



**Combating the Trafficking of Women in the United Arab Emirates: A Critical Analysis of
the United Arab Emirates Legal Response in the Context of International Law**

A Thesis Submitted for the Degree of Doctor of Philosophy

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Abstract

The United Arab Emirates (UAE) is a key destination and transit country for human trafficking. Human trafficking is a complex international criminal enterprise that supplies humans for many different forms of forced labour and commercial sexual exploitation. It has devastating effects on its victims. Theories suggest that human trafficking is strongly linked to migration, which would explain why it has become an urgent issue for the UAE, since its massive influx of migrants seeking a better life and economic circumstances, are habitually lured to the UAE and subjected to exploitation by traffickers. It is a situation that in recent years has tarnished the UAE's reputation to the international community and its wealthy investors. It is for all of these reasons that this thesis is concerned with human trafficking in the UAE, with a special focus on the trafficking of women, as well as the legal mechanisms and initiatives created to combat this scourge. At the heart of this investigation is Federal Law No. 51 which marked a pivotal moment for the UAE, as it was a law specifically designed to address trafficking on its territory. However, as with laws drafted by the international community, there exist difficulties with how trafficking should be construed, and with how traffickers and trafficked victims should be treated in order to effectively eliminate this crime. Ultimately, the research highlights the importance and benefits of a victim-centred human rights based approach, as opposed to the pervasive crime control one, which includes ensuring that victims are genuinely protected and fully rehabilitated to re-enter society. In addition, the research provides crucial insights from Islamic law and principles that raise significant implications for understanding how the trafficking in women should be conceptualised and dealt with in modern-day Muslim societies such as the UAE.

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- To my sponsor (Dubai Police) for its financial support throughout my studies at Brunel. Also, special thanks to all my colleagues and senior officers who provided me with the necessary data and information for my study. Finally, my appreciation goes to the Brunel University support staff.

Dedication

To my parents along with my wife and my friends who wished and prayed for my successful completion of PHD study, this work is also dedicated to the former Commander-in-Chief of Dubai Police Lieutenant General Khamis Al Mazeina (Late).

Affirmation

This thesis, submitted for the Degree of Doctor of Philosophy, is an original work of my own and has not been submitted before for any other degree.

List of Abbreviations

1904 Agreement - International Agreement for the Suppression of the White Slave Traffic

1910 Convention - International Convention for the Suppression of the White Slave Traffic

1921 Traffic Convention - International Convention for the Suppression of the Traffic in Women and Children

1933 Convention - International Convention for the Suppression of the Traffic in Women in Full Age

1949 Convention - Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others

The 1956 Supplementary Convention - The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

ACHR - Arab Charter on Human Rights

ACTIP - ASEAN Convention Against Trafficking in Persons, Especially Women and Children

CATW - Coalition Against Trafficking in Women

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

DFWAC - Dubai Foundation for Women and Children

ESWAC - Ewa'a Shelter for Women and Children

European Trafficking Convention - Council of Europe Convention on Action against Trafficking in Human Beings

Federal Law 1980 - Federal Law No 8 of 1980 on Regulation of Labor Relations

Federal Penal Code - Federal Law No 3 of 1987 on Penal Code for the United Arab Emirates.

GAATW - Global Alliance against Traffic in Women

GAO - Government Accountability Office

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

ILO - International Labour Organization

IOM - International Organisation for Migration

Law 51 of 2006 - Federal Law No 51 of 2006 in Combating Human Trafficking Crimes

Law 51 as amended in 2015 - Federal Law No 51 of 2006 in Combating Human Trafficking
Crimes as amended under Federal Law No 1 of 2015

LN - League of Nations

NCCHT - National Committee to Combat Human Trafficking

NGOs - Non-Governmental Organizations

OHCHR - Office of the High Commissioner for Human Rights

SAARC - South Asian Association for Regional Cooperation Convention on Preventing and
Combating Trafficking in Women and Children for Prostitution

Smuggling of Migrants Protocol - Protocol against the Smuggling of Migrants by Land, Sea and
Air, Supplementing the United Nations Convention against Transnational Crime

Supplementary Convention of 1956 - Supplementary Convention on the Abolition of Slavery

Trafficking Convention - United Nations Convention against Transnational Organised Crime

Trafficking Protocol - Protocol to Prevent, Suppress and Punish Trafficking in Persons,
especially Women and Children

TIPR - Trafficking in Persons Report

TVPA - Trafficking Victims Protection Act – US 2000

UAE - United Arab Emirates

UAE Trafficking Report - Combating Human Trafficking in the UAE annual report.

UDHR - Universal Declaration of Human Rights

UNODC - United Nations Office on Drugs and Crimes

UNGA - United Nations General Assembly

Table of Conventions and Protocols

- Abolition of Forced Labour Convention, C105 (adopted 25 June 1957, entered into force 17 January 1959)
- Arab Charter on Human Rights (entered into force 15 March 2008)
- ASEAN Convention against Trafficking in Persons, particularly Women and Children (signed 21 November 2015, entered into force 8 March 2016)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987)
- Convention Against Transnational Organized Crime (signed 12 December 2000, entered into force 29 September 2003) 2225 UNTS 209
- Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, C182 (entered into force 19 November 2000) 2133 UNTS 161
- Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (adopted 21 March 1950, entered into force 25 July 1951) 96 UNTS 271
- Convention on the Elimination of All Forms of Discrimination against Women (entered into force 3 September 1981) 1249 UNTS 13
- Convention on the Rights of the Child (entered into force 2 September 1990)
- Convention to Suppress the Slave Trade and Slavery (signed 25 September 1926, entered into force 9 March 1927) 60 LNTS 253
- Council of Europe Convention on Action against Trafficking in Human Beings (signed 16 May 2005, entered into force 1 February 2008) ETS 197
- Covenant of the League Nations (opened for signature 28 June 1919, entered into force 10 January 1920) 34 LNTS
- Equal Remuneration Convention, 1951 (No 100) (adopted 29 June 1951, entered into force 23 May 1953)
- Forced Labour Convention, 1930 (No 29) (adopted 28 June 1930, entered into force 1 May 1932)

- Inter-American Convention on International Traffic in Minors (entered into force 15 August 1997)
- International Agreement for the Suppression of the White Slave Traffic (entered into force 18 July 1905) 1 LNTS 83
- International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)
- International Convention for the Suppression of the Traffic in Women and Children (entered into force 15 June 1922) 9 LNTS 415
- International Convention for the Suppression of the Traffic in Women of Full Age (entered into force 24 August 1934) 150 LNTS 431
- International Convention for the Suppression of the White Slave Traffic (adopted 4 May 1910)
- International Convention on the Elimination of All Forms of Racial Discrimination (signed 7 March 1966, entered into force 4 January 1969)
- International Covenant on Civil and Political Rights (entered into force 23 March 1976) 999 UNTS 171
- Miami Declaration of Principles on Human Trafficking (10 February 2005)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted 25 May 2000, entered into force 18 January 2002)
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (entered into force 28 January 2004)
- Protocol Amending the International Convention for the Suppression of the Traffic in Women of Full Age 11 October 1933 (signed 12 November 1947)
- Protocol Amending the International Convention for the Suppression of the White Slave Traffic 4 May 1910 (signed 4 May 1949, entered into force 14 August 1951)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (entered into force 25 December 2003)

- South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (entered into force 1 December 2005)
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (entered into force 30 April 1957) 226 UNTS 3
- United Nations Convention against Transnational Organized Crime (entered into force 29 September 2003)
- Universal Declaration of Human Rights (adopted 10 December 1948)
- Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

Table of Cases

- Case No 146/2007 Dubai Airport Police Station, Dubai (2007)
- Case No 2843/2011 Dubai Court of Appeal, Dubai (2011)
- Case No 3220/2011 Dubai Airport Police Station, Dubai (2011)
- Case No 5391/2012 Al Muraqqabat Police Station, Dubai (2012)
- Case No 7676/2015 Al Muraqqabat Police Station, Dubai (2015)
- Case No 10055/2015 Al Rifaa Police Station, Dubai (2015)
- Case No 21595/2015 Al Qusais Police Station, Dubai (2015)
- Case No 58122/2015 Bur Dubai Police Station, Dubai (2015)

Table of Legislations

- Joint Action of 24 February 1997 Concerning Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children (97/154/JHA) [1997] OJ L63/2
- Bahraini Trafficking Law No 1 of 2008
- Egyptian Law on Combating Human Trafficking No 64 of 2010
- French Penal Code
- Jordanian Anti-Trafficking in Persons Law No 9 of 2009
- Lebanese Anti-trafficking Legislation No 164 of 2011
- Saudi Arabian Law for Combating Crimes of Trafficking in Persons (Royal Decree No M/40 of 2009)
- Qatari Law No 15 of 2011 Combating Trafficking in Human Beings
- Syrian Legislative Decree No 3 of 2010 on the Crimes of Trafficking in Persons
- UAE Constitution of 1971 with Amendments through 2004
- UAE Federal Law No 10 of 1973 on the Federal Supreme Court and its amendments
- UAE Federal Law No 3 of 1987 on Issuance of the Penal Code
- UAE Federal Law No 6 of 1973 on Entry and Residence of Foreigners
- UAE Federal Law No 8 of 1980 on the Regulation of Labour Relations
- UAE Federal Law No 9 of 1976 on Delinquent and Vagrant Juveniles
- UAE Federal Law No 51 of 2006 on Combating Human Trafficking (as amended in 2015)
- Victims of Trafficking and Violence Protection Act of 2000 (US)
- Vietnamese Penal Code 1999

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Chapter One: Introduction

1.1 Research Background

Human trafficking is not new; it is a form of trade that dates back to early civilisations.¹ According to theoretical definitions, ‘human trafficking’ includes modern-day slavery, the global slave trade, trafficking in human beings, and trafficking in persons.² Ciment and Radzilowski argue that human trafficking is not a single crime, rather it is a complex criminal enterprise which supplies people for commercial sexual exploitation and sexual slavery, forced marriage (mail-order and child brides), sweatshop labour, domestic, construction and agricultural work, armed conflicts (including child soldiers), human organs and tissue, as well as a plethora of labour or services where human beings are cruelly exploited for profit.³ Today, women, men and children are trafficked by land, sea and air.

While it might be assumed that human trafficking only occurs in impoverished countries, where human and civil rights are frequently undermined by unstable governments and economies, there have been many incidents of trafficking recorded in developed countries, for example, in the United States which involved two US judges.⁴ Obokata notes that people are trafficked from Russia via Poland and the Czech Republic into Western Europe. Greece and Italy have also been identified as key destination countries for people trafficked from the Middle East.⁵ Additionally, people are regularly trafficked from Africa into Western Europe, Canada and the United States,⁶ and, from Central, South and Southeast Asian States into the United Arab Emirates (hereinafter referred to as the UAE).⁷ As Nicholson argues, ‘this is an evil that we thought had been banished

¹ Maggy Lee, *Trafficking and Global Crime Control* (Sage 2010) 193; Pade Badru and Brigid M Sackey, *Islam in Africa South of the Sahara: Essays in Gender Relations and Political Reform* (Scarecrow Press 2013) 47; Alison Cole, ‘Reconceptualising Female Trafficking: The Human Trade in Women’ (2006) 12 *Cardozo Journal of Law & Gender* 789.

² Stephanie L Mace, Donald L Venneberg and James W Amell, ‘Human Trafficking: Integrating Human Resource Development Toward a Solution, *Advances in Developing Human Resources*’ (2012) 14(3) *Sage Journal* 333.

³ James Ciment and John Radzilowski, *American Immigration: An Encyclopedia of Political, Social, and Cultural Change* (Routledge 2013) 879.

⁴ Salviad, ‘U.S. Judges Involved in Human Trafficking’ <<http://disinfo.com/2009/02/u-s-judges-involved-in-human-trafficking/>> accessed 12 October 2016.

⁵ Tom Obokata, *Trafficking of Human Beings from Human Rights Perspectives, Towards a Holistic Approach, International Studies in Human Rights* (Martinus Nijhoff 2006) 2.

⁶ *ibid.*

⁷ US Department of State, ‘Trafficking in Persons Report’ (June 2017) 411.

from the world, but it is back alive and well and in countries on every continent'.⁸ Essentially, no country is immune from the scourge of trafficking; it can be utilised a point of origin (source), transit or destination. In other words, a country might export people abroad, temporarily hold arrivals from other countries, or be the country of destination.⁹

Troubnikoff notes that human trafficking is one of the fastest growing criminals industries and can be carried out by both international criminal gangs and individuals.¹⁰ It is a very lucrative trade estimated by the International Organisation of Migration (IOM) to be worth more than 150 billion USD a year,¹¹ and one which generates increased profits for criminals when combined with illegal trading in weapons and drugs.¹² From Brownback's perspective: 'Human trafficking is the "perfect crime". The chances of being caught are slight, small penalties exist if traffickers are caught and the profits are huge'.¹³ Indeed, the revenue from human trafficking is large, with an annual estimated average of 13,000 USD per trafficked victim.¹⁴

The true scale of the phenomenon is difficult to gauge and collect accurate data owing to its very clandestine nature. As Hughes states: 'the trade is secretive, the women are silenced, the traffickers are dangerous and not many agencies are counting'.¹⁵ Weitzer notes that, 'in fact, there are no reliable statistics on the magnitude of trafficking, and the figures can only be described as guesswork'.¹⁶ Globally, according to the US Trafficking in Persons Report (hereinafter referred to as TIPR) between 600,000 and 800,000 people are trafficked annually.¹⁷ Most people are trafficked into commercial sexual exploitation (43%), but many are also

⁸ R James 'Jim' Nicholson, 'Trafficking in Persons: The 21st Century Version of Human Slavery' (2006) 1 *Intercultural Human Rights Law Review* 29; Sile NicGabhann, 'Human Trafficking: Twenty-First Century Slavery' (2006) 57 *The Furrow* 528; Lea Pfefferle, 'Crimes That Know No Borders – Human Trafficking in the EU' (2013) GRIN Verlag 2.

⁹ NicGabhann (n 8).

¹⁰ Anna M Troubnikoff, *Trafficking in Women and Children: Current Issues and Developments* (Nova 2003) 33.

¹¹ International Organization for Migration, 'Global Migration Trends: Factsheet 2015' <https://publications.iom.int/system/files/global_migration_trends_2015_factsheet.pdf> accessed 16 April 2018.

¹² Jeremy Harding, *Border Vigils: Keeping Migrants Out of the Rich World* (Verso Books 2012) 13.

¹³ Barbara A Moynihan, 'The High Cost of Human Trafficking' (2006) 2(2) *Journal of Forensic Nursing* 100.

¹⁴ Elizabeth M Wheaton, Edward J Schauer and Thomas V Galli, 'Economics of Human Trafficking' (2010) 48(4) *International Migration* 114.

¹⁵ Donna M Hughes, 'The "Natasha" Trade: The Transnational Shadow Market of Trafficking in Women' (2000) 53(2) *Journal of International Affairs* 625, 626.

¹⁶ Ronald Weitzer, 'The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade' (2007) 35 *Politics Society* 447, 455.

¹⁷ US Department of State, 'Trafficking in Persons Report' (June 2004) 7.

trafficked for economic exploitation (32%)¹⁸, while women and girls represent 56% of victims, men and boys nevertheless account for 44%. Regarding commercial sexual exploitation, an overwhelming majority (98%) are women and girls.¹⁹

Human trafficking has been studied from various perspectives, for instance, crime control, transnational crime, and migration perspectives.²⁰ Through analysing early human trafficking conventions, we can clearly see that the crime control approach has dominated at the international level.²¹ Furthermore, the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (hereinafter referred to as the 1949 Convention) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereinafter referred to as the Trafficking Protocol)²² have also been criticised for their primary focus on crime control (investigation and prosecution) and a lack of focus on victims' human rights protection.

In this thesis the human rights-based approach is used, which provides a broader view and an increased understanding of trafficking, as well as allowing relevant human rights issues related to victims to be explored and identified. In this regard, international number of international and regional human rights conventions are analysed to demonstrate that obligations are imposed upon States Parties to protect victims and their human rights. Important guidance for the development and implementation of policies designed to combat trafficking and protect victims of trafficking are also provided through Islamic law and supported by Islamic principles.²³ This thesis argues that as Islamic law is compliant with international law on human trafficking, applying or adopting Islamic principles can play a significant role in addressing the acts, means, and forms of trafficking in the UAE.

¹⁸ International Labour Organization, *A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (International Labour Office 2005) para 59.

¹⁹ *ibid* para 60.

²⁰ Derks, for instance, identified six approaches: trafficking for the purpose of prostitution, in the context of migration, as a labour related issue, as a criminal problem, as a human rights problem, and trafficking in children. See Annuska Derks, 'Combating Trafficking in South Asia: A Review of Policy and Programme Response' (IOM Migration Research Series 2/2000).

²¹ See discussion in chapter two.

²² Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (entered into force 25 December 2003) 2237 UNTS 319 (Trafficking Protocol). It has attracted 173 parties as of April 2018.

²³ United Nations Office on Drugs and Crime, *Combating Trafficking in Persons in accordance with the Principles of Islamic Law* (UN 2010) 1.

The express aim of this thesis is to examine the issue of human trafficking in the UAE. The UAE is a destination and transit country for human trafficking; a large number of the victims are migrant women who are trafficked for the purpose of commercial sexual exploitation, sex bondage and sex slavery.²⁴ The reasons why women migrate to the UAE, and the connection between these reasons and their becoming victims of human trafficking, are assessed in the thesis. It also seeks to explore the scale of human trafficking in the UAE, how victims are trafficked, how traffickers control them, several different forms of trafficking and why trafficking for the purpose of forced labour in the UAE has received comparatively less attention than that of sex trafficking.

Additionally, the thesis evaluates how human trafficking crimes were dealt with in UAE national legislation before Federal Law No 51 of 2006 in Combating Human Trafficking Crimes (hereinafter referred to as Law 51 of 2006) was established. In response to international pressure and the growing national interest in the issue, the UAE government has embarked upon legislative and administrative reforms, which include passing Law 51 of 2006 and Federal Law No 51 of 2006 in Combating Human Trafficking Crimes as amended under Federal Law No 1 of 2015 (hereinafter referred to as Law 51 as amended in 2015). The thesis analyses the legislative gaps in Law 51 as amended in 2015, which includes the definition of the crime of human trafficking (which uses the plural form to refer to trafficked victims and omits definitions of the many forms human trafficking can take); the lack of definition of the *action* and the *means* element in Law 51 as amended in 2015; and the exploitative acts which were restricted and tightened under Law 51 as amended in 2015. Other gaps in Law 51 as amended in 2015 include the adoption of the phrase ‘for the purpose of exploitation’, which implies that the specific intention of exploitation is a necessary element of human trafficking under UAE Law 51, which might lead a court to grant immunity to traffickers.

The thesis also seeks to analyse the UAE government’s Strategy to Combat Human Trafficking and some limitations and shortcomings in its efforts to address human trafficking in the country. For instance, in regard to the victims’ protection strategy, systematic procedures were not

²⁴ Stephanie Hepburn and Rita J Simon, *Human Trafficking Around the World: Hidden in Plain Sight* (Columbia University Press 2013) 66.

employed by law enforcement authorities in the UAE to proactively identify trafficked victims, the law fails to protect the right of foreign trafficked persons to remain in the UAE when they may be in danger of being re-trafficked should they be returned to their home countries,²⁵ nor does it provide permanent residency to victims.²⁶ Moreover, the law does not contain any article on repatriation of victims of trafficking. As a result of the research findings concerning the above deficiencies, recommendations are proffered by the researcher in the concluding chapter.

1.2 Research Aim and Questions

The express aim of this thesis is to critically evaluate the UAE's legislative framework for combating the trafficking of women. In so doing, it will examine the following questions:

1. How effective is UAE law in providing protection to victims of trafficking who are women? What are its strengths and weaknesses and how can it be fortified overall?
2. How does the UAE's legislative framework measure up to key international legal instruments on trafficking?
3. What factors make migrant women especially vulnerable to trafficking for commercial sexual exploitation in the UAE?
4. Can a crime control approach adequately deal with the issue of human trafficking?
5. Can a focus on human rights assist with a more comprehensive understanding of the trafficking of women in the UAE?
6. In what ways does a victim-centered human rights approach enhance protection for trafficked women and victims of human trafficking overall?

²⁵ All victims are sent back to their home countries. Dubai Foundation for Women and Children, 'Annual Report 2014' 59; Dubai Foundation for Women and Children, 'Annual Report 2013' 65.

²⁶ US Department of State, 'Trafficking in Persons Report' (June 2016) 384.

To assist with answering these research questions, it is vital to gain an understanding of five contextual issues. Firstly, an overview of the historical definition of human trafficking and the key elements of this definition, ie the *acts*, *means* and *purposes* that constitute this phenomenon. Secondly, it is necessary to examine migration theories to establish the link between human trafficking and migration. This information is useful in determining what factors and situations make people vulnerable to human trafficking and how traffickers exploit these for profit. Thirdly, it is important to demonstrate how human trafficking as a gross violation of human rights, requires a human rights-based approach to tackle it. Fourthly, it is crucial to examine the development, strengths and weaknesses of the key international human trafficking instruments, such as the Trafficking Protocol and the 1949 Convention, as well as other major international and regional legal instruments related to trafficking. Finally, it is essential to appraise the UAE's current anti-trafficking laws, measures and policies in order to identify areas for reform. Ultimately, it is hoped that the UAE's experience in combating human trafficking might be used as a reference point in addressing similar situations occurring in other countries (in the same region), or could be utilised by countries with similar legal systems facing the same problem.

1.3 Research Methodology

The doctrinal or 'black-letter' approach²⁷ is used in this thesis in order to elucidate how the legal principles found in international anti-trafficking law have been used in domestic law. Doctrinal or black-letter research is defined by Hutchinson and Duncan as 'a synthesis of rules, principles, norms, interpretive guidelines and values. It explains, makes coherent or justifies a segment of the law as part of a larger system of law'.²⁸ For their part, McConville and Chui state that 'doctrinal analysis aims to systematise, rectify and clarify the law on any particular topic by a distinctive mode of authoritative texts that consist of primary and secondary sources'.²⁹ Smits argues that:

[D]octrinal research at its best, involves rigorous analysis and creative synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials. All relevant

²⁷ Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Oxford University Press 2007) 4.

²⁸ Terry Hutchinson and Nigel Duncan, 'Defining and Describing what We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83.

²⁹ McConville and Chui (n 28) 4.

elements are thus fitted together into one working whole, resolving internal inconsistencies among seemingly contradict.³⁰

The doctrinal approach in this thesis includes a methodical description of the legal instruments, rules, norms and principles employed to tackle human trafficking. Such an exposition enables the relationships between them to be questioned, asking whether they cohere.

Doctrinal or black letter law approach is employed to analyse primary and secondary sources of law on specific issues of human trafficking. Primary sources in this thesis take the form of international and regional conventions, treaties as well as domestic statutes and regulations.³¹ By analysing the legal definitions and provisions, it is hoped that the most appropriate and efficient response to fighting human trafficking can be determined.

The thesis also examines several secondary sources. These comprise books, articles, annual reports, working papers and websites (academic and non-academic). The National Committee to Combat Human Trafficking (NCCHT) is an official government body in the UAE, the annual reports it produced between 2007 and 2017 are used in the thesis. The thesis also references reports by the Dubai Foundation for Women and Children (DFWAC) and the Global Reports on Trafficking in Persons by the United Nations Office on Drugs and Crime (UNODC). The controversial Trafficking in Persons Reports issued by the US Department of State between 2002 and 2016 is referenced to compare and contrast the UAE government's official statistics in this area.

There are a number of UAE laws that touch on the subject of human trafficking which this thesis analyses. These are the Federal Law No 6 of 1973 on Entry and Residence of Foreigners,³² Federal Law No 9 of 1976 concerning Delinquent and Vagrant Juveniles, Federal Law No 8 of

³⁰ Jan M Smits, 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research' (Maastricht European Private Law Institute, Working Paper No 2015/06) 6.

³¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Council of Europe Convention on Action against Trafficking in Human Beings; Convention on the Elimination of All Forms of Discrimination Against Women; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Universal Declaration of Human Rights; South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution; ASEAN Convention against Trafficking in Persons, particularly Women and Children; and UAE Trafficking Law 51.

³² Federal Law (6/1973) on Entry and Residence of Foreigners of the UAE (entered into force 25 July 1973).

1980 on Regulation of Labor Relations,³³ Federal Penal Code 1987,³⁴ Law No 15 of 1993 on Regulating Human Organ Transplantation, Federal Law No 15 of 2005 on Regulation of Participations in Camel Races, Federal Law No 39 of 2006 on International Judicial Cooperation and Federal Law No 5 of 2012 on Combating Cybercrimes.

There are clearly also obstacles to addressing human trafficking, and this thesis aims to uncover these. Finally, suggestions and recommendations are made in order to better comprehend and tackle this crime.³⁵ Suggestions for legal reform can be made within this doctrinal approach; it is not simply confined to the above task of illustrating and clarifying the law.³⁶ The argument made in this thesis is that the law requires reform because it is unclear and inconsistent, which severely restricts both its application and implementation. Legal doctrine is not confined to simply describing and understanding the existing law, it includes searching for practical solutions that neatly tie-in with the existing system. Description of doctrine always goes hand in hand with a more prescriptive approach directed towards legal decision-makers such as those in the legislature and the courts and, to a lesser extent, the executive. Legal doctrine can easily fulfil this role of establishing *lex ferenda* because it so successfully reflects the normativity of the law. Doctrine can therefore be said to be a ‘source of information on how to behave’.³⁷

Finally, the comparative approach is adopted in this thesis. This mainly takes the form of a comparison between the UAE Trafficking Law No 51 and international best standards found in the Trafficking Protocol, and through a comparison of the same UAE law with the response of Western and Arab countries more generally. This type of legal research can illuminate new paths to explore in attempts to find legal solutions, and challenges preconceived ideas about how legal systems ought to operate.³⁸ These comparisons also help to show how gaps in UAE law can be filled through adopting good practice and standards, in particular, for the purposes of this research, in the area of human trafficking, and help in suggesting legal reforms. Making reference to other jurisdictions can help identify the various approaches that can be employed to

³³ Federal Law (8/1980) on the Regulation of Labour Relations of the UAE (adopted 20 April 1980).

³⁴ Federal Law (3/1987) on Issuance of the Penal Code (adopted 20 December 1987).

³⁵ Caroline Morris and Cian Murphy, *Getting a PhD in Law* (Hart 2011) 31.

³⁶ Morris and Murphy (n 36) 31.

³⁷ Smits (n 31) 10.

³⁸ Morris and Murphy (n 36) 35.

address the trafficking of women in the UAE, in addition to highlighting their respective areas of strength and weakness. Such a comparative investigation may therefore be useful in assessing the UAE's anti-trafficking measures and policies, as well as suggesting some solutions to them.

1.4 Research Significance and Contribution to Knowledge

This research seeks to contribute to knowledge by filling the gap in the existing literature on the issue of human trafficking in the UAE. Consequently, it will provide a comprehensive and systematic evaluation of human trafficking in the context of the UAE's legislative framework, especially in relation to the UAE Federal Law 51. The research will also analyse several factors that make people vulnerable to trafficking in the UAE and how traffickers readily exploit these situations for financial gain. Additionally, the thesis examines and critiques the provisions of the Trafficking Protocol, the principle international legal instrument on human trafficking. This involves an appraisal of its crime control approach and a discussion of whether a victim-centred human rights approach would combat human trafficking more effectively.

This research will take an in depth look at a number of aspects. The first concerns the situation of human trafficking in the UAE. The second concerns the definition of human trafficking under the UAE Trafficking Law 51, and whether or not it is consistent with the standards established internationally. The third aspect concerns the focus of the provisions in UAE law for combating trafficking through crime control. The final aspect concerns efforts already made in the UAE to combat human trafficking which includes an analysis of the government's legislative mechanisms and practical measures of implementation. The research utilises information and data on human trafficking in the UAE derived from literature, reports, and statistics with the purpose of presenting a comprehensive study incorporating the main aspects of this crime.

1.5 Research Structure

The thesis is divided into eight chapters to meet its research objectives:

Chapter One is the introductory chapter which presents the research background, aim and questions, methodology, significance, the contribution to knowledge, and an outline of the research structure. **Chapter Two** examines how trafficking has been understood and defined at

the international level. It critiques some of the historical definitions of human trafficking as described in international legal instruments. It shows the ways in which laws were inflected by societal views on sex, gender, race, prostitution, consent, exploitation (and more) and how these greatly influenced who was deemed worthy to receive protection in law. Furthermore, it analyses three elements that constitute human trafficking as a crime, namely: the *acts*, *means* and *purpose* elements. The chapter also importantly distinguishes between human trafficking and the smuggling of migrants, and delineates a variety of different forms of the crime of trafficking as articulated in the Trafficking Protocol.

Chapter Three evaluates human trafficking against the backdrop of migration, human rights and Islamic law and principles. Section one looks at migration theory to appraise the links between the trafficking of women, migration and commercial sexual exploitation in the UAE. It introduces the neo-classical economics theory which helps identify the factors (termed as ‘push’ and ‘pull’) that influence an individual’s decision to migrate, and how traffickers exploit these for profit. Section two examines the ways in which human trafficking and sexual exploitation are fundamentally violations of human rights. It analyses the benefits of a victim-centred human rights based approach which demands that equal weight be given to the prosecution of traffickers, crime prevention and the protection of trafficked victims. Section two exposes the impact of human trafficking on trafficked women. Finally, section three considers several Islamic laws and principles that are applicable to human trafficking which can be used to shape contemporary directives on how to address and deal with this crime and the rights of victims in modern-day Muslim societies.

Chapter Four interrogates the international legal response to the trafficking of women. It is divided into two sections. The first section examines the crime control response that is a feature of both the 1949 Convention and the Trafficking Protocol. Alternatively, the second section considers several international³⁹ and regional⁴⁰ legal instruments which adopt a human rights approach to the trafficking of women, and in so doing emphasise the protection of trafficked victims’ rights. Overall, the chapter appraises whether there is a need to address human

³⁹ Conventions adopted by the United Nations such as the UDHR, ICCPR, ICESCR and CEDAW.

⁴⁰ Such as the European Trafficking Convention, SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and Arab Charter on Human Rights.

trafficking and commercial sexual exploitation with a comprehensive framework that combines the crime control approach provisions contained in the Trafficking Protocol with the human rights-based approach contained in human rights instruments.

Chapter Five assesses the trafficking of women in the UAE using data from the UAE government, Dubai Police departments and the Trafficking in Persons Report (TIPR). Included in the chapter is an analysis of the scale of women being trafficked in the UAE, how these victims are recruited and eventually trafficked to the UAE, and the ways that traffickers exert and maintain their control over them. The chapter also reviews how the UAE has been ranked and classified as a destination, transit and origin country for several different forms of human trafficking listed in the TIPR.

Chapter Six traces the development of the legal framework in the UAE that deals with the trafficking of women. It assesses the significance and effectiveness of the Federal Law 51 as amended in 2015 on combating human trafficking and that of several of its legal predecessors. Included in the discussion is an exploration of both the shortcomings and strengths of the provisions contained within these legal instruments. The overall objective of the chapter is to provide a critical evaluation of the legal framework which is currently in place for dealing with the issue of trafficking of women in the UAE, and to investigate whether there are ways that it could be further enhanced.

Chapter Seven reviews the key national policies in the UAE developed to combat human trafficking. The UAE government established the National Committee to Combat Human Trafficking (NCCHT) in 2007 as part of its '5 Ps' approach, namely Prevention, Prosecution, Punishment, Protection and Promotion. The chapter critiques each component of this strategy in turn, and considers them in light of anti-trafficking laws in Jordan and Egypt, as well as information from the TIPR and Polaris Project. The chapter also evaluates the UAE's State responsibility and obligation in international law with respect to human trafficking. It does so by discussing whether or not the UAE, as a party to a number of international instruments, has State responsibility in the event of an internationally wrongful act, and what this might mean with respect to the trafficking of women on its territory.

Finally, the Conclusions and Recommendations open with a review of some of the key research findings - based on the examination of the research questions in the chapters of the thesis - and the Recommendations section offers several valuable insights which emerged from them. As a study concerned with the trafficking of women in the UAE, the research findings are principally concerned with the ways that Federal Law 51 could be strengthened and developed, and how this in turn could positively impact moves to eradicate the pervasive and illegal industry of trafficking in the UAE.

