

Trafficking in Human Persons:

Law and Practice in Lebanon

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On August 24, 2005, Lebanon acceded to the United Nations Convention against Organized Transnational Crime (UNCOT), the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Pursuant to the articles of the aforementioned protocol, “trafficking in persons” shall mean “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

Trafficking in persons is an organized transnational crime that begins in the victim’s country of origin, continues through the country of transit, and ends in the country of destination. Trafficking in persons is the illicit trading of human resources through abduction, threat of force, fraud, or deception, or else through either a false commercial transaction that aims at sexual exploitation or forced labor. This is a clear and flagrant violation of human rights, tantamount to modern-day slavery.

Amnesty International defines trafficking in persons as the abuse and violation of human rights, “including the rights to: physical and mental integrity; life; liberty; security of the person; dignity; freedom from slavery; freedom of movement; health; privacy; and safe and secure housing”.

Trafficking in persons has myriad forms, including:

- Prostitution: one of the most serious and dangerous forms of trafficking in persons. It is also the most widespread form of human trafficking in the world owing to the income it generates. The victims often include women and children, both male and female;
- Trafficking in children: whereby the child may be exploited for commercial sex, cheap labor, hazardous labor, recruitment in militarized zones, cybersex, among others; and
- Trafficking in human organs: which generates great amounts of money for those who engage in it, who either use threats and coercion, or exploit the financial needs of the victims to traffic in their organs, such as their kidneys, heart, liver, and corneas.

The victims of trafficking in persons can be divided into four categories:

- The secondary victim: the victim's family members or dependents;
- The vulnerable victim: who is either in an unusual state of vulnerability or weakness, or is vulnerable due to age, physical or mental state, or being particularly susceptible to committing a criminal act;
- The potential victim: who belongs to a vulnerable group and may be subject to human trafficking. It is noteworthy that measures be taken to prevent a potential victim from becoming an actual victim;
- The supposed victim: who was trafficked but has not been identified as a victim.

In 2018, The Global Slavery Index was published to measure how widespread this phenomenon is around the world, basing its methodology on surveys and studies conducted by Gallup Inc on a nationally-representative, random-sample of more than 42 thousand respondents around the world in 52 languages. Of 167 countries, Lebanon ranked 145 for prevalence of modern-day slavery, including trafficked persons.

Trafficking in Persons as per the International Criminal Court's Rome Statute

The International Criminal Court (ICC) is a permanent body having the power to exercise the jurisdiction thereof. Pursuant to the first paragraph of Article 5 of the International Criminal Court's Rome Statute, "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- a. The crime of genocide;
- b. Crimes against humanity;
- c. War crimes; [and]
- d. The crime of aggression.

The Rome Statute is the first treaty of its kind with respect to its articles and the crimes that fall within its jurisdiction. The treaty defines crimes of sexual violence, including the crime of trafficking in persons which is, according to the Rome Statute, a war crime and a crime against humanity. For instance, the Rome Statute has enumerated the acts that are considered sexual or gender-based crimes, as follows:

- Rape
- Enslavement
- Sexual slavery
- Enforced prostitution
- Forced pregnancy
- Enforced sterilization
- Any other form of sexual violence of comparable gravity

Additionally, the Statute defines "Enslavement" as "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".

The Case of Lebanon

Law Number 164/2011 on the Punishment for the Crime of Trafficking in Persons was promulgated on August 24, 2011 and was published in the Official Gazette on September 1, 2011. The Lebanese legislative branch promulgated the aforementioned law after the U.S. downgraded Lebanon to the Tier 3 List of its annual Trafficking in Persons Report issued on June 27, 2011. Such a downgrade is automatic, and it follows from a country remaining on the Tier 2 Watch List for two straight years. Not only does including Lebanon in the Tier 3 List damage the country's reputation, it can also trigger certain sanctions—the most significant of which are withholding and ceasing foreign assistance, and Lebanon losing the assistance of the World Bank and the International Monetary Fund. Earlier, Lebanon was subject to American pressures to pass a law punishing the crime of trafficking in persons in order to avoid the American sanctions that would go into effect on October 1, 2011.

