Middle East are taking limited measures to prevent trafficking in persons. The government of Morocco, in conjunction with an international organization, has supported a public awareness campaign on the problem of child maids.¹⁵⁷ In an attempt to prevent trafficking, Lebanon tightly controls the foreign workers entering the country and there are strict regulations for those who employ foreign domestic laborers.¹⁵⁸ The government of Qatar supports programs to raise awareness on the problem of child camel jockeys.¹⁵⁹ In Bahrain, “in terms of prevention, the government has not yet taken any action.”¹⁶⁰ In regards to prevention in Iran, “the government supports keeping youth in schools, but it has not supported public awareness campaigns.”¹⁶¹ “Government activities to prevent trafficking in persons have been minimal” in Saudi Arabia.¹⁶² In Turkey, prevention “efforts thus far have been limited to a few *ad hoc* educational campaigns at the local level.”¹⁶³ In the United Arab Emirates, “the government does not sponsor prevention efforts.”¹⁶⁴

In inquiring into whether the government investigates and prosecutes public officials who participate in or facilitate traffick-

151. *Id.* at 85 (discussing that the Quatari government “does not provide services to trafficked victims”).

152. *Id.* at 89 (stating that in Saudi Arabia, “[r]egarding protection of victims, the government has made minimal efforts”).

153. *Id.* at 103 (explaining that in Turkey, “[w]ith respect to protection of victims, the government provides no social services or shelters for victims”).

154. *Id.* at 106 (stating that in the United Arab Emirates, the government “provides no assistance . . . to trafficking victims”).

155. *Id.* at 77.

156. TVPA, *supra* n.1, Sec. 108(b)(3).

157. TIP REPORT, *supra* n.36, at 77.

158. *Id.* at 70.

159. *Id.* at 85.

160. *Id.* at 26.

161. *Id.* at 62.

162. *Id.* at 89.

163. *Id.* at 103.

164. *Id.* at 106.

ing,¹⁶⁵ the TIP REPORT does not provide any statistics regarding the numbers of cases prosecuted in the countries of the Middle East, except in Iran. The TIP REPORT notes that in the countries of Qatar,¹⁶⁶ Lebanon,¹⁶⁷ and Morocco,¹⁶⁸ the governments are pursuing and investigating cases of trafficking, while the governments of Bahrain,¹⁶⁹ Iran,¹⁷⁰ Saudi Arabia,¹⁷¹ Turkey,¹⁷² and the United Arab Emirates¹⁷³ are not taking any steps to investigate cases of trafficking. For example, the TIP REPORT states that in Iran, there “reportedly were three trials during the year related to trafficking. No information is available, however, regarding details of the trials or their outcomes.”¹⁷⁴

The Department of State’s COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (“COUNTRY REPORTS”) also include a section on trafficking in persons.¹⁷⁵ The 2001 COUNTRY REPORTS de-

165. TVPA, *supra* n.1, Sec. 108(b)(7).

166. TIP REPORT, *supra* n.36, at 85.

167. *Id.* at 70.

168. *Id.* at 77.

169. *Id.* at 26.

170. *Id.* at 62.

171. *Id.* at 89.

172. *Id.* at 103.

173. *Id.* at 167.

174. *Id.* at 62.

175. COUNTRY REPORTS, *supra* n.44. In accordance with Section 104(b) of the TVPA, the COUNTRY REPORTS include a description of severe forms of trafficking in persons in each foreign country. Section 104(b) requires that each COUNTRY REPORT contain:

(A) A description of the nature and extent of severe forms of trafficking in persons, as defined in Sec. 103 of the Trafficking Victims Protection Act of 2000, in each foreign country;

(B) With respect to each country that is a country of origin, transit, or destination for victims of severe forms of trafficking in persons, an assessment of the efforts by the government of that country to combat such trafficking. The assessment shall address the following:

(i) Whether government authorities in that country participate in, facilitate, or condone such trafficking.

(ii) Which government authorities in that country are involved in activities to combat such trafficking.

(iii) What steps the government of that country has taken to prohibit government officials from participating in, facilitating, or condoning such trafficking, including the investigation, prosecution, and conviction of such officials.