Chapter Two: Understanding and Defining Human Trafficking at the International level: Some Early Attempts

Introduction

A study of the definition of trafficking is, in many senses, also a study of the history of trafficking in international law. A historical analysis of this kind demonstrates that discussions concerning definitions serve ‘as a mask or proxy for infinitely more complicated debates around issues such as prostitution and migration’.¹ The evaluation of an international legal definition of trafficking provides important insights into the ideas, beliefs and assumptions that inform and construct the way individuals, States and the international community think about and respond to it.²

This chapter examines historical definitions of human trafficking and analyses key elements of this phenomenon. The *action*, *means* and *purpose* elements are widely held to be the three dynamic constituent parts of this illegal activity. The chapter scrutinises the definition of human trafficking to be found in early international instruments, as well as that which is contained in the Trafficking Protocol adopted in November 2000.³ Moreover, it importantly distinguishes between human trafficking and the smuggling of migrants by showing how their differences are based upon what is deemed to be a crime against a person (the former) and what is deemed to be a crime against the state (the latter), and how this demarcation is evident in the procedures in place for the investigation, prosecution and prevention of each.

2.1 What is Human Trafficking?

Lee opines that ‘human trafficking is an imprecise and highly contested term’.⁴ There are numerous, sometimes opposing or shifting, understandings of trafficking.⁵ Considering its

¹ Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 13; see also, Sharon Morley and others, *A Companion to State Power, Liberties and Rights* (Policy Press 2017) 136.

² *ibid.*

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (entered into force 25 December 2003) 2237 UNTS 319. It has attracted 173 parties as of April 2018.

⁴ Maggy Lee, *Human Trafficking* (Routledge 2013) 3; Maggy Lee, *Trafficking and Global Crime Control* (Sage 2010) 148.

complexity, scope and overlap with related concepts - such as the smuggling of migrants - the task of defining human trafficking is not an easy one, and thus it has proven very difficult to achieve a universally agreed upon definition.⁶ This section reviews several historical definitions of human trafficking, as well as the most widely accepted contemporary definition of trafficking found in the Trafficking Protocol, in order to avoid conceptual vagueness and ambiguity.⁷

2.1.1 The History of a Definition: Some Early Attempts to Combat Human Trafficking

In less than 30 years, four international conventions have been adopted in an attempt to combat human trafficking. These are the International Agreement for the Suppression of the White Slave Traffic (hereinafter referred to as the 1904 Agreement),⁸ the International Convention for the Suppression of the White Slave Traffic (hereinafter referred to as the 1910 Convention),⁹ the International Convention for the Suppression of the Traffic in Women and Children (hereinafter referred to as the 1921 Convention),¹⁰ and the International Convention for the Suppression of the Traffic in Women of Full Age (hereinafter referred to as the 1933 Convention).¹¹

⁵ Shewit Gebreegziabher, *Modern Slavery in African Land: Situations of Trafficking Women from Ethiopia to Sudan* (Anchor Academic Publishing 2014) 10.

⁶ The special Rapporteur on Violence Against Women made the following statement in regard to the definition of trafficking in her Report to the 56th Session of the Commission on Human Rights: 'At present there is no internationally agreed definition of trafficking. The term "trafficking" is used by different actors to describe activities that range from voluntary and facilitated migration, to the exploitation of prostitution, to the movement of individuals through the threat or use of force, coercion and other means for certain exploitative purposes. Increasingly, it has been recognized that historical characterizations of trafficking are outdated, ill-defined and non-responsive to the current realities of the movement of and trade in people and to the nature and extent of the abuses inherent in and incidental to trafficking.' Radhika Coomaraswamy, 'Integration of the Human Rights of Women and the Gender Perspective, Violence against Women: Report of the Special Rapporteur on Violence Against Women, its Causes And Consequences, on Trafficking in Women, Women's Migration and Violence against Women, submitted in accordance with Commission on Human Rights Resolution 1997/44' (29 February 2000) E/CN.4/2000/68, para 10.

⁷ Jenny J Pearce, Patricia Hynes and Silvie Bovarnick, *Trafficked Young People: Breaking the Wall of Silence* (Routledge 2013) 18.

⁸ International Agreement for the Suppression of the White Slave Traffic (adopted 18 May 1904, entered into force 18 July 1905) 1 LNTS 83.

⁹ International Convention for the Suppression of the White Slave Traffic (adopted 4 May 1910, entered into force 5 July 1920) 8 LNTS 278.

¹⁰ International Convention for the Suppression of the Traffic in Women and Children (adopted 30 September 1921, entered into force 15 June 1922) 9 LNTS 415.

¹¹ International Convention for the Suppression of the Traffic in Women of Full Age (adopted 11 October 1933, entered into force 24 October 1934) 159 LNTS 431.

The 1904 Agreement was the first international anti-trafficking agreement established to fight the phenomenon of human trafficking.¹² Thirteen States in Europe supported measures against the practice of selling people.¹³ The adoption of this agreement reflected the economic situations in European countries where the sale of women and girls occurred.¹⁴ Female victims from England, for instance, worked as prostitutes¹⁵ in France and Belgium.¹⁶ Sex, gender and racial discrimination evidently influenced the legislators who neglected to offer protection to men and non-white women.¹⁷ The intention of the Agreement on ‘white slave traffic’ was to protect women and girls from forced prostitution, sexual exploitation and abuse, rather than to punish the traffickers.¹⁸ Therefore, the 1904 Agreement did little in the fight against white slave trafficking in Europe.

¹² Stephanie A Limoncelli, *The Politics of Trafficking: The First International Movement to Combat the Sexual Exploitation of Women* (Stanford University Press 2010) 66-67; Raquel Aldana and others, *Global Issues in Immigration Law* (West Academic 2013) 45.

¹³ These countries included Belgium, Denmark, France, Germany, Great Britain, Italy, The Netherlands, Norway and Sweden, Portugal, Russia, Spain and Switzerland.

¹⁴ Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Martinus Nijhoff 2012) 342; Georgios Papanicolaou, *Transnational Policing and Sex Trafficking in Southeast Europe: Policing the Imperialist Chain* (Springer 2011) 91; Benjamin N Lawrence and Richard L Roberts, *Trafficking in Slavery's Wake: Law and the Experience of Women and Children in Africa* (Ohio University Press 2012) 147.

¹⁵ A brief note regarding terminology. As explained in Jo Bindman and Jo Doezema, *Redefining Prostitution as Sex Work on the International Agenda* (Anti-Slavery International 1997) Introduction 2a, ‘the word “prostitute” has been used as a social category to describe women who did not adhere to sexual norms, were pitied, despised and excluded from mainstream society. This lowly, marginal and outcast status rendered “prostitutes” vulnerable to exploitation, since they were denied the international, national or customary protections that have been readily available to other citizen-workers. As a result of this precarious situation, the terms “sex work” and “sex workers” were coined by sex workers to redefine and foreground commercial sex as an *income generating mode of employment* (for both women and men), and not as the social and psychological characteristic of a demographic of women. It is a critical redefinition which allows for sex work to enter mainstream debates on human, women’s and worker’s rights at the local, national and international level’ (see discussion in Chapter Two). Concomitantly, although the words ‘prostitute’ and ‘prostitution’ were widely used in the past, they are now liable to cause offence in some circles. It is for these reasons that the researcher would like to clarify that he has endeavoured to only use the terms ‘prostitute’ and ‘prostitution’ in the thesis when it is historically appropriate, or when referencing (directly and indirectly) a source where they are used. In all other instances he has sought to use the terms ‘sex work’, ‘sex workers’, ‘the sex industry’ and ‘commercial sex work’; these terms are not to be equated with ‘sex trafficking’, ‘sexual exploitation’, ‘forced prostitution’ and ‘commercial sexual exploitation’. The latter terms are used in the thesis to delineate and foreground the role of coercion for those working in the sex industry.

¹⁶ Karen E Bravo, ‘Exploring the Analogy between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade’ (2007) 25 Boston University International Law Journal 207, 215-216.

¹⁷ *ibid* 216.

¹⁸ Stephanie Farrior, ‘The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential’ (1997) 10 Harvard Human Rights Law Journal 213, 216.

The 1904 Agreement did not provide a comprehensive definition of the white slave trade.¹⁹ Instead, it obliged States to work together when they received information about the procurement of women or girls for the purposes of prostitution or forced labour, otherwise called immoral acts.²⁰ States were required to provide these victims with protection - rather than punish their traffickers²¹ - and supervise employment agencies.²² Moreover, the 1904 Agreement only covered international trafficking offences, internal trafficking was excluded.²³ Due to its lack of law enforcement provisions, the Agreement allowed for some gathering of intelligence of white slave trafficking rings, including the monitoring of employment agencies who provided work for female foreign nationals.²⁴ Ultimately, the Agreement was ineffective,²⁵ for no provision covered the enhancement of law enforcement, as a consequence trafficking continued unabated.²⁶

Since the 1904 Agreement failed to reduce white slave trafficking,²⁷ a number of States met in 1910 and signed the 1910 Convention, which criminalised the procurement of women for forced prostitution. Despite similarities with the 1904 Agreement, and its focus on the protection of white women, unlike its predecessor the new convention did address the evils of trafficking between States.²⁸ Within the Convention, Articles 3 and 5 stated that the punishment of offenders would be facilitated by amending national legislation, and that this would include the extradition of suspects.

¹⁹ Venla Roth, *Defining Human Trafficking and Identifying its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Martinus Nijhoff 2011) 44.

²⁰ International Agreement for the Suppression of the White Slave Traffic (n 8) arts 1 and 2.

²¹ *ibid* arts 3 and 4 (shelter to female victims of trafficking and repatriation of victims should they desire it).

²² *ibid* art 5.

²³ *ibid* art 3; Farrior (n 18).

²⁴ Christal Morehouse, *Combating Human Trafficking. Policy Gaps and Hidden Political Agendas in the USA and Germany* (Springer 2009) 52.

²⁵ Henry Wilson Harris, *Human Merchandise: A Study of the International Traffic in Women* (E Benn 1928) 38.

²⁶ Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a More Holistic Approach* (Martinus Nijhoff 2006) 14.

²⁷ Nora V Demleitner, 'Forced Prostitution: Naming an International Offense' (1994) 18(1) *Fordham International Law Journal* 163, 168.

²⁸ 'Whoever, in order to gratify the passions of another person, has procured, enticed ... shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.' International Convention for the Suppression of the White Slave Traffic 1910 (n 9) art 1.

In the first article of the 1910 Convention, ‘trafficking’ was more broadly defined than the earlier 1904 Agreement. Notably, it contained the term ‘enticing’ which was used to refer to luring a woman or a girl to work in prostitution by exploiting her interests, hopes or desires, with lies and deception.²⁹ The phrase ‘even with her consent’ was included to emphasise that human trafficking could be done willingly, or unwillingly, due to the victim’s overall lack of awareness of what they were being lured into. The Convention allowed for the protection of women up to the age of twenty.³⁰ For those who were over the age of twenty, the 1910 Convention stated that parties should punish anyone who ‘in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes’.³¹ This provision meant that the trading of white women over twenty years of age was only punishable when it involved coercion.

Nevertheless, detaining a woman or a girl in a brothel against her will was excluded from the 1910 Convention, as this was considered an issue for national legislation.³² Consistent with the 1904 Agreement, the 1910 Convention this aspect of forced prostitution was believed to fall under the domestic jurisdiction of each signatory.³³ The anomaly here is that although States were required to criminalise human trafficking, they were not obliged to criminalise prostitution. However, the 1910 Convention was limited in its scope³⁴ for its inability to include the trafficking of people for other purposes, such as forced marriage or labour.³⁵ Furthermore, there were no rehabilitation measures for victims included within the 1910 Convention, which was a clear indication of the international community’s neglect and indifferent attitude towards a comprehensive policy for anti-trafficking. This failure demonstrates a disconnect between encouraging the rehabilitation of victims, and effective anti-trafficking policies.³⁶

²⁹ Obokata (n 26) 15.

³⁰ Roth (n 19) 45.

³¹ The 1910 Convention (n 9) art 2.

³² *ibid* Final Protocol, para D; Roth (n 19) 45.

³³ Demleitner (n 27) 169.

³⁴ Janie Chuang, ‘Redirecting the Debate over Trafficking in Women: Definition, Paradigms and Contexts’ (1998) 11 *Harvard Human Rights Law Journal* 65, 74-75.

³⁵ Ranyta Yusran, ‘Trafficking in Women and Children and an Observation to ASEAN Counter-Trafficking Efforts’ (Law in a Sustainable Asia, 8th Asian Law Institute Conference, 2011) 10.

³⁶ Morehouse (n 24) 45.

2.1.1.2 Combating Human Trafficking after the Establishment of the League of Nations

The League of Nations (hereinafter referred to as the LN) became involved in the fight to prevent women and children from being trafficked for the purposes of prostitution after the First World War. Within the Covenant of the LN, Article 23(c)³⁷ gave the LN a general mandate to supervise agreements relating to ‘the trafficking of women and children, as well as the ‘trafficking of opium and other dangerous drugs’.³⁸ The LN also adopted two other international instruments relating to trafficking: the 1921 Convention,³⁹ and the 1933 Convention.

The 1921 Convention was successful in its avoidance of race as a determining factor, which was a key shortcoming of the earlier white slave conventions. Unlike its predecessors, this new law applied to both white and black women, as well as to children of both genders.⁴⁰ Consent was deemed irrelevant when referring to children, in contrast to the 1910 Convention’s Article 1 which had only referred to those ‘procured, enticed, or led away’ without their consent. In addition, the 1921 Convention extended the scope of earlier instruments since it required States to provide punishment for those offences referred to within the 1910 Convention’s Articles 1 and 2, as well as ‘attempts to commit, and, within the legal limits, of acts preparatory to the commission’, the crime of trafficking.⁴¹

The 1921 Convention increased the age limit of a victim from twenty to twenty-one years of age.⁴² Crucially, it was the first international instrument that extended protection to male minors who had been trafficked.⁴³ In addition, the Convention encouraged individual States to take

³⁷ Covenant of the League of Nations (opened for signature 28 June 1919, entered into force 10 January 1920) 34 LNTS.

³⁸ Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (Routledge 2012) 33.

³⁹ This Convention endorsed the description of trafficking under the 1910 Convention. Therefore, prostitution and sexual exploitation were treated as an important part of trafficking.

⁴⁰ Burns H Weston and Anna Gear, *Human Rights in the World Community: Issues and Action* (University of Pennsylvania Press 2016) 93; Obokata (n 26) 16.

⁴¹ Allain (n 14) 343.

⁴² Traffic in Women and Children Convention 1921 (n 10) art 5.

⁴³ Robyn Emerton, ‘Trafficking of Women into Hong Kong for the Purpose of Prostitution: Preliminary Research Findings’ (Occasional Paper No 3, University of Hong Kong, February 2001) 4.

action through the licensing and supervision of employment agencies to protect emigrant and immigrant women and children seeking overseas employment.⁴⁴ It emphasised that States should exercise control not only at points of departure, but also during journeys, such as on emigrant ships, in ports and on railways.⁴⁵ Moreover, the effectiveness of combating trafficking in women of all ages was to be enhanced through an Advisory Committee on the Trafficking of Women and Children that was tasked with supervising the implementation of the Convention which participant States were periodically required to feedback to.⁴⁶ The Advisory Committee was also responsible for finding ways of making the legal instrument more effective and efficient.

In 1933, the International Convention for the Suppression of the Traffic in Women of Full Age was adopted. Once again, trafficking was described in terminology comparable with the 1910 and 1921 conventions. However, the main focus of the 1933 Convention was sexual exploitation and prostitution⁴⁷ and not coercion or consent.⁴⁸ A woman's consent was not considered by this Convention as a defence against the crime of trafficking.⁴⁹ Trafficking was described as transporting a woman for the purpose of prostitution to another State, which shows an important acceptance of the existence of human trafficking of women in this Convention which specifically states in Article 1 that it covers acts carried out in another State. Nevertheless, the 1933 Convention was criticised for once again including a gender specific definition of trafficking; it only referred to 'a woman or a girl of full age' in Article 1 and in its title. In addition, the 1933 Convention failed to address children, it neither reaffirms nor disputes the progress made in previous conventions relating to child victims of both genders.⁵⁰ Ultimately, both conventions adopted by the LN (1921 and 1933) were viewed by many of its critics as ineffective for continuing to treat prostitution as a domestic concern, and therefore not authorising States to

⁴⁴ Traffic in Women and Children Convention 1921 (n 10) arts 6 and 7.

⁴⁵ Reyhan Atasü-Topcuolu, *Ideology and the Fight Against Human Trafficking* (Routledge 2014) 48.

⁴⁶ Demleitner (n 27) 170.

⁴⁷ 1933 Convention (n 11) art 1; Obokata (n 26) 16.

⁴⁸ Corin Morcom and Andreas Schloenhardt, 'All about Sex?! The Evolution of Trafficking in Persons in International Law' (The University of Queensland, Human Trafficking Working Group, March 2011) 14; Jessica Elliott, *The Role of Consent in Human Trafficking* (Routledge 2014) 50.

⁴⁹ *ibid* and see also KE Nelson, 'Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches' (2002) 24 *Houston Journal of International Law* 554.

⁵⁰ Morehouse (n 24) 31.

abolish it.⁵¹ As a result, the LN prepared a new draft Convention in 1937, however it was never adopted due to the outbreak of World War II.⁵²

In 1947, following the end of World War II, the Economic and Social Council of the United Nations through Resolution 43 (IV) authorised the Secretary-General to recommence the work of the LN's draft Convention of 1937.⁵³ It was specifically designed 'to cover all the penal clauses of the Conventions of 1910, 1921 and 1933', which brought together the principles contained within previous years' anti-trafficking regimes and a new decision-making procedure that provided a legal instrument outlining agreement on trafficking offences.⁵⁴ Later, this led to the adoption of the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (hereinafter referred to as the 1949 Convention), which equated commercial sex work and prostitution with the evils of human trafficking.⁵⁵ This move criminalised sex work, and within a broader context, was clearly viewed as straying from the perspective of human rights.⁵⁶

The 1949 Convention refocused its attention on human trafficking. It created a neutral ground in gender, which maintained that young boys and men can be trafficked for prostitution,⁵⁷ and covered instances of men's victimisation. Furthermore, forced prostitution was acknowledged as a matter of international law by this Convention.⁵⁸ States were bound by three areas of obligation within the Convention, relating to prohibition, prevention and protection. In addition, States were obliged to follow the anti-trafficking principle, which is the prohibition of trafficking for sexual exploitation. Article 1 of the Convention states that: 'the Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) procures, entices or leads away,

⁵¹ Obokata (n 26) 16.

⁵² *ibid.*

⁵³ *ibid.* 35.

⁵⁴ MC Brand, 'International Cooperation and the Anti-trafficking Regime' (Working Paper Series No 71, Refugee Studies Centre, Oxford Department of International Development, University of Oxford, 2010) 12.

⁵⁵ Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (adopted 21 March 1950, entered into force 25 July 1951) 96 UNTS 271.

⁵⁶ Kamala Kempadoo, Jyota Sanghera and Bandana Pattanaik, *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights* (Paradigm 2005) 10.

⁵⁷ Morcom and Schloenhardt (n 48) 15; Obokata (n 26) 17.

⁵⁸ Demleitner (n 27) 172.

for purposes of prostitution, another person, even with the consent of that person; (2) exploits the prostitution of another person, even with the consent of that person’.

Although the Convention fails to provide definitions of trafficking and forced prostitution,⁵⁹ it does penalise procurement under Article 1, with or without consent, as well as domestic trafficking and trafficking across borders. This perspective helped conceptualise the criminalisation of a broad and complex set of actions. States were required by the Convention to punish individuals involved in keeping, managing or financing brothels.⁶⁰ The Convention also discouraged the registration or supervision of prostitutes.⁶¹ It required States Parties to punish those who procured prostitutes or ran brothels without regard to the victims’ consent to prostitution.⁶² Thus, Article 1 of the 1949 Convention acknowledged the views expressed in the 1927 and 1932 LN reports; that the existence of brothels and the prevalence of trafficking in persons were linked.⁶³

The 1949 Convention incorporated a number of provisions, already presented in earlier international instruments, which were designed to suppress and prevent human trafficking for sexual exploitation. A trafficking offence, as deemed by the Convention, was now an extraditable offence.⁶⁴ States were bound to establish a system of mutual cooperation in exchange for information about human trafficking⁶⁵ and required to implement appropriate immigration and emigration procedures, and to supervise employment agencies to prevent human trafficking.⁶⁶ Cross-border cooperation was seen as imperative in the fight against immigration fraud and forced prostitution. In addition, States were required to prevent

⁵⁹ Yusran (n 35).

⁶⁰ Protocol Amending International Convention for the Suppression of the White Slave Traffic 4 May 1910 (signed 4 May 1949, entered into force 14 August 1951) art 2.

⁶¹ *ibid* art 6: ‘(each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.’

⁶² Gerhard Werle and Vormbaum Moritz, *The African Criminal Court: A Commentary on the Malabo Protocol* (Springer 2016) 114.

⁶³ Roth (n 19) 53.

⁶⁴ 1949 Protocol (n 60) art 8.

⁶⁵ *ibid* arts 14 and 15.

⁶⁶ For instance, arts 17 and 20 of the 1949 Protocol (n 60).

prostitution through rehabilitation, social action, health, economic initiatives, education and other related services.⁶⁷

Yet, the 1949 Convention has been described as weak and ineffective. It has been criticised for its failure to define terms such as ‘prostitution’ and ‘exploitation’ and for not distinguishing between forced and voluntary prostitution.⁶⁸ It has been condemned for equating all prostitution with trafficking and ignoring freedom of choice.⁶⁹ Nelson argues that Article 2 of the Convention, which criminalised the management or finance of brothels, could create a conflict with the trend in the military of organising prostitutes for soldiers.⁷⁰ In short, according to Article 2 such practices within the military could conceivably be equated to managing a brothel. The Convention also failed to apply a human rights approach⁷¹ and to protect the rights of victims of trafficking⁷² since it did not recognise many of the root causes of trafficking, for instance, poverty and the many socio-economic factors related to sex and gender discrimination and oppression.

During the 1990s, the international community came together to develop an internationally agreed upon definition of human trafficking. This was a major development since there was no unanimity.⁷³ It led to States, inter-governmental organisations (hereinafter referred to as IGOs) and non-governmental organisations (hereinafter referred to as NGOs) proposing their own definitions of trafficking, with some focusing only on commercial sex work,⁷⁴ whilst others on trafficking for a wider ‘purpose’.⁷⁵ The definition finally agreed upon by the UN General

⁶⁷ *ibid* art 16.

⁶⁸ Barbara Sullivan, ‘Trafficking in Women: Feminism and New International Law’ (2003) 5(1) *International Feminist Journal of Politics* 67; Janice G Raymond, *Not a Choice, Not a Job: Exposing the Myths about Prostitution and the Global Sex Trade* (Potomac Books 2013) 100.

⁶⁹ Roth (n 19) 55.

⁷⁰ Yusran (n 35) 12.

⁷¹ Alice Edwards, ‘Trafficking in Human Beings: At the Intersection of Criminal Justice, Human Rights, Asylum/Migration and Labor’ 8 <<http://www.law.du.edu/documents/djilp/36No1/Traffic-Human-Beings-Intersection-Criminal-Justice-Human-Rights-AsylumMigration-Labor-Alice-Edwards.pdf>> accessed 20 May 2015; Roth (n 19) 16.

⁷² Human Rights Law Network, *Trafficking and the Law* (Socio-Legal Information Centre 2011) 483; Kempadoo (n 56) 73; Roth (n 19) 55.

⁷³ Gallagher (n 1) 18.

⁷⁴ See, for example, art 1(3) of the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (enacted 1 May 1997, entered into force 15 November 2005).

⁷⁵ Gallagher (n 1) 17.

Assembly in 1994, referred to situations that exploit women and girls economically or sexually through practices such as sexual exploitation, forced adoption, clandestine employment, forced marriages, forced domestic labour, and by illegally transporting people from economically developing countries across national and international borders.⁷⁶

Some may challenge the 1994 General Assembly definition due to its limited focus on the movement of people from developing countries and those with transitional economies, as well as reducing and conflating human trafficking to women and girls, whilst ignoring the plight of men and boys.⁷⁷ Although it incorporated the end result and outcomes of trafficking, such as sexual exploitation, forced domestic labour, clandestine employment, force adoption, and force marriage, the 1994 definition failed to identify coercion as a necessary element of trafficking.⁷⁸ The lack of clarity surrounding the meaning of trafficking was not confined to the UN General Assembly in 1994, since the the International Organisation for Migration (hereinafter referred to as the IOM) attempted in 1996 to give human trafficking a definition which incorporated the experience of migrant workers illegally smuggled into other countries.⁷⁹

Illegal transportation of women migrants with the intention of trading them for economic or personal gain was included in the IOM definition.⁸⁰ The IOM report sets out examples of various elements of trafficking which covered: 1) migrant women deceived about the purpose of their legal or illegal migration; 2) the illegal movement of migrant women facilitated to other countries, with or without their knowledge and consent; 3) selling or trading women for prostitution, marriage, work, or profit-making abusive purposes; and 4) sexually or physically abusing migrant women for trafficking.⁸¹ The IOM definition included both situations where women know that they are being recruited by traffickers for prostitution, and where women are

⁷⁶ United Nations General Assembly, 'Traffic in Women and Girls' (23 December 1994) UN Doc A/RES/49/166; Dimitri Vlassis and Phil Williams, *Combating Transnational Crime: Concepts, Activities and Responses* (Routledge 2013) 244; Gallagher (n 1) 17-18.

⁷⁷ Gallagher (n 1) 18.

⁷⁸ *ibid* 18.

⁷⁹ International migratory movements are to be considered 'trafficking' if the following five conditions are met: (i) money (or other form of payment) changes hands; (ii) a facilitator (traffickers) is involved; (iii) an international border is crossed; (iv) entry is illegal; (v) the movement is voluntary. Frank Laczko and Elizabita Gozdiak (eds), *Data and Research on Trafficking: A Global Survey* (International Migration for Migration 2005) 10.

⁸⁰ Arun Kumar Acharya, 'International Migration and Trafficking of Mexican Women to the United States' in Karen D Beeks and Delila Amir, *Trafficking & the Global Sex Industry* (Lexington Books 2006) 24.

⁸¹ Mary K Meyer and Elisabeth Prügl, *Gender Politics in Global Governance* (Rowman & Littlefield 1999) 232.

deceived into the true purpose of their recruitment.⁸² Gallagher argues that the IOM trafficking definition made no explicit reference to exploitation.⁸³ Trafficking in women became defined as the organised and illegal movement of persons for profit, which is similar to migrant smuggling.

The problems with definitions relating to trafficking were also present in other regions. In 1994, trafficking was defined by the Inter-American Convention on International Traffic as attempts to retain, remove or abduct children or minors for unlawful purposes,⁸⁴ which include servitude, sexual exploitation, prostitution,⁸⁵ as well as coercion, fraud, kidnapping or payment.⁸⁶ An unlawful purpose under this definition does not have to be established if the procurement or retention took place by force, or through payment. In addition, procurement or retention methods were regarded as irrelevant when shown to be unlawful or exploitative.⁸⁷ This influenced the UN definition in 2000⁸⁸ which included detailed expressions of *means* and *purposes* that are illegal.

In 1996, the Steering Committee for Equality between Women and Men of the Council of Europe proposed definitions of trafficking through a 'Plan of Action' which stated that trafficking occurs when women are exploited by others persons for profit. It encompassed the sexual exploitation of women who migrate from their birth country to seek work, or for other legitimate reasons. The Council of Europe 1996 definition disregards the presence of consent or whether migration is legal or illegal where victims are concerned.⁸⁹ Criticisms of this definition include it being vague about whether the concept of trafficking only applies to the end result, or incorporates the entire process, in addition to its scope being confined to women.⁹⁰ Furthermore, The Council of Europe's definition of human trafficking is limited to sexual exploitation and prostitution.

⁸² Migration Information Programme, 'Trafficking in Women to Italy for Sexual Exploitation' (International Organization for Migration, June 1996) 12.

⁸³ Gallagher (n 1) 19.

⁸⁴ Inter-American Convention on International Traffic in Minors (adopted 18 March 1994, entered into force 15 August 1997) art 2(b).

⁸⁵ *ibid* art 2(c).

⁸⁶ *ibid*.

⁸⁷ Gallagher (n 1) 22.

⁸⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons (n 3) art 3(a).

⁸⁹ Michele Hirsch, *Plan of Action against Traffic in Women and Forced Prostitution* (Council of Europe 1996) 11 cited in Marjan Wijers and Lin Lap-Chew, *Trafficking in Women, Forced Labour and Slavery-Like Practices in Marriage, Domestic Labour and Prostitution* (Foundation Against Trafficking in Women 1999) 26.

⁹⁰ Gallagher (n 1) 20.

The Council of the European Union issued a Joint Action statement in 1997 relating to human sexual exploitation and the trafficking of children. It incorporated any behaviour that allows the entry, transit or exit from any Member State's territory for (a) sexual exploitation where coercion, violence, threats or deceit are used, or there is abuse of authority or other pressure which is such that the person has no real and acceptable choice but to submit to the pressure or abuse involved; (b) trafficking in persons other than children for gainful purposes with a view to their sexual exploitation.⁹¹ Once again, this definition was criticised for being too narrow,⁹² with sexual exploitation and migration viewed as the only possible end result.⁹³ Trafficking definitions recommended by the Committee of Ministers of the EU⁹⁴ refer to the procurement by one or more natural or legal persons and/or the organisation of the exploitation and/or transport or migration – legal or illegal – of persons, even with their consent, for the purpose of their sexual exploitation, *inter alia*, by means of coercion, in particular violence or threats, deceit, abuse of authority or a position of vulnerability.⁹⁵ This definition includes *purpose, means* and *actions*, and it is not restricted to one gender. Moreover, the consent of trafficked victims is irrelevant. Notwithstanding this, it has been criticised for its focus on sexual exploitation and for ignoring other forms of trafficking.⁹⁶

In 2000, the Commission on Human Rights received a report by the UN Special Rapporteur on Violence against Women, Radhika Coomaraswamy, who observed that there was no universal consensus on the definition of trafficking. Coomaraswamy commented that trafficking is used to

⁹¹ Joint Action of 24 February 1997 Concerning Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children (97/154/JHA) [1997] OJ L63/2 at Title I A(i), Title I B(a)(b); Nathalie Siron and Piet Van Baeveghem, *Trafficking in Migrants Through Poland: Multidisciplinary Research into the Phenomenon of Transit Migration in the Candidate Member States of the EU, with a View to the Combat of Traffic in Persons* (Maklu 1999) 194.

⁹² Roth (n 19) 63.

⁹³ Gallagher (n 1) 21.

⁹⁴ Gert Vermeulen, Fleur Dhont and Arne Dormaels, *European Data Collection on Sexual Offences Against Minors* (Maklu 2001) 23.

⁹⁵ Council of Europe, Committee of Ministers, 'Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, adopted on May 19, 2000, at the 710th meeting of the Ministers' Deputies' (2000 Committee of Ministers Recommendation, Appendix to Recommendation No R 11, at I(1)), cited in Kresimir Kamber, *Prosecuting Human Rights Offences: Rethinking the Sword Function of Human Rights Law* (Brill 2017) 112.

⁹⁶ Roth (n 19) 111.

procure women for prostitution, manual labour, marriage and adoption.⁹⁷ It was proposed that the trafficking of people should refer to practices of slavery; working conditions that are enforced by authorities that abuse people; bondage related to money that is owed or debt; situations when people are coerced, people are abducted, forced, threatened when imprisoned, or when transferred, sold, purchased, transported or recruited.⁹⁸ This definition is thought of as being sufficiently broad and inclusive, unlike earlier definitions, for both women and men are acknowledged and it clearly states that trafficking might take a variety of modes of exploitation. It is a definition which is designed to fill the vacuum between the process and result concept by insisting that the *action* element of the definition (recruitment, sale, etc) covers ‘all persons involved in the trafficking chain: those at the beginning of the chain who provide or sell the trafficked person, and those at the end of the chain, who receive or purchase the trafficked person, hold the trafficked person in forced labor and profit from that labor’.⁹⁹

2.1.1.3 Definition of Human Trafficking in the Trafficking Protocol¹⁰⁰

Article 3(a) of the Trafficking Protocol defines human trafficking as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁰¹

⁹⁷ United Nations, *The World's Women, 2000: Trends and Statistics* (UN 2000) 158.

⁹⁸ UN Commission on Human Rights, ‘Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on Violence Against Women, its Causes and Consequences, on Trafficking in Women, Women’s Migration and Violence Against Women’ (29 February 2000) UN Doc E/CN.4/2000/68, para 13; Elaine Pearson, *Global Alliance Against Traffic in Women: Human Rights and Trafficking in Persons: A Handbook* (Global Alliance Against Traffic in Women 2001) 30.

