

Human Trafficking in National Criminal Legislation

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Abstract

The topic of modern-day slavery or human trafficking has received increased media and national attention. However, to date, there has been limited research on the definitions and types of human trafficking. Hence, the main concept of human trafficking is: “Anyone who deals in any way with a natural person, including selling or offering for sale or purchase inside the country or across national borders by receiving sums of money or benefits in return for obtaining the consent of one person to traffic another person.” This article describes and synthesizes the legal representative knowledge of, and experience with, human trafficking cases. This article has two main goals: (a) to define what human trafficking is in different countries, (b) to describe types and forms identified as contributing to vulnerability to being trafficked and keeping a person entrapped in the situation. Major forms of trafficking in persons are nine forms discussed in the research.

Keywords: Human Trafficking, Types of Human Trafficking, National Criminal, Legislation,

Introduction

As a result of the acceleration of the processes of globalization in the world, the increase of illegal migration processes, the difference in the economic development of the countries, the growth of unemployment and poverty, the increase of the influence of "mass culture", and the activation of transnational criminal organizations, the scope of human trafficking is expanding, threatening the development and security of humanity. Therefore, improving the international and national mechanisms of combating it has become an objective necessity.

Over the past years, a unique national system of combating human trafficking has been created in our country. In particular, national legislative norms have been improved, republican and regional interdepartmental commissions for combating human trafficking, a republican rehabilitation center for assisting and protecting victims of human trafficking, structures related to combating human trafficking and its prevention have been established within internal affairs bodies. As a result of this, a significant reduction in crimes related to human trafficking was achieved in our country. However, in the fight against this crime, it is important to establish responsibility for new forms of human trafficking, such as the implementation of illegal transactions against people, forcing them to engage in illegal activities, and to strengthen the protection of the interests of vulnerable victims, pregnant women and children through criminal legal means, to alleviate the punishment of those who actively cooperated in the detection of crime, to release from punishment the victims who participated in illegal activities under coercion, to recover the damage caused, to find a scientific solution to the problems related to the mechanisms of crime prevention, the legislation of foreign countries, norms of international law, national legislation and the practice of law enforcement is gaining actual importance.

Research Objective:

1. Identify the most important definitions issued by national legislation for human trafficking.

2. Determine the human trafficking types.

Research Outline:

1. Human Trafficking Main Definitions.
2. Major Forms of Trafficking in Persons.

1. Human Trafficking Main Definitions

First: Human trafficking in French law:

According to Article (1-4-225) of the French Penal Code, the crime of human trafficking is: “The act that takes place in exchange for a wage or any benefit or a promise of a wage or benefit to recruit, transfer or receive a person with the aim of placing him at the disposal of others, either with the aim of committing procuring crimes or sexual assaults against this person, or exploiting him in acts of begging, or imposing a condition of work or housing that is suitable for his dignity, or forcing him to commit a misdemeanor”. The French legislator required that the subject of the crime be a person and not several persons.

Second: Human trafficking in American law:

The US Trafficking Victims Protection Act of 2000, amended 2003. Hence, the severe forms of trafficking in persons:

1. Trafficking in persons for sexual purposes involves the use of force, fraud or coercion in order to compel a person to perform a sexual act for commercial purposes, or if the person sought is under the age of eighteen.
2. The use of force, fraud or coercion in order to recruit a person, shelter him, transfer him or make him available to others, for the purpose of subjecting him against his will and without his will to the provision of his services, or for the purpose of making him compulsory labor in order to pay a debt or to enslave him.

Third: human trafficking in UAE law

Article (1) of the Law No. 1 of 2015 defined the crime of human trafficking as:

1. If a person is considered to have committed a crime of trafficking
 - a. He sold a person or offered them for sale or purchase or promised them.
 - b. He recruited, used, received or delivered persons, whether within the country or across national borders, by means of threats of force, abuse of power, abuse of influence, or abuse of a state of vulnerability, for the purpose of exploitation.
2. It is considered human trafficking even if it does not involve the use of any of the means indicated in the previous paragraph.
 - a. Using or transporting a child for the purpose of exploitation
 - b. Selling a child, offering it or buying it

From the definition, the researcher notes the following:

1. The UAE legislator, in the process of defining the crime of human trafficking, has approved the Protocol annexed to the Crime Convention in 2000. However, he added the interests of selling, buying, or deporting, and this indicates the extent of interest on the part of the UAE legislator in closing all roads to human traffickers or preventing human trafficking crimes.
2. There is a disagreement between the UAE law and the protocol. The UAE legislator indicated that the punishment for human trafficking becomes a hard prison sentence if it is committed in certain circumstances.
3. It was more appropriate when transferring from the protocol to comply with the domestic legal system, because the protocol is of an international nature. Because it is conceivable that

when the crime is committed inside the state by people who do not belong to a terrorist group, so the researcher believes that the person has a specific legal meaning linked to the idea of law about the right, so the legal person is linked to the due legal rights.