(iv) What steps the government of that country has taken to prohibit other individuals from participating in such trafficking, including the investigation, prosecution, and conviction of individuals involved in severe forms of trafficking in persons, the criminal and civil penalties for such

scribed the problem of trafficking in the countries of Algeria, Bahrain, Iran, Kuwait, Lebanon, Libya, Morocco, Qatar, Saudi Arabia, Turkey, and the United Arab Emirates.¹⁷⁶ In reporting on the status of severe forms of trafficking in a foreign country, the COUNTRY REPORTS focus on trafficking in persons as a violation of human rights.¹⁷⁷ The COUNTRY REPORTS, as required by Section 104 of the TVPA, must inquire into whether government

trafficking, and the efficacy of those penalties in eliminating or reducing such trafficking.

(v) What steps the government of that country has taken to assist victims of such trafficking, including efforts to prevent victims from being further victimized by traffickers, government officials, or others, grants of relief from deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter.

(vi) Whether the government of that country is cooperating with governments of other countries to extradite traffickers when requested, or, to the extent that such cooperation would be inconsistent with the laws of such country or with extradition treaties to which such country is a party, whether the government of that country is taking all appropriate measures to modify or replace such laws and treaties so as to permit such cooperation.

(vii) Whether the government of that country is assisting in international investigations of transnational trafficking networks and in other cooperative efforts to combat severe forms of trafficking in persons.

(viii) Whether the government of that country refrains from prosecuting victims of severe forms of trafficking in persons due to such victims having been trafficked, and refrains from other discriminatory treatment of such victims.

(ix) Whether the government of that country recognizes the rights of victims of severe forms of trafficking in persons and ensures their access to justice.

(C) Such other information relating to trafficking in persons as the Secretary of State considers appropriate.

Id.

176. The COUNTRY REPORTS provides little or no information on the countries of Egypt, Iraq, Jordan, Oman, Syria, Tunisia, and Yemen.

177. International law provides specific provisions on universal human rights, which can be found in the following three pieces of international law: the Universal Declaration of Human Rights G.A. Res. 217A (III) (A), U.N. GAOR, 3rd Sess., at 71, U.N. Doc. A/810 (Dec. 10, 1948); the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360; and the International Covenant on Civil and Political Rights ("ICCPR"), Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368. The Universal Declaration of Human Rights provides in Article 4 that "[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." *Id.* The ICESCR provides in Article 7 that:

... [the] present Covenant recognizes the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions

authorities are involved in such violations by participating, facilitating, or condoning such trafficking, and whether the government respects the human rights of victims of trafficking by refraining from prosecuting victims of a severe form of trafficking, and refraining from other discriminatory treatment of such victims. Section 104 also requires the COUNTRY REPORTS to take into consideration “whether the government of [a particular] country recognizes the rights of victims of severe forms of trafficking in persons and ensures their access to justice.”¹⁷⁸

The 2001 COUNTRY REPORTS detail instances of trafficking as violations of human rights. For example, it is reported that in Algeria, armed terrorist groups frequently kidnap young women and hold them captive for weeks at a time, while group members

of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to any appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure, and reasonable limitations of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Id. The ICCPR provides in Article 8:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this Paragraph the term “forced or compulsory labour” shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community; [or]

(iv) Any work or service which forms part of normal civil obligations.

Id.

178. TVPA, *supra* n.1, Sec. 104.

rape them and force them into servitude.¹⁷⁹ The COUNTRY REPORTS indicate that in Bahrain, women working in hotels and restaurants engage in prostitution. These women “typically are locked in a communal house when not working.”¹⁸⁰ In Kuwait, it is reported that domestic servants are kidnapped “off the street and temporarily forced . . . into prostitution.”¹⁸¹ The passports of foreign domestic workers in Lebanon are “confiscated by recruitment agencies or employers when the workers arrive at the airport.”¹⁸² “Reports of physical and psychological abuse . . . are widespread”¹⁸³ in Morocco. In Qatar, “children age 4 to 15 . . . are used as jockeys in camel races.”¹⁸⁴ These children “live in difficult conditions and train on a daily basis to become riders.”¹⁸⁵ Foreign domestic servants in Saudi Arabia face conditions such as “forced confinement, beating and other physical abuse, withholding of food, and rape. The authorities often force domestic servants to return to their place of employment.”¹⁸⁶ In Turkey, “women who attempt to escape their trafficking often . . . [are] beaten, raped, or killed.”¹⁸⁷ In the United Arab Emirates, “almost all camel jockeys are under the minimum employment age.”¹⁸⁸

Meeting the minimum standards for the elimination of trafficking in persons by the countries of the Middle East requires reconsideration of governments’ policies and initiation of government programs aimed at prevention of trafficking and protection of victims of trafficking. This change of policies and programs is also mandated by the Protocol.