⁹⁹ Gallagher (n 1) 24.

¹⁰⁰ Protocol (n 3).

¹⁰¹ *ibid* art 3.

This Protocol provided the first-ever agreed upon international definition of human trafficking.¹⁰² The definition contained in Article 3 was formulated to provide consistency and consensus around the world on the phenomenon of human trafficking.¹⁰³ In particular, it was to be used as a guideline for States Parties to adopt the most effective domestic legislation against this crime.¹⁰⁴ Additionally, it makes clear that the use of force or some form of coercion is necessary for trafficking to have taken place.¹⁰⁵ However, a number of issues have arisen over the scope of legal intervention on human trafficking since the Protocol on Trafficking in persons was adopted. When the Protocol was being drafted, consideration was given to whether it was for the trafficking in women and children only or the trafficking of all persons. Primary drafts of the Protocol reveal that trafficking in women and children was the only area discussed. Later, the draft Trafficking Protocol was revised and covered international trafficking of all persons, regardless of age, gender or race. Consequently, the United Nations General Assembly (hereinafter referred to as UNGA) agreed to widen the Protocol to cover trafficking of everyone, especially women and children.¹⁰⁶

While the definition has provided a basis for the criminalisation of trafficking in many countries, a number of NGOs and States continue to disagree on what actions constitute human trafficking.¹⁰⁷ Two conflicting views have dominated the discussion. They are whether ‘prostitution’ is trafficking or a form of labour (in other words, whether an individual can choose ‘prostitution’ as a profession), and whether force is a necessary component of trafficking into the sex industry.¹⁰⁸ The different approaches to ‘prostitution’ reflect highly contentious debates over how, and if, ‘prostitution’ should be included within a definition of trafficking, and whether to distinguish between voluntary sex work and forced ‘prostitution’.¹⁰⁹

¹⁰² Conny Rijken, *Trafficking in Persons, Prosecution from European Perspectives* (TMC Asser Press 2003) 66; Pearce, Hynes and Bovarnick (n 7) 18; Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery* (Oxford University Press 2008) 206.

¹⁰³ UNODC, *Toolkit to Combat Trafficking in Persons* (UN 2008) 3.

¹⁰⁴ *ibid.*

¹⁰⁵ Junius P Rodriguez, *Slavery in the Modern World: A History of Political, Social, and Economic Oppression: A History of Political, Social, and Economic Oppression* (ABC-CLIO 2011) 443.

¹⁰⁶ UNGA, ‘Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the Works of Its First to Eleventh Sessions’ (3 November 2000) UN Doc A/55/383, para 54.

¹⁰⁷ Roth (n 19) 74.

¹⁰⁸ Rodriguez (n 105) 444.

¹⁰⁹ Rachel Masika, *Gender, Trafficking and Slavery* (Oxfam 2002) 32.

The Coalition Against Trafficking in Women (hereinafter referred to as CATW), along with the Movement for the Abolition of Pornography and Prostitution France (hereinafter referred to as MAPP), the European Women's Lobby (EWL), and the International Federation of Human Rights (FIDH) all played a pivotal role in the evolution of the Trafficking Protocol. The CATW and MAPP organised the International Human Rights Network, a coalition of 140 NGOs from all parts of the world. This was instrumental in advocating for a definition of trafficking that protected all victims of trafficking, not just those who could prove they had been forced.¹¹⁰ Their goal was to abolish the sexual exploitation of women in all its forms and they held the problematic belief that prostitution was comparable to battering, incest, genital mutilation and rape.¹¹¹ The Network also argued that consent is irrelevant; trafficking can occur with, or without the victim's consent.¹¹²

On the other hand, groups such as the prostitutes' rights movement in the United States and Western Europe believe that income is regularly supplemented by a variety of activities, including sex work.¹¹³ Yet critics argue that sex work is only undertaken as a last resort, rather than for women to educate, feed and clothe their children, or when couples want to supplement the family income.¹¹⁴ Nevertheless, scholars and activists stress that sex work is a legitimate trade that should be protected by the same labour rights as other industries, which would subsequently improve the health, safety and working conditions, access to social security and health care for those engaged in it.¹¹⁵ By legitimising or normalising this form of trade, sex workers would attain the proper dignity and rights of other workers.¹¹⁶ These arguments are based on traditional liberal theory which emphasises the free will of people to make autonomous

¹¹⁰ Janice G Raymond, 'The New UN Trafficking Protocol' (2002) 25(5) *Women's Studies International Forum* 494.

¹¹¹ Jo Doezema, 'Forced to Choose Beyond the Voluntary v Forced Prostitution Dichotomy' in Kamala Kempadoo and Jo Doezema, *Global Sex Workers, Rights, Resistance, and Redefinition* (Routledge 1998) 37.

¹¹² Raymond (n 68) 23.

¹¹³ Kamala Kempadoo, 'Introduction: Globalising Sex Workers' Rights' in Kempadoo and Doezema (n 111) 4.

¹¹⁴ *ibid.*

¹¹⁵ Bindman and Doezema (n 15).

¹¹⁶ Stephanie A Limoncelli, 'The Trouble with Trafficking: Conceptualizing Women's Sexual Labor and Economic Human Rights' (2009) 32 *Women's Studies International Forum* 261.

choices about their lives.¹¹⁷ Ultimately, this indicates that it is crucial to delineate what is sex work, what is sexual exploitation, and the role of consent and coercion.¹¹⁸

The Trafficking Protocol represents a compromise between highly conflicting positions on prostitution, thereby enabling it to be widely ratified by States that have different legal systems with regard to it.¹¹⁹ The Interpretative Note of the Trafficking Protocol explicitly states that the Protocol is only concerned with the exploitation of the prostitution of others or forms of sexual exploitation within the context of human trafficking; a directive which allows individual States to choose how to deal with prostitution in their respective domestic laws.¹²⁰ In accordance with Article 3 of the Protocol, the consent of a trafficking victim is irrelevant if any of the *means* set out in the definition are used.¹²¹

2.1.2 Three Key Elements of Human Trafficking

Three key elements are contained in the definition of trafficking within the Trafficking Protocol.¹²² They are the *action*, *means* and *purpose* elements. Many practitioners and commentators sometimes make the mistake of conflating these three elements that define a composite criminal act.¹²³ Each of these components and their significance will be considered in detail in the following pages.

2.1.2.1 The *Action* Element

¹¹⁷ Jody Freeman, 'The Feminist Debate over Prostitution Reform: Prostitutes' Rights Groups, Radical Feminists and the Impossibility of Consent' (1989/1990) 5(1) Berkeley Women's Law Journal 86, 87.

¹¹⁸ See section 2.2.2.2: The 'Means' Element.

¹¹⁹ Holly Cullen, *The Role of International Law in the Elimination of Child Labor* (Brill 2007) 50.

¹²⁰ Roth (n 19) 74.

¹²¹ Article 3 states that consent is irrelevant where any of the prohibited means have been employed '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'.

¹²² This can be seen as what is done, how it is done, and why it is done.

¹²³ United Nations, *Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices* (UN 2003) 101.

The *action* element is the first part of the *actus reus* of the trafficking of adults. However, in the case of trafficking children it is the only part.¹²⁴ This element can be accomplished by a variety of activities including, but not limited to, the practices of recruitment, transportation, transfer, harbouring or receipt of persons.¹²⁵ Although these activities may be neutral in themselves, they would be regarded differently when linked with a particular method of exploitation. There is a lack of interpretative material available that could provide guidance on how these terms should be applied or interpreted.¹²⁶ However, the COE/UN Study on Trafficking in Organs¹²⁷ assists in understanding these terms.¹²⁸

The *action* element within the Trafficking Protocol seeks to control the processes of recruitment, transportation and transfer together with the end result of trafficking (exploitation). The extension of the range of identified actions to contain terms such as ‘harbouring or receipt of persons’ operates to bring not just the processes of recruitment, transportation and transfer, but also the end result of trafficking within the definition. These terms extend the scope to encompass supervisors, managers and owners of brothels, factories, apartments, households and

¹²⁴ Daria Davitti, ‘Shirking Responsibilities: Receiving Countries and the Structural Causes of Conflict-related Child Trafficking’ in Gillian Wylie and Penelope Redmond, *Human Trafficking in Europe: Character, Causes and Consequences* (Springer 2010) 43.

¹²⁵ Amy Whitman and David H Gray, ‘Transnational Human Trafficking’ (2015) 6(3) *Global Security Studies* 11.

¹²⁶ Gallagher (n 1) 29.

¹²⁷ Joint Council of Europe/United Nations Study, ‘Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs’ (Directorate General of Human Rights and Legal Affairs Council of Europe 2009).

¹²⁸ ‘Recruitment is to be understood in a broad sense, meaning any activity leading from the commitment or engagement of another individual to his or her exploitation. It is not confined to the use of certain means and therefore also includes the use of modern information technologies. ... Transportation is also a general term and does not define any particular means or kinds of transportation. The act of transporting a person from one place to another constitutes this element; as in the cases of trafficking in human beings for sexual or labour exploitation, it is not necessary for the victim to have crossed any borders, nor is it necessary for the victim to be present illegally in a state’s territory. The offence therefore includes transnational and national trafficking. The transfer of a person includes any kind of handing over or transmission of a person to another person. This is particularly important in certain cultural environments where control over individuals (mostly family members) may be handed over to other people. As the term and the scope of the offence are broad, the explicit or implied offering of a person for transfer is sufficient; the offer does not have to be accepted for the offence of trafficking in human beings to be constituted if the other elements are also present. The harbouring of persons means accommodating or housing persons in whatever way, whether during their journey to their final destination or at the place of the exploitation. ... The receipt of persons is not limited to receiving them at the place where the exploitation takes place either, but also means meeting victims at agreed places on their journey to give them further information on where to go or what to do.’ *ibid* 78.

recruitment agencies in destination countries, as well as those who transport, control or recruit victims of trafficking.¹²⁹

2.1.2.2 The *Means* Element

The *means* element is the second part of the *actus reus* of human trafficking. Kneebone and Debeljak refer to it as the ‘glue’ between the act of trafficking and the end purpose of exploitation.¹³⁰ It describes one person controlling another after gaining consent from the victim through payments received or given, when power over someone is abused, and when victims experience deceit, fraud, force, abduction or coercion.¹³¹ This element does not refer to trafficking of children, only adults.¹³² The Protocol (Article 3, subparagraphs c and d) states that when children under the age of eighteen are involved, there is no requirement for improper *means* to be established. For minors under eighteen years of age, the prosecution must only prove *action*, which may include the intention to exploit children when transporting them or recruiting them.¹³³

Coercion is an essential element and considered to be of central importance to human trafficking,¹³⁴ which differentiates trafficking from similar phenomena, such as the smuggling of migrants.¹³⁵ Gallagher comments that the *means* includes both direct and indirect activity, ranging from threat, force and coercion, to fraud, deception, abuse of vulnerability or power.¹³⁶ Therefore, when these *means* are adopted to control victims of human trafficking, it is not relevant, nor appropriate to consider the victim’s consent within any definition.¹³⁷ Consequently, the Legislative Guide acknowledges: ‘once it is established that deception, coercion, force or

¹²⁹ Gallagher (n 1) 30.

¹³⁰ Kneebone and Debeljak (n 38) 109.

¹³¹ Paul Close, *Child Labour in Global Society* (Emerald Group 2014) 28.

¹³² Virginia M Kendall and T Markus Funk, *Child Exploitation and Trafficking: Examining the Global Challenges and U.S. Responses* (Rowman & Littlefield 2012) 140.

¹³³ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (UN 2004) 270.

¹³⁴ Marie Segrave, Sanja Milivojevic and Sharon Pickering, *Sex Trafficking* (Routledge 2012) 17.

¹³⁵ Beeks and Amir (n 80) 8.

¹³⁶ Gallagher (n 1) 31.

¹³⁷ Trafficking Protocol (n 3) art 3(b).

other prohibited means were used, consent is irrelevant and cannot be used as a defence'.¹³⁸ In so doing, the burden of proof is not on the trafficked victims, but rests on their traffickers.¹³⁹

The Trafficking Protocol takes a clear line in cases involving coercion and deception of children, yet the interpretation of the terms coercion and deception when adults are involved is often unclear. Trafficking victims are often made promises to gain their consent, and the true extent of what awaits them varies from one victim to another. The nature of victimisation ranges from total coercion, to deception in lesser forms.¹⁴⁰ Complete coercion takes place when victims have been abducted, yet this is an uncommon occurrence when adults are trafficked for sexual exploitation or labour, and it is also rare in cases of child labour (with the exception of child kidnapping).¹⁴¹ Usually, individuals are promised jobs in the legitimate economy as nannies or domestic workers, hotel chambermaids or unskilled workers, and deception takes place when victims find themselves forced into sexual slavery.¹⁴² Lesser forms of deception occur when victims of sexual exploitation have their income taken by traffickers, when they are forced to work against their will, are unable to choose the conditions in which they work, are imprisoned, kept against their will, have their passports withheld and are forced to pay exorbitant fees to have their official travel documentation returned to them.¹⁴³ It is important to note that not all trafficking victims are restrained or controlled physically. Some victims are prevented from asking for help from the police or other local organisations by threats that they will be reported to the police for engaging in illegal activities rather than physical coercion.¹⁴⁴

The concept of the 'abuse of power or of a position of vulnerability' is considered unique to the Trafficking Protocol; this language does not appear in earlier documents. Both phrases focus on the trafficker's state of mind and their intention to exploit, or to take advantage of the victim's vulnerabilities. They thereby perpetuate the notion of the weak victim who lacks agency.¹⁴⁵ In

¹³⁸ UNODC (n 133) 276, para 37; Gallagher (n 1) 28.

¹³⁹ Scarpa (n 102) 61.

¹⁴⁰ Alexis Aronowitz, *Human Trafficking, Human Misery* (Praeger 2009) 2.

¹⁴¹ *ibid.*

¹⁴² *ibid.*

¹⁴³ *ibid.* 3.

¹⁴⁴ Elliott (n 48) 61.

¹⁴⁵ Ramona Vijayarasa, *Sex, Slavery and the Trafficked Woman: Myths and Misconceptions about Trafficking and its Victims* (Routledge 2016) 170.

addition, the Interpretative Notes from the *travaux préparatoires* negotiation of the Trafficking Protocol note that ‘the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real or acceptable alternative but to submit to the abuse involved’.¹⁴⁶ Victims feel vulnerable when they are economically dependent, are in poor health, or have an immigration status that is illegal or precarious. This vulnerability could be understood as economic, social, familial, emotional, physical or psychological, and it is detailed in the Explanatory Report of the European Convention on Action against Trafficking (hereinafter referred to as the European Trafficking Convention). It refers to any situation in which a person is forced to accept their exploitation or humiliation, or where those abusing such situations violate the human dignity and integrity of another and/or infringe upon their human rights.¹⁴⁷

The expression ‘the giving or receiving of payments or benefits to achieve the consent of a person having control over another person’ is vague. A question that arises is: is this limited to the exercise of legal control of one person over another (such as a parent over a child), or can it be extended to include *de facto* control, as may be exercised by employers over employees? No guidance is supplied for this enquiry within interpretative documents such as the UNODC Model Trafficking Law or Legislative Guide.¹⁴⁸

2.1.2.3 The *Purpose* Element

The third element that comprises the *actus reus*, as well as the *mens rea* of trafficking, is the *purpose* element.¹⁴⁹ It refers to the reasons why people are trafficked. Traffickers transport victims to be exploited either during transportation, at the destination, or both.¹⁵⁰ The Trafficking Protocol defines ‘exploitation’ to include ‘at minimum the exploitation of the prostitution of

¹⁴⁶ UNODC, ‘Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto’ (2006) 347; Jean Allain, *The Law and Slavery: Prohibiting Human Exploitation* (Brill 2015) 351; Allain (n 14) 357.

¹⁴⁷ Council of Europe, ‘Explanatory Report on the Convention on Action against Trafficking in Human Beings’ (16 May 2005) ETS 197, para 83, cited in Gallagher (n 1) 32.

¹⁴⁸ Gallagher (n 1) 33.

¹⁴⁹ *ibid* 34.

¹⁵⁰ Violeta Moreno-Lax and Efthymios Papastavridis, *Boat Refugees' and Migrants at Sea: A Comprehensive Approach: Integrating Maritime Security with Human Rights* (Brill 2016) 147.

others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'.¹⁵¹

Slavery, forced labour or services, and servitude are all defined in other instruments, and cover many forms of trafficking.¹⁵² However, the Protocol does not define the terms 'sexual exploitation' or 'exploitation of prostitution'.¹⁵³ The *travaux preparatoires* confirm that the two terms were deliberately left undefined, indicating that 'the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons'. It states that 'the terms "exploitation of the prostitution of others" or "other forms of sexual exploitation" are not defined in the Protocol, which as previously mentioned is without prejudice to how States Parties address prostitution in their respective domestic laws'.¹⁵⁴

The critical point to note here is that the Trafficking Protocol's definition of trafficking requires all three elements: *act*, *means* and *purpose*. It is generally recognised that if one component from each of the three elements is present, then the result is human trafficking,¹⁵⁵ with the exception that the *means* element is not required for child trafficking.¹⁵⁶ The Trafficking Protocol (Article 3c) states 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'.

2.2 Human Trafficking Versus the Smuggling of Migrants

Trafficking should not to be confused with migrant smuggling. There is a distinct difference between human trafficking and the smuggling of migrants which necessitates discrete procedures for the investigation, prosecution and prevention of each. This is because the smuggling of migrants is considered a crime against the State, whereas human trafficking is viewed as a crime

¹⁵¹ Trafficking Protocol (n 3) art 3(a).

¹⁵² Section 2.2.5 will discuss forms of trafficking in detail.

¹⁵³ Segrave, Milivojevic and Pickering (n 134) 17.

¹⁵⁴ Masika (n 109) 32.

¹⁵⁵ John Winterdyk, Benjamin Perrin and Philip Reichel, *Human Trafficking: Exploring the International Nature, Concerns, and Complexities* (CRC Press 2011) 8.

¹⁵⁶ Shewit Gebreegziabher, *Modern Slavery in African Land: Situations of Trafficking Women from Ethiopia to Sudan* (Anchor Academic Publishing 2014) 11.

against the person.¹⁵⁷ This offers an explanation as to why the treatment of trafficked victims is markedly different from the treatment of a person who is smuggled,¹⁵⁸ with States often applying very punitive measures, such as detention, arrest and deportation, towards the latter.¹⁵⁹

By way of illustration, Gallagher points out that there is no requirement to give a smuggled person the right to remain temporarily or permanently in the territory of a State Party in the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Crime (hereinafter referred to as the Smuggling of Migrants Protocol).¹⁶⁰ Furthermore, she argues that the safety of smuggled persons is not taken into consideration with regard to the repatriation process under the Smuggling of Migrants Protocol.¹⁶¹ Additionally, special protections in relation to psychological or physical harm, the remedy right, the personal safety of smuggled persons, the protection of smuggled children, and measures against smugglers are not provided in the Smuggling of Migrants Protocol.¹⁶²

Smuggling of migrants is defined as ‘the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident’.¹⁶³ This means that smuggling requires the crossing of borders (always international) and entering other countries illegally, whereas human trafficking can remain within the borders of one country¹⁶⁴ and trafficked persons may enter the destination country either legally or illegally.¹⁶⁵ In other words, trafficked victims can be any

¹⁵⁷ Ichiro Kawachi and Sarah P Wamala, *Globalization and Health* (Oxford University Press 2006) 164; Atasü-Topcuolu (n 45) 104.

¹⁵⁸ US Department of State, ‘Responses to Human Trafficking’ (2003) 8(2) *Global Issues* 38.

¹⁵⁹ Rebecca Napier-Moore, *FAQ 2: Smuggling and Trafficking Intersections by Global Alliance Against Traffic in Women* (GAATW 2011) 8.

¹⁶⁰ Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Crime (adopted 15 November 2000, entered into force 28 January 2004). Gallagher (n 1) 279.

¹⁶¹ Gallagher (n 1) 279.

¹⁶² *ibid.*

¹⁶³ Protocol against Smuggling (n 160) art 3(a); Siddhartha Sarkar, ‘Nexus of Trafficking and Migration Issues’ (2016) 5(1-2) *International Journal of Cross-Cultural Studies* 27; Ilse van Liempt, *Navigating Borders: Inside Perspectives on the Process of Human Smuggling into the Netherlands* (Amsterdam University Press 2007) 41.

¹⁶⁴ Sally Cameron and Edward Newman (eds), *Trafficking in Humans: Social, Cultural and Political Dimensions* (UN 2008) 111.

¹⁶⁵ Dina Siegel, H Bunt and D Zaitch, *Global Organized Crime: Trends and Developments* (Springer Science & Business Media 2003) 88.

nationality, as opposed to smuggled migrants who are always foreign nationals¹⁶⁶ or stateless people.¹⁶⁷

Other key differences between these two phenomena are that the relationship between the smuggler and the migrant ends once the person has crossed an international border.¹⁶⁸ In contrast, human trafficking is ongoing and constitutes a continuous exploitation of victims that provides an unlawful profit to criminals.¹⁶⁹ Furthermore, the process of human smuggling involves the consent of smuggled victims, while human trafficking can involve consent which is often elicited by deception, force or coercion.¹⁷⁰ Smuggled persons, even if they live and work under conditions where they are exploited, are – in theory - free to leave whenever they wish. However, trafficked persons are entirely at the mercy of those involved in the criminal enterprise of trafficking who may be threatening to harm their families, have seized their passports and/or official travel documentation, and who are subjecting trafficked victims to conditions of debt bondage and slavery.¹⁷¹

Despite the differences outlined above, there are common characteristics shared by those who are trafficked and those who are smuggled. Both groups often leave their home countries willingly however, due to their illegal status in the destination country, they are both at risk of exploitation.¹⁷² When migrants use the services of smugglers voluntarily and later find themselves in situations that are coercive, they become the victims of trafficking. A trip by a migrant that starts out as voluntary can easily descend into trafficking. Essentially, there are no guarantees that a person will not be exploited or trafficked even in cases where all the money is paid in full before the migrants depart.¹⁷³

¹⁶⁶ Winterdyk and Reichel and Perrin (n 155) 26.

¹⁶⁷ Anne T Gallagher and Fiona David, *The International Law of Migrant Smuggling* (Cambridge University Press 2014) 150.

¹⁶⁸ Roth (n 19) 97; OECD, *OECD Reviews of Risk Management Policies Illicit Trade Converging Criminal Networks: Converging Criminal Networks* (OECD 2016) 39.

¹⁶⁹ Catherine Paris, *Modern Day Slavery – Human Trafficking Revealed* (Claddagh 2007) 9.

¹⁷⁰ Edna Keeble, *Politics and Sex: Exploring the Connections between Gender, Sexuality, and the State* (Canadian Scholars' Press 2016) 174; Min Liu, *Migration, Prostitution, and Human Trafficking: The Voice of Chinese Women* (Transaction Publishers 2013) 35.

¹⁷¹ Aronowitz (n 140) 7; Rodriguez (n 105) 525.

¹⁷² Aronowitz (n 140) 7; Judith Ann Warner, *Battleground: Immigration* (ABC-CLIO 2008) 295; Rodriguez (n 105) 43.

¹⁷³ Aronowitz (n 140) 7.

2.3 Some Forms of Human Trafficking as Expressed in the Trafficking Protocol

2.3.1 *The Exploitation of the Prostitution of Others or Other Forms of Sexual Exploitation*

The Trafficking Protocol recognises that human trafficking comes in a variety of diverse forms and is related to: ‘the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.¹⁷⁴ However, the terms ‘exploitation of the prostitution of others’ and ‘sexual exploitation’ are not defined in the Trafficking Protocol.¹⁷⁵ They were included in the definition as a means to end an unnecessary year-long debate over whether or not voluntary prostitution should be defined as trafficking.¹⁷⁶ During the drafting process, delegates were unable to reach any agreement on this point and finally compromised (on the last day of negotiations) by leaving the terms undefined.¹⁷⁷ This enabled governments to sign the Protocol despite their differing domestic laws on sex work.¹⁷⁸ Therefore, it could be said that these forms of trafficking occur when victims are forced into sexually exploitative situations.¹⁷⁹ Although a large number of trafficked victims are women and girls who are subjected to sexual exploitation,¹⁸⁰ in the past few decades it has been importantly recognised that human trafficking is related to many diverse forms of exploitation which incorporates much more than sexual coercion.¹⁸¹ Human trafficking is pervasive; it occurs in a range of labour sectors, including domestic work, hospitality services, agriculture, fishing, manufacturing and construction.¹⁸²

¹⁷⁴ Trafficking Protocol (n 3) art 3.

¹⁷⁵ Sole Alba Zollo, *Promotion, Popularisation and Pedagogy: An Analysis of the Verbal and Visual Strategies in the COE's Human Rights Campaigns* (Cambridge Scholars Publishing 2014) 95; Scarpa (n 102) 6; Roth (n 19) 124.

¹⁷⁶ Masika (n 109) 32.

¹⁷⁷ *ibid.*

¹⁷⁸ Masika (n 109) 32; Alba Zollo (n 177) 95.

¹⁷⁹ Borg Jansson (n 175) 84.

¹⁸⁰ UNODC, *Global Report on Trafficking in Persons* (UNODC 2014) 9. In accordance with this Report, between 2007 and 2009 all human trafficking cases in the UAE were about forced prostitution (See UAE, ‘Annual Trafficking Report 2010-2011’ 13). Between 2008 and 2010, (62%) of trafficked victims were trafficked for the purpose of sexual exploitation in the UAE (See European Scrutiny Committee, *Twentieth Report of Session 2014-5* (HC 219) 114; Angela Sammarco, *Women's Health Issues Across the Life Cycle* (Jones & Bartlett 2016) 283.

¹⁸¹ Antonis Antoniadis, Robert Schütze and Eleanor Spaventa, *The European Union and Global Emergencies: A Law and Policy Analysis* (Bloomsbury 2011) 226.

¹⁸² Alison Brysk and Austin Choi-Fitzpatrick, *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (University of Pennsylvania Press 2012) 158; Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press 2010) 234; JW Boynton, *Trafficked: A Novel* (Lulu 2015) 222.

2.3.2 *Forced Labour or Services*

The notion of exploitation of labour in the definition of human trafficking allows for a link to be established between the Trafficking Protocol and the Forced Labour Convention concerning forced labour. It establishes that human trafficking for the purpose of exploitation is encompassed by the definition of forced or compulsory labour in the Convention.¹⁸³ Forced service or labour is defined as a situation where individuals do not voluntarily offer themselves to carry out specific work or services, or where individuals carry out work or services under threat of punishment; this is described in paragraph 1 of Article 2 of the Convention.¹⁸⁴

While the Protocol draws a distinction between exploitation for forced labour or services, and sexual exploitation, this should not lead to the conclusion that sexual exploitation does not amount to forced labour or services, particularly in the context of trafficking. Sexual exploitation and forced prostitution fall within the scope of the definition of forced labour or compulsory labour.¹⁸⁵ The ILO Committee of Experts treat trafficking for the purpose of commercial sexual exploitation as one form of forced labour.¹⁸⁶ Accordingly, it might be argued that forced labour involves coercion and denial of freedom or lack of consent to the conditions of work.¹⁸⁷ The ILO has developed a list of six indicators, it asserts that if two or more are present, there is a strong suggestion of forced labour. These ILO indicators include a labourer not being able to determine their employment, being paid very low or no wages, being in a condition of debt bondage and subjected to the constant threat of denunciation to the authorities.¹⁸⁸

¹⁸³ United Nations, *Model Law Against Trafficking in Persons* (UN 2009) 15; Gallagher (n 1) 35.

¹⁸⁴ Forced Labour Convention, 1930 (No. 29) (entered into force 1 May 1932, adopted 28 June 1930) art 2(1); Graeme Baber, *Essays on International Law* (Cambridge Scholars Publishing 2017) 219; Ramesh Chandra, *Liberation and Social Articulation of Dalits* (Gyan Publishing House 2004) 166.

¹⁸⁵ United Nations (n 185) 15.

¹⁸⁶ International Labour Office, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (International Labour Office 2005) 25.

¹⁸⁷ Kneebone and Debeljak (n 38) 122.

¹⁸⁸ The six indicators are: threats of or actual physical or sexual violence; restriction of movement and confinement, to the workplace or to a limited area; debt bondage: where a worker work to pay off debt or loan, and is not paid for his or her services; withholding of wages, refusing to pay the worker at all or excessive wage reductions; retention of passports and identity documents; threat of denunciation to the authorities. See International Labour Office (n 188) 20-21.

A point to note is that not all forced labour is a result of trafficking.¹⁸⁹ Forced labour only amounts to trafficking when the process elements of the Trafficking Protocol definition and the intended purpose, identified earlier in this chapter, are present.¹⁹⁰

2.3.3 Slavery or Practices Similar to Slavery, Servitude

Slavery is categorically and unambiguously regarded as a form of human trafficking. It occurs when victims are considered to be owned as a right by other individuals who exercise power over them. It is delineated in this way in the Convention to Suppress the Slave Trade and Slavery.¹⁹¹ Bales, a leading expert on slavery and trafficking, defines slavery as the point at which victims lose their free will, so that they are unable to autonomously sell their labour, and are subjected to threats of violence or actual violence. Thus, slavery contains three important elements: the threat or use of violence, control by another and the appropriation of labour.

Practices that are analogous to slavery are legally regarded as forms of human trafficking. The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (hereinafter referred to as the Supplementary Convention of 1956) provides for the abolition of practices ‘similar to’ slavery, which are, debt bondage, serfdom, several forms of forced marriage, and exploitation of children and their labour.¹⁹² The Supplementary Convention of 1956 recognises situations of bonded labour or debt bondage as comparable to slavery, specifically when the nature and length of service is inadequately defined, the repayment of a debt is not applied or is ineffectively assessed in terms of its value, and a debt

¹⁸⁹ Forced labor is closely linked to human trafficking but is not identical to it. While most victims of trafficking end up in forced labor, not all victims of forced labor are in this situation as a result of trafficking. For example, people who are coerced to work in their place of origin have not been considered in the ILO’s own estimates of forced labor as trafficking victims. A distinction must also be drawn between those people who are under some form of economic compulsion to accept sub-standard working conditions because they simply have no alternative (exploitation or abuse of vulnerability, but not necessarily forced labor) and those against whom actual coercion is exercised by a third party to force them to undertake a job against their will (forced labor). Gallagher (n 1) 50; Dina Siegel and Roos de Wildt, *Ethical Concerns in Research on Human Trafficking* (Springer 2015) 100.

¹⁹⁰ Kneebone and Debeljak (n 38) 123.

¹⁹¹ Convention to Suppress the Slave Trade and Slavery (signed 25 September 1926, entered into force 9 March 1927) 60 LNTS 253, art 1(1); Jean Allain, *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2012) 252; Satvinder S Juss, *The Ashgate Research Companion to Migration Law, Theory and Policy* (Routledge 2016) 285.

¹⁹² Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957); Steven R Ratner, Jason S Abrams and James L Bischoff, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (Oxford University Press 2009) 116; Allain (n 146) 393.

is used as a security control which is placed over victims.¹⁹³ It is for all of these reasons that governments are obliged to enact legislation to abolish debt bondage and similar practices that lead to victims being forced into servile status.¹⁹⁴

A traditional form of trafficking involves loaning money or services to individuals only for the victims to discover later that they need to repay this debt with forced labour. For example, over many years people travelled to South America and North America to work as servants; they were indentured which required them to repay their transport costs to these countries by working for their new owners for seven years.¹⁹⁵ Moreover, many women who are sex trafficked find themselves not only sexually exploited, but also cast into a state of debt-bondage where they are expected to repay the costs of transporting them from their origin country, as well as paying for their accommodation and food so that they remain in a state of debt bondage to their traffickers. It might be assumed that victims are eventually released on payment of sufficient money to the traffickers, as they would then be free of debt bondage,¹⁹⁶ but many female victims of human trafficking who are trapped in situations of commercial sexual exploitation never repay these costs due to exploitation by traffickers, or they find that they never receive any money for the sexual services they are forced to provide, which is often controlled by the traffickers. It is unsurprising that these victims of debt bondage become frustrated, demoralised and worse by their circumstances, although a minority do eventually manage to repay their debt bond.