1. Trafficking in Persons, the Trafficker, and the Victim according to the Clauses of Law Number 164/2011

A. The Lebanese law has defined trafficking in persons as:

- i. luring, transporting, receiving, detaining, or finding shelter for a person (the act);
- ii. by using force or threatening to use force against someone who is subject to one's power; by kidnapping or deceiving another person; by using one's power against another person or exploiting that person's vulnerability; by giving or receiving sums of money or benefits; and by utilizing such methods against another person who is subject to perpetrator's authority (the means);
- iii. for the purpose of exploiting said other person or facilitating his/her exploitation by others (the purpose).

B. As for traffickers, the law defines them as those who:

- i. recruit or transport the victim of trafficking;
- ii. subject the victim to their authority;
- iii. exploit the victim;
- iv. benefit directly or indirectly from trafficking in the victim.

C. The Victim of Trafficking in Persons according to the Clauses of the Lebanese Law:

Lebanese law has defined the victim of trafficking in persons as "any natural person who was the subject of trafficking in persons or who is reasonably considered by the competent authorities to be a victim of trafficking in persons, regardless of whether the perpetrator of the crime [of trafficking in persons] was identified, arrested, tried, or convicted".

The exploitation of victims who are under eighteen years of age is also considered trafficking in human persons even if such activities were not accompanied by any of the methods indicated in Paragraph A above.

It is noteworthy that according to the provisions of Law 164/2011, "consideration shall not be given to the consent that is given by the victim to exploitation that is to be committed [...]; nor shall consideration be given to the consent to such exploitation that is given by one of the victim's forefathers, legal guardian, or any other person

who exercises legal or actual authority over the victim”.

It shall be considered exploitation to compel persons to engage in:

- i. Acts that are punishable by law;
- ii. Prostitution or exploitation of the prostitution of others;
- iii. Sexual exploitation;
- iv. Begging;
- v. Slavery or practices that resemble slavery;
- vi. Forcible or compulsory work;
- vii. Forcible or mandatory recruitment of children to use them in terrorist acts;
- viii. Forcible involvement in terrorist acts;
- ix. Selling organs or tissue from the victim’s body.

Myriad are the reasons behind the crime of trafficking in persons; perhaps the most important of which are poor social and economic conditions and the lack of legislation and preventative measures. Additionally, wars and disasters are leading causes behind the rise of this phenomenon that [1] augments the disintegration of families and [2] pushes their children to enter the world of human enslavement and sex, or to seek work outside their homelands in an effort to flee death and killing.

There is no unique method to identify the victims of trafficking, because trafficking often takes place amidst confidential milieus, as it is a subtle problem, despite the fact that the victims of trafficking are always in plain sight. Women and girl victims of trafficking, however, are often placed in isolated areas, far from the eyes of society. If allowed to go out, they are often under tight supervision, and are occasionally accompanied by overseers. Additionally, the victims of trafficking are often coached to present different narratives and answers to anyone that might ask questions.

The victims of trafficking work in different fields. Some are forced to work in sex rings, and other jobs connected to the sex industry. Others are coerced to work in agriculture, as domestics, or at restaurants and hotels. These victims are often susceptible to rape, physical attacks, imprisonment, arrest, and torture, or are forced to live under circumstances that can be life threatening; many fear reprisal against their families (that is, the families of the victims of trafficking in persons) in their nations of origin provided they were able to run away to safe zones. These victims live under a constant state of fear, [1] denying, at first, that they are forced to work under circumstances akin to slavery, forced labor, or even [2] covering the reasons behind their injuries and how they were inflicted upon them.

Additionally, victims of trafficking in persons do not often hold their passports, identity documents, or documents from the directorate of immigration, as their captives strip them of these documents almost immediately. Rarely do these victims possess any means of communication, such as mobile phones or others.