179. COUNTRY REPORTS, *supra* n.44.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

IV. *THE UNITED NATIONS PROTOCOL TO PREVENT,
SUPPRESS AND PUNISH TRAFFICKING IN PERSONS,
ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE
CONVENTION AGAINST TRANSNATIONAL ORGANIZED
CRIME: WHAT COUNTRIES OF THE MIDDLE EAST MUST DO
TO COMPLY WITH THE TRAFFICKING PROTOCOL*

The Protocol mandates that States Parties take the necessary measures not only to criminalize the offense of trafficking, but also to prevent trafficking and protect the victims of trafficking.¹⁸⁹ This comprehensive approach has yet to be fully embraced by the countries of the Middle East.

As previously indicated, criminal and penal codes of the countries of the Middle East criminalize trafficking as a prostitution-related activity. To comply with the Protocol, domestic laws of the Middle Eastern countries must specifically prohibit trafficking and criminalize all forms of trafficking, as defined by the Protocol. Few Middle Eastern countries also criminalize forms of trafficking other than prostitution.

On the level of prevention, the Protocol calls on States Parties to “establish comprehensive policies, programs and other measures . . . to prevent and combat trafficking in persons.”¹⁹⁰ As the TIP REPORT indicates, few countries of the Middle East have such programs.

The Protocol specifically calls on each State Party to “consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases,”¹⁹¹ giving “appropriate consideration to humanitarian and compassionate factors.”¹⁹² Traditional immigration laws of Middle Eastern countries, however, consider alien victims of trafficking to be violators of immigration laws. Aliens who are prostitutes or who have engaged in prostitution are considered “prohibited immigrants” and are subject to deportation. This is the common approach in most countries today.¹⁹³ In 2002, the Egyptian police deported

189. See text of Preamble to the Protocol, *supra* n.4.

190. *Id.* art. 9(1)(a)(b).

191. *Id.* art. 7(1).

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

193. The approach that leads to deportation of alien victims of trafficking similarly applies in the following countries: Zambia (*see* Sec. 22 of the Immigration and Deportation Act of Zambia); Uganda (*see* Sec. 8 of the Immigration Act of Uganda); Tanzania

more than ninety foreigners suspected of involvement in prostitution. Most of them were women believed to be from Eastern Europe, who were arrested in Sinai.¹⁹⁴ In Algeria, foreign nationals who work as prostitutes or in related activities, are deported. Under Article 20 of the Decree No. 66 of 1966 regarding the status of a foreigner in Algeria, an alien may be deported should he or she commit a crime punishable by imprisonment. An alien is allowed a period of forty-eight hours to fifteen days to leave the country.¹⁹⁵ The Penal Code of Bahrain provides that if an alien, whether male or female, is convicted by a court order of any of crime involving prostitution, the judge may order deportation of the alien.¹⁹⁶

Compliance with the provisions of the Protocol would require countries of the Middle East to reconsider, in the appropriate cases, traditional immigration rules of deportation. The deportation rule should yield to the important policy of allowing victims of trafficking some kind of residency status that would enable them to testify against their traffickers.