In the case of debt bondage, there is an additional factor to consider: the time agreed for debt clearance and how the nature of the work is often at variance with the original arrangement at the time of recruitment. Descriptions of how long it will take to repay a loan, the payment details, guarantees initially provided, and the work undertaken for repayment of the debt can frequently be inconsistent, contradictory and untrue. Traffickers may deliberately keep their accounts

¹⁹³ Supplementary Convention (n 194) section 1, art I(a); Kevin Bales, *Understanding Global Slavery: A Reader* (University of California Press 2005) 59; Vijayarasa (n 145) 48.

¹⁹⁴ See Article 7(b) of Supplementary Convention (n 194); Jatindra Kumar Das, *Human Rights Law and Practice* (PHI Learning 2016) 159.

¹⁹⁵ Bales (n 195) 149.

¹⁹⁶ Kathryn Cullen-DuPont, *Global Issues: Human Trafficking* (Infobase Publishing 2009) 11.

arbitrary and obscure so that the women who work for them have little access to, or no understanding of the way their debt is being calculated.¹⁹⁷

The status of serfdom and forced marriage are other practices which are comparable to slavery.¹⁹⁸ Victims of serfdom cannot change their status, and they offer specific services to others that might involve payment or not, as well as being forced to work and live on land owned by others according to agreements, customs or laws that control the status or condition of tenants, as defined in the Supplementary Convention of 1956.¹⁹⁹ The 1956 Supplementary Convention classifies women in forced marriages as ‘persons of servile status’.²⁰⁰ It prohibits ‘any institution or practice whereby ... 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 other person or group’.²⁰¹ This form of human trafficking occurs when the marriage takes place against the will of at least one of the parties involved and their refusal is ignored, when one party is afraid to resist because the psychological, social or emotional pressure exerted by the family is too great, or when physical coercion has been applied or threatened.²⁰²

An important point to note is that forced marriage is very different from an arranged marriage. An arranged marriage usually involves a negotiation between two families, for girl A and boy B to date each other. Eventually they get married, based on mutual agreement between the two families and with the full consent of both the potential bride and groom. They may like, or even be in love with, each other.²⁰³ Forced marriage, by contrast, can be a form of debt bondage. In Afghanistan, for example, there are recorded instances of men whose opium crops have failed, or have been destroyed, find themselves unable to repay their debt to the local warlord and so have offered their young daughters in marriage as payment for their debt.²⁰⁴

¹⁹⁷ Human Rights Watch, *Owed Justice. Thai Women Trafficked into Debt bondage in Japan* (HRW 2000) 89.

¹⁹⁸ Allain (n 146) 379.

¹⁹⁹ Supplementary Convention (n 194) art 1(b); Close (n 131) 18.

²⁰⁰ Cullen-DuPont (n 198) 14.

²⁰¹ 1956 Supplementary Convention (n 194) art 1(c); Rodriguez (n 105) 486.

²⁰² Andrea Büchler, *Islamic Law in Europe? Legal Pluralism and its Limits in European Family Laws* (Routledge 2016) 42.

²⁰³ Yaya Sillah (aka Yaya-Patchari), *Marriage and Society* (Xlibris Corporation 2014) 30.

²⁰⁴ Aronowitz (n 140) 123.

Illegal adoption is another practice that can be compared to slavery.²⁰⁵ It occurs when parents sell their children for money, or when children are kidnapped by human traffickers.²⁰⁶ As McCabe argues, the buying and selling of children under the umbrella of adoption is another extension of trafficking, as children may be sold or stolen from their birth family and then sold either for adoption or exploitation.²⁰⁷ Illegal adoption is not mentioned in the Trafficking Protocol definition. However, the *travaux préparatoires* included this form of exploitation among those that fall within its scope, in cases in which they amount to practices similar to slavery as defined by the Supplementary Convention of 1956 Article 1(d), namely, any institution or practice whereby children who are younger than eighteen years of age are exploited by removing them from their natural parents to another person, or by their guardians to another person whether for reward or not, with a view to the exploitation of the child or young person or of their labour.²⁰⁸

On the one hand, only those illegal adoptions leading to the exploitation of a minor fall within the definition of human trafficking, including *inter alia* ones whose purposes involve young victims of forced marriage, sexual activity involving adults, enforced begging, or other types of exploitation.²⁰⁹ On the other hand, the scope of the Trafficking Protocol does not include illegal adoption in which children (including babies) are not considered to be exploited; this is believed to apply to many instances of illegal adoption.²¹⁰ Despite the divergent definitions of the illegal adoption of children, most international organisations and countries across the world recognise that trafficking and international adoption of children are incontrovertibly linked.²¹¹

²⁰⁵ Article 1(d) of the Supplementary Convention (n 194); UN, *Combating Trafficking in Persons. A Handbook for Parliamentarians* (United Nations Publications 2009) 16; Alba Zollo (n 177) 96.

²⁰⁶ Aronowitz (n 140) 126.

²⁰⁷ Kimberly A McCabe, *The Trafficking of Persons: National and International Responses* (Peter Lang 2008) 13.

²⁰⁸ Supplementary Convention (n 201); Alba Zollo (n 177) 96.

²⁰⁹ Scarpa (n 102) 7.

²¹⁰ They fall within the scope of application of both the Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.

²¹¹ Gallagher (n 1) 41.

The final part of this subsection aims to consider servitude as another form of trafficking. It is a practice which is prohibited, but not explicitly defined by international law.²¹² The history of the international legal prohibition of servitude suggests that it is more expansive than ‘slavery’ and not confined to the four institutions and practices similar to slavery proscribed by the Supplementary Convention of 1956.²¹³ The European Commission of Human Rights consider that in addition to the obligation to provide another with certain services, the concept of servitude includes the obligation on the part of the ‘serf’ to live on another’s property and the impossibility of ever changing their condition.²¹⁴ In addition, legal scholars interpreting the European Convention for the Protection of Human Rights and Fundamental Freedoms, have suggested that servitude refers to ‘the total of labour conditions and/or the obligation to work or to render services from which the person cannot escape and which he cannot change’.²¹⁵

Interpretations of the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR) argue that those ‘labour conditions’ suffered must be economically abusive and create a dependent relationship between the individual and her employer.²¹⁶ In addition, the Trafficking Protocol’s revised draft makes a proposal that servitude includes the situation where victims are trapped in debt bondage or domestic servitude, or where they must perform services for another person and have no possible alternatives or choices, so they are considered to be coerced or compelled to carry out these services, which is unlawful.²¹⁷ Although no consensus exists regarding the definition of servitude, two components can be extracted from the above interpretations: a dependent, economically-abusive labour relationship, and no reasonable possibility of escape.²¹⁸

²¹² Human Rights Watch, ‘Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States’ (HRW reports, volume 13, issue 2, 2001) 50.

²¹³ Art 1. In summary form, the following four ‘institutions and practices’ are proscribed by the Supplementary Convention: debt bondage; serfdom; delivery of a minor to another by her present or guardian for exploitation of the child or her labor; and the promise, surrender, or transfer of a women in marriage through payment of consideration to another or through inheritance.

²¹⁴ HRW (n 214) 50; Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* (Cambridge University Press 2002) 360; Leila Nadya Sadat and Michael P Scharf, *The Theory and Practice of International Criminal Law: Essays in Honor of M. Cherif Bassiouni* (Brill 2008) 407.

²¹⁵ Pieter van Dijk and Godefridus JH Van Hoof, *Theory and Practice of the European Convention on Human Rights* (Martinus Nijhoff 1998) 334; Gallagher (n 1) 182.

²¹⁶ HRW (n 214) 50.

²¹⁷ *ibid* 50; Prabha Kotiswaran, ‘Beyond Sexual Humanitarianism: A Postcolonial Approach to Anti-Trafficking Law’ (2010) 4(1) UC Irvine Law Review 369; Gallagher (n 1) 37.

²¹⁸ HRW (n 214) 50.

2.3.4 *The Removal of Organs*

The removal of organs is classified as a form of human trafficking in the Trafficking Protocol.²¹⁹ Organs are removed and sold to patients who need them. One example is where an individual is recruited in order to remove and sell one of their kidneys, although the process can be deadlier.²²⁰ Improvements in biotechnology and organ transplant operations over recent years have created an illegal trade in removing organs from victims when organs, such as livers and kidneys, are not readily available. Examples of illegal organ removal as abuses of human rights include organs removed from executed prisoners in China, from children and adults kidnapped in Brazil, and from children and adults in poor communities in South Africa and India. It has created an illegal distribution and procurement business for spare body parts or transplant organs.²²¹ The World Health Organization report that human trafficking agents charge wealthy patients that need donor organs between ten and two hundred thousand dollars, and suggest that this illegal trade is proliferating.²²² Despite this, incredibly US anti-human trafficking laws do not define trafficking in human organs as a form of human trafficking,²²³ which makes the USA the only country in the world that does not recognise this as a type of human trafficking.²²⁴

Doctors are often identified as the primary agents who contact criminal groups across the world to source body parts for wealthy patients willing to pay high fees for transplant organs. Victims of trafficking are so vulnerable that their organs are removed in order to be sold. Most countries prohibit the transfer of body parts or organs, unless the donor has died, but reports indicate that in India individuals living in poverty are offered money to donate a kidney.²²⁵ The removal of organs is not defined by the Trafficking Protocol in terms of the detail of what needs to be recognised. However, the *travaux préparatoires*, subsequently confirmed by the Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as the Trafficking Convention) and the Protocol Thereto drafted by

²¹⁹ Atasü-Topcuolu (n 45) 32.

²²⁰ Winterdyk, Perrin and Reichel (n 155) 27.

²²¹ Lee, Human Trafficking (n 4) 43.

²²² *ibid* 42.

²²³ Morehouse (n 24) 156.

²²⁴ Winterdyk, Perrin and Reichel (n 155) 94.

²²⁵ Bales (n 195) 150.

the United Nation Office on Drugs and Crimes (hereinafter referred to as UNODC) to facilitate States Parties' implementation of the measures contained in this treaty, explained that the consent given by a guardian or parent for organs to be removed from a child for therapeutic reasons or medical reasons is considered outside the scope of the Trafficking Protocol.²²⁶

Notably, the removal of organs without the *means* element of trafficking, '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', does not necessarily constitute a crime. Whereas, control over a person held for the purpose of commercial sexual exploitation, forced labour, servitude or slavery always constitutes a crime, with regard to the removal of organs, a legitimate avenue for the donation of, for example, a kidney to a loved one does exist, and is on the whole legal.²²⁷ Thus, what is prescribed by the Trafficking Protocol is not the removal of organs *per se*, rather it is the exploitative removal of organs in the process of trafficking. As such, it is necessary to scrutinise that what constitutes 'the removal of organs' as a crime is intrinsically linked to the *means* by which this removal allows for unscrupulous organ-brokers and surgeons to take unfair advantage of the destitution of the people they seek to exploit.²²⁸

2.4 Conclusion

This chapter has sought to foreground several historical and contemporary shortcomings and dilemmas that have occurred when seeking to understand, define and combat human trafficking in international law and was divided into three sections. The first section described how early international instruments, such as the 1904 Agreement, exhibited discrimination and bias based on sex, gender and race by only affording protection to victims of trafficking who were white women, whilst the 1910 Convention was preoccupied with the role of enticement and consent, yet overlooked forced labour and the rehabilitation of victims. Despite these pitfalls, the victimisation of men and boys gradually entered the discourse on trafficking for prostitution, as is evident in the 1921 and 1949 Conventions. Nevertheless, debates continue to rage on the subject of prostitution and sex work in international legal instruments more broadly. Typically,

²²⁶ Scarpa (n 102) 7; UNODC, *Model Law Against Trafficking in Persons* (UN 2009) 38; UNODC (n 146) 269.

²²⁷ Allain (n 14) 340.

²²⁸ *ibid.*

they question: is prostitution and/or sex work trafficking? Are there any occasions where prostitution and/or sex work can be distinguished apart from exploitation? Is it possible for these terms to be defined with respect to a person's freedom of choice? These concerns were repeatedly disputed during the drafting process of the Trafficking Protocol; the final document was said to represent a compromise between highly conflictual positions held by States Parties on whether prostitution and/or sex work could be understood and defined as a profession of choice or simply conflated to trafficking in all instances.

The chapter examined the key components of human trafficking, namely, the *action*, *means* and *purpose* elements. By analysing each in turn it showed how these constituent parts dynamically work together to forge this devastating criminal enterprise. The *action* element describes the recruitment, transportation, harbouring or receipt of trafficked persons. The *means* element refers to the abuse of power which can include the abuse of another's position of vulnerability, this occurs when a victim is controlled through payments received, deceit, fraud, force and/or coercion. Finally, the *purpose* element describes the many reasons why people are trafficked for profit and its multifarious incarnations. These three components will be returned to in the analysis of subsequent chapters in the thesis.

As part of the chapter's project to elucidate some of the definitions of trafficking found in international law, it importantly compared trafficking with how international law construes the smuggling of migrants. The smuggling of migrants is often unproblematically equated to trafficking. Yet a major difference revealed in the chapter is that the smuggling of migrants is deemed to be a crime *against the State*, whereas human trafficking is perceived as a crime *against the person*. The chapter exposed how these differences become very apparent in the investigation, prosecution and prevention procedures of these two illegal activities which are predominantly based upon the crossing of state borders as well as a person's immigration status, nationality, consent and believed exposure to, and risk of exploitation.

Finally, the chapter explicated the diverse forms of trafficking that are listed in the Trafficking Protocol. As a groundbreaking international consensus on trafficking, the Trafficking Protocol included the prostitution of others, forms of sexual exploitation, forced labour or services,

slavery, practices similar to slavery, servitude, and the removal of organs. The chapter showed how the Trafficking Protocol also incorporated debt bondage, forced marriage and illegal adoption.

Having looked at human trafficking from the perspective of defining it in international legal instruments, the next chapter begins to narrow the research focus of this phenomenon to the UAE. Taking as its point of departure theories of migration, it discusses why women migrate to the UAE, and the connection between these reasons and the likelihood of their being trafficked. The theories of migration discussed in the chapter will demonstrate that it is the perpetuation of human rights violations against women which create unique social and economic vulnerabilities for them that are exploited by traffickers. In this way, human trafficking is situated as both a cause and a consequence of the violation of a person's human rights. Hence, the chapter proffers a human rights-based approach to tackling this complex phenomenon, one that apportions equal weight to the prosecution of traffickers, crime prevention and the protection of trafficked women, and one which is duly supported by Islamic law and principles.

Chapter Three: Conceptualising Human Trafficking: Migration, Human Rights and Islam

Introduction

Human trafficking is a multifaceted criminal enterprise that includes fraud, coercion, forced labour and sexual exploitation.¹ Human trafficking for the purpose of sexual exploitation has become the fastest growing underground industry.² Firman argues that anti-trafficking cannot be fully conceived without understanding how the problem of trafficking is conceptualised.³

This chapter examines human trafficking through the lens of migration, human rights and Islam. To achieve this aim it is divided into three sections. The first section, 'Migration, Trafficking in Women and Theory of Neo-Classical Economics', demonstrates how theories of migration are instrumental to an understanding of human trafficking. It analyses the causes and impact of migration in modern societies, particularly with respect to the UAE to obtain a more indepth and textured understanding of the research topic. It examines the neo-classical economics theory which identifies and explains the economic 'push' and 'pull' factors that influence an individual's decision to migrate, and how traffickers take full advantage of these multifarious circumstances. The second section, 'Human trafficking as a Violation of Human Rights', investigates the assertion that human trafficking and forced prostitution are violations of human rights. It explains the benefits of a victim-centred human rights based approach and how encapsulated within this is the view that the prosecution of traffickers and the prevention of the crime of trafficking must be accompanied by the protection of victims, including their rehabilitation. The third section, 'The Role of Islamic law and Principles in Addressing Human Trafficking', analyses the Islamic legal framework on human trafficking. It shows how Islamic law and principles, calling for the elimination of the institution of slavery, the prohibition of exploitation of human beings (in all its forms), and the rejection of oppression and hardship, are

¹ Karen Moser, 'Prevention, Prosecution, and Protection: A Look at the United States Trafficking Victims Protection Act' (2012) 3(6) *International Journal of Business and Social Science* 1.

² Grace Robertson, 'The Injustice of Sex Trafficking and the Efficacy of Legislation' (2012) 6 *Global Tides* 2; Marco de Waard, *Imagining Global Amsterdam: History, Culture and Geography in a World City* (Amsterdam University Press 2012) 279.

³ Richard Firman, 'Human Trafficking, Human Security and the Balkans' in H Richard Firman and Simon Reich (eds), *Human Trafficking and the Balkans* (University of Pittsburgh Press 2008) 63.

very applicable to the crime of trafficking in the UAE and can be used to impose a public duty to protect victims of trafficking, particularly women and children, in Muslim societies.

3.1 Migration, Trafficking in Women and Theory of Neo-Classical Economics

The theory of neo-classical economics defines migration as the outcome of individuals' decisions based on rational calculation of the factors pushing people out of their countries and/or attracting them to their destinations.⁴ In this approach, migration is seen as a decision made by an individual seeking a better life, which could include better job opportunities, job security or higher wages. This decision is based on an assessment of the factors which impel people to leave their home country and the factors that draw them to the destination country, the so-called 'push and pull' factors.⁵ Ravenstein, sees migration as an inseparable part of development, with a key impetus being economic reasons.⁶ As Hicks argues, 'differences in net economic advantages, chiefly differences in wages, are the main causes of migration'.⁷ Furthermore, adverse economic or political conditions in the sending country 'push' immigrants to leave. They are then 'pulled' to the receiving country as a result of the more favourable conditions, whether economic, political or environmental.⁸

Jain and Oommen argue that there are many push and pull factors contributing to the high levels of women migrating from South Asian countries to the Gulf countries, in particular Saudi Arabia and the UAE.⁹ Environmental destruction, climate change, instability of local political institutions, violence in home areas, sex and gender inequality, inadequate opportunities to sustain life and find work, and poverty are the main push factors that motivate migration.

⁴ Doreen Elliott and Uma A Segal, *Refugees Worldwide, Vol 4: Global Perspectives* (ABC-CLIO 2012) 62; Panos Arion Hatziprokopiou, *Globalisation, Migration and Socio-economic Change in Contemporary Greece: Processes of Social Incorporation of Balkan Immigrants in Thessaloniki* (Amsterdam University Press 2006) 26.

⁵ Striking Women, 'Understanding Migration' <<http://www.striking-women.org/module/migration/understanding-migration>> accessed 20 March 2015.

⁶ Cited in Hein De Haas, 'Migration and Development: A Theoretical Perspective' (International Migration Institute, Working Paper 9/2008) 21; Assefaw Bariagaber, *International Migration and Development in Eastern and Southern Africa* (Osserea 2014) 114.

⁷ Cited in Cynthia Bansak and Nicole B Simpson, Madeline Zavodny (eds), *The Economics of Immigration* (Routledge 2015) 26.

⁸ Stephen C Loveless, *Immigration and its Impact on American Cities* (Greenwood Publishing Group 1996) 56.

⁹ Prakash C Jain and Ginu Zacharia Oommen, *South Asian Migration to Gulf Countries: History, Policies, Development* (Routledge 2015) 9.

Moreover, many women, including young women, migrate independently as a basic strategy for survival and to support themselves.¹⁰

It is for all these reasons that academic theorists have asserted that trafficking is caused by push and pull factors, and these are especially true for women victims. Women and young girls are most susceptible and vulnerable to the various social imbalances and economic problems that are intrinsic to human trafficking and are readily exploited by traffickers.¹¹ Such imbalances take the form of political impasse, economic and social instability, armed conflict, oppression, the disintegration of familial structures, domestic violence, sex and gender discrimination, as well as a lack of access to proper educational opportunities.¹² These factors can lead to decisions to flee one's homeland in pursuit of a better life. Gallagher notes that the most commonly cited factors are those that 'increase vulnerability of victims and potential victims, create or sustain demand for the goods and services produced by trafficked labour, and create or sustain an environment within which traffickers and their accomplices can operate with impunity'.¹³ Push and pull factors are examined in more detail in the following section.

3.1.1 Push Factors

3.1.1.1 Economic Motivators

The Trafficking Protocol suggests that the current conditions of human trafficking have a basis in inequality, weak economic development and poverty in societies, describing them as economic motivators.¹⁴ The movement of people, or migration, increases when there are insufficient

¹⁰ S Irudaya Rajan, *India Migration Report 2015: Gender and Migration* (Routledge 2015) 65.

¹¹ Dominika Borg Jansson, *Modern Slavery: A Comparative Study of the Definition of Trafficking in Persons* (Martinus Nijhoff 2014) 44; George Ritzer and Paul Dean, *Globalization: A Basic Text* (2nd edn, John Wiley & Sons 2014) 291; PM Nair and Sankar Sen, *Trafficking in Women and Children in India* (Orient Blackswan 2005) 145; Jayashree Ahuja, *Trafficking in Women and Children: Myths and Realities* (Concept Publishing Company 2009) 20; Reyhan Atasü-Topcuolu, *Ideology and the Fight Against Human Trafficking* (Routledge 2014) 34.

¹² According to a 2013 report by the UAE National Committee to combat human trafficking, 20% of victims have no education and 34% attend only primary school. NCCHT, 'Combating Human Trafficking in the UAE: Annual Report' (2013-2014).

¹³ Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 414.

¹⁴ Article 9.4 of the Trafficking Protocol states that: 'States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and

opportunities for employment and levels of unemployment are high, and these factors are described as vulnerability economic factors.¹⁵ Studies supporting these findings also suggest that individuals are motivated to migrate to escape economic insecurity, corruption and political instability.¹⁶

Since the 1970s, the economies of many countries defined as ‘developing’ have remained in a depressed state,¹⁷ this has contributed to economic motivators to traffic many children and women to countries defined as ‘developed’ through mechanisms for making money illegally. This illicit trade includes sexual slavery, slave labour, child pornography, domestic work, and commercial sexual exploitation. Moreover, powerful and wealthy individuals and groups in developed countries encourage human trafficking as it provides them with cheap and free labour. Children and young women often become victims of sexual exploitation by criminal gangs and individuals who imprison them.¹⁸

Kim Anh Doung in one of her article mentioned Kabeer who has commented that women in developing countries experience poverty differently from their male counterparts for a number of reasons.¹⁹ They have limited access to, and less control over land and other resources than men, and receive a lower income because of time they are required to spend engaged in unpaid labour such as housework, child bearing and rearing.²⁰ Furthermore, the gender-poverty gap between men and women has increased due to globalisation and economic restructuring; this is despite the fact that the movement towards a market economy has brought more opportunities for women to work.²¹ Women in developing countries often constitute a large part of the workforce in the

children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity’; Jacqueline Bhabha, *Child Migration and Human Rights in a Global Age* (Princeton University Press 2014) 169.

¹⁵ Marco Giugni, *Dialogues on Migration Policy* (Lexington Books 2006) 199.

¹⁶ G Gordon Betts, *The Twilight of Britain: Cultural Nationalism, Multiculturalism, and the Politics of Toleration* (Transaction Publishers 2002) 180.

¹⁷ Angelina Stanojoska, ‘Theory of Push and Pull Factors: A New Way of Explaining the Old’ <http://www.academia.edu/2163849/Theory_of_push_and_pull_factors_A_new_way_of_explaining_the_old> accessed 27 June 2016.

¹⁸ Obbi NI Ebbe and Dilip K Das, *Global Trafficking in Women and Children* (CRC Press 2008) 33.

¹⁹ In Kim Anh Duong, ‘Human Trafficking in a Globalized World: Gender Aspects of the Issue and Anti-trafficking Politics’ (2012) 2(1) *Journal of Research in Gender Studies* 57.

²⁰ *ibid.*

²¹ *ibid.*

textile, garment and manufacturing industries, working very long hours for low pay.²² They are more disadvantaged than men in the level of pay they receive for the work they do, so that for comparable work women often earn around 60% of the wages normally paid to men in occupations that are low-skilled and low paid.²³ The Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as the CEDAW) Committee's General Recommendation No. 19 notes that poverty and unemployment increase opportunities for the trafficking in women and force many of them into prostitution.²⁴

The explanatory Report to the European Trafficking Convention explicitly recognises the link between poverty, increased vulnerability and trafficking:

It is widely recognised that improvement of economic and social conditions in countries of origin and measures to deal with extreme poverty would be the most effective way of preventing trafficking. Among social and economic initiatives, improved training and more employment opportunities for people liable to be traffickers' prime targets would undoubtedly help to prevent trafficking in human beings.²⁵

Over recent years, people living in developing countries across the world have gained greater awareness of other countries from those who have returned home after working in a different country, or from television or the Internet, so that they understand their poverty gap and develop greater expectations and aspirations about improved lifestyles and living standards in other countries. The world is now seen from a changed perspective by many people living in poverty due to the influences of globalisation. Young people are motivated to migrate to other countries to share in the perceived experiences and opportunities abroad and move away from living at subsistence levels in their home countries.²⁶

²² *ibid.*

²³ *ibid.*

²⁴ Gallagher (n 15) 420, see also General Recommendation No. 19 (11th session, 1992) Violence against women.

²⁵ Council of Europe, 'The European Trafficking Convention Explanatory Report' (CETS No 197, 16 May 2005) para 103; Gallagher (n 15) 419.

²⁶ Sally Cameron and Edward Newman, *Trafficking in Humans – Social, Political and Cultural Dimensions* (United Nations University Press 2008) 26.

3.1.1.2 Social Motivators

Lack of information, insufficient social protection, health care services being unavailable, and discrimination in work opportunities and education affect various groups in developing countries differently in terms of their status, ethnic origin or gender, and these complex factors contribute to marginalisation. When people believe that they are not protected in their society, cannot access social benefits or find their social rights are not respected, they feel socially excluded.²⁷ Labour and sex trafficking have grown in response to the changing social conditions of recent decades. Youthful populations have burgeoned in the developing world. Nevertheless, without capital and adequate job growth, rural to urban migration undermines traditional values as well-established communities are destroyed, and entrenched discrimination against women, girls and minorities is exacerbated by the global economy.²⁸ Family exploitation often becomes a stepping-stone to abuse by human traffickers. Moreover, the breakdown of family life facilitated and enabled by alcoholism, violence and abuse, abandonment and estrangement, divorce, illness and/or death of a parent or family member can all motivate women and children from rural areas to migrate to cities.²⁹

3.1.1.3 Political Motivators

When countries experience political instability, the loss of national identity and civil unrest, their societies are defined as ‘transitional’ and create a fertile environment for human trafficking and organised criminal activities. Individuals within these fractured societies become vulnerable to human traffickers when they are displaced and the frameworks of protection ordinarily supplied by families and communities are disrupted.³⁰ Moreover, human trafficking could not exist without corruption in law enforcement in the form of border guards, police, consular officials, diplomats, lawyers, and the security and transport sectors.³¹ Bales argues that, in exchange for

²⁷ Stanojoska (n 19).

²⁸ Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press 2010) 52.

²⁹ *ibid.*

³⁰ UNODC, *UN Global Initiative to Fight Human Trafficking: UN Handbook for Parliamentarians* (UNODC 2009) 67.

³¹ Alexis A Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Greenwood 2009) 62.

money, police officers can be involved in acts of violence against victims of trafficking.³² In developing countries, the salary of police officers can be between 10 USD and 20 USD per month so if police officers have the opportunity to make an additional 100 USD per month, this would mean more money to provide food for their families, better amenities for their homes and to send their children to school. Therefore, police officers in developing countries might find themselves under pressure to work more closely with slave-controllers, and senior police officers might also encourage their junior police officers to take bribes.³³

Corruption can be either (or both) proactive (actively assisting traffickers in procuring travel documents) or passive (failing to act in the presence of trafficking). For instance, there is evidence of Bosnian officials creating or ignoring false documents produced by traffickers to transport victims through the country, operating bars where trafficked women are forced to engage in sex work and accepting bribes (often in the form of sexual favours) in exchange for ignoring human trafficking.³⁴ In connection with these types of systemic failures perpetrated by government officials, the Albanian prime minister accused the judicial system and government of widespread corruption that exacerbated the country's human trafficking problem.³⁵

3.1.1.4 Cultural Motivators

From early historical periods, for example agricultural or feudal societies before the Industrial Revolution, women have been trafficked for sexual exploitation. They were excluded from public life and their status as the property of their husbands reduced them to sexual objects, with marital relations controlling their lives through reproduction and unpaid labour in the home.³⁶ In early male-dominated societies, married women did not contribute to the public economy but might have contributed to informal economic sectors that were not counted.³⁷ Men could purchase the services of a prostitute, have a relationship with another woman and exploit their

³² Kevin Bales, *Ending Slavery. How we Free Today's Slaves* (University of California Press 2007) 17.

³³ *ibid* 18.

³⁴ Aronowitz (n 33) 62.

³⁵ *ibid*.

³⁶ Kathleen Barry, *The Prostitution of Sexuality. The Global Exploitation of Women* (New York University Press 1995) 51.

³⁷ *ibid*.

wives with their privileges of promiscuity.³⁸ This contrasts with the status of women who were the property of men for sexual purposes, so that sexual activities by a woman outside marriage which might include forced prostitution or rape, would be considered an action that broke the conditions of marriage and would be punished harshly. Beyond male-domination, women had little or no place in society but men had the freedom to buy the services of a prostitute. Therefore, in these societies girls and women would be supplied to brothels as a result of forced prostitution and violent trafficking.³⁹

Cultural factors may explain why such experiences place females at risk of trafficking. For instance, girls experiencing disruption via abuse or abandonment by their husbands often face extreme community ostracisation. Families of such girls are also subject to stigmatisation, and therefore may be reluctant to offer support or shelter based on the fear of additional negative consequences for their status within the community, including the marriage eligibility of unmarried family members. Similarly, whilst traditional cultural norms associate sons with economic and social advantage, daughters are conversely constructed as financial burdens who require dowries. Extended family members may be unwilling or unable to assume the costs of providing for unmarried/widowed females.⁴⁰

3.1.2 Pull Factors

Piore argues that migration is not only caused by the push factors of sending countries, but also the ‘pull’ factors of receiving countries.⁴¹ The UAE, as a result of its political stability and socioeconomic development, has become a major destination for traders, investors, recruiters, tourists, labourers⁴² and criminals.⁴³ The oil boom and rapid rise in financial prosperity

³⁸ *ibid.*

³⁹ *ibid.* 52.

⁴⁰ Leonard Territo and George Kirkham, *International Sex Trafficking of Women & Children: Understanding the Global Epidemic* (Looseleaf Law 2010) 266.

⁴¹ In Caf Dowlah, *International Trade, Competitive Advantage and Developing Economies: Changing Trade Patterns Since the Emergence of the WTO* (Routledge 2015) 209.

⁴² Froilan T Malit Jr and Ali Al Youha, ‘Labor Migration in the United Arab Emirates: Challenges and Responses. Migration Information Source’ (Migration Policy, 18 September 2013) <<http://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses>> 4 June 2015.

necessitated a large workforce which significantly altered migration patterns and sources.⁴⁴ The Gulf countries often present a cheap and accessible location for migrants from South Asia to enter legally as opposed to countries located in the West. Among the pull factors of Gulf countries are the high prospects for employment as domestic workers.⁴⁵ Birken recognises three reasons women are targeted in destination countries: the avoidance of the costs that might normally be incurred by those who wish to employ legally hired workers; a demand for cheap labourers in agricultural, industrial and construction companies; and a demand for sex workers in a highly lucrative and globalised sex industry.⁴⁶ For example, the increasing demand for foreign women to work in commercial sex work and related industries, for example, as dancers and masseuses, has encouraged many women from developing countries to migrate, legally or illegally, to the UAE in order to make substantially higher sums of money than they could ever earn in their countries of origin.⁴⁷

The increased demand for migrant women to work in the commercial sex industry in the UAE has created a big market for trafficked women and traffickers.⁴⁸ As Kelly argues, while the sex industries continue to expand in the UAE and there exist difficulties in recruiting national women for sex work, the demand for migrants and trafficked women has increased significantly.⁴⁹ While many sex workers have entered the country for economic reasons by choice, there is credible evidence which suggests that there are others who have been trafficked into the UAE and are in working in situations that amount to sexual exploitation.⁵⁰

⁴³ Dubai in particular has become known as ‘the centre for prostitution’ in the Middle East. Sevil Sönmez and others, ‘Human Rights and Health Disparities for Migrant Workers in the UAE’ (2013) 13(2) *Health and Human Rights Journal* 1.

⁴⁴ Pardis Mahdavi and Christine Sargent, ‘Questioning the Discursive Construction of Trafficking and Forced Labor in the United Arab Emirates’ (2011) 7(3) *Journal of Middle East Women’s Studies* 6.

⁴⁵ Irudaya Rajan (n 12) 65.

⁴⁶ Sara Birkenthat, ‘Human Trafficking: A Human Rights Abuse with Global Dimensions’ (2011-2012) 6 *Interdisciplinary Journal of Human Rights Law* 27, 29.