4. UAE Law No. 51 of 2006 is Amendment No. 1 of 2015, so it is inevitable to refer to what is not included in the rules and provisions to the general law in penalties and criminal procedures. The reason is that the special text prevails over the general text in what it regulates, and this is the relationship of the Anti-Human Trafficking Law, as a group of texts related to the Penal Code and the Procedural Law as a “general law”.
5. The UAE approach is dominated by the elements mentioned in the protocol. As the UAE law, in its recent amendments, first stated that the crime of human trafficking is complete when people are sold or offered for sale or purchase if it is a child, which reflects the desire of the UAE legislator to expand to protect children.

Fourth: Human Trafficking in Egyptian Law

According to the law, the perpetrator of the crime of human trafficking is: “Anyone who deals in any way with a natural person, including selling or offering for sale or purchase inside the country or across national borders by receiving sums of money or benefits in return for obtaining the consent of one person to traffic another person.”

The researcher believes that the definition of human trafficking did not deviate from the definition that was mentioned in the United Nations protocol to prevent, prohibit and punish persons who traffic in human beings, especially women and children issued in 2000, as the Egyptian legislator approached the same approach as the international protocol. However, the Egyptian legislator has expanded criminalization to include all forms of dealing with human beings by adding other terms such as selling or offering for sale, i.e. buying, promising or using.

Fifth: Human Trafficking in Bahraini Law

The Bahraini legislator defined human trafficking as: recruiting a person, transporting him, transferring him, or providing him with the purpose of exploitation and exploitation through threat, subterfuge, abuse of position, or abuse of power, and it includes exploitation of a person in prostitution, forced labor or service, enslavement, or the removal of organs.

Sixth: Human Trafficking in Kuwaiti Law

According to the law, human trafficking is the recruitment, use, transfer, harboring, or reception of persons under duress, whether by force or threat of use, in any other form of kidnapping, fraud, deception, coercion, or receiving sums of money or benefits in kind, or for the misguided purpose of exploitation and prostitution, or any form of Exploitation of others.

2. Major Forms of Trafficking in Persons

a. Forced Labor

Most instances of forced labor occur as unscrupulous employers take advantage of gaps in law enforcement to exploit vulnerable workers. These workers are made more vulnerable to forced labor practices because of unemployment, poverty, crime, discrimination, corruption, political conflict, and cultural acceptance of the practice. Immigrants are particularly vulnerable, but individuals are also forced into labor in their own countries. Female victims of forced or bonded labor, especially women and girls in domestic servitude, are often sexually exploited as well. Forced labor is a form of human trafficking that can be harder to identify and estimate than sex trafficking. It may not involve the same criminal networks profiting from transnational sex trafficking, but may instead involve individuals who subject anywhere from one to hundreds of workers to involuntary servitude, perhaps through forced or coerced household work or work at a factory.

b. Bonded Labor

One form of force or coercion is the use of a bond, or debt, to keep a person under subjugation. This is referred to in law and policy as “bonded labor” or “debt bondage.” It is criminalized under U.S. law and included as a form of exploitation related to trafficking in the UN TIP Protocol. Many workers around the world fall victim to debt bondage when traffickers or recruiters unlawfully exploit an initial debt the worker assumed as part of the terms of employment, or when workers inherit debt in more traditional systems of bonded labor. Traditional bonded labor in South Asia enslaves huge numbers of people from generation to generation.

c. Debt Bondage and Involuntary Servitude among Migrant Laborers

The vulnerability of migrant laborers to trafficking schemes is especially disturbing because this population is so sizeable in some regions. Three potential contributors can be discerned: 1) Abuse of contracts; 2) Inadequate local laws governing the recruitment and employment of migrant laborers; and 3) The intentional imposition of exploitative and often illegal costs and debts on these laborers in the source country or state, often with the complicity and/or support of labor agencies and employers in the destination country or state.