CONCLUSION

In December of 2002, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families became international law. Under the Convention, migrant workers are free to leave their country of

(see art. 10 of the Tanzania Citizenship Act); Swaziland (see Sec. 9 of the Immigration Act of Swaziland); Sri Lanka (see Sec. 31 of the Immigration and Emigration Act of Sri Lanka); Mauritius (see Sec. 8 of the Immigration Act of Mauritius); Malta (see Sec. 5 of the Immigration Law of Malta); Ethiopia (see Sec. 3 of the Proclamation Regulation and Issuance of Travel Documents and Visas and Registration of Foreigners of Ethiopia); and Zimbabwe (see Sec. 14 of the Immigration Act of Zimbabwe). On the other hand, the status of victims of trafficking in receiving States has recently changed in some countries including the United States, Austria, Belgium, Canada, Italy, the Netherlands, Spain, the Czech Republic, Hungary, and Lithuania, all of which grant a trafficked victim some kind of residency status. For instance, the TVPA allows temporary residency to victims of severe forms of trafficking who may be potential witnesses to such trafficking. Additionally, after three years of the issuance of these victims' temporary visas, the TVPA grants permanent resident status for up to 5,000 victims of trafficking a year, who would suffer "extreme hardship involving unusual and severe harm upon removal from the United States." See TVPA, *supra* n.1.

194. *Egypt Departs 'East European Prostitutes'* (BBC News television broadcast, June 27, 2002), available at <http://news.bbc.co.uk/1/hi/world/middle-east/2070639.stm>.

195. Decree No. 66 of 1966, art. 21 (Alg.).

196. *Id.* art. 33.

employment.¹⁹⁷ No migrant workers will be held in slavery or servitude, or be required to perform forced or compulsory labor, and they are entitled to receive the same treatment as nationals of the country of employment.¹⁹⁸ The same rights should be granted to victims of trafficking. Many countries of the Middle East, which still adopt the Sponsorship Rule, must reconsider its implication, especially if it entails elements of enslavement and control. The Sponsorship Rule has been abolished in Saudi Arabia in accordance with the new Foreign Investment Act,¹⁹⁹ but this applies only to employees who work for a foreign investor doing business in Saudi Arabia. A recent Saudi Council of Ministers' Decree explicitly provides that an alien employee is entitled to keep his travel documents and the travel documents of his family. The employee also has the right to travel anywhere in the Kingdom of Saudi Arabia without showing documentation, as previously required.²⁰⁰ The early Saudi Arabian Instructions Concerning the Trade in Slave of 1936²⁰¹ explicitly prohibited

197. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, G. A. Res. 45/158, art. 8(1) (1990).

198. *Id.* arts. 11(1)(2), (25).

199. Foreign Investment Act, art. 9 (2000) (Saudi Arabia).

200. Counsel of Ministers Decree, No. 166 (July, 12, 2001) (Saudi Arabia). The Decree further provides that the relationship between the employer and the alien employee must be regulated in accordance with the employment contract and not the Sponsorship Rule. The Decree also provides that prior approval of the employer is no longer required for the execution of any transactions, which the alien employee would like to execute, such as obtaining a driver's license or a telephone line, or buying, or renting. *Id.*

201. Instructions Concerning the Trade in Slaves (1936) (Saudi Arabia), *cited in* BERNARD LEWIS, *RACE AND SLAVERY IN THE MIDDLE EAST: AN HISTORICAL ENQUIRY* 167 (1990). Article 1 of the Instructions states:

Inasmuch as the provisions of the noble *Sharia* preclude the enslavement or purchase of the subjects of countries in treaty relationships, it is accordingly absolutely forbidden:

1. to import slaves from any country to the Kingdom of Saudi Arabia by sea;
 2. to import slaves to the Kingdom of Saudi Arabia by land, unless the slave-dealer has a government document attesting that the person imported was recognized as a slave in the country from which he was imported at the time when this statute was promulgated;
 3. to enslave free persons in the Kingdom of Saudi Arabia;
 4. to purchase or own any person imported or enslaved, in a manner in violation of the foregoing provisions, after the promulgation of this statute.
- Any violation of the foregoing provisions shall require the punishment of the perpetrators, as follows:
1. the liberation and release of the slave;
 2. the application of the current customs regulations to the smugglers;
 3. severe imprisonment for a term not exceeding one year.

trafficking of slaves. Any system of control or ownership by virtue of the Sponsorship Rule, must also be abolished. A foreign worker should be allowed to leave his or her employer whenever he or she chooses; the worker's travel documents should not be withheld by the employer; and the worker should have the right to complain and the right to report to authorities cases of exploitation or abuse.