⁴⁷ More than half of Azeri women involved in prostitution in the UAE consider prostitution as a way to earn additional money rather than as their primary occupation and they would leave this activity if they could find better paid employment. See IOM, ‘Shattered Dreams: Report on Trafficking in Persons in Azerbaijan’ (2002) 16 <https://publications.iom.int/system/files/pdf/shattered_dreams.pdf> accessed 4 June 2015.

⁴⁸ Pardis Mahdavi, ‘Race, Space, Place: Notes on the Racialization and Spatialisation of Commercial Sex Work in Dubai’ (2010) 12(8) *Cult Health Sex* 943.

⁴⁹ Liz Kelly, ‘“You Can Find Anything You Want”: A Critical Reflection on Research on Trafficking in Persons within and into Europe’ (2005) 43(1-2) *International Migration* 233.

⁵⁰ TAI Said, ‘The Role of Ministry of Interior in Combating Human Trafficking Crimes in the UAE’ (Research Paper Presented to a Symposium of Combating Human Trafficking, 19-20 June 2005) 146 and 147.

The neo-classical economics theory is thus a useful framework for analysing the issue of trafficking in women for forced commercial sexual exploitation. One of the main reasons for linking neo-classical economics theory with human trafficking in the UAE is that the majority of victims are migrants from developing countries. For example, women from India, Pakistan and Bangladesh who migrate from these countries to the UAE in the hope of earning higher wages and enjoying a better quality of life soon find themselves the victims of sex trafficking.⁵¹ These victims of commercial sexual exploitation usually enter the UAE legally using visiting or working visas and 80% of them are promised jobs in the UAE.⁵² Statistics show that the majority of trafficked victims are from the South, Southeast, and Central Asia.⁵³

3.2 Human Trafficking as a Violation of Human Rights

In 1948, many people were optimistic that the world would become a better place after the introduction of the Universal Declaration of Human Rights (hereinafter referred to as the UDHR) by the United Nations, but seventy years later, human rights abuses have peaked.⁵⁴ There is a growing consensus that human trafficking should be considered a human rights violation. This view has been articulated by several authors and in reports and anti-trafficking measures,⁵⁵ for it is widely acknowledged that violations of human rights are both a cause and a consequence of human trafficking.⁵⁶ For instance, Piotrowicz argues that conditions which promote or expose

⁵¹ DFWAC, 'Annual Report 2014' 54; DFWAC, 'Annual Report 2013' 56.

⁵² NCCHT, 'Combating Human Trafficking in the UAE: Annual Report 2012-2013' 33.

⁵³ DFWAC, 'Annual Report 2012' 44; DFWAC, 'Annual Report 2013' 56.

⁵⁴ Darren J O'Byrne, *Human Rights. An Introduction* (Longman 2003) 5.

⁵⁵ HRW, 'A Human Rights Approach to the Rehabilitation and Reintegration into Society of Trafficked Victims' (Paper Presented by Widney Brown of Human Rights Watch at the 21st Century Slavery: The Human Rights Dimension to Trafficking in Human Beings Conference, Rome, 15-16 May 2002); Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* (Martinus Nijhoff 2006) 35; Dina Haynes, 'Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers' (2004) 16 *Human Rights Quarterly* 221; Janie Chuang, 'Beyond a Snapshot: Preventing Human Trafficking in the Global Economy' (2006) 13 *Indiana Journal of Global Legal Studies* 137.

⁵⁶ Siuli Sarkar, *Gender Disparity in India: Unheard Whimpers* (PHI Learning 2016) 286; Aronowitz (n 33) 28; Venla Roth, *Defining Human Trafficking and Identifying Its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Martinus Nijhoff 2011) 136; Alice Edwards and Carla Ferstman, *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010) 406.

people to the risk of trafficking may in themselves be human rights violations.⁵⁷ Askola asserts that it is possible to argue convincingly that trafficking as a phenomenon stems from existing and prevalent human rights violations against women, especially regarding their social and economic rights.⁵⁸ As has already been discussed, poverty, lack of education, discrimination and unequal access to resources and opportunities in work are frequently significant factors in trafficking and in fact constitute human rights violations. In short, not only do gross human rights violations occur during trafficking, they can also be understood as the cause of it.

Human trafficking and the commercial sexual exploitation of women does not only lead to the moral and ethical claims that this enterprise is unjust, but also to the specific claim that it is comprised of harms that are recognised by international human rights treaties.⁵⁹ The UN Special Rapporteur on Trafficking in Persons, Joy Ngozi Ezeilo, has noted that in a significant number of situations the root causes of migration and trafficking is attributable to the failure of States to guarantee the fundamental human rights of all individuals within their jurisdiction.⁶⁰ Based on this reasoning, human trafficking can predominantly be recognised as a human rights issue. In fact, it has been described as ‘the very antithesis of the Universal Declaration of Human Rights’⁶¹ since it violates the most fundamental rights of its victims: freedom from involuntary servitude (Article 4)⁶²; freedom from cruel, degrading, and inhuman treatment (Article 5),⁶³ and freedom of movement (Article 13).⁶⁴ Human trafficking violates virtually the entire spectrum of rights protected in the UDHR. As stated by Mary Robinson, former UN High Commissioner for Human Rights (1990-1997):

⁵⁷ Ryszard Piotrowicz, ‘Legal Nature of Trafficking In Human Beings’ (2009) 4 *Intercultural Human Rights Law Review* 184.

⁵⁸ Heli Askola, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union* (Hart 2007) 135.

⁵⁹ Stephanie Fariior, ‘The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential’ (1997) 10 *Harvard Human Rights Journal* 213.

⁶⁰ Joy Ngozi Ezeilo, ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development, Report submitted by the Special Rapporteur on Trafficking In Persons, Especially Women and Children’ UN Doc A/HRC/14/32 (4 May 2010) para 21.

⁶¹ Kate E Tunstall, *Displacement, Asylum, Migration: The Oxford Amnesty Lectures 2004* (Oxford University Press 2006) 236; Pierre Hauck and Sven Peterke, *International Law and Transnational Organized Crime* (Oxford University Press 2016) 151.

⁶² Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 4.

⁶³ *ibid* art 5.

⁶⁴ *ibid* art 13; Joyce Gelb and Marian Lief Palley, *Women and Politics Around the World: A Comparative History and Survey, Volume 2. History Reference Online* (ABC-CLIO 2009) 180.

[T]rafficking is a cause of human rights violations because it violates fundamental human rights, such as the right to life, the right to dignity and security, the right to just and favourable conditions of work, the right to health, the right to equality and the right to be recognised as a person before the law. It is a consequence because it is rooted in poverty, inequality and discrimination.⁶⁵

Nevertheless, traffickers are willing to perpetrate human rights abuses for profit. For traffickers, their victims are essentially objects; chattel to be bought and sold as required.⁶⁶ It is not hard to see why The Report of the Working Group on Contemporary Forms of Slavery declared that ‘trans-border trafficking of women and girls for sexual exploitation is a contemporary form of slavery and constitutes a serious violation of human rights’.⁶⁷ In tandem with this, The Miami Declaration states that victims of trafficking must be treated with dignity, fairness and respect for their human rights.⁶⁸ These human rights consist of the following:

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 to their country of origin.⁶⁹

According to Aronowitz, the human rights paradigm has the longest history when it comes to analysing human trafficking.⁷⁰ At the beginning of the 20th century, the terminology used to define human rights was comprised of a common language of humanity. Therefore, human rights that are not specifically defined in law by national States, are protected on an international basis so that human freedom, equality and human dignity are standards and values that are understood to be inalienable and universal.⁷¹ Essentially, individual governments are obliged to protect and guarantee all human rights across the international community, and that there are no international boundaries where they cannot be protected. However, international law that defines human rights

⁶⁵ UN, ‘Prevent, Combat, Protect: Human Trafficking’ (Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, 2011) 22.

⁶⁶ Leroy Potts, ‘Global Trafficking in Human Beings, Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons’ (2003) 35 *George Washington International Law Review* 229.

⁶⁷ Farhad Malekian and Kerstin Nordlöf, *Prohibition of Sexual Exploitation of Children Constituting Obligation Erga Omnes* (Cambridge Scholars Publishing 2014) 227.

⁶⁸ Miami Declaration of Principles on Human Trafficking (10 February 2005) art 4.

⁶⁹ *ibid.*

⁷⁰ Alexis A Aronowitz, ‘Trafficking Nexus and the Myths Surrounding Human trafficking’ in William Frank McDonald (ed), *Sociology of Crime, Law and Deviance: Immigration, Crime and Justice* (Emerald Group 2009) 119.

⁷¹ Darren J O’Byrne, *Human Rights: An Introduction* (Longman 2003) 5.

that need to be protected has previously been assumed to be part of governments' responsibilities, in terms of identifying and preventing human rights violations, rather than the responsibility of individual citizens. This assumption is based on the duty of governments to avoid violations of human rights, ensure that government representatives do not abuse human rights, prepare criminal punishments for those who violate human rights, and ensure that all activities that occur within national boundaries are effectively controlled.⁷²

3.2.1 The Human Rights-Based Approach to Combating Human Trafficking

A human rights-based approach offers a conceptual and normative framework that can provide direction to the development of anti-trafficking policies. This framework enables the evaluation and monitoring of anti-trafficking actions and practices in terms of their real and potential impact on trafficked persons.⁷³ Gallagher⁷⁴ and Obokata⁷⁵ as well as frontline anti-trafficking activists support the human rights-based approach.⁷⁶ Obokata argues that the human rights-based approach promotes a better understanding of the problems experienced by trafficked victims and allows exploration and identification of the relevant human rights issues pertaining to the trafficking of human beings,⁷⁷ such as the major causes that make them vulnerable to trafficking, the harms that victims suffer during the trafficking process, and the diverse forms of exploitation that they are subjected to once they reach their destinations. By examining the problem of trafficking through the lens of human rights, pressure can be brought to bear upon States to take action.

⁷² Janusz Symonides (ed), *Human Rights: Concept and Standards* (Ashgate 2000) 20.

⁷³ Marjan Wijers, 'An Exploration of the Meaning of a Human Rights Based Approach to Trafficking' (2004) 22 *Alliance News* 1.

⁷⁴ Anne Therese Gallagher is an Australian born lawyer, practitioner and scholar. She is considered to be an international authority on human rights and gender issues and, according to the 2012 Trafficking in Persons Report prepared by the United States Department of State, 'the leading global expert on the international law on human trafficking'. For more information visit <http://works.bepress.com/anne_gallagher/> accessed 5 May 2015.

⁷⁵ Professor Obokata's expertise lies in transnational organised crime generally and trafficking of human beings in particular. He has written a number of publications on these topics. Previously he advised the bodies including the UK Parliamentary Joint Committee on Human Rights, the Northern Ireland Assembly All Party Group on Human Trafficking and the International Organisation for Migration and the European Union. For more information, see <<http://www.keele.ac.uk/law/people/academicstaff/tomoyaobokata/>> accessed 5 May 2015.

⁷⁶ May Ikeora, *Bilateral Cooperation and Human Trafficking: Eradicating Modern Slavery between the United Kingdom and Nigeria* (Springer 2017) 10.

⁷⁷ Tom Obokata, 'A Human Rights Framework to Address Trafficking of Human Beings' (2006) 24(3) *Netherlands Quarterly of Human Rights* 383.

A human rights approach may also encourage other pertinent actors, such as NGOs and international organisations to work together closely to address the human rights issues inherent in practice.⁷⁸ As Amiel argues, it offers and requires a multi-disciplinary and coordinated policy between government, law enforcement and judicial agencies, NGOs, civil society, labour and migration organisations.⁷⁹ Amiel believes that the human rights framework provides the potential for a broader view of trafficking but, due to a lack of consensus and political will, governments and activists have not effectively pushed it very far.⁸⁰

The human rights approach sees the problem of human trafficking as encompassing prevention, by raising awareness and addressing the root causes of trafficking, prosecution, and the protection and rehabilitation of victims.⁸¹ This means that in order to secure a human rights-based approach to trafficking of women, it is essential to give equal weight to the prosecution of traffickers, the prevention of the crime and the protection of the women trafficked. It advocates that the human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking, and to protect, assist and provide redress to victims.⁸² In general, a human rights approach is based on the core principles of universality, inalienability, non-discrimination and equality, participation and inclusion, as well as accountability and the rule of law.⁸³ These core principles should be reflected in States' obligations to criminalise trafficking, investigate and prosecute traffickers, protect and assist victim of trafficking and address the root causes of the crime.⁸⁴ This means that anti-trafficking measures must target the pervasive economic factors and social and cultural practices which discriminate against women, legitimise their victimisation

⁷⁸ *ibid* 384.

⁷⁹ Alexandra Amiel, 'Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation' (2006) 12 Buffalo Human Rights Law Review 38.

⁸⁰ *ibid* 36-37.

⁸¹ The Special Rapporteur on trafficking in persons, Joy Ngozi Ezeilo, believes that universal respect for human rights must be ensured not only as a goal in itself but also as a means of preventing trafficking in persons while placing the human rights of trafficked persons at the centre of all prevention efforts. Human Rights Council, 'Trafficking in Persons, Especially Women and Children' (Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 20 February 2009) UN Doc A/65/288, para 15, 4; Federico Lenzerini, 'International Legal Instruments on Human Trafficking and a Victim-Oriented Approach: Which Gaps are to be Filled' (2009) 4 Intercultural Human Rights Law Review 205, 206.

⁸² OHCHR, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (E/2002/68/Add.1) Principle 1.

⁸³ Anna Shavers, 'Human Trafficking, the Rule of Law, and Corporate Social Responsibility' (2012) 9(1) South Carolina Journal of International Law & Business 39.

⁸⁴ Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* (Brill 2006) 47.

and subordination, and overlooks acts of cruelty and violence towards them, all of which increase their vulnerability to trafficking. Further, they should focus attention on empowering women and enabling their access to education and employment, whilst prohibiting all discriminatory practices against them.⁸⁵ Thus, anti-trafficking mechanisms for women and girls should incorporate empowerment strategies which can serve to protect them from ever becoming victims of this crime.⁸⁶

Askola believes that a key objective in centring trafficking as a human rights issue 'is to make the victim of trafficking visible as a subject, emphasising her dignity and integrity, despite her prima facie irregular status as an illegal noncitizen'.⁸⁷ She further emphasises how the 'formulation transforms the victim into a subject whose basic rights have been violated by exploiters and whose rights can also be violated in the process of implementing anti-trafficking measures'.⁸⁸ This emphasis on a victims' need for respect shifts the attention from a States' right to control, to a victims' humanity and the States' obligation to protect it. Widney Brown, the Human Rights Watch Advocacy Director, states that: 'Once we understand trafficking and the harm done, it is easy to understand what action States must take to rehabilitate victims and work toward their successful reintegration into society'.⁸⁹ Brown explains how a human rights-based approach to trafficking is different from treating trafficking solely as a criminal justice or migration issue. She states that 'any program must first and foremost return control to the victims. It is only when we have created the space for the trafficking victim to see her or himself again as a person, not an object, whose agency we respect and whose value is inherent, that she or he becomes a survivor'.⁹⁰ It could be argued that the challenge for States is not in identifying the services that victims of trafficking need to survive and grow, such as counselling, medical care, legal advice and access to job training programmes and education, but, as Brown argues, in convincing States 'to see and respect, at the most basic level, the humanity of all victims and to

⁸⁵ Barbara Limanowska, 'Trafficking in Human Beings in South Eastern Europe. Focus on Prevention in: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Moldova, Romania, Serbia and Montenegro, and the UN Administered Province of Kosovo' (*UNICEF*, 2005) 18-19 <<http://www.unicef.org/ceecis/Trafficking.Report.2005.pdf>> accessed 2 June 2015.

⁸⁶ *ibid.*

⁸⁷ Askola (n 60) 133.

⁸⁸ *ibid.*

⁸⁹ Widney Brown, 'A Human Rights Approach to the Rehabilitation and Reintegration into Society of Trafficked Victims' <<http://www.hrw.org/legacy/backgrounder/wrd/trafficked-victims.htm>> accessed 6 February 2015.

⁹⁰ *ibid.*

get States to work with victims or survivors in a way that demonstrates their commitment to protecting the equality and dignity of all human beings'.⁹¹

The connection between protecting the human rights of trafficked victims and the eradication of human trafficking has often been highlighted by Radhika Coomaraswamy, the former Special Rapporteur on Violence against Women and the former UN High Commissioner for Human Rights (hereinafter referred to as the UNHCHR).⁹² The legal responsibility of States, with regard to international human rights law, to promote and protect all individuals within their borders, includes an obligation on State and non-State entities to punish, investigate and prevent violations of human rights.⁹³ The instruments of human rights law state that any measures adopted by States should comply with their established obligations for international human rights⁹⁴ so that as a minimum requirement any measures adopted should not undermine or conflict with human rights law. One of the most significant advantages of the human rights approach offers is the ability to hold States accountable for how they treat their nationals and other individuals under their control.⁹⁵

The International Human Rights Law Group, the Global Alliance Against Traffic in Women (hereinafter referred to as the GAATW)⁹⁶ and the Office of the High Commissioner for Human Rights (hereinafter referred to as the OHCHR) through their Recommended Principles and Guidelines on Human Rights and Human Trafficking have developed provisions for protecting and helping victims of human trafficking. It is a document that delineates the protection and help that should be given to victims of human trafficking with a basis in international human rights law. Its provisions for trafficked victims incorporate: voluntary and safe return to their country of

⁹¹ *ibid.*

⁹² Wijers (n 75) 9.

⁹³ University of Minnesota, 'Human Rights in the Administration of Justice' (Human Rights Monitoring Fieldwork) Chapter 1: International Human Rights Law and the Role of the Legal Professions: A General Introduction <<https://www1.umn.edu/humanrts/monitoring/adminchap1.html>> accessed 6 May 2015.

⁹⁴ For instance, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination of Women and the Convention on the Rights of the Child.

⁹⁵ Elizabeth M Bruch, 'Models Wanted: The Search for an Effective Response to Human Trafficking' (2004) 40(1) *Stanford Journal of International Law* 32.

⁹⁶ Elaine Pearson, 'Human Rights and Trafficking in Persons: A Handbook' (Global Alliance Against Traffic in Women 2000) 6 <<http://lastradainternational.org/doc-center/1112/human-rights-and-trafficking-in-persons-a-handbook>> accessed 7 May 2015.

origin; access to health, psychological and social care; access to temporary or permanent residence status; legal assistance; witness protection (and other procedural protections during court cases); and the right to reparations, private actions and justice.⁹⁷ Therefore, when enabling the return of victims of human trafficking to their country of origin, international treaty law requires that due consideration should be given to their safety. This means that there is a requirement for States to ensure that victims of human trafficking are not harmed when they return to their country of origin or face incidents of retaliation, such as being prosecuted or arrested for leaving their country of origin, or face criminal charges for being forced to engage in sex work when abroad, which may be illegal in their country of origin.⁹⁸

Although States have an obligation to prevent the root causes of human trafficking, they also need to apply measures to combat human trafficking that meet established human rights norms so that victims (such as sex workers, asylum seekers and migrants who are women) do not have their human rights adversely affected or undermined.⁹⁹ Therefore, instruments adopted by States to prevent human trafficking should not include policies that could worsen or create conditions that contribute towards or create opportunities for human trafficking, or that could serve to undermine and/or exacerbate the status of groups who are already vulnerable, oppressed and marginalised. In one of the article Marjan Wijers, quoted Robinson arguing that States overwhelming focus should be on the victims and they should not hold the narrow-minded view that human trafficking is only a problem of organised crime, public order, or migration, as well-intentioned initiatives could risk increasing the discrimination of women.¹⁰⁰ Respecting the non-discrimination principle is critically important for international human rights law, and has significant importance for the status of marginalised or vulnerable groups, as well as illegal or

⁹⁷ See Global Alliance Against Trafficking in Women, Foundation against Trafficking in Women, and the International Human Rights Law Group, 'Human Rights Standards for the Treatment of Trafficked Persons' (1999) <http://www.gaatw.org/books_pdf/hrs_eng1.pdf> accessed 7 May 2015; and see OHCHR (n 84).

⁹⁸ See OSCE/ODIHR, *Guiding Principles on Human Rights in the Return of Trafficked Persons* (OSCE/ODIHR 2014) 36.

⁹⁹ Experts Group on Trafficking in Human Beings, 'Opinion of the Expert Group on Trafficking in Human Beings of the European Commission in connection with the conference "Tackling Human Trafficking: Policy and Best Practices in Europe" and its related documents' (*La Strada International*, 2005) 2 <<http://lastradainternational.org/lisidocs/260%20Opinion%20Expert%20Group.pdf>> accessed 7 May 2014.

¹⁰⁰ Marjan Wijers, 'Only Rights Can Stop Wrongs: A Critical Assessment of Anti-trafficking Strategies' (Paper Presented at EU/IOM STOP European Conference on Preventing and Combating Trafficking in Human Beings—A Global Challenge for the 21st Century, Brussels, Belgium, 18-20 September 2002).

irregular migrants.¹⁰¹ Victims of human trafficking should not face discrimination in law or practice. This means that measures to protect victims of human trafficking should not discriminate against them for being trafficked in the past, having previously worked in the sex industry, or based on their immigration status, ethnicity, sex or gender.¹⁰²

3.2.2 Violence and Harm Against Trafficked Victims

Kelly developed the concept of a ‘continuum of violence’ associated with sexual exploitation, and argues that human trafficking is at the extreme of this continuum. She defines sexual violence as ‘any physical, visual, verbal or sexual act that is experienced by a woman or girl, at the time or later, as a threat, invasion or assault, that has the effect of hurting her or degrading her, and/or takes away her ability to control intimate contact’.¹⁰³ When victims fail to comply with the demands of traffickers, violence or threats are normally used to intimidate them into submission. Victims interviewed by Aronowitz spoke of the use of coercion, threat of force, intimidation and harm. The findings revealed that victims were subject to violence, physical attacks, sexual exploitation and threats to harm their family members.¹⁰⁴

Furthermore, victims can face equally serious punishment if they are found to be communicating with clients, or attempt to escape. An investigation carried out on trafficked women and young girls in Nepal and India by Human Rights Watch found that trafficked victims were subjected to high levels of physical abuse and that their living conditions were deplorable.¹⁰⁵ This study also revealed that victims were subjected to arbitrary imprisonment, exposed to AIDS, severely beaten, tortured and raped, and that their debt bondage could last for many years.¹⁰⁶ Other findings show that up to half of trafficked women who try to get help from support agencies and organisations that provide assistance to migrants and who were repatriated were subsequently raped and beaten by traffickers, pimps or their owners, as a deterrent to others.¹⁰⁷ Traffickers use

¹⁰¹ See, inter alia, Arts 2 and 7 UDHR, Arts 2 and 26 ICCPR and Arts 2 ICESCR, but also the Statute of the International Criminal Court, Art 21(3).

¹⁰² Wijers (n 75) 4.

¹⁰³ Jennifer M Brown and Sandra L Walklate, *Handbook on Sexual Violence* (Routledge 2011) 220.

¹⁰⁴ Aronowitz (n 33) 58.

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*

¹⁰⁷ *ibid.*

many forms of violence and punishment to maintain the obedience and loyalty of victims. Findings show that, in Istanbul, Turkey, two migrant women from the Ukraine were thrown off a balcony by their traffickers, and in Serbia when a victim of sex trafficking refused to be a sexually exploited, her traffickers beheaded her in public.¹⁰⁸

The safety, welfare and rights of trafficked victims who endure physical violence, mental abuse and appalling conditions are often ignored. Apart from the lack of a proper health care, victims are vulnerable to sexually transmitted diseases. Many authors argue that HIV/AIDS is prevalent among many victims of human trafficking as they are forced into commercial sexual exploitation and are unable to access condoms. Research from the Counselling Centre for Alternative Prostitution in Portland, Oregon, USA, indicates that 84% of the women interviewed said that male pimps forced them into prostitution, 78% of women suffered rape whilst working as prostitutes, 84% were victims of violence, 53% were victims of sexual torture, and 73% considered suicide as a means of escape.¹⁰⁹

There are also the social effects of human trafficking, such as the loss of family support and the stress experienced by the families of the victims.¹¹⁰ Trafficked persons may face social ostracism and owing to this find that they are unable to seek help to escape their plight. Individuals specifically trafficked for sex, have reported facing stigma and other negative responses during and after their trafficking ordeal, especially from friends and family members.¹¹¹

3.3 The Role of Islamic Law and Principles in Addressing Human Trafficking

Important guidance for the development and implementation of policies designed to address trafficking and protect victims of trafficking is provided in Islamic law and supported by Islamic principles.¹¹² Islamic law addresses a number of the practices that constitute the concept of human trafficking as defined in the Trafficking Protocol, the first of which is slavery.

¹⁰⁸ ibid 58.

¹⁰⁹ Bozidar Banović and Zeljko Bozidar, 'Traumatic Experiences, Psychophysical Consequences and Needs of Human Trafficking Victims' (2012) *Vojnosanitetski Pregled* 94, 97.

¹¹⁰ Joyce Hart, *Human Trafficking* (Rosen Publishing Group 2009) 38.

¹¹¹ Anuradha Kumar, *Human Rights* (Sarup & Sons 2002) 203; PM Nair and Sankar Sen, *Trafficking in Women and Children in India* (Orient Blackswan 2005) 399; Human Trafficking Search <<http://www.humantraffickingsearch.net/impact>> accessed 4 May 2017.

¹¹² UNODC (n 5) 1.

Islam did not abolish slavery at the outset, since slavery was a common practice in pre-Islamic societies.¹¹³ The Qu'ran accepted slavery as an established part of life, yet sought to regularise and humanise the practice rather than seek its abolition.¹¹⁴ Whilst the Qu'ran instructs Muslims to treat slaves with fairness, Islamic teachings of the Qu'ran, together with the traditions of the Prophet, eliminated slavery through gradual reform. The Islamic philosophy is one of gradual social change rather than outright abolition.¹¹⁵

The issue was addressed by the Prophet Muhammed by correcting specific abuses, as well as asking that his followers treat their slaves humanely: 'As for your slaves, male or female, he commanded at the Farewell Pilgrimage, feed them with what you eat yourself and clothe them with what you wear. If you cannot keep them or they commit any fault, discharge them. They are God's people like you and be kind to them'.¹¹⁶ He condemns those who enslave others, saying: 'There are three types of people whose prayer is not accepted by Allah: One who goes in front of people when they do not like him; a man who comes *dibaran*, which means that he comes to it too late; and a man who takes into slavery an emancipated male or female slave';¹¹⁷ and 'There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgment; Of these three, one is he who enslaves a free man, then sells him and eats this money'.¹¹⁸ The Prophet himself ensured the freedom of Bilal, an African slave who converted to Islam, as a way of encouraging emancipation, and setting an example to others.¹¹⁹ There are a number of verses in the Qu'ran that suggest that slaves be freed, for example, (2:177) 'and to set slaves free', (5:89) 'or the liberation of a slave', and (4:92) 'He who hath killed a believer by mistake must set free a believing slave'.¹²⁰

¹¹³ Mohamed Charfi, *Islam and Liberty: The Historical Misunderstanding* (Zed Books 2005) 49.

¹¹⁴ Zuraini Ab Hamid and Khairil Azmin Mokhtar, 'Human Trafficking: The International, Malaysian Legal Framework and Shariah Perspectives' (2013) 21(2) IIUM Law Journal 301.

¹¹⁵ *ibid.*

¹¹⁶ Murray Gordon, *Slavery in the Arab World* (Rowman & Littlefield 1989) 19.

¹¹⁷ Abu Dawood, Chapter 2, Prayer (Kitab Al-Salat), Hadith 593 <<http://ahadith.co.uk/searchresults.php?q=slavery>> accessed 7 March 2018.

¹¹⁸ KM Baharul Islam, *Issues in Women's Rights: A Practitioner's Resource Book* (Allied Publishers 2014) 52.

¹¹⁹ BBC, 'Slavery in Islam' <http://www.bbc.co.uk/religion/religions/islam/history/slavery_1.shtml> accessed 7 March 2018.

¹²⁰ Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge University Press 2006) 40.

Second, practices that are similar to slavery, such as forced marriage, which is regarded as a form of human trafficking are condemned under Islam. Both trafficking for the purpose of forced marriage, and forced marriage itself are forbidden under Islamic law, since they constitute a violation of the consent of all parties to the marriage, which is a fundamental principle of the Islamic marriage tradition.¹²¹ Chattel slavery, the situation where a woman is owned by a man, and can be inherited as any other property, is also explicitly prohibited by Qur'anic text: 'O you who believe, you are forbidden to inherit women against their will'.¹²² Additionally, Islamic law does not recognise illegal adoption, which is regarded as a practice similar to slavery, and thus, this too is forbidden.¹²³

Third, Islam also addresses labour exploitation, which it prohibits.¹²⁴ God says 'three people I shall not be on their side at the end of the world: A man who gives and then bites back, a man who sold on behalf and embezzled the money, and a man who took on a labourer who fulfilled the work, and then did not pay him';¹²⁵ 'Give the labourer his wages before his sweat dries', commanded the Prophet.¹²⁶ Several principles of Islamic law define the relationship between employer and employee, Firstly an employee must fulfil his contractual obligations;¹²⁷ secondly wages must be paid upon the completion of a contract;¹²⁸ and thirdly the compensation to be paid must be agreed and specified before entering into a contract.¹²⁹ Under Islamic law, the inflicting of hardship or harm is expressly forbidden, as shown by the passages (22:78) 'He has chosen you and has not laid upon you in religion any hardship'; and (2:185) 'Allah desires for you ease. He desires not hardship for you'. Forced or exploitative labour involves both hardship and harm and is therefore prohibited.¹³⁰

¹²¹ UNODC, *Combating Trafficking in Persons in Accordance with the Principles of Islamic Law* (UN 2010) 30.

¹²² Qu'ran, Surah An-Nisa (4:19).

¹²³ Morgan Clarke, *Islam and New Kinship: Reproductive Technology and the Shariah in Lebanon* (Berghahn Books 2013) 73.

¹²⁴ Sohrab Behdad and Farhad Nomani, *Islam and the Everyday World: Public Policy Dilemmas* (Routledge 2006) 115.

¹²⁵ Nabil M Mustapha, *Economics: The Historical, Religious & Contemporary Perspectives: A Treatise* (AuthorHouse 2009) 30.

¹²⁶ *ibid.*

¹²⁷ UNODC (n 123).

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ Myada Omar El-Sawi, 'Beyond the "Tiers of Human Trafficking Victims: Islamic Law's Ability to Push the Muslim World to the Top of the United States Trafficking Tier Placement and into Compliance with International Law' (2011) 39(2) *Georgia Journal of International & Comparative Law* 391, 403.

Fourth, sexual exploitation is also prohibited in Islam, with prostitution considered to be a forbidden act and regarded as a form of sexual exploitation.¹³¹ Forced prostitution and earning money from prostitution is also forbidden. The Qu’ran 24:33 states, ‘And do not compel your slave-girls, your handmaidens, to prostitution, fornication, when they desire to be chaste, that you may seek, through such compulsion, the transient things of the life of this world.’¹³²

Fifth, the buying and selling of human organs is also prohibited under Islam. The simple reason provided is that no human can own another’s body. All human beings are solely owned by God.¹³³

El-Sawi considers that Islam recognises the importance of the rights of human trafficking victims.¹³⁴ Women and children, are more likely to become victims of trafficking, because they are vulnerable due to social immobility, discrimination and poverty.¹³⁵ The most vulnerable groups, woman and children are addressed by the Qu’ran specifically and Islam encourages believers to assist vulnerable groups for ‘if anyone saved a life, it would be as if he saved the life of the whole people’.¹³⁶ Islam prioritises the safety and security of children, which is particularly relevant to human trafficking where victims have often come from abusive environments where they have suffered physically or psychologically. The Prophet says: ‘Each one of you is a caretaker and is responsible for those under his care’.¹³⁷

The Qur’an urges its believers to comply with agreements and treaties,¹³⁸ and teaches its followers to protect the rights of victims. Therefore, Muslim countries should comply with the Trafficking Protocol, which is designed to provide protection for trafficked victims and migrant

¹³¹ Niaz Shah, *Women, the Koran and International Human Rights Law: The Experience of Pakistan* (Brill 2006) 218.

¹³² El-Sawi (n 132) 404; UNODC (n 123) 25.

¹³³ UNODC (n 123).

¹³⁴ El-Sawi (n 132) 404.

¹³⁵ Grigore Silasi, *Migration, Mobility and Human Rights at the Eastern Border of the European Union: Space of Freedom and Security* (Ovidiu Laurian Simina 2008) 200.