D. Trafficking in Persons Indicators:

The indicators that will be mentioned, inter alia, are amongst the most common indicators adduced to demarcate the crimes of trafficking. It is noteworthy that these indicators are not exhaustive - for some other indicators may be detected according to the cases of exploitation - and that they apply to adults and children equally, based

on the means defined by Law Number 164, which are: (1) using force or threatening to use force against someone who is subject to one's power; (2) kidnapping or deceiving another person; (3) using one's power against another person or exploiting that person's vulnerability; (4) giving or receiving sums of money or benefits; and (5) utilizing such methods against another person who is subject to perpetrator's authority. These indicators are as follows:

- Exploiting one's vulnerability;
- Disappointment or deception;
- Restrictions on movement;
- Isolation;
- Physical and Sexual violence—use of force;
- Intimidation and threatening;
- Confiscation of identification documents;
- Seizure of salaries;
- Debt bondage;
- Poor life and working conditions;
- Exceeding working hours of forced labor;
- Monetary payments; and
- Early marriage.

E. Of the Penalty Administered on Trafficking in Persons Crime:

In Lebanon, the crime of trafficking in persons is considered a felony. Additionally, the penalty for a perpetrator of the crime shall be imprisonment for five to fifteen years along with a fine that amounts to either three hundred or six hundred times the official minimum wage.

Women and Girls—Victims of Trafficking in Persons

One of the driving forces of sex trafficking is the demand for sexual services and prostitution. There are many things that contribute to the increased demand for sexual services, such as the commodification of women and girls, coupled with the lack of accountability for customers or sexual service purchasers.

Additionally, a number of common reasons and factors render women and girls most vulnerable to trafficking in persons, the most important of which are:

- Women and girls who are victims of domestic violence;
- Women and girls who are victims of rape, sexual harassment, or incest;
- Women and girls who are victims of early and forced marriage;
- Women and girls who are victims of homelessness and begging;
- Women and girls who are [1] internally displaced, or [2] asylum seekers and/or those who are victims of armed conflicts, disasters, among others;
- Low education levels amongst women and girls;
- Illegal residency permits as well as *Maktoumat al-Qayd* (that is, women who lack registered nationality or official records); and
- Sexual tourism.

Besides prostitution and sexual exploitation, perhaps one of the most important forms of trafficking in persons prevalent amongst women and girls is early marriage. In Lebanon, the phenomenon of early marriage surfaced among minor girls with the

Syrian exodus to the country. It is noteworthy that the Lebanese government lacks any legal provisions that demarcate the minimum age of marriage. As for personal status laws, child marriage is legal and licit, as it is permitted for the guardians to marry off minors of some sects upon puberty, that is nine or ten years. The Member of Parliament (MP) Elie Kayrouz introduced before the Parliament's Administration and Justice Committee a draft law aiming to establish the legal minimum age of marriage at 18 years old.

According to a 2016 UNICEF report, 6% of Lebanese women aged 20 to 24 years were married off before reaching 18. It is obvious that child marriage is surfacing among Syrian refugees whose number exceeds one million refugees. A 2017 study estimated that 24% of the Syrian refugees' girls who age 15 to 17 are married. However, there is a lack of statistics on minor girls who were married off early and who fall victim to sexual exploitation or trafficking in persons.

Combating Trafficking in Persons: the Role of the Internal Security Forces

Article 1 of Law Number 17/1990 on the organization of the Internal Security Forces (ISF) defines the duties of these forces as: protecting individuals and properties, protecting freedom within the rule of law, undertaking the duties of the Jurisdictional Supervision Unit, as well as monitoring the enforcement of judicial laws and regulations that fall within the authority thereof.

In regards to combating trafficking, the role of the ISF is centered directly on intervening (1) if a crime is witnessed, notification is received, or complaint is filed by the aggrieved party of the witnessed crime, (2) provided a trafficking in persons crime is reported, as well as (3) upon executing the writs, decrees, and warrants issued by the judiciary.

Human trafficking is a transnational crime. Accordingly, investigations in such crimes postulate that investigators shall possess the knowledge, specialization, and investigation techniques; therefore, the Jurisdictional Supervision Unit officers shall acquire the legal education to distinguish the crime of trafficking in persons from other crimes akin and/or connected to it. These officers shall also develop expertise in criminal investigation coupled with considerable communication skills to use with victims who are often found in weak and vulnerable psychological and health situations that investigators, of both genders, shall take into consideration upon investigation.