This year, the government of Saudi Arabia has required that any camel jockey should not be less than eighteen years of age or weigh less than fifty-two kilograms. In the United Arab Emirates, a September 1, 2002 Decree prohibits the use of children under the age of fifteen, or children who weigh less than forty-five kilograms, as camel jockeys.²⁰² However, the Emirates Camel Racing Federation should be sure to enforce the law, since failure to enforce this prohibition will contribute to the continued trafficking of children for the use as camel jockeys.

In addition to these measures in countries of destination, countries of origin should take the necessary preventive measures to combat trafficking. In the Philippines, for instance, the 1995 Migrant Workers and Overseas Filipinos Act²⁰³ provides for travel advisory and information dissemination so that migrant workers can be aware of the dangers potentially involved in working in a foreign country, and prohibits illegal recruitment of employees working in countries that do not fully protect the rights of migrant workers. In response to the growing problem of abuse of domestic servants in the countries of the Middle East, the government of Bangladesh has banned single, unskilled females from traveling alone to most counties of the Middle East.²⁰⁴ The government of Nepal has forbidden Nepali women

Id.

202. *UNICEF Lauds U.A.E. Ban on Children as Camel Jockeys*, EMIRATES NEWS AG., WAM, Sept. 23, 2002. The Decree introduced checks at U.A.E. ports and airports to ensure that no children are permitted admission into the country if it is suspected that they are being brought in as camel jockeys. The Decree also introduced strict medical and health examinations for jockeys at all camel tracks. There is a range of severe penalties for those who do not adhere to the ban.

203. Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress and for Other Purposes, Act No. 8042 (1995) [hereinafter Migrant Workers and Overseas Filipinos Act]. See also Dan Gatmaytan, *Recent Development: Death and the Maid: Work, Violence, and the Filipina in the International Labor Market*, 20 HARV. WOMEN'S L.J. 229, 256 (1997) (discussing the Act).

204. See generally Alastair Lawson, *Dhaka Discusses Women Migrants* (BBC News tele-

from traveling to the Gulf States for work following reports of sexual and physical abuse, including torture and forced abortions.²⁰⁵

Labor laws should cover domestic service so that domestic servants are entitled to employment benefits and protection. This protection should not be denied merely on the basis on the special nature of domestic work itself. Furthermore, this protection should not depend on whether the worker is a national or a foreigner. It is encouraging that the Saudi Arabian Grand *Mufti*, the highest Islamic authority in the country, issued a *Fatwa* on September 3, 2002, against abuse of foreign labor by Saudi employers, stating that "blackmailing and threatening [foreign] labourers with deportation if they refuse the employers' terms, which breach the contract, is not allowed."²⁰⁶ Jordan, along with the U.N. Development Fund for Women, agreed on a contract intended to protect the rights of foreign domestic workers in the country. The contract will protect workers' rights to life insurance, medical care, rest days, and repatriation. Most importantly, the contract will protect their right to be treated in a way that complies with international standards on human rights.²⁰⁷

Any anti-trafficking legislation must comply with the international mandate of the Protocol. Only Algeria, Egypt, Lebanon, Saudi Arabia, Syria, Tunisia, and Turkey have signed the Protocol, and none of the countries of the Middle East have ratified it.²⁰⁸ An adequate anti-trafficking legislation in the countries of the Middle East must shift the focus from linking trafficking to prostitution, to recognizing all forms of trafficking as defined by the Protocol. An anti-trafficking legislation must provide for the appropriate criminal sanctions, which should not be limited to imprisonment, but should also include confiscation

vision broadcast, Oct. 20, 2002), available at http://news.bbc.co.uk/1/hi/world/south_asia/2344101.stm.

205. Anisha Schubert, *Girl Trafficking for Prostitution in Nepal* (U. of Bremen, 1999), available at <http://www.geocities.com/anishasworld/reports/traffic.html>.

206. *Saudi Cleric Preaches Workers' Rights* (BBC News television broadcast, Sept. 3, 2002), available at <http://news.bbc.co.uk/1/hi/business/2232090.stm>.

207. Jumana Heresh, *UNIFEM Endorses Foreign Domestic Workers' Contract*, JORDAN TIMES, Jan. 22, 2002, available at http://www.amanjordan.org/english/daily_news/whrview.php?ArtID=794.