¹³⁶ Quran 5:32.

¹³⁷ Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam* (The Other Press 2013) 255.

¹³⁸ Quran 5:1 ‘O you who have believed, fulfill all contracts’; UNODC (n 123) 38.

workers.¹³⁹ The basic rights of victims are addressed in the Trafficking Protocol provides for the fundamental rights of the victim and access to housing, counselling, information about their rights, medical assistance, material assistance, training, education and employment opportunities.¹⁴⁰ Islamic law requires the protection of certain vulnerable groups from victimisation, which is relevant to human trafficking.¹⁴¹ Islamic law also provides for the principle of non-punishment of victims of crime, which is especially relevant to trafficking for the purpose of sexual exploitation.¹⁴²

Prevention is better than cure, is an Islamic saying,¹⁴³ and prevention is a key element of Islamic law. However, it goes further, saying that a failure to act to provide protection or prevent wrongdoing is not permissible.¹⁴⁴ Consequently, Muslim believers are obliged both morally and legally to prevent victimisation and provide protection from trafficking, in line with the Protocol.¹⁴⁵ In regard to the punishment of human trafficking under Islamic law, trafficking itself is not specifically mentioned as a crime in the Quran or Sunnah, but is classified as a ta'zir crime,¹⁴⁶ meaning the governments of Muslim countries have discretion to enact punishments to penalise and deter offenders as they see fit. As the Islamic religion and Islamic law are in compliance with international law on the issue of human trafficking,¹⁴⁷ applying or adopting Islamic principles can play a significant role in addressing the acts, means, and forms of trafficking.¹⁴⁸ Furthermore, El-Sawi argues if Muslim countries realise that human trafficking violations are not only condemned by the international community but also by the Qu'ran and Islamic teachings, they may be ideologically compelled to become more proactive in the anti-trafficking movement.¹⁴⁹

¹³⁹ El-Sawi (n 132) 407.

¹⁴⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (entered into force 25 December 2003) 2237 UNTS 319, art 6.

¹⁴¹ El-Sawi (n 132) 407.

¹⁴² Quran 24:33 'But force not your maids to prostitution when they desire chastity ... bbut if anyone compels them, yet, after such compulsion is Allah, oft-forgiving, most merciful to them'.

¹⁴³ Muhammad Ali Alkhuli, *The Light of Islam* (Al Manhal 2013) 81.

¹⁴⁴ El-Sawi (n 132) 407.

¹⁴⁵ *ibid.*

¹⁴⁶ Shahid M Shahidullah, *Comparative Criminal Justice Systems* (Jones & Bartlett 2012) 378.

¹⁴⁷ El-Sawi (n 132) 395.

¹⁴⁸ UNODC (n 123) 20.

¹⁴⁹ *ibid* 411.

3.4 Conclusion

This chapter has dealt with the conceptual and theoretical framework of human trafficking as viewed from a migration, human rights and Islamic perspective. The first section addressed the migration perspective by analysing the neo-classical economics. The migration perspective helped to explain the circumstances that make women vulnerable targets for human traffickers, the economic, social, political and cultural factors, and how traffickers take full advantage of such situations for their own benefit.

The second section examined human trafficking and forced prostitution as violations of human rights. Human rights violations occur at all stages of the trafficking cycle, including unassailable rights such as the right to life, liberty, and security; the right to freedom of movement; and the right not to be subjected to torture and/or cruel, inhuman or degrading treatment or punishment. Then, a human-rights-based approach to human trafficking was adopted. The key to this approach is the decriminalisation (protection) of victims and the criminalisation (prosecution) of traffickers in order to restore the appropriate balance in terms of human rights, as well as ensuring that the human rights of trafficked persons are at the centre of all efforts to combat trafficking. Furthermore, this section discussed the impact of human trafficking and forced prostitution upon victims through, for example, physical abuse. Victims are often badly beaten so they do what they are told. Sometimes, victims are told that if they do not obey, their family will be hurt or they will be handed over to the immigration authorities.¹⁵⁰ Others may not be physically harmed but be abused emotionally.

The third section examined how Islamic law and principles addressed a number of the practices that constitute the concept of human trafficking as defined in the Trafficking Protocol such as slavery, practices that are similar to slavery, labor exploitation, sexual exploitation and the buying and selling of human organs. Furthermore, this section also recognises the importance of the rights of human trafficking victims under Islamic law and adopting Islamic principles can play a significant role in addressing the acts, means, and forms of trafficking.

¹⁵⁰ Hart (n 112) 31.

The next chapter examines the international and regional legal response to the trafficking of women and the extent to which legal instruments address the issue sufficiently and comprehensively.

Chapter Four: Combating Human Trafficking: International and Regional Legal Responses to the Trafficking of Women

Introduction

During the last two decades, the UN and NGOs have stepped up their efforts through international legal frameworks, conventions, implementation mechanisms and expert committees to combat human trafficking and commercial sexual exploitation around the world.¹ These measures aim to reduce the vulnerability of potential victims, provide sufficient support and protection for victims, ensure the swift prosecution of traffickers (and other key actors), whilst respecting the basic human rights of all.² Given that the prohibition of slavery and human trafficking is part of international law, and considered a *jus cogens* principle,³ states are under obligation to act with due diligence to prevent trafficking, investigate and prosecute traffickers, and to assist and protect trafficked persons.⁴

Governments habitually approach trafficking from a law enforcement or crime control perspective (as opposed to a victim protection or human rights perspective). Typically, they are overwhelmingly concerned with protecting borders, preventing unwanted migration, controlling organised crime, and more recently, terrorism.⁵ However, efforts to combat trafficking are unlikely to be successful if the emphasis is crime prevention, and not a victim's protection and rights, as will be duly analysed in this chapter.⁶

¹ Much of the international law that establishes the actions necessary for combating human trafficking worldwide is created by the UN. This international body obligates states to refrain from committing human rights violations and also take positive steps to ensure that individuals are able to enjoy their human rights. A state's legal obligations are articulated in human rights instruments, such as treaties and conventions. The UN also drafts politically-binding documents that do not have the force of law, such as declarations and resolutions, but which nevertheless represent important guidelines on state obligations. See Stop Violence Against Women, 'Trafficking in Women – Law and Policy: The International Legal Framework' <<http://www1.umn.edu/humanrts/svaw/trafficking/law/intl.htm>> accessed 2 December 2015.

² See UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action* (UN 2008) 1.

³ Article 53 of the Vienna Convention on the Law of Treaties 1969 provides that *jus cogens* is 'a peremptory norm of general international law' which is 'accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character'. See Edward H Lawson and Mary Lou Bertucci, *Encyclopaedia of Human Rights* (Taylor & Francis 1996) 1456.

⁴ Joint Committee on Human Rights, *Human Trafficking (twenty-sixth report)* (HC 2005-2006) 16.

⁵ Alice Bullard, *Human Rights in Crisis* (Ashgate 2008) 115.

⁶ *ibid.*

The chapter examines the provisions in the Trafficking Protocol and the 1949 Convention that are crime control focused alongside the international and regional instruments that adopt a human rights approach to trafficking. It evaluates these international human trafficking legal responses in an attempt to explain why the 1949 Convention failed to comprehensively or sufficiently address the issue of human trafficking. The section also contains a critical analysis of the most comprehensive legal instrument in the fight against human trafficking at international level, the Trafficking Protocol. It examines the provisions of the Trafficking Protocol in regard to the criminalisation, investigation and prosecution of traffickers, as well as the protection and assistance of victims, with respect for their human rights. The Trafficking Protocol is interrogated for its failure to comprehensively combat trafficking.

A key argument of the chapter is that there is an urgent need to address human trafficking and commercial sexual exploitation with a legal framework that combines a crime control approach with a human rights approach. Using this claim as a point of departure, the chapter will present an examination of several international⁷ and regional⁸ legal instruments. Furthermore, the chapter will also critique the fundamental norms and standards related to the protection of trafficked victims' rights which will be discussed in tandem with prevention of some of the principal causes of trafficking. This analysis concludes with a strategy to effectively combat trafficking and resolve the problems faced by victims of human trafficking and commercial sexual exploitation.

4.1 A Crime Control Approach to Human Trafficking

The crime control approach is one that is based on the assumption that criminalising human trafficking reduces the probability of its incidence and that prosecution prevents it.⁹ The preamble to the Trafficking Protocol underlines that it 'shall ensure effective action to punish the traffickers and to protect the victims'. Criminalisation and punishment, with the aim of reducing the danger of actual victimisation, is considered a measure of protection against victimisation.

⁷ Conventions adopted by the United Nations (UDHR, ICCPR, ICESCR and CEDAW).

⁸ Such as the European Trafficking Convention, SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the Arab Charter on Human Rights.

⁹ Karin Bruckmuller and Stefan Schumann, 'Crime Control versus Social Work Approaches in the Context of the "3P" Paradigm: Prevention, Protection, Prosecution' in John Winterdyk, Benjamin Perrin and Philip Reichel, *Human Trafficking: Exploring the International Nature, Concerns, and Complexities* (CRC Press 2011) 109.

Sentencing criminals to the appropriate punishment is intended to have a deterrent effect on both the convicted criminal (special prevention) and any would be offenders (negative general prevention).¹⁰ In this context, trafficking is understood as a product of criminals and the punishment is employed to stem the flow of this criminal activity and its victims. It is an approach which legitimises the anti-trafficking project to the criminal justice community as it necessitates a criminal justice solution.¹¹ Essentially, it penalises traffickers' activities, rather than paying attention to eliminating the vulnerability of potential trafficking victims. In this way, structural inequalities of sex, gender, class, race and poverty - that lie at the heart of patterns of migration, forced labour and commercial sexual exploitation - are overlooked and obscured.¹²

4.1.1 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949)

As discussed in Chapter Two, the provisions of the 1949 Convention supersede the provisions of the 1904, 1910, 1921 and 1933 Conventions.¹³ The 1949 Convention aimed to punish traffickers and criminalise any conduct related to human trafficking.¹⁴ Whilst some attention was given to the prevention of trafficking and the repatriation of victims, the primary focus of the 1949 Convention was law enforcement.¹⁵ As Morehouse argues, it is purely an anti-prostitution law.¹⁶ Bruch adds that the drafters intended to consolidate and supplement the previous agreements, and emphasised anti-prostitution and law enforcement in the Convention.¹⁷

States Parties subject to the 1949 Convention are bound to three areas of obligation.¹⁸ Firstly, States are bound to a general anti-trafficking principle which obliges signatories to work towards

¹⁰ Bruckmuller and Schumann (n 9) 109.

¹¹ Terence C Halliday and Gregory C Shaffer, *Transnational Legal Orders* (Cambridge University Press 2015) 392.

¹² *ibid.*

¹³ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (signed 21 March 1950, entered into force 25 July 1951) art 28.

¹⁴ Elizabeth M Bruch, 'Models Wanted: The Search for an Effective Response to Human Trafficking' (2004) 40 *Stanford Journal of International Law* 16.

¹⁵ *ibid.*

¹⁶ Christal Morehouse, *Combating Human Trafficking: Policy Gaps and Hidden Political Agendas in the USA and Germany* (Springer Science & Business Media 2009) 46.

¹⁷ Bruch (n 14) 9.

¹⁸ Sara Dillon, *International Children's Rights* (Carolina Academic Press 2010) 281.

the abolition of sex trafficking. It does not provide any explicit definitions of trafficking,¹⁹ but it does delineate actions which are prohibited by the Convention. Thus, States Parties are required to punish any person who, to gratify the passions of another: ‘(1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; and (2) Exploits the prostitution of another person, even with the consent of that person’.²⁰ Viewing trafficked women as victims of pimps and customers, States are required to punish those involved in the keeping, managing or financing of brothels,²¹ and refrain from any system of registration or supervision of prostitutes.²² Secondly, in accordance with Articles 8 to 15, signatories agree to participate in specific enforcement measures, including cooperating in the extradition of traffickers, coordinating investigation efforts, information sharing, and upholding foreign trafficking convictions.²³ Thirdly, in accordance with Article 16, States agree to attempt to rehabilitate and otherwise support victims of forced prostitution by utilising social welfare systems such as public education, health care and social services.²⁴

Although the 1949 Convention is fairly precise in establishing the specific obligations of States Parties, commentators have criticised its ambiguity with respect to whether or not the framers of the Convention intended to abolish all forms of prostitution or only forced prostitution.²⁵ Under the terms of the Convention, prostitution and trafficking are ‘incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community’.²⁶ Chuang writes that a UN report issued pursuant to the 1949 Convention reveals that the drafters did not intend to regulate or prohibit prostitution, instead they wished to work towards the abolition of the ‘exploitation of prostitution’.²⁷ A number of studies conducted under the auspices of the LN in the 1920s and 1930s reported that ‘the fear that abolition would result

¹⁹ Alicia W Peters, *Responding to Human Trafficking: Sex, Gender, and Culture in the Law* (University of Pennsylvania Press 2015) 55.

²⁰ 1949 Convention (n 13) art 1.

²¹ *ibid* art 2; Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 15.

²² *ibid* art 6 ‘Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.’

²³ *ibid* arts 8 to 15.

²⁴ *ibid* art 16.

²⁵ Janie Chuang, ‘Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts’ (1998) 11 *Harvard Human Rights Journal* 76.

²⁶ 1949 Convention (n 13) Preamble.

²⁷ Chuang (n 25) 77.

in an increase of venereal disease or would be prejudicial to public order has been proved to be unfounded, and that the danger of international trafficking has been diminished by the closing of the houses'.²⁸ Based on these findings, the framers of the 1949 Convention decided that measures should be taken to abolish the regulation of prostitution. Accordingly, under Article 6 of the 1949 Convention, States Parties agree to abolish any existing laws or regulations under which persons who engage in prostitution are subject to special registration or exceptional requirements for supervision or notification.²⁹ The framers did not want to prohibit or criminalise prostitution for fear that prohibition would drive the practice underground.³⁰ Nevertheless, while it is clear that States Parties are to refrain from regulating prostitution and prosecuting prostitutes, it is unclear whether, in requiring States to combat the exploitation of prostitution, such efforts are to be targeted at all forms of prostitution or only forced prostitution.³¹

Cross-border cooperation is viewed as an important tool in the fight against trafficking. A number of substantive and procedural provisions have been adopted at an international level with this in mind.³² The 1949 Convention outlined the extradition of offenders as well as the prosecution and punishment of nationals for offences committed abroad.³³ Detailed guidance is supplied on the internal coordination and centralisation of anti-trafficking efforts.³⁴ Protection and rehabilitation are central themes.³⁵ Foreign victims of trafficking are to share the same rights

²⁸ League of Nations (Advisory Commission for the Protection and Welfare of Children and Young People, 'Traffic in Women and Children Committee), 'Report on the Ninth Session – adopted by the Committee on April 9th' (16 April 1930) C.216.M.104.1930.IV 7.

²⁹ 1949 Convention (n 13) art 6.

³⁰ Chuang (n 25) 77.

³¹ *ibid.*

³² 1949 Convention (n 13) arts 13, 14, 15 and 18. Article 13 establishes/facilitates direct communication between 'judicial authorities' as well as between Ministers of Justice in signatory countries. Article 13 attempts to ease the burden of passing requests/communications through ordinary diplomatic channels, thereby increasing the efficacy of cooperation. Article 14 establishes a standing body to coordinate/track investigations into offences under the Convention. It also assists cross-border cooperation by promoting regular contact between each domestic body as well as establishing a standing body of knowledge about previous offenders/cases. Article 15 provides for the transfer of information about offenders between the bodies established under Article 14. It covers the particulars of an offence, attempt to commit an offense, investigations into an offense, the movement of persons, and biodata of offenders/suspected offenders. It is possible the effectiveness of this Article may be circumscribed by its first clause: i.e. 'to the extent permitted by domestic law and to the extent to which the authorities ... judge desirable'. Its success also depends upon each state having formed a working (and through) central body.

³³ *ibid* arts 8 and 9.

³⁴ *ibid* art 14.

³⁵ Gallagher (n 21) 59.

as nationals, with respect to their being party to proceedings against traffickers³⁶ (presumably including equality of access to compensation for crimes). Victims of prostitution are to be identified and the reasons and circumstances for their situation established prior to their repatriation.³⁷ Victims of both prostitution and trafficking are to be provided with social services for ‘rehabilitation and social adjustment’.³⁸ States Parties are also obliged to maintain and care for destitute trafficking victims prior to their repatriation.³⁹ Repatriation (for alien prostitutes, as well as trafficked persons) if desired, is advocated, unless their ‘expulsion is ordered in conformity with the law’.⁴⁰ The Convention sets out a range of measures to be taken by States Parties to prevent trafficking and prostitution, including the provision of public information warnings about the dangers of trafficking;⁴¹ supervision of employment agencies,⁴² railway stations, airports and other public places;⁴³ and regulation of immigration and emigration.⁴⁴

However, under the 1949 Convention those working as prostitutes needed to prove that they were either coerced or tricked and that it was not a profession that they had selected by choice. This indicates that the 1949 Convention combines prostitution with human trafficking in a moralistic manner.⁴⁵ The 1949 Convention has proved ineffective in protecting the rights of trafficked women and does not take a human rights approach.⁴⁶ Special Rapporteur Coomaraswamy argues that the 1949 Convention ‘does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby

³⁶ 1949 Convention (n 13) art 5.

³⁷ *ibid* art 18. This authorises officials to take declarations from ‘alien’ prostitutes to establish their identity/civil status/reasons for leaving their country of origin, with a view to eventual repatriation. This information is to be communicated to officials from the state of origin. While this article may assist in cross-border cooperation, it may also endanger/frighten victims of trafficking who do not want officials in their home country to know of their whereabouts. It is unclear whether this information is to be included in the database/body of knowledge set out in art 4.

³⁸ *ibid* art 16.

³⁹ *ibid* art 19(1).

⁴⁰ *ibid* art 19(2).

⁴¹ *ibid* art 17(2).

⁴² *ibid* art 20.

⁴³ *ibid* art 17(3).

⁴⁴ *ibid* art 17(1).

⁴⁵ Geetanjali Gangoli and Nicole Westmarland, *International Approaches to Prostitution: Law and Policy in Europe and Asia* (Policy Press 2006) 196.

⁴⁶ Venla Roth, *Defining Human Trafficking and Identifying its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Martinus Nijhoff 2011) 55.

increasing trafficked women's marginalisation and vulnerability to human rights violations'.⁴⁷ The inadequacy of the Convention is amplified by its failure to define other forms of trafficking, such as sex tourism, forced marriage, begging, working in sweatshops and domestic labour, which are increasingly a matter of grave international concern.⁴⁸

Other shortcomings of the 1949 Convention are its weak reporting mechanisms and its absence of an independent supervisory body to ensure that its legal provisions are enforced.⁴⁹ Although the Convention requires States Parties to report annually to the UN Secretary-General, no independent treaty body has been established to monitor the implementation and enforcement of the treaty at the national level, this could explain why only less than half of the 69 States Parties report.⁵⁰ Since 1974, the Working Group on Contemporary Forms of Slavery, mandated under the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities has reviewed States' action in respect of trafficking,⁵¹ although it is empowered to receive and publicly review information on trafficking, it lacks a mandate to take action on the reports.⁵²

4.1.2 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (The Trafficking Protocol)⁵³

The UNGA adopted a new Convention against Transnational Organized Crime on 15 November 2000 (hereinafter referred to as the Trafficking Convention). Its purpose was to defeat the transnational nature of organised criminal groups.⁵⁴ Two Optional Protocols are included within the Convention; the Optional Protocol against the smuggling of Migrants by Land, Sea and Air,

⁴⁷ Radhika Coomaraswamy, 'Integration of the Human Rights of Women and the Gender Perspective, Violence against Women: Report of the Special Rapporteur on Violence Against Women, its Causes And Consequences, on Trafficking in Women, Women's Migration and Violence against Women, submitted in accordance with Commission on Human Rights Resolution 1997/44' (29 February 2000) E/CN.4/2000/68, para 22; Roth (n 48) 55.

⁴⁸ Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a More Holistic Approach* (Martinus Nijhoff 2006) 36.

⁴⁹ Coomaraswamy (n 49) para 26.

⁵⁰ Kate E Tunstall, *Displacement, Asylum, Migration* (Oxford University Press 2006) 243.

⁵¹ OHCHR, 'Report of the Working Group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities' (5 March 1993).

⁵² Coomaraswamy (n 49) para 26.

⁵³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (entered into force 25 December 2003) 2237 UNTS 319 (Trafficking Protocol).

⁵⁴ Melissa Hope Ditmore, *Encyclopedia of Prostitution and Sex Work, Volume 2* (Greenwood 2006) 686.

and the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter referred to as the the Trafficking Protocol).⁵⁵

A primary issue to be raised since the adoption of the Trafficking Protocol concerned the scope of legal intervention on human trafficking. When the Protocol was first drafted, consideration was given to whether it was only the trafficking in women and children, or the trafficking of all persons that should be addressed. Primary drafts of the Protocol reveal that trafficking in women and children was the only area discussed. Later, the draft Trafficking Protocol was revised to cover international trafficking of all persons, regardless of age, gender or race. The UNGA agreed to widen the Protocol to cover trafficking of everyone, especially women and children.⁵⁶

Two debates dominated discussions on the definition of trafficking in the Trafficking Protocol, which indicated that the use of force or some form of coercion is necessary for trafficking to have taken place.⁵⁷ The areas of contention were whether prostitution was trafficking *per se* or a form of labour, and if force was a necessary component of trafficking into the sex industry.⁵⁸ An endnote in the *travaux préparatoires* accompanying the Protocol indicated that national governments should address the sex industry under their national laws. Furthermore, it stated that ‘the exploitation of the prostitution of others and sexual exploitation are not defined in this convention, and that the protocol is without prejudice to how States address prostitution in their respective laws’.⁵⁹ The definition contained within the Trafficking Protocol is now accepted worldwide. Nevertheless, debates still rage over its effectiveness.⁶⁰

⁵⁵ A third protocol, dealing with the trade in firearms and weapons, was adopted the year after at the General Assembly meeting of 8 June 2001 (UN Res 55/255).

⁵⁶ UNGA, ‘Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the Works of Its First to Eleventh Sessions’ (3 November 2000) UN Doc A/55/383, para 54.

⁵⁷ Junius Rodriguez, *Slavery in the Modern World: A History of Political, Social, and Economic Oppression: A History of Political, Social, and Economic Oppression* (ABC-CLIO 2011) 443.

⁵⁸ *ibid* 444.

⁵⁹ *ibid*.

⁶⁰ Robert W Spires, *Preventing Human Trafficking: Education and NGOs in Thailand* (Ashgate 2015) 16.

4.1.2.1 Border Controls and Crime Control Responses Strengthened by Relevant Provisions

4.1.2.1.1 Criminalisation: Investigation and Prosecution

The promotion of international cooperation on counter-trafficking, which includes criminalising trafficking and punishing traffickers, as well as assisting victims of trafficking ‘with full respect for their human rights’ is the proposed function of the Trafficking Protocol.⁶¹ Article 2 sets out three of its key objectives. Firstly, State signatories are obliged to criminalise people trafficking within national legislation and establish penalties for this offence. Secondly, States are required to promote international cooperation. Thirdly, signatories must consider offering protection and assistance to victims of trafficking. Notably, the first objective is expressed in mandatory terms, by contrast the other two are facultative.⁶²

The criminalisation provisions have been described as ‘a central and mandatory obligation of all States Parties to the Protocol’.⁶³ Article 5 obliges States Parties to criminalise trafficking, either as a single criminal offence or a combination of offences that cover, at a minimum, the full range of conduct covered by the definition within the Trafficking Protocol.⁶⁴ States Parties are also obliged to criminalise participating,⁶⁵ organising or directing others to commit such an offence.⁶⁶ Likewise, attempting to commit the offence is also criminalised.⁶⁷

It is worth noting that in Article 4 of the Protocol, international legislators describe the scope of the application as limited, and the Protocol’s provisions as applying only where the offences are transnational in nature and involve organised crime.⁶⁸ However, many people who are victims of

⁶¹ Trafficking Protocol (n 55) art 2.

⁶² Trafficking Protocol (n 55) art 6.1: ‘In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential’; Raffaella Sette, *Cases on Technologies for Teaching Criminology and Victimology: Methodologies and Practices: Methodologies and Practices* (IGI Global 2009) 142; Dominika Borg Jansson, *Modern Slavery: A Comparative Study of the Definition of Trafficking in Persons* (Martinus Nijhoff 2014) 77; Gallagher (n 21) 374.

⁶³ UNODC, *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto* (UN 2004) 269; Gallagher (n 21) 371.

⁶⁴ UNODC (n 65) 268.

⁶⁵ Trafficking Protocol (n 55) art 5(2)(b).

⁶⁶ *ibid* art 5(2)(c).

⁶⁷ ‘subject to the basic concepts’ of the legal system of each state party – Trafficking Protocol (n 55) art 5(2)(a).

⁶⁸ Leslie Holmes, *Trafficking and Human Rights: European and Asia-Pacific Perspectives* (Edward Elgar 2010) 21.

human trafficking today are not trafficked by individuals belonging to a criminal group. Yet, the Trafficking Convention requires criminalisation regardless of whether trafficking is transnational or involves an organised crime group.⁶⁹ That is, the requirement to criminalise trafficking applies both to transnational and individual situations.⁷⁰ Moreover, it is not limited to situations involving an organised crime group.⁷¹ In line with this argument, Part 2, paragraph 25 of the Legislative Guide to the Trafficking Protocol reads:

[I]t is important for drafters of legislation to note that the provisions relating to the involvement of transnationality and organised crime do not always apply ... It is important to emphasise that, for example, Article 34 Paragraph 2, of the Convention provides that legislators must not incorporate elements concerning transnationality or an organised criminal group into domestic offences provisions ... in the case of trafficking in persons, domestic offences should apply even where transnationality and the involvement organised criminal groups do not exist.⁷²

4.1.2.1.2 Strengthening Border Controls, Cooperation and Law Enforcement Measures

Part III of the Trafficking Protocol entitled ‘Prevention, cooperation and other measures’ concerns provisions relating to law enforcement and border control.⁷³ Article 10 requires law enforcement training to help identify potential trafficking victims and the organised crime methods used to traffic individuals.⁷⁴ Article 10 also requires information exchange between law enforcement and immigration officials of State Parties regarding transportation routes, fraudulent documents and potential traffickers.⁷⁵

With respect to border control measures, States Parties are required under Article 11 of the Protocol to strengthen border controls to the greatest extent possible;⁷⁶ adopt measures to prevent transport operated by commercial carriers; oblige carriers to ensure that all passengers have the

⁶⁹ United Nations Convention Against Transnational Organized Crime (signed 12 December 2000, entered into force 29 September 2003) 2225 UNTS 209, art 34, para 2 (Trafficking Convention): ‘legislators must not incorporate elements concerning transnationality or an organised criminal group into domestic offence provision ... In the case of trafficking in persons, domestic offences should apply even where transnationality and the involvement of organised criminal groups do not exist’.

⁷⁰ Borg Jansson (n 64) 79.

⁷¹ Satvinder Singh Juss and Colin Harvey, *Contemporary Issues in Refugee Law* (Edward Elgar 2013) 143.

⁷² UNODC (n 65) part 2, para 25.

⁷³ Trafficking Protocol (n 55) arts 10 to 13.

⁷⁴ *ibid* art 10.2.

⁷⁵ *ibid* art 10.1(a) & (b).

⁷⁶ *ibid* art 11.1.

required travel documents; and provide sanctions in cases of violation.⁷⁷ Commercial carriers are obliged to return any persons who do not have the required travel documents. States can also refuse entry or revoke the visas of people who are known to engage in, or are suspected of engaging in, trafficking crimes.⁷⁸ Furthermore, Article 12 requires States Parties to ensure the integrity and security of their travel or identity documents⁷⁹ and, at the request of another State, to ‘verify within a reasonable time’ the legitimacy and validity of documents purported to have been issued by them.⁸⁰

4.1.2.2 Provisions Concerning the Assistance and Protection of Victims

Protecting victims of trafficking is one of the aims, listed under Article 2(b), of the Trafficking Protocol.⁸¹ Wuiling argues that the Trafficking Protocol is the first universal counter-trafficking instrument to adopt a multidisciplinary, victim-centred approach,⁸² and this is evident in Article 9 which stipulates that States have a clear duty ‘to protect victims of trafficking in persons, especially women and children, from re-victimisation’.⁸³ The relevant provisions on the treatment, support and protection of victims are found in Articles 6, 7 and 8 of Part II of the Protocol. Nevertheless these provisions are not binding; States are not obliged to adopt them.⁸⁴ Moreover, the Trafficking Protocol is very ‘light’ in terms of its measures to protect and assist victims of trafficking.⁸⁵ Gallagher argues that this weakness in the Protocol is attributable to its failure to explicitly acknowledge the victims’ right to access information or remedies, which is subsequently likely to undermine its effectiveness as a law enforcement instrument.⁸⁶

⁷⁷ *ibid* art 11.3.

⁷⁸ *ibid* art 11.5.

⁷⁹ *ibid* art 12 ‘Each State Party shall take such measures as may be necessary, within available means: ... (b) to ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.’

⁸⁰ *ibid* art 13.

⁸¹ *ibid* art 2(b); Obokata (n 50) 174.

⁸² Cheah Wuiling, ‘Assessing Criminal Justice and Human Rights Models in the Fight against Sex Trafficking: A Case Study of the ASEAN Region’ (2006) 3(1) *Essex Human Rights Review* 53.

⁸³ Trafficking Protocol (n 55) art 9(b); Kristina Touzenis, *Trafficking in Human Beings: Human Rights and Transnational Criminal Law* (UNESCO 2010) 71.

⁸⁴ Rianne Letschert and Jan van Dijk, *The New Faces of Victimhood: Globalization, Transnational Crimes and Victim Rights* (Springer Science & Business Media 2011) 86; Touzenis (n 85) 80.

⁸⁵ Singh Juss and Harvey (n 73) 149.

⁸⁶ Gallagher (n 21) 991.

4.1.2.3 Article 6: Assistance and Protection for Victims of Trafficking

Part II of the Protocol includes specific provisions for the protection of trafficked victims. These are contained in Article 6 which incorporates six paragraphs covering: the protection of privacy and identity; adopting appropriate measures for providing victims with information; examining ways of guaranteeing physical, psychological and social recovery of victims, including counselling and housing; age, gender and special needs of victims taken into account; providing for the physical safety of victims; and guaranteeing compensation.⁸⁷ Notwithstanding this, the Trafficking Protocol is essentially committed to the crime control approach. Its provisions for protecting victims of trafficking are not mandatory and are decidedly weak.⁸⁸ For example, Article 6.1 states that States Parties ‘shall protect the privacy and identity of victims of trafficking in persons’.⁸⁹ Furthermore, Article 6.2 states that a States Party ‘shall ensure that its domestic legal or administrative system contains measures that shall provide protection to victims of trafficking in persons, in appropriate cases’.⁹⁰ Yet, the language is not specific, with the use of terms such as ‘in appropriate cases’, which appears to allow governments to provide assistance to some trafficked persons and not others.⁹¹ States Parties ‘shall consider implementing measures’ to provide victims with protection, support and remedies, but are not required to do so.⁹² Fundamentally, this does not compel States to adhere to a positive human rights obligation, a failure that greatly compromises the protection of human rights.⁹³

The right to social benefits and rehabilitation for victims are specified in Article 6.3. These include the rights to psychological, physical and social recovery which can take the form of housing; counselling and information; medical and psychological help; material support; as well employment, education and training.⁹⁴ Once again, the language within the article is problematic, in 6.3 it states that a government ‘shall consider’ and act ‘in appropriate cases’, yet it does not obligate governments to do anything. However, Articles 6, 7 and 8 of the Trafficking Protocol should be read and implemented in conjunction with Articles 24 and 25 of the Trafficking

⁸⁷ Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery* (Oxford University Press 2008) 64.

⁸⁸ Carin Benninger-Budel, *Due Diligence and Its Application to Protect Women from Violence* (Brill 2008) 205.

⁸⁹ Trafficking Protocol (n 55) art 6(1).

⁹⁰ *ibid* art 6(2).

⁹¹ Touzenis (n 85) 73.

⁹² Benninger-Budel (n 90) 205.

⁹³ Mathias Klang and Andrew Murray, *Human Rights in the Digital Age* (Routledge 2004) 25.

⁹⁴ Trafficking Protocol (n 55) art 6(3).