Some abuses of contracts and hazardous conditions of employment do not in themselves constitute involuntary servitude, though use or threat of physical force or restraint to compel a worker to enter into or continue labor or service may convert a situation into one of forced labor. Costs imposed on laborers for the “privilege” of working abroad can place laborers in a situation highly vulnerable to debt bondage. However, these costs alone do not constitute debt bondage or involuntary servitude. When combined with exploitation by unscrupulous labor agents or employers in the destination country, these costs or debts, when excessive, can become a form of debt bondage.

d. Involuntary Domestic Servitude

Domestic workers may be trapped in servitude through the use of force or coercion, such as physical (including sexual) or emotional abuse. Children are particularly vulnerable. Domestic servitude is particularly difficult to detect because it occurs in private homes, which are often unregulated by public authorities. For example, there is great demand in some wealthier countries of Asia and the Middle East for domestic servants who sometimes fall victim to conditions of involuntary servitude.

e. Forced Child Labor

Most international organizations and national laws recognize that children may legally engage in light work. In contrast, the worst forms of child labor are being targeted for eradication by nations across the globe. The sale and trafficking of children and their entrapment in bonded and forced labor are clearly among the worst forms of child labor. Any child who is subject to involuntary servitude, debt bondage, peonage, or slavery through the use of force, fraud, or coercion is a victim of trafficking in persons regardless of the location of that exploitation.

f. Child Soldiers

Child soldiering is a unique and severe manifestation of trafficking in persons that involves the unlawful recruitment of children through force, fraud, or coercion to be exploited for their labor or to be abused as sex slaves in conflict areas. Such unlawful practices may be perpetrated by government forces, paramilitary organizations, or rebel groups. UNICEF estimates that more than 300,000 children under 18 are currently being exploited in more than 30 armed conflicts worldwide. While the majority of child soldiers are between the ages of 15 and 18, some are as young as 7 or 8 years of age.

Many children are abducted to be used as combatants. Others are made unlawfully to serve as porters, cooks, guards, servants, messengers, or spies. Many young girls are forced to marry or have

sex with male combatants and are at high risk of unwanted pregnancies. Male and female child soldiers are often sexually abused and are at high risk of contracting sexually transmitted diseases.

Some children have been forced to commit atrocities against their families and communities. Child soldiers are often killed or wounded, with survivors often suffering multiple traumas and psychological scarring. Their personal development is often irreparably damaged. Returning child soldiers are often rejected by their home communities.

Child soldiers are a global phenomenon. The problem is most critical in Africa and Asia, but armed groups in the Americas and the Middle East also unlawfully use children in conflict areas. All nations must work together with international organizations and NGOs to take urgent action to disarm, demobilize, and reintegrate child soldiers.

g. Sex Trafficking and Prostitution

Sex trafficking comprises a significant portion of overall trafficking and the majority of transnational modern-day slavery. Sex trafficking would not exist without the demand for commercial sex flourishing around the world. The U.S. Government adopted a strong position against prostitution in a December 2002 policy decision, which notes that prostitution is inherently harmful and dehumanizing, and fuels trafficking in persons. Turning people into dehumanized commodities creates an enabling environment for human trafficking.

The United States Government opposes prostitution and any related activities, including pimping, pandering, or maintaining brothels as contributing to the phenomenon of trafficking in persons, and maintains that these activities should not be regulated as a legitimate form of work for any human being. Those who patronize the commercial sex industry form a demand which traffickers seek to satisfy.

h. Children Exploited for Commercial Sex

Each year, more than two million children are exploited in the global commercial sex trade. Many of these children are trapped in prostitution. The commercial sexual exploitation of children is trafficking, regardless of circumstances. International covenants and protocols obligate criminalization of the commercial sexual exploitation of children. The use of children in the commercial sex trade is prohibited under both U.S. law and the U.N. TIP Protocol. There can be no exceptions, no cultural or socio-economic rationalizations that prevent the rescue of children from sexual servitude. Terms such as “child sex worker” are unacceptable because they falsely sanitize the brutality of this exploitation.

i. Child Sex Tourism

Child sex tourism (CST) involves people who travel from their own country—often a country where child sexual exploitation is illegal or culturally abhorrent—to another country where they engage in commercial sex acts with children. CST is a shameful assault on the dignity of children and a form of violent child abuse. The commercial sexual exploitation of children has devastating consequences for minors, which may include long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and possibly death.

Tourists engaging in CST often travel to developing countries looking for anonymity and the availability of children in prostitution. The crime is typically fueled by weak law enforcement, corruption, the Internet, ease of travel, and poverty. Sex offenders come from all socio-economic backgrounds and may in some cases hold positions of trust. Cases of child sex tourism involving U.S. citizens have included a pediatrician, a retired Army sergeant, a dentist, and a university professor. Child pornography is frequently involved in these cases, and drugs may also be used to solicit or control the minors.

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