In this context, the Lebanese American University's (LAU) Institute for Women's Studies in the Arab World (IWSAW) has organized a number of training sessions for personnel and officers from the ISF on various issues connected to human rights, including the question of trafficking in persons, the role of the ISF aimed at protecting victims, and investigation along with combating trafficking techniques. Of the most important recommendations put forward in the panel on presenting and discussing the crime of trafficking in persons were to [1] convene intensive and in-depth training sessions on this subject to embrace a bigger number of officials and personnel from the ISF; [2] empower and strengthen the capacities of investigators, from both

genders equally, in regards to the investigative techniques implemented in combating transnational organized crimes, particularly the crime of trafficking in persons, taking into consideration the psychological and social status of victims; and [3] exchange expertise with other states. It is noteworthy that these training sessions will include public prosecutions as well as investigating and criminal courts judges.

Also in this respect, it must be noted that in Lebanon the Jurisdictional Supervision Unit has arrested and investigated in collaboration with many trafficking in persons networks. Perhaps the most important of which was the “Chez Maurice” case, where 75 girls were liberated, a majority of whom were Syrian, ages 16 to 27. These girls were subject to myriad forms of physical, psychological, and sexual torture. Even physical disabilities were inflicted upon some of these girls driven as a result.

On November 28, 2016, a conjectural indictment was issued by the Judiciary in the Mount Lebanon Governorate, convicting 26 persons of committing a trafficking in persons crime in “Chez Maurice” case. In 2017, the Criminal Court of Baabda started off the public hearing, and adjourned the sessions three times to date due to incomplete litigation (the absence of one of the defendants, demand for deferral to hire an attorney, absence of some attorneys, among others).

F. A Critical Study of the Lebanese Law Pursuant to Trafficking in Persons

An in-depth review of Lebanese Law on the punishment of the crime of trafficking (164/2011), reveals that it is a punitive rather than preventative or protective law in regards to victims, for the following reasons: “The victim, pursuant to Law Number 164/2011, remains susceptible to prosecution and punishment and could be arrested, prosecuted, and condemned, unless the victim proved (s)he was forced to undertake acts punishable by laws or infringe residency and working conditions”. Put differently, the Lebanese legislative branch holds that trafficking victims are criminals who are subject to detention, prosecution, and condemnation, which, by implication, hampers the protection of victims.

The text has automatically exempted the victim from any impunity whatsoever on the grounds of violating residency and working conditions; however, the victim is only exempted from impunity in regards to ordinary crimes, such as prostitution or begging which might be directly intertwined with trafficking, if only (s)he proved that they were forced to commit such crimes. Certainly, proving this is difficult as the victim often lacks the means to secure proper defense. As such, Lebanon has violated international standards, particularly those set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

2. Protection of Victims and Witnesses

The Lebanese Penal Code does not include any mechanism for the protection of victims and witnesses. The Law on the Punishment of the Crime of Trafficking in Persons does not include any legal provision stipulating or even defining a mechanism for the protection of victims and witnesses of this crime.

Pursuant to Law Number 164/2011, the investigating judge may decide to hear the testimony of a person holding information, as a witness, without including the identity

of the attestant in the minutes provided the following two conditions are met:

- i. The crime of trafficking in persons, subject to investigation, is punishable by a minimum criminal penalty of five years' imprisonment; and
- ii. There are concerns that disclosing information about the crime would pose a threat to the life or safety of the attestant, his/her family, or relatives.

The identity and address of the attestant are put on a special record, not included in the case file, filed and kept at the Attorney General's office at the Court of Cassation. The defendant, however, may request the judge to reveal the identity of the attestant pursuant to the provisions of the preceding article, if (s)he deems this action essential for exercising their right of defense. The judge decides then—should (s)he find that the conditions of the request are met—to either disclose the identity only with the consent of the concerned person, or annul the proceedings. The defendant may also request to face the attestant. In this case, the judge decides to make use of some techniques that render the person's voice unrecognizable.