208. U.N. Office on Drugs and Crime, *Signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons*, available at http://www.undcp.org/odccp/crime_cicp_signatures_trafficking.html.

of the assets of the trafficker. On May 22, 2002, a new Egyptian money laundering legislation recognized prostitution as one of the crimes the proceeds of which should be forfeited.²⁰⁹ An anti-trafficking legislation must also treat the trafficked person as a victim of a crime,²¹⁰ who is entitled to basic rights, which, the author believes, should include: the right to safety; the right to privacy; the right to information; the right to legal representation; the right to be heard in court; the right to compensation for damages; the right to medical assistance; the right to social assistance; the right to seek residence and the right to return.²¹¹ Any anti-trafficking legislation must also provide for the principle of non-criminalization of the trafficked person.²¹² A traf-

209. Anti-Money Laundering Law, No. 80, art. 2 (2002) (Egypt).

210. Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, G.A. 40/34, Annex 40, U.N. GAOR Supp. No. 53, at 214, Sec. A(1), U.N. Doc 4/40/53 (1985). The term "victim of a crime" has been defined by the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power as:

[P]ersons who, individually or collectively, have suffered harm including, physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are violations of criminal laws, operative within Member States . . .

Id.

211. See Mohamed Y. Matter, *Establishing a Bill of Rights for Victims of Trafficking in Persons: How it can Become a Possibility*, at www.protechonproject.org.

212. See TVPA, *supra* n.1, Sec. 1592. The TVPA, while providing for a penalty of up to five years imprisonment in cases involving document falsification in furtherance of trafficking, involuntary servitude, or forced labor, does not apply this rule to the conduct of a victim of trafficking "if that conduct is caused by, or incident to, that trafficking." *Id.* In this context, Section 1592 provides that the following conduct is unlawful with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor:

(a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person:

(1) in the course of a violation of Secs. 1581, 1583, 1584, 1589, 1590, 1591, or 1594(a);

(2) with intent to violate Secs. 1581, 1583, 1584, 1589, 1590, or 1591; or

(3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in Sec. 103 of the Trafficking Victims Protection Act of 2000, shall be fined under this title or imprisoned for not more than 5 years, or both.

(b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in Section 103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking.

ficked person should not be held criminally responsible for prostitution, illegal entry, presence, or work, if the person was a victim of trafficking.²¹³

These principles are consistent with the Qur'anic legislation, which states:

And force not your maids to prostitution, if they desire chastity, in order that you may make a gain in the [perishable] goods of this worldly life. But if anyone compels them [to prostitution], then after such compulsion, Allah is Oft Forgiving, Most Merciful [to those women, i.e. He will forgive them because they have been forced to do this evil action unwillingly].²¹⁴

Finally, since trafficking in persons is a transnational crime, it requires transnational policies, including cooperation among the countries in the region of the Middle East. Some regional efforts on related issues have been made, such as the October 2002 Tunis Declaration at the Ministerial Conference on Migration in the Western Mediterranean²¹⁵ and the October 2001 Arab-African forum against sexual exploitation of children, which was held in Rabat, Morocco.²¹⁶ Similar forums specifically addressing trafficking in persons would greatly contribute to understanding the scope of the problem of trafficking in persons in the region, and would address necessary actions that must be implemented by the various countries of the region to combat this grave human rights violation.

Id.

213. United Nations Interim Administration Mission in Kosovo: Regulation No. 2001/4 on the Trafficking in persons in Kosovo, U.N. Doc. UNMIK/Reg/2001/4 (2001). Section 8 of the Kosovo Regulation No. 2001/4 provides: "a person is not criminally responsible for prostitution or illegal entry, presence or work in Kosovo if that person provides evidence that supports a reasonable belief that he or she was the victim of trafficking."

Id.

214. HOLY QUR'AN, *supra* n.31, Sura XXIV:33.

215. 5+5 Dialogue: Ministerial Conference in the Western Mediterranean: Tunis Declaration, Oct. 16-17, 2002.

216. Arab-African Forum Sexual Exploitation of Children, Rabat, Morocco, Oct. 24-26, 2001.