Convention.⁹⁵ Thus, governments should provide some level of assistance and protection according to the commitment made in Article 25.1 of the Trafficking Convention.⁹⁶

Article 6.5 of the Trafficking Protocol requires States to provide for the physical safety of victims of trafficking. However, it neglects to make the same provisions available to their family members or key witnesses. Nonetheless, States are required to take appropriate steps under Article 24.1 of the Trafficking Convention to provide protection for victims and witnesses who may face retaliation, intimidation or victimisation during or after criminal proceedings.⁹⁷ Such measures may include establishing procedures for (where necessary and feasible) to relocate them, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons, and providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of witnesses, such as permitting testimony to be given via communications technology in the form of video links, or other adequate means.⁹⁸

Article 6.6 of the Trafficking Protocol demands that States provide victims with the opportunity of seeking compensation.⁹⁹ While the Protocol does not prescribe potential sources of victim compensation, the UNODC suggests the following options as sufficient to meet the requirements of the Protocol: 1) allowing criminal courts to award criminal damages so that compensation is paid by offenders to victims; 2) imposing orders for compensation or restitution against those convicted of offences; 3) allowing victims to sue offenders or others under statutory or common law torts for civil damages; and 4) establishing funds or schemes from which victims can claim compensation from the State for injuries or damages suffered as a result of a criminal offence.¹⁰⁰

⁹⁵ Roth (n 48) 91; Special Action Programme to Combat Forced Labour, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (International Labour Office 2005) 13; UNODC (n 65) 282.

⁹⁶ Touzenis (n 85) 113.

⁹⁷ Trafficking Convention (n 71) art 24.1: 'they shall provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.'

⁹⁸ *ibid* art 24.2.

⁹⁹ The Trafficking Protocol, Article 6.6 states that, Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered; see also Laurie Berg, *Migrant Rights at Work: Law's Precariousness at the Intersection of Immigration and Labour* (Routledge 2015) 229.

¹⁰⁰ UNODC (n 65) 403; Touzenis (n 85) 79; Vienna Forum to Fight Human Trafficking, 'The Effectiveness of Legal Frameworks and Anti-Trafficking Legislation' (Austria Center, Vienna, Background Paper 023 Workshop, 13-15 February 2008) 25.

Furthermore, Article 25(2) of the Trafficking Convention requires States to establish procedures to provide victims with compensation and restitution to enable them to reintegrate into society.¹⁰¹ Receiving compensation is critical for it has psychological, physical and material value to trafficked victims. It can help in giving them hope for a new life by supplying impetus to their future endeavours. It can also be a crucial stepping-stone for victims in overcoming their trauma, financial stress and abuses suffered.¹⁰² Additionally, awarding compensation acknowledges that trafficking is a crime, and compensation, or the option of a fine paid by traffickers, can serve as a form of punishment and/or deterrent for other traffickers.¹⁰³

4.1.2.4 Article 7: Status of Victims in Receiving Countries

Article 7 of the Trafficking Protocol addresses the status of trafficked persons in receiving countries and asks States to ‘consider’ adopting measures that allow temporary or permanent residence to victims. These measures can have a strong effect on victims and can be very influential in their decision to come forward and testify against their traffickers. Moreover, they make it easier for organisations to persuade victims to whom they provide facilities to report incidents to the government.¹⁰⁴

Nonetheless, it should be noted that the Trafficking Protocol fails to mandate that States Parties adopt legislative measures relating to the status of victims.¹⁰⁵ The inability of the Protocol to oblige States to adopt measures to permit the resident status of trafficked persons suggests that the Protocol is not doing enough to protect or address the human rights of victims. However, a number of governments have incorporated a short-term residency period as a time of reflection for victims into their anti-trafficking laws, such as the US, Italy, the Netherlands and Belgium.¹⁰⁶ In Belgium, for instance, the residency period is 45 days, and in the Netherlands it is 3

¹⁰¹ Craig Barker and John Grant, *International Criminal Law Deskbook* (Routledge 2013) 167.

¹⁰² Touzenis (n 85) 79.

¹⁰³ UNODC (n 65) 434.

¹⁰⁴ *ibid* 313.

¹⁰⁵ UNODC (n 65) 291.

¹⁰⁶ Touzenis (n 85) 82.

months.¹⁰⁷ Support, including counselling, housing, medical and legal services, financial assistance, and the right to work is also made available to trafficked victims in Belgium.¹⁰⁸ In Italy, Article 18 of the Alien Law provides a six month temporary social protection residence permit, which may be extended for up to eighteen months, regardless of whether or not a victim has cooperated with the police.¹⁰⁹

4.1.2.5 Article 8: Repatriation of Trafficked Persons

Article 8 of the Trafficking Protocol provides for the safe return of trafficked persons to their countries of origin. Mandatory requirements prescribed by Article 8 obligate countries to facilitate and accept the return of victims, who are nationals or had the right of permanent residence in their territory at the time of entry into the receiving country.¹¹⁰ In addition, upon the request of the receiving country, the country of origin is required to cooperate in verifying the nationality and residency of the victim, as well as in issuing travel documents to enable the victim to return.¹¹¹

There are some challenges associated with the safe return of trafficking victims to their countries of origin. For example, once a trafficked person testifies against traffickers or trafficking gangs, the ‘victims become vulnerable to retaliation’, intimidation, and/or to being trafficked again.¹¹² In this situation, both the sending and receiving States are obliged to guarantee the return of victims with due regard to their safety and in accord with the status of any ongoing legal proceedings.¹¹³ In other words, a receiving State is required to investigate and ensure that there is no danger to the victim's life before returning them to the country of origin, and that they will not

¹⁰⁷ Potential victims of trafficking are granted a reflection period of 45 days during which time they can decide either to file a complaint or make a statement of return to his/her country of origin. See, European Commission, ‘Together Against Trafficking in Human Beings. Belgium - 2. Institutional and Legal Framework’ <https://www.ec.europa.eu/anti-trafficking/member-states/belgium-2-institutional-and-legal-framework_en> accessed 25 June 2015.

¹⁰⁸ *ibid.*

¹⁰⁹ Leonard Territo and George Kirkham, *International Sex Trafficking of Women & Children: Understanding the Global Epidemic* (Looseleaf Law Publications 2009) 308.

¹¹⁰ Trafficking Protocol (n 55) art 8.1.

¹¹¹ *ibid* art 8.3.

¹¹² Dimitri Vlassis, ‘Overview of the Provisions of the United Nations Convention against Transnational Organized Crime and its Protocols’ (Paper presented at the 119th International Training Course, Visiting Expert's Papers, Resource Material Series No. 59) 462.

¹¹³ Trafficking Protocol (n 55) art 8.2.

subject to reprisals by traffickers. Moreover, repatriation should not be forced by receiving States, rather voluntary repatriation should be facilitated in cooperation with sending States.¹¹⁴ Transportation and accommodation should be provided to trafficked people with consideration and without unreasonable delay.¹¹⁵

4.1.3 Provisions Concerning Prevention Measures for Reducing Vulnerability to Trafficking

Part III of the Trafficking Protocol deals with the obligations upon States to prevent trafficking.¹¹⁶ For instance, Article 9.4 requires them to take measures to alleviate the factors that make victims vulnerable to trafficking. Vulnerability to trafficking is defined in terms of ‘poverty, underdevelopment and lack of equal opportunity’.¹¹⁷ Article 9.2 requires States to undertake research, public enlightenment campaigns, and economic and social intervention to prevent and combat trafficking,¹¹⁸ as well as to create the necessary awareness of trafficking and forced prostitution. This is done through programmes and policies which include cooperation with NGOs through seminars and workshops organised by other relevant organisations.¹¹⁹

Article 9.1 of the Trafficking Protocol obliges States to establish comprehensive policies, programmes and other measures to combat and prevent trafficking,¹²⁰ and protect victims, especially women and children, from re-victimisation.¹²¹ Under Article 9.4, States are required to take measures, including bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking. Furthermore, they are encouraged to reduce the demand for women and young girls and any associated enticements that encourage their exploitation. States can achieve this by adopting legislation or strengthening their legal systems, along with educational, social and cultural strategies.¹²²

¹¹⁴ Ann D Jordan, *The Annotated Guide to the Complete UN Trafficking Protocol* (International Human Rights Law Group 2002) 27.

¹¹⁵ Obokata (n 50) 157-158.

¹¹⁶ OHCHR, ‘Human Rights and Human Trafficking’ (Fact Sheet No 36, United Nations, 2014) 2.

¹¹⁷ Trafficking Protocol (n 55) art 9.4.

¹¹⁸ *ibid* art 9.2.

¹¹⁹ *ibid* art 9.3.

¹²⁰ *ibid* art 9.1(a).

¹²¹ *ibid* art 9.1(b).

¹²² *ibid* art 9.5.

4.1.4 Evaluation of the Trafficking Protocol Framework

Gallagher states that effective responses to trafficking require holistic, interdisciplinary and long-term approaches which address each aspect of the trafficking cycle and explicitly recognise the links between trafficking, national migration policies and transnational organised crime.¹²³ In the view of UN Special Rapporteur on Violence against Women, the prevention and eradication of trafficking is linked to the protection of the human rights of trafficked people,¹²⁴ and ‘any remedy or strategy proposed to combat trafficking or provide assistance to victims of trafficking must be assessed in terms of whether and how it promotes and provides protection for the human rights of women’.¹²⁵ As presented in this chapter, the Trafficking Protocol clearly focuses on crime prevention mechanisms, such as the criminalisation of traffickers,¹²⁶ tighter border control,¹²⁷ increased security and the control of documents.¹²⁸ As Coontz and Griebel argue, ‘criminalisation is the centrepiece of the Protocol’.¹²⁹ Gallagher explains that the Trafficking Protocol suffers from three main weaknesses: the absence of mandatory protections for victims, the failure to provide guidance in the identification process, and the lack of a review or supervisory mechanism.¹³⁰

4.2 Does the Crime Control Approach Work in Practice?

The overall criminal justice response to trafficking in persons has historically been very ineffective and weak.¹³¹ Jayne Huckerby, Research Director at the Centre for Human Rights and Global Justice at New York University Law School, says that the crime control approach ‘has often led to trafficked persons being detained and deported before they are able to seek legal

¹²³ *ibid* 29; Gallagher (n 21) 1004.

¹²⁴ Coomaraswamy (n 49) 7.

¹²⁵ Stated in Heli Askola, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union* (Bloomsbury 2007) 135.

¹²⁶ Roth (n 48) 78.

¹²⁷ Sharon Pickering, *Women, Borders, and Violence: Current Issues in Asylum, Forced Migration, and Trafficking* (Springer Science & Business Media 2010) 10.

¹²⁸ Gurinder Shahi and Bethi Luu, *Emerging Trends in Global Health* (Lulu 2008) 186.

¹²⁹ Phyllis Coontz and Catherine Griebel, ‘International Approaches to Human Trafficking: The Call for Gender-Sensitive Perspective in International Law’ (2004) 4 *Women’s Health Journal* 51.

¹³⁰ Cited in Isabel Borges, ‘The Challenges of the Current Legal Regime to Trafficking in Women’ (2009) 6 *BSIS Journal of International Studies* 16.

¹³¹ UNODC (n 65).

advice'.¹³² The 2012 Global Report affirms that any criminal justice response to trafficking in persons needs to have 'a victim-centred approach to ensure that victims of trafficking in persons are properly identified at all stages of the trafficking process, that their needs are met and that they are equipped to participate in the criminal proceedings should they wish to do so'.¹³³ A major criticism levelled at the criminal approach, as argued by Ollus, is that in some instances the victims' security and protection are placed in a subordinate position to the prosecution and trial.¹³⁴ When this occurs victims of trafficking are primarily viewed as witnesses or informants, rather than as victims of a serious crime. The situation can be further compounded when victims might themselves be proven guilty of offences, e.g. immigration offences and drug crimes. It may therefore be likely that a trafficked person could simultaneously be an offender, an illegal migrant, a victim and a witness. This complexity is helpful in understanding some of the challenges for the criminal justice authorities dealing with trafficking in persons.¹³⁵

Another significant shortcoming of the crime control approach is that it fails to target some of the key actors in human trafficking. For instance, the owners of premises used for commercial sexual exploitation are rarely apprehended and prosecuted, resulting in little, to no impact on the elimination of trafficking processes.¹³⁶ Furthermore, the criminal approach fails to adequately address the underlying socio-economic causes and consequences of sex trafficking services globally. As a result, victims of sex trafficking are neglected or re-victimised by the authorities of the destination country; left in limbo while awaiting repatriation; and ostracised or marginalised upon repatriation to their States of origin.¹³⁷ The vulnerability of rescued victims is often exploited by traffickers. To effectively break the vicious cycle of trafficking, a new victim-centred approach that addresses the multi-dimensional nature of trafficking needs to be adopted.¹³⁸ As Bistra argues: 'this approach, no matter how effective it might be on a first look,

¹³² OHCHR, 'Human Trafficking: A Rights-based Approach' <<http://www.ohchr.org/EN/NewsEvents/Pages/HumanTrafficking.aspx>> accessed 23 March 2016.

¹³³ US Department of State, 'Trafficking in Persons Report' (June 2012) 82.

¹³⁴ Natalia Ollus, 'The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: A Tool for Criminal Justice Personnel' 17 <www.unafei.or.jp/english/pdf/RS_No62/No62_06VE_Ollus1.pdf> accessed 19 October 2015.

¹³⁵ *ibid.*

¹³⁶ Marie Segrave, Sanja Milivojevic and Sharon Pickering, *Sex Trafficking: International Context and Response* (Routledge 2012) 150.

¹³⁷ Wuiling (n 84) 47.

¹³⁸ *ibid.*

in reality does not prevent trafficking in women ... There will always be new criminals to take the place of the prosecuted ones and there will always be new methods to pass borders, illegal or legal'. Nevertheless, the crime control approach is still very important in the overall fight against trafficking of women. It can be very effective if combined with the human rights approach as a supporting element.¹³⁹

4.3 A Human Rights Approach to Human Trafficking¹⁴⁰

The human rights approach, as evidenced in international treaties, creates obligations for States and governments to respect individual human rights. The overarching goal of human rights within the trafficking context is to restore individual rights, re-empower the individual and address vulnerabilities.¹⁴¹ States are required to enact legislation and establish governmental policies and programmes to protect vulnerable people from being trafficked, investigate and prevent human trafficking, and to provide redress.¹⁴²

4.3.1 UN International Instruments

4.3.1.1 The Universal Declaration of Human Rights (UDHR)¹⁴³

The UDHR, which was adopted by the United Nations in 1948, is a non-legally binding document, nevertheless 'the integrative human rights framework established by the UDHR gives us the conceptual tools for devising strategies that better attend to the ethical implications of anti-trafficking interventions'.¹⁴⁴ One example is Article 3, which states that everyone has the right to life, liberty and security of person.¹⁴⁵ Slavery and servitude are specifically prohibited by Article 4.¹⁴⁶ The UDHR is an important instrument as it further anchors a human rights approach to

¹³⁹ Stated in Chenda Keo, *Human Trafficking in Cambodia* (Routledge 2013) 79.

¹⁴⁰ For more details, see Human rights approach to trafficking (Chapter three of this thesis).

¹⁴¹ Angela Chen, 'Victim, Rights-holder, or Worker. Human Trafficking in the International. Criminal, Human Rights, and Labor Frameworks' (International Courts) 15 <<https://internationalcourts.net/system/files/Chen.pdf>> accessed 16 May 2017.

¹⁴² Bruch (n 14) 37.

¹⁴³ (adopted 10 December 1948) UNGA Res 217 A(III).

¹⁴⁴ Alison Brysk and Austin Choi-Fitzpatrick, *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (University of Pennsylvania Press 2012) 95.

¹⁴⁵ UDHR (n 145) art 3.

¹⁴⁶ *ibid* art 4.

combating human trafficking at the international level.¹⁴⁷ Inhuman or degrading treatment, torture and cruelty are also prohibited by the declaration.¹⁴⁸ Non-discrimination and equality before the law are basic human rights to which every individual is entitled, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁴⁹ Further guarantees are given in Article 23, which states that ‘everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment’.¹⁵⁰

The UDHR confirm that rights are universal and apply to everyone, irrespective of their race, sex, ethnic origin, or other distinction and to protect citizens from any type of violation in the world.¹⁵¹ Therefore, trafficked persons are entitled to the full range of human rights in the UAE and government should take the necessary measures to prosecute, prevent, protect and assist trafficked victims.

4.3.1.2 International Covenant on Civil and Political Rights (ICCPR)¹⁵²

The ICCPR contains provisions obliging States Parties to protect and respect human rights within their territories.¹⁵³ States are obliged to prevent violations of rights by third parties and protect against violations of rights ‘in the private domain’,¹⁵⁴ as well as ensuring that effective remedies for violations suffered are in place.¹⁵⁵ Furthermore, the ICCPR demands that States refrain from discriminatory practices and adopt punitive measures to ensure equality and non-

¹⁴⁷ Morehouse (n 16) 71.

¹⁴⁸ UDHR (n 145) art 5.

¹⁴⁹ *ibid* art 2.

¹⁵⁰ *ibid* art 23.

¹⁵¹ United Nations, ‘Human Rights and Human Trafficking’ (Fact Sheet No 36, 2014) 6

¹⁵² ICCPR (adopted 16 December 1966, entered into force 23 March 1976). It has 74 signatories and 170 States Parties as of 1 April 2018.

¹⁵³ ICCPR, art 2(1) states that: ‘each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’; Helen Duffy, *The ‘War on Terror’ and the Framework of International Law* (Cambridge University Press 2005) 283.

¹⁵⁴ David B Hunter, *International Financial Institutions and International Law* (Kluwer Law International 2010) 267.

¹⁵⁵ See ICCPR, art 2(3) where each state party undertakes ‘to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.’

discrimination.¹⁵⁶ It contains provisions that prohibit all forms of slavery, servitude and forced labour.¹⁵⁷ It declares that ‘no one shall be held in slavery; slavery and slave-trade in all their forms shall be prohibited’.¹⁵⁸ Human trafficking involves a violation of the individual’s rights protected under the ICCPR, such as the right to liberty and security of the person,¹⁵⁹ as well as a violation of the right of a person to be treated with humanity, and not be subjected to cruel, inhuman or degrading treatment.¹⁶⁰

The ICCPR identifies the obligation to eliminate trafficking of women in its General Comment No 28, with Article 8 providing that no one shall be held in slavery, that slavery and the slave-trade in all forms shall be prohibited, and that no one shall be held in servitude or forced to perform forced or compulsory labour.¹⁶¹ The right to be free from imprisonment for debt or failure to fulfil a contract obligation is guaranteed in Article 11 of the ICCPR.¹⁶² Furthermore, human trafficking includes depriving individuals of their identity, for instance, by giving them a new name, or obliging them to speak a new language, which is protected under Article 18 of the ICCPR.¹⁶³ Also, trafficking violates Article 23.1 of the ICCPR which states that: ‘the family is the natural and fundamental group unit of society and is entitled to protection by society and the State’.¹⁶⁴ The family as a unit can be adversely affected when women and girls are forcibly trafficked and removed from their families. To protect trafficking victims from re-victimisation, non-refoulement protection is available under the ICCPR.¹⁶⁵

The UAE is one of the few States that is not a party of the ICCPR which include basic rights for trafficked victims such as no one shall be held in slavery, the right to be free from imprisonment for debt or the right to liberty and security of the person. Since the UAE has not ratified the ICCPR, the government is not legally bound to implement the principles laid out in it. Therefore,

¹⁵⁶ ICCPR art 26; Art 3 grants equal rights for men and women in the enjoyment of civil and political rights.

¹⁵⁷ *ibid* arts 8(2) and 8(3)(a). This prohibition is similar to that contained in the UDHR art 4.

¹⁵⁸ *ibid* art 8(1).

¹⁵⁹ *ibid* art 9(1) protects the individual from arbitrary arrest and guarantees the right to liberty and security of person, while art 12 guarantees freedom of movement.

¹⁶⁰ *ibid*. Rights guaranteed respectively by art 10 and art 7.

¹⁶¹ *ibid* art 8 (1, 2, 3).

¹⁶² *ibid* art 6(1).

¹⁶³ *ibid* art 18(2): ‘No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or beliefs of his choice.’

¹⁶⁴ *ibid* art 23.1.

¹⁶⁵ *ibid* art 12.4, for example, states that ‘no one shall be arbitrarily deprived of the right to enter his own country’.

it is recommended that the UAE to sign and ratify the ICCPR which obliges States to protect victims of trafficking.

4.3.1.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁶⁶

Many of the rights implicated in the root causes of trafficking are the subject of States' obligations under the ICESCR.¹⁶⁷ For example, Articles 2 and 3 state that gender equality is the enjoyment of cultural, social and economic rights which should not be restricted but rather be equally exercised by everyone, both men and women.¹⁶⁸ Article 2 maintains that there should be no discrimination against anyone on the grounds of social origin, race, sex, age or colour.¹⁶⁹

Article 6 of the Covenant recognises the right to do work that one freely chooses.¹⁷⁰ However, trafficked women and girls work undocumented in an industry that is largely unregulated. As such, they do not freely choose the work that they perform or the conditions of work. Article 7 guarantees the right to just and favourable conditions of work.¹⁷¹ The practice of withholding wages or failing to pay an employee is clearly a violation of basic human rights, notably the guarantee in the ICESCR of 'remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind'¹⁷² and may contribute to forced labour or other exploitative employment conditions. Article 8.1(a) provides that 'no one shall be required to perform forced or compulsory labour', subject to certain specified exceptions concerning prisoners, military service, emergencies and public order.¹⁷³ Article 10 recognises the right to protection and assistance for the family and the prohibition of child labour. The right to an adequate standard of living for oneself and one's family including adequate food, clothing and housing and to the continuous improvement of living conditions is recognised in Article 11 of the Covenant. An adequate standard of living is

¹⁶⁶ ICESCR (adopted 16 December 1966, entered into force 3 January 1976). Its monitoring body is the Committee on Economic, Social and Cultural Rights. It had 71 signatories as of 1st April 2018.

¹⁶⁷ M Magdalena Sepulveda, *The Nature of the Obligations under the International Covenant on Economic, Social, and Cultural Rights* (Intersentia 2003) 2.

¹⁶⁸ ICESCR (n 167) arts 2 to 3.

¹⁶⁹ *ibid* art 2.

¹⁷⁰ *ibid* art 6.1 recognises that 'the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts'.

¹⁷¹ ICESCR (n 167) art 7.

¹⁷² *ibid* art 7(a) (i).

¹⁷³ *ibid* art 8.1(a).

defined as a right in Article 11, which meets the needs of wellbeing and health for individuals and their families such as medical care to survive, education, clothing, housing and food, which are defined as basic needs.¹⁷⁴ Trafficked persons do not have the opportunity to achieve such a standard of living; they rarely reach this level because they are often unpaid and cannot afford basic things. Additionally, they face many risks, and at the same time are denied access to medication or contraceptives and exposed to much abuse and exploitation, including violations of their human rights.¹⁷⁵ A point to note under Article 12 of the Covenant is that everyone has the right to attain and enjoy the highest standard of physical and mental health.¹⁷⁶

The UAE has not ratified the ICESCR which demonstrates weak international commitment to human rights issues specially towards trafficked victims. It is recommended that the UAE to sign and ratify the ICESCR and this would be an important step towards the improvement of the victims' human rights and protection.

4.3.1.4 Convention on the Elimination of All Forms of Discrimination Against Women¹⁷⁷

The CEDAW aims to guarantee full protection of women's human rights and is the first human rights treaty to go beyond imposing State obligations in the field of public life to require States to undertake a number of measures to ensure equality in private life.¹⁷⁸ Furthermore, the CEDAW is an important tool for ensuring full and equal participation and enjoyment of rights by women in all spheres of life, thus reducing their vulnerability to abuse and exploitation.¹⁷⁹ The Convention highlights the measures to be undertaken by States to end discrimination covering civil and political rights and the legal status of women, reproductive rights and non-discrimination on the basis of culture or tradition.¹⁸⁰

¹⁷⁴ *ibid* art 11.

¹⁷⁵ Mary C Burke, *Human Trafficking: Interdisciplinary Perspectives* (Routledge 2013) 251.

¹⁷⁶ *ibid* art 12.

¹⁷⁷ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13. It had 99 signatories and 189 parties as of 13 April 2018. The UAE became a signatory on 6 October 2004.

¹⁷⁸ Shanthi Dairiam, Commonwealth Secretariat, *Gender and Human Rights in the Commonwealth: Some Critical Issues for Action in the Decade 2005-2015* (Commonwealth Secretariat 2004) 165.

¹⁷⁹ *ibid*.

¹⁸⁰ United Nations, Economic and Social Commission for Asia and the Pacific, *Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices* (UN 2003) 218.

Trafficking in women constitutes discrimination against women.¹⁸¹ Article 2 of the Convention places general obligations upon States and requires them to undertake a series of measures to end all forms of discrimination against women. Member countries are therefore expected to enshrine the following measures in their legal system: prohibition of all discriminatory acts against women; tribunals to be established to protect women against discrimination effectively; abolition of all laws that discriminate against women; and ensuring legal systems incorporate the principle of equality for women and men.¹⁸² Furthermore, the Convention plays an active role in preventing the causes of trafficking that lead to the vulnerability of women to exploitation and abuse by prohibiting sexually discriminating activities that lead to violations of the fundamental rights of women. Countries are required by Article 6 of the CEDAW to take action to prevent the exploitation of women sexual workers and protect them from falling victim to human traffickers.¹⁸³

The CEDAW acknowledges that females' lack of adequate access to information and services, unequal power relations based on gender, and harmful traditional practices are factors contributing to their vulnerability to trafficking and subsequently to contracting HIV/AIDS.¹⁸⁴ Measures to eliminate discrimination against women are considered to be inadequate if a health care system lacks services to prevent, detect or treat illnesses specific to women.¹⁸⁵ Consequently, women's health care and services, especially those for vulnerable and disadvantaged groups,¹⁸⁶ are addressed in Article 12.¹⁸⁷

¹⁸¹ The Convention explains the concept of discrimination as 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their material status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field'. CEDAW art 1.

¹⁸² *ibid* art 2, para A, B, C, D, E, F and G.

¹⁸³ Including legislation to suppress all forms of traffic in women and exploitation of prostitution of women. CEDAW art 6; UN (n 181) 219.

¹⁸⁴ See Committee on the Elimination of Discrimination Against Women, 'Avoidance of Discrimination against Women in National Strategies for the Prevention and Control of Acquired Immunodeficiency Syndrome (AIDS)' CEDAW General Recommendation No 15 (UN Doc A/45/38).

¹⁸⁵ See CEDAW, para 11.

¹⁸⁶ CEDAW, para 6. Vulnerable females are migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.

¹⁸⁷ The provision reads: 'States shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.'

As trafficking of women is a form of discrimination, it is necessary to establish which rights of women are denied or infringed when they are trafficked. Breaking down the trafficking cycle into separate human rights violations reveals, for instance, which rights of women are infringed when women are deceived or lured into leaving their home out of economic despair or simply have no other option, or when their passports are seized and they are forced to perform a job they never wanted or which is subject to conditions to which they never agreed. This process, in turn, reveals a wide range of remedies. The comprehensiveness of the CEDAW makes it an appropriate instrument to address the wide-ranging issues that need to be tackled when dealing with trafficking.¹⁸⁸

In establishing which rights are violated during the course of the trafficking process, it is useful to turn to General Recommendation No. 19 adopted by the CEDAW Committee in 1992.¹⁸⁹ This covers the issue of gender-based violence – a human rights violation not explicitly included in the Convention. Paragraphs 6 and 7 clarify, however, that all forms of gender-based violence are discrimination and spell out the rights denied to women when they experience gender-based violence.¹⁹⁰ Paragraph 6 states that Article 1 of the Convention recognises gender-based violence as discrimination, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence. Paragraph 7 states that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention. This includes the right to life; the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment; and the right to equal

¹⁸⁸ UN (n 181) 219; Dairiam (n 179) 166.

¹⁸⁹ General Recommendations are not binding instruments but are designed to recommend states parties' obligations which are not mentioned in the Convention itself. Sally Engle Merry, 'Constructing a Global Law-violence Against Women and the Human Rights System' (2003) 28 *Law and Social Inquiry* 952.

¹⁹⁰ UN (n 181) 219.

protection according to humanitarian norms in times of international or internal armed conflict.¹⁹¹ All of these rights are violated during the process of trafficking.¹⁹²

Furthermore, General Recommendation No 19 requires States to take measures to eliminate discrimination against women by any person.¹⁹³ It attaches responsibility to States, not only for their own acts of violence against women but for violence against women committed by private persons when a State fails to act with due diligence to prevent violations of rights, investigate and punish acts of violence, or provide compensation.¹⁹⁴ In addition, General Recommendation No 19 calls for the adoption of specific preventive and punitive measures to combat trafficking of women and sexual exploitation.¹⁹⁵ States Parties are recommended to report all information regarding legal, preventive and protective measures as well as the effectiveness of such measures to ensure the empowerment of women.¹⁹⁶

In relation to the UAE, CEDAW Committee in its concluding observations on the country report submitted by the UAE in 2015 expressed its concern that the UAE remains a country of destination and transit for women trafficked predominantly from South, South-East and Central Asia and Eastern Europe for purposes of forced labour and sexual exploitation.¹⁹⁷ The CEDAW Committee report also states that the penalties provided for in Federal Law No. 51 are not commensurate with the gravity of the crime and that efforts to prosecute and convict traffickers and their accomplices remain insufficient, especially in cases of trafficking for the purpose of forced labour and sexual exploitation.¹⁹⁸ In addition, the report is further concerned about cases of victims of trafficking being deported by force instead of being provided with the support needed.¹⁹⁹ The CEDAW Committee requests the government to ‘strengthen its efforts to

¹⁹¹ Human rights for individuals for security and liberty; the right to equal protection under the law; the right to equality in the family; the right to the highest standard attainable of physical and mental health, and the right to just and favourable conditions of work.

¹⁹² Dairiam (n 179) 167.

¹⁹³ CEDAW art 2(e).

¹⁹⁴ Committee on the Elimination of Discrimination against Women, ‘Violence against Women’ General Recommendation No 19 CEDAW/C/19921L. 1/Add. 15, para 9.

¹⁹⁵ *ibid* para 24(g).

¹⁹⁶ *ibid* para 24(v).

¹⁹⁷ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined second and third periodic reports of the United Arab Emirates, (2015) 7.

¹⁹⁸ *ibid*.

¹⁹⁹ *ibid*.

eliminate trafficking in women and girls, notably by fully enforcing the penalties contained in Federal Law No. 51 and by reinforcing the capacity of labour inspectorates and immigration authorities to detect such cases’, and calling on the government to ‘ensure that traffickers and their accomplices are prosecuted and, if found guilty, punished with sanctions that are commensurate with the gravity of their crimes and to refrain from deporting victims of trafficking, especially those with heightened protection needs, and to consider granting them temporary residence permits irrespective of their ability or willingness to cooperate with the prosecutorial authorities’.²⁰⁰

4.3.1.5 The Recommended Principles and Guidelines on Human Rights and Human Trafficking²⁰¹

The Recommended Principles and Guidelines on Human Rights and Human Trafficking (Recommended Principles and Guidelines) were formulated to ensure that anti-trafficking initiatives, at the national, regional and international levels, have human rights integrated into them. Submitted by Mary Robinson, the UN High Commissioner of Human Rights (1997-2002), the Recommended Principles and Guidelines were contained in an addendum to her report released to the United Nations Economic and Social Council in July 2002.²⁰² They were explicitly intended to address some of the weaknesses of the Trafficking Protocol, such as its optional – rather than obligatory – provisions for victim protection (as discussed earlier in this chapter).²⁰³ They were to be used to facilitate and promote integration of human rights perspectives at all levels of anti-trafficking interventions, policies and laws, and are based on informal consultations with related programmes, relevant agencies, intergovernmental organisations and experts.²⁰⁴

²⁰⁰ *ibid.*

²⁰¹ Non-treaty-instrument that adopted a human rights approach in the context of addressing trafficking in human beings. The non-treaty instruments are not legally binding for state but they may be used as sources of inspiration and tools for interpretation when developing, implementing and evaluating the national counter trafficking strategies and activists towards more a effective protection of the human rights of trafficking victims. Non-treaty instruments can also have legal relevance as they may promote the adoption of legal principles.

²⁰² Mary Robinson, ‘Report of the United Nation High Commissioner for Human Rights to the Economic and Social Council: Recommended Principles and Guidelines on Human Rights and Human Trafficking’ UN Doc E/2002/68/Add. I, 258.

²⁰³ Ann Jordan, ‘Human Rights for Trafficked Persons in Countries of Destination – International Standards or Serendipity?’ (Conference on Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking, Helsinki, Finland, 24 September 2004).

²⁰⁴ Roth (n 48) 148.

There are eleven guidelines and seventeen principles contained within this report.²⁰⁵ The principles relate to the primacy of human rights, the prevention of trafficking, the protection and assistance of victims, and the criminalisation, punishment and redress of traffickers.²⁰⁶ The guidelines concern the promotion and protection of human rights; the identification of trafficked persons and traffickers; research, analysis, evaluation and dissemination; ensuring an adequate legal framework; ensuring an adequate law enforcement response; protection and support for trafficked persons; the prevention of trafficking; special measures for the protection and support of child victims of trafficking; access to remedies; the obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel; and cooperation and coordination between States and regions.²⁰⁷

As discussed in chapter three, a human rights based approach to trafficking is one that recognises the trafficked person as a victim entitled to human rights. Guideline 1 provides that ‘violations of human rights are both a cause and a consequence of trafficking in persons’.²⁰⁸ Therefore, to prevent these violations, the protection of human rights needs to be a central concept of any anti-trafficking measures so that the rights of trafficked victims are not harmed, and the dignity and rights of all are respected.²⁰⁹ The second principle places a responsibility on States, through international law, to help and protect trafficked victims, prosecute and investigate traffickers, and prevent further trafficking through due diligence.²¹⁰ The third principle determines that measures to prevent trafficking should not harm the dignity or human rights of people, especially asylum seekers, refugees, internally displaced persons, migrants and victims of trafficking.²¹¹

Based on its victim centred provisions, the Recommended Principles and Guidelines are more specific, detailed and effective than the provisions contained for victims in the Trafficking Protocol which are discretionary, and therefore weak by comparison. For example, principle 7

²⁰⁵ Janet A Sigal and Florence L Denmark, *Violence Against Girls and Women: International Perspectives* (ABC-CLIO 2013) 146.

²⁰⁶ Scarpa (n 89) 74.

²⁰⁷ Roth (n 48) 149.

²⁰⁸ Robinson (n 199).

²⁰⁹ *ibid.*

²¹⁰ *ibid.*

²¹¹ *ibid.*

raises requirements for help and protection for victims of trafficking when entering and residing illegally in destination countries and transit countries so that they are not prosecuted, charged or detained because their situation is a direct consequence of becoming victims of trafficking.²¹² Principle 8 ensures that victims of trafficking have access to psychological and physical care and are protected from greater harm and exploitation so that their care and protection does not depend on their cooperation. In addition, cooperation in legal proceedings in terms of the willingness or capacity of trafficking victims cannot be conditional on providing them with appropriate care and protection.²¹³

Human trafficking should not solely be regarded as moving people for profit. This is recognised in the guideline 2 which requires traffickers and trafficked victims to be carefully identified. This guideline establishes additional factors of exploitation, coercion, force and deception throughout various stages of the trafficking process that distinguishes migrant smuggling from human trafficking. Often, active investigation is required to prove the differences between migrant smuggling and trafficking, which might be thought to be obvious but victims' rights could be denied further if trafficked victims are not correctly identified. This guideline places obligations on States to ensure that identification of trafficked victims can and does take place, and traffickers are identified.²¹⁴ Principle 11 establishes an obligation on the origin State and the destination State to guarantee trafficked victims safe return to their home or legal repatriation alternatives when it is believed that returning victims to their home country could pose a safety risk to victims or their families.²¹⁵ Crucially, the Recommended Principles and Guidelines focus on the need to identify the underlying causes of human trafficking so that strategies created to prevent it take into consideration what is fuelling this abusive global supply and demand for humans. Intergovernmental organisations and States must ensure that interventions address the factors that make individuals vulnerable to trafficking,²¹⁶ encompassing many that have already been discussed in chapters two and three of this thesis.

²¹² UN, *Model Law Against Trafficking in Persons* (UN 2009) 40.

²¹³ Claire M Renzetti, Jeffrey L Edleson and Raquel Kennedy Bergen, *Companion Reader on Violence Against Women* (Sage 2011) 177.

²¹⁴ Touzenis (n 85) 118.

²¹⁵ UN (n 181) 116.

²¹⁶ Dairiam (n 179) 188.

4.3.2 Regional Human Rights Instruments

The realisation of human rights may be facilitated by regional human rights instruments, which have a unique potential to contribute immensely to an increase in human dignity. They are well placed to impact upon, and draw from, the legal space between national and international levels, and have the capacity to link the norms of universal human rights and principles with responsiveness and sensitivity to the social and cultural particularities of a region.²¹⁷ Such conventions, together with systems for their enforcement, play an important role in the European, Inter-American, Asian and African contexts.²¹⁸

The next section discusses the European Trafficking Convention, the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (hereinafter referred to as the SAARC), the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (hereinafter referred to as the ACTIP), and the Arab Charter on Human Rights (hereinafter referred to as the ACHR).

4.3.2.1 Council of Europe Convention on Action against Trafficking in Human Beings

At the regional level, the European Trafficking Convention was adopted by the Council of Europe in order to provide a regional focus on victim protection and a human rights-based approach to trafficking in a legally binding instrument,²¹⁹ as opposed to the Trafficking Protocol which focuses on the crime control approach. The European Trafficking Convention Explanatory Report clarifies that the intention of the drafters was to draft a legally binding instrument able to create a proper balance between human rights and prosecution issues.²²⁰ The European Trafficking Convention provides added value because, firstly, it affirms that human trafficking

²¹⁷ Sanjana Dhawan, 'Regional Protection of Human Rights' (4 May 2015) <<https://prezi.com/w0nvczwpndl/regional-protection-of-human-rights/>> accessed 8 October 2015.

²¹⁸ Mohamed Y Mattar, 'Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards' (2013) 26 Harvard Human Rights Journal 91.

²¹⁹ Council of Europe Convention on Action against Trafficking in Human Beings (entered into force 1 February 2008) ETS 197. It had attracted 43 ratifications as of September 2015.

²²⁰ Council of Europe, 'The European Trafficking Convention Explanatory Report' (CETS No 197, 16 May 2005) para 29.

violates human integrity, human dignity and human rights so that victims need greater protection. Secondly, the Convention's scope takes in all forms of trafficking (national, transnational, linked or not to organised crime, and for purposes of exploitation), in particular with a view to victim protection measures and international cooperation.²²¹ Thirdly, to ensure that all parties effectively implement its provisions, the Convention sets up monitoring machinery. Fourthly, the Convention focuses on gender equality.²²²

Trafficking is recognised by the European Trafficking Convention, in the preamble, as constituting 'a violation of human rights and an offence to the dignity and the integrity of human beings', and it is argued that 'respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives'.²²³ Article 1 lists the aims of the Convention, which is to guarantee gender equality when attempting to combat and prevent the trafficking of human beings; guarantee gender equality when protecting the victims of trafficking; ensure their human rights within a framework of effective investigation and prosecution; assist and protect the witnesses and victims of trafficking; and ensure that action to stop trafficking in human beings is promoted by international cooperation.

Article 2 of the Convention identifies that all forms of human trafficking should be stopped, 'whether national or transnational, whether or not connected with organised crime'.²²⁴ Furthermore, countries are required to introduce legislation to criminalise all aspects of trafficking, including those who help and support the processes of human trafficking.²²⁵ Article 24 mentions some aggravating circumstances in the determination of penalties, such as the offence deliberately or by gross negligence endangering the life of the victim; the offence being against a child; the offence being committed by a public official in the performance of their duties; and the offence being committed within the framework of a criminal organisation.²²⁶

²²¹ Roth (n 48) 115.

²²² Explanatory report (n 217) para 36.

²²³ European Trafficking Convention (n 216) Preamble.

²²⁴ *ibid* art 2.

²²⁵ *ibid* art 21.

²²⁶ *ibid* art 24. See also art 25.

When compared with the definitions contained within the Trafficking Protocol, issues relating to victim protection are identified with more precise measures and higher standards within the European Trafficking Convention. The Convention has three purposes, one is to protect and promote the human rights of victims.²²⁷ In order to do this, States must assess, implement and develop their anti-trafficking initiatives when implementing all provisions of the Convention.²²⁸ States should not discriminate based on birth or other status, association with a national minority, national or social origin, political or other opinion, religion, language, colour, race or sex when implementing the elements of the Convention as the non-discrimination principle is fundamental.²²⁹ This principle of non-discrimination is meant to ensure that trafficked victims have their human rights promoted and protected.²³⁰

Gallagher notes that the Convention represents a significant improvement in terms of the recognition of the rights of victims and the connection between the protection of those rights and the improvement of criminal justice responses to trafficking.²³¹ The right of victims to be properly identified is the first critical step to being granted protection and assistance.²³² The European Trafficking Convention includes mandatory measures on protection and detailed requirements to ensure that victims are rapidly and accurately identified. Article 10.2 obliges States to adopt such legislative or other measures to identify victims as appropriate in collaboration with other parties and relevant support organisations.²³³ Therefore, if State authorities believe that an individual could be a victim of trafficking, then that individual should not be removed from that State. Victims who are children require special protection until an assessment of their age is conducted.²³⁴ States are required to provide legal representation for children not accompanied by adults so that their nationality, identity, location of their family, and whether it is in the best interests of those children to be reunited with their relatives or parents can be established.²³⁵ This is an important provision which is not included in the Trafficking

²²⁷ *ibid* 1(b).

²²⁸ *ibid* art 5.

²²⁹ *ibid* art 3.

²³⁰ *ibid*.

²³¹ Anne Gallagher, 'Recent Legal Developments in the Field of Human Trafficking: A Critical Review of the 2005 European Convention and Related Instruments' (2006) 8 *European Journal of Migration and Law* 187.

²³² European Trafficking Convention (n 216) art 10.

²³³ *ibid* art 10.2.

²³⁴ *ibid* art 10.3.

²³⁵ Scarpa (n 89) 149.

Protocol. Failure to effectively identify trafficked victims hampers any efforts to protect them, it can also serve to perpetuate the cycle of exploitation, as States are unable to gather vital information about their traffickers.²³⁶

The European Trafficking Convention requires provisions for periods of reflection and recovery so that trafficked victims can be given help and support, especially those who have a legal right to live in a State, but with a short time period, and those that live unlawfully in a State so that they can escape the control and influence of traffickers.²³⁷ Therefore, when State authorities believe that an individual is a victim of trafficking based on reasonable evidence, they should be entitled to a 30-day recovery period so that relevant documents can be issued to them to provide legal rights to remain in the State. Victims of trafficking are required to cooperate with relevant authorities and attend court to give evidence when required.²³⁸

Although the recovery period rule is an important provision of the European Trafficking Convention, it is further extended to give effective protection to victims by ensuring they are granted residence permits in the State where they have been exploited.²³⁹ However, relevant authorities need to evaluate whether the personal situation of an individual requires them to stay and/or cooperate in criminal investigations involving trafficking.²⁴⁰ Two distinct advantages of this provision are that law enforcement authorities can gain access to valuable information that may assist in the eventual arrest and prosecution of traffickers, and a legal right of residency is granted to victims so that threats of being re-trafficked or forcibly deported are removed.²⁴¹ Therefore, victims of trafficking can be confident when giving information to authorities as fear of arrest or other strict measures taken against them are removed, thereby enhancing trust between authorities and victims.

The European Trafficking Convention also includes the rights of victims of trafficking to choose to return to their original country rather than remain permanently in the new State, and

²³⁶ *ibid.*

²³⁷ art 13; Explanatory Report (n 217) paras 172-173.

²³⁸ *ibid.*, para 176.

²³⁹ Art 14; Explanatory Report (n 217) para 181.

²⁴⁰ *ibid.*

²⁴¹ *ibid.*

appropriate measures should be taken to return them safely. This includes protecting the victims' identities, their family life and private life.²⁴² States must conduct the return 'with due regard for the rights, safety and dignity' of victims.²⁴³ States of origin have two specific obligations regarding repatriation; they have to facilitate and accept the return of victims, whether nationals or residents, and they have to cooperate in their return.²⁴⁴ The safe return measures within the Convention encourage destination States and origin States to reach agreement about return home programmes so that victims can be re-integrated into society and to prevent them from being re-trafficked.²⁴⁵ Victims of trafficking need to be given appropriate travel documents agreed between States based on international cooperation so that they can enter the receiving State legally and have legal residency there if they had previously been a national or had permanent residency rights.²⁴⁶

4.3.2.2 South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution²⁴⁷

As most of the victims of trafficking in the UAE come from South Asian countries it is important to examine the Convention on Preventing and Combating Trafficking in Women and Children which was adopted by the South Asian Association for Regional Cooperation²⁴⁸ in 2002 at the eleventh SAARC Summit, held in Kathmandu, Nepal, and which was the first regional instrument to address trafficking within the framework of the SAARC.²⁴⁹ The purpose of this Convention is to:

[P]romote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use

²⁴² Art 16; Explanatory Report (n 217) para 202.

²⁴³ *ibid* 16.2.

²⁴⁴ Winston P Nagan, John AC Cartner and Robert J Munro, *Human Rights and Dynamic Humanism* (Brill 2016) 337.

²⁴⁵ Art 16(5-6); Explanatory Report (n 217) paras 205-206.

²⁴⁶ *ibid* art 16(3-4); Explanatory Report (n 217) para 204.

²⁴⁷ (adopted January 2002, entered into force 2005) (SAARC Convention).

²⁴⁸ The SAARC is an intergovernmental organization bringing together the hugely divergent States of South Asia: India, Pakistan, Bangladesh, Sri Lanka, Nepal, the Maldives, Bhutan and, most recently, Afghanistan.

²⁴⁹ UNODC (n 65) 24.

of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.²⁵⁰

Human trafficking is defined as ‘the moving, selling or buying of women or children for prostitution²⁵¹ within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking’.²⁵² The people subject to trafficking are defined as ‘women and children victimised or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means’.²⁵³ The definition of trafficking under the SAARC does not comply with the internationally agreed definition of trafficking contained in the Trafficking Protocol. Firstly, it does not cover trafficking in men and excludes other forms of trafficking for labour exploitation.²⁵⁴ The definition is limited and creates challenges in addressing trafficking when sexual exploitation is combined with other forms of exploitation.²⁵⁵ As Rajbhandari argues:

Forms of trafficking have changed and it has been revealed that it is not only women and children who are trafficked. Men too have fallen victims of this global trend. Moreover, sexual exploitation is not always for commercial purposes, but for purposes such as labour exploitation, organ transplant and domestic servitude, among others.²⁵⁶

Secondly, under the SAARC, trafficking only covers the moving, selling or buying of a person, and does not cover recruitment, harbouring, transfer or receipt so it does not include buying or selling as provided in the Trafficking Protocol.²⁵⁷ Thirdly, the SAARC separates the *means* by which trafficking can occur from the definition of trafficking which makes the definition subject to multiple interpretations. Additionally, although the means include ‘other unlawful means’, they do not specifically list important means included in the Trafficking Protocol definition, namely force, fraud other than for marriage, abuse of power, abuse of position of vulnerability

²⁵⁰ SAARC Convention (n 244) art II.

²⁵¹ The Convention defines ‘prostitution’ as ‘the sexual exploitation or abuse of persons for commercial purposes’, *ibid* art I(2).

²⁵² *ibid* art I(3).

²⁵³ *ibid* art I(5).

²⁵⁴ Gallagher (n 21) 129.

²⁵⁵ Ramona Vijeyarasa, *Sex, Slavery and the Trafficked Woman: Myths and Misconceptions about Trafficking and its Victims* (Ashgate 2015) 55.

²⁵⁶ Kathmandu Post, ‘Activists Call to Revise SAARC Convention on Trafficking’ (2 December 2015) <<http://kathmandupost.ekantipur.com/news/2015-12-02/activists-call-to-revise-saarc-convention-on-trafficking.html>> accessed 1 January 2016.

²⁵⁷ UN (n 181) 136.

and giving or receiving payments or benefits to achieve the consent of a person. Not specifically listing these means in the definition makes their inclusion dependent upon the interpretation of law enforcement and the judiciary, which may not be informed about the international standards.²⁵⁸

However, these and other limitations should not take away from the significance of the SAARC Trafficking Convention. Article 11 of the SAARC states that the measures in the Convention are ‘without prejudice to higher measures of enforcement and protection accorded by relevant national laws and international agreements’. This means that Member States are free to include broader provisions in their national legislation, and Member States that are party to the Trafficking Protocol and other instruments that provide greater protection are obligated to comply with the international standards.²⁵⁹ Furthermore, it recognises the need for extraterritorial application jurisdiction and extradition laws including a provision that the Convention be effective and that States Parties to the Convention shall be bound to prosecute or extradite offenders in the absence of extradition treaties between the concerned States.²⁶⁰ The Convention also sets out a range of ‘aggravating circumstances’ that can be taken into account during the judicial consideration of trafficking offences, including involvement in an organised criminal group or international organised criminal activities, the use of arms or violence, and the victimisation or trafficking of children.²⁶¹ Abuse of public authority to commit trafficking offences is also to be considered an aggravating circumstance.²⁶²

The SAARC contains detailed provisions on mutual legal assistance which are designed to ensure improved cooperation in relation to investigations, inquiries, trials and other proceedings.²⁶³ Such assistance is to include regular information exchange aimed at identifying trafficking patterns and routes, as well as possible bilateral mechanisms.²⁶⁴ At the national level, States Parties are required to provide the necessary resources, training and assistance for the

²⁵⁸ *ibid.*

²⁵⁹ *ibid* 137.

²⁶⁰ Human Rights Law Network, *Trafficking and the Law* (2nd edn, HRLN 2011) 489.

²⁶¹ SAARC Convention (n 244) art III.

²⁶² *ibid.*

²⁶³ *ibid* art VI.

²⁶⁴ *ibid* arts VIII(4)-VIII(5).

investigation and prosecution of trafficking offences.²⁶⁵ Law enforcement officials and the judiciary are to be sensitised to the issue of trafficking, including the factors that encourage such trafficking.²⁶⁶ The Convention includes an optional provision relating to the supervision of employment agencies to prevent trafficking under the guise of employment.²⁶⁷

In terms of the protection and assistance of victims, key provisions for countries of destination are framed within the context of repatriation. States Parties are required to provide assistance (including legal advice and health care) to trafficking victims pending their repatriation.²⁶⁸ States Parties (countries of origin) should also aim to establish protective homes or shelters for the rehabilitation of trafficked persons.²⁶⁹ The Convention encourages States Parties to seek the involvement of ‘recognised non-governmental organisations’ in the establishment of such homes or shelters, as well as more generally in prevention, intervention and rehabilitation.²⁷⁰ The Convention requires States Parties to promote awareness of the problem of trafficking and its underlying causes, ‘including the projection of negative images of women’, as well as to endeavour to focus preventative and developmental efforts on source areas of trafficking.²⁷¹

The SAARC requires the establishment of a regional taskforce, consisting of officials of the Member States, to facilitate implementation of the Convention as well as to undertake periodic reviews.²⁷² The taskforce also makes recommendations regarding the establishment of a voluntary fund for the rehabilitation and reintegration of victims of trafficking. The Convention includes a number of important assistance and protection provisions, several of which go beyond their strictly optional equivalents contained in the Trafficking Protocol.²⁷³ For example, as noted above, States Parties are required to provide legal advice and health care to victims of trafficking pending their repatriation, as well as suitable provisions for their care and maintenance.²⁷⁴ Rehabilitation of trafficked persons in protective homes or shelters is also envisaged, with States

²⁶⁵ *ibid* art VIII(1).

²⁶⁶ *ibid* art VIII(2).

²⁶⁷ *ibid* art VIII(6).

²⁶⁸ *ibid* arts IX(1)-IX(2).

²⁶⁹ *ibid* art IX(3).

²⁷⁰ *ibid* arts IX(4)-IX(5).

²⁷¹ *ibid* art VIII(8).

²⁷² Gallagher (n 21) 130.

²⁷³ *ibid* 131.

²⁷⁴ SAARC Convention (n 244) art IX(2).

Parties being required to make ‘suitable provisions’ for legal advice, consulting, job training and health care facilities.²⁷⁵

The UAE government noted that most human trafficking cases are planned outside the UAE,²⁷⁶ and Bangladesh, Pakistan or India remain a major source country for trafficked victims in the country.²⁷⁷ As these countries have ratified the SAARC Trafficking Convention, States are obliged under Article II ‘to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination’.²⁷⁸ States are also obliged to address the root causes of human trafficking such as poverty, inequality, discrimination, gender based violence or unemployment.²⁷⁹ In addition, Bangladesh, Pakistan or India should further strengthen and implement bilateral and multilateral agreements with destination countries such as the UAE to interdict trafficking in women and children for prostitution.²⁸⁰

4.3.2.3 ASEAN Convention against Trafficking in Persons, particularly Women and Children

On 29 November 2004, the ASEAN Declaration against Trafficking in Persons, particularly Women and Children was adopted during the 10th Summit of the Association of Southeast Asian Nations (ASEAN) by ten ASEAN heads of state.²⁸¹ The purpose of the declaration was to establish a regional focal network for sharing views and information, and to strengthen operations to prevent and combat human trafficking, particularly in women and children, in the ASEAN region. The relevant heads of state also signed the legally binding ASEAN Convention

²⁷⁵ *ibid* art IX(3).

²⁷⁶ A report by the DFWAC stated that 80% of human trafficking cases were externally trafficked (trafficked outside the UAE), mostly in their homelands, and brought to the UAE for the purpose of sexual exploitation. DFWAC, ‘Annual Report 2013’ 60

²⁷⁷ For more information, see chapter 5 (5.2).

²⁷⁸ SAARC Convention (n 248) art II.

²⁷⁹ *ibid* art VIII (2).

²⁸⁰ *ibid* art VIII (4).

²⁸¹ Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

Against Trafficking in Persons, Especially Women and Children (ACTIP) on 21 November 2015 in a further demonstration of their commitment to combating human trafficking.²⁸²

The ACTIP draws extensively on the Trafficking Protocol, although in the preamble it also reproduces the phraseology of the European Trafficking Convention of 2005: ‘recognising that trafficking in persons constitutes a violation of human rights and an offence to the dignity of human beings.’²⁸³ The Trafficking Protocol and the ACTIP share similar goals: to prevent and combat trafficking, in women and children in particular; provide protection and support for victims, and facilitate cooperation between States.²⁸⁴ Both Conventions provide for the criminalisation of trafficking in persons, although the ACTIP is broader in scope, referring to offences that are transnational in nature, ‘including those committed by organised criminal groups’.²⁸⁵ Thus, offences committed by individuals not belonging to criminal groups can also be brought within the terms of the ACTIP. Compared to the Trafficking Convention and the Trafficking Protocol, the ACTIP contains similar provisions on law enforcement, prevention and protection. However, unlike the Trafficking Protocol, which merely requires States to ‘consider implementing measures to provide for the physical, psychological and social recovery of victims’,²⁸⁶ the ACTIP obligates each State Party to ‘provide care and support to victims of trafficking in persons’.²⁸⁷

The Trafficking Protocol, in addition, does not refer specifically to victim identification, in contrast to the ACTIP, which contains two relevant provisions, one requiring States Parties to establish identification guidelines or procedures,²⁸⁸ and the other requiring one State Party to

²⁸² ASEAN Convention against Trafficking in Persons, particularly Women and Children (signed 21 November 2015, entered into force 8 March 2016). Member States of ACTIP comprise Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. OECD, *Trafficking in Persons and Corruption: Breaking the Chain* (OECD 2016) 20.

²⁸³ Yumiko Nakanishi, *Contemporary Issues in Human Rights Law: Europe and Asia* (Springer 2017) 160.

²⁸⁴ Art 1 and 2 of the ACTIP.

²⁸⁵ Article 4 of the Trafficking Protocol applies to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.’

²⁸⁶ Trafficking Protocol, art 6.

²⁸⁷ ACTIP, art 14.10.

²⁸⁸ ‘Each Party shall establish national guidelines or procedures for the proper identification of victims of trafficking in persons and where appropriate, may collaborate with relevant non-governmental assistance organisations.’ *ibid* art 14.1.

recognise the victim determination decision of another State Party.²⁸⁹ The importance of such types of identification is clearly recognised in the UN Principles and Guidelines on Human Rights and Human Trafficking.

Failure to identify a trafficked person correctly can lead to further obstacles preventing that person's access to the rights to which they are entitled. Thus, States are required to guarantee that such identification can and will be undertaken.²⁹⁰

Article 5 of the ACTIP mandates that States criminalise trafficking when committed intentionally. The same article also obliges States to criminalise attempts to commit such offences, whether as a participant or an accomplice, and organising or directing others to commit such an offence.²⁹¹ These obligations are extended to both natural and legal persons, and public officials in the performance of their public duties,²⁹² with increased penalties if the offence involves a child, more than one victim, injury or death of victims, or exposure of the victim to a life-endangering disease such as HIV.²⁹³

Victims of trafficking are entitled to immediate protection from exploiters and from the possibility of further harm, including through re-trafficking in accordance with the ACTIP.²⁹⁴ Victims of trafficking are also entitled to practical support such as accommodation, health care, and other measures essential to their physical and psychological wellbeing and recovery.²⁹⁵

²⁸⁹ 'Each Party shall respect and recognise the identification of victims of trafficking in persons made by the competent authorities of the receiving Party.' *ibid* art 14.2; ASEAN, *Regional Review on Laws, Policies and Practices within ASEAN relating to Identification, Management and Treatment of Victims of Trafficking, Especially Women and Children* (ASEAN 2016) 31.

²⁹⁰ OHCHR, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (E/2002/68/Add.1) Principle 2.

²⁹¹ Article 5.2 (a,b,c) of the ACTIP.

²⁹² *Ibid.* art. 5.3 (g).

²⁹³ *Ibid.* art.5.3 (a, b, c, d).

²⁹⁴ 'Each Party shall 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. Each Party shall give appropriate consideration to humanitarian and compassionate factors to this end.' Article 14(4) of the ACTIP; 'Each Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.' *Ibid.* Article 14(5).

²⁹⁵ 'Each Party shall, where applicable, provide care and support to victims of trafficking in persons, including in appropriate cases in cooperation with relevant non-governmental organisations, other organisations and other elements of civil society, in the following: (a) Appropriate housing; (b) Counselling and information, in particular as

The ACTIP also requires States Parties to provide victims with employment opportunities.²⁹⁶ The right of victims of trafficking to work while they are in the country of destination is of vital importance, as many ASEAN States already recognise. For example, Malaysian law permits foreign victims of trafficking to work.²⁹⁷ Singapore has a Temporary Job Scheme to allow ‘special pass’ holders (migrant workers or foreign nationals involved in a police investigation or a legal case, and who may have had an existing work pass cancelled by employers) to work in certain sectors, such as factory work or domestic work.²⁹⁸ Thailand has a temporary work permit scheme which enables foreign victims to work while awaiting repatriation or the completion of legal proceedings.²⁹⁹

To ensure that victims of trafficking are not detained or criminalised, Article 14(7) of the ACTIP states: ‘Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking’. Moreover, the ACTIP goes beyond the Trafficking Protocol in requiring States Parties not to hold victims of trafficking in detention ‘unreasonably’ at any point, whether before, during or after criminal, civil or administrative proceedings.³⁰⁰

To prevent trafficking, the ACTIP requires States Parties to take positive steps to address the underlying causes of trafficking by alleviating factors that make persons vulnerable to trafficking, such as discrimination, conflict, violence, lack of employment opportunities, and failure to protect migrants, children and other vulnerable groups.³⁰¹

regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance. Ibid. Article 14(10).

²⁹⁶ Ibid. 14.10(d) ‘Each Party shall, where applicable, provide ... employment, education and training opportunities.’

²⁹⁷ Trafficking in Persons Report 2017 P.264.

²⁹⁸ ASEAN, *Regional Review on Laws, Policies and Practices within ASEAN relating to Identification, Management and Treatment of Victims of Trafficking, Especially Women and Children* (ASEAN 2016) 65.

²⁹⁹ *ibid.*

³⁰⁰ ‘Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.’ ACTIP art 14.9.

³⁰¹ *ibid* art 11.

4.3.2.3 Arab Charter on Human Rights

The ACHR is a regional instruments in the field of human rights adopted by the Arab League Council in 1994.³⁰² UAE signed the ACHR in September 2006 and ratified it in January 2008. The aim of the Charter is to ensure individual rights and equality between both genders within the Arab nations. However, it soon emerged that the Charter was not going to be signed by the members of the League. The non-ratification of the Charter led to the Arab League bringing forward a revised version of the Charter before the Arab States, which was finally adopted and signed without any amendment at the Summit of Heads of Member States of the League Council, Tunis on 22 May 2004.³⁰³

The revised instrument focuses on a considerable number of rights which were not properly tackled by the Declaration of Human Rights in Islam. Another essential difference between the Declaration and the Charter is that the former is simply a declaration and has no binding force while the latter has treaty status based on the fact that it was officially signed by the Member States of the League.³⁰⁴ This position of the Charter strengthens its provisions, which possess juridical rather than just moral enforceability. The revised version takes into account several documents of the United Nations, such as the UNDHR, the ICCPR and the ICESCR.³⁰⁵

The duties of the State to guarantee certain rights are listed in the Charter, which states that the rights of women are equal to those of men: ‘Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments’.³⁰⁶ In addition, ‘each State Party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment

³⁰² The members of the Arab League Council are Algeria, Bahrain, the Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen.

³⁰³ Dinah Shelton, Paolo G Carozza and Paolo Wright-Carozza, *Regional Protection of Human Rights*, Volume 1 (Oxford University Press 2013) 100.

³⁰⁴ Farhad Malekian and Kerstin Nordlof, *Prohibition of Sexual Exploitation of Children Constituting Obligation Erga Omnes* (Cambridge Scholars Publishing 2014) 97.

³⁰⁵ *ibid.*

³⁰⁶ art 3(3).

of all the rights set out in this Charter’.³⁰⁷ Within Article 5 of the Charter, the right to life, liberty and security is given to every individual, which is protected by law. Although not every party to the Charter at national level has specific anti-trafficking legislation,³⁰⁸ the Charter prohibits human trafficking³⁰⁹ and violence against women.³¹⁰

Any conflict between the Charter and International Convention are dealt with under Article 43 of the ACHR, which states that: ‘Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms ... set forth in international ... human rights instruments which the States Parties have adopted or ratified.’ This has been interpreted as the Trafficking Protocol superseding the ACHR, ie that international standards have supremacy over regional documents, and that Articles 9³¹¹ and 10³¹² of the Charter shall be read in accordance with Articles 6³¹³ and 7³¹⁴ of the Trafficking Protocol.³¹⁵

³⁰⁷ *ibid.*

³⁰⁸ Mattar (n 215) 98.

³⁰⁹ Art 10(1) ‘All forms of slavery and trafficking in human beings are prohibited and are punishable by law.’

³¹⁰ Art 33(2) ‘The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members, and the prohibition of all forms of violence or abuse in the relations among its members, and particularly against women and children.’

³¹¹ Art 9 provides that: ‘No one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each State party. Trafficking in human organs is prohibited in all circumstances.’

³¹² Art 10 states: ‘1. All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances. 2. Forced labor, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict are prohibited.’

³¹³ Art 6 provides: ‘1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential. 2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence. 3. Each State Party shall consider implementing measures to provide for the physical, psychological, and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations, and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational, and training opportunities. 4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care. 5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory. 6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered. United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime art. 6.’

Whilst the protection and assistance for victims of trafficking are not specifically referred to in the ACHR, these obligations may be inferred from Article 43 of the Charter which refers to international conventions. International human rights law has supremacy over the Protocol under Article 14 (the Savings Clause) of the Protocol itself.³¹⁶ Despite this, the Charter provides for the right to remedies that may apply to victims of human trafficking. According to Article 13, everyone has the right to a fair trial, with Article 12 stating that everyone has the right to seek a legal remedy. The right to compensation is provided for in Articles 8(2), 14(7) and 19(2), with Article 13 guaranteeing legal aid to those without the requisite financial resources to enable them to defend their rights. Article 23 commits each State Party to ensuring that anyone whose rights or freedoms are violated is provided with an effective remedy.

A serious deficiency of the Charter is the failure to create a human rights court or a regional court to deal with violations of the principles of the Charter or international human rights law. The reason for this is that the Arab Human Rights Committee does not have the power or the political will to investigate serious violations of human rights within Arab signatory States.³¹⁷ Although trafficking may be prevented to some extent within the Arab States, violations of the Charter are very frequent and prevention depends on how the term ‘trafficking’ is applied and, specifically, how trafficking is defined in the territories of relevant States Parties.³¹⁸ Ferhad argues that although the Charter is not comprehensive, it