It is also stated in Law Number 164/2011 that a decree must be issued by the Council of Ministers to determine the implementation of procedures for the protection of victims and witnesses. Put differently, to establish a clear mechanism for the protection of victims and witnesses. However, this decree has not been issued yet.

The Law allows for foreign victims to reside in Lebanon during the period required by the investigation procedures, pursuant to a decision issued by the investigating judge or the judge hearing the case. The question, however, remains as to the extent to which the General Directorate of General Security is ready to implement the judicial decision in conformity with its adopted policy, aimed at non-implementing judicial rulings ordering the release of some foreigners and preventing their deportation.

3. Lack of Measures for the Protection, Rehabilitation and Integration of Victims of Trafficking in Persons in Lebanon

These measures shall include:

- Identifying the victim at the onset of the process;
- Keeping the victim far from social pressures, along with providing the necessary psychosocial, social, and medical care for rehabilitation;
- Counseling and information, in particular as regards to the victims' legal rights in a language that the victims of trafficking in persons understand;
- Providing employment, education, and training opportunities; and
- Rehabilitating and reintegrating the victim into society.

G. Trafficking in Persons: Preventive Measures and Mechanisms:

Law Number 164/2011 did not stipulate measures and mechanisms to prevent trafficking in persons and to provide information exchange and training, particularly in regards to cooperation with law enforcement, immigration, and other relevant authorities of the States, which have acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, by exchanging information in accordance with each State's domestic laws to enable them to determine:

- a. Whether individuals crossing or attempting to cross an international border, with travel documents belonging to other persons or without travel documents, are perpetrators or rather victims of trafficking in persons;
- b. The types of travel documents that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- c. The means and methods used by organized criminal groups for the purpose of trafficking in persons.

The State shall provide or strengthen training for law enforcement, immigration, and other relevant officials specialized in the prevention of trafficking in persons. The training should focus on the methods used to prevent such trafficking, prosecute traffickers, and protect the rights of trafficked victims. The training should also take into account the need to consider human rights, children, and gender sensitive issues, and it should encourage cooperation with non-governmental organizations, and other relevant organizations.

In Lebanon, members and officers of the security forces, including the ISF, undergo general training courses on the crime of trafficking in persons; however, this is not sufficient. It is also necessary to build the capacity of investigators with regard to the rights of victims and victim protection mechanisms, and to provide them with investigative techniques on human trafficking crimes. This is in addition to the intensive training that public prosecution and investigating judges as well as criminal courts must undergo, which, when held in Lebanon, are often conducted in an unorganized, unsystematic, and interrupted manner. This is problematic, given that investigations into human trafficking crimes require different investigative methods that are predominantly interactive, proactive or disruptive – a process that time and resource intensive, often requiring internal and international liaising between different agencies, and parallel financial investigations. The State is also required to introduce specialized counter-trafficking in persons law enforcement units.

Since most of the training received by the security forces and judiciary is based on projects executed by civil society, the United Nations, and private universities with foreign funding, it means that there is an absence of the State in devising strategic national plans for protecting victims of trafficking, and producing mechanisms for ending impunity and countering human trafficking crimes, and taking and reinforcing measures on borders in order to prevent and detect trafficking in persons.

H. Security and Control of Documents

As per the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, travel or identity documents issued by States shall be of such quality that they cannot be easily misused, unlawfully falsified, altered, replicated or issued.

In conclusion, it is important to note that there have been a number of sex and trafficking rings whose members have been arrested; many of these cases are still pending a trial.

In order to affirm that Lebanon has taken all measures to put an end to the impunity with regards to trafficking in persons, the State must review and amend Law Number 164/2011, devise national strategic plans and stipulate measures and mechanisms for protecting, rehabilitating and reintegrating victims of trafficking in persons and returning them voluntarily to their homelands, as well as stipulate policies, programs and measures to prevent trafficking in persons, provide exchange of information, training, border measures, and security and control of documents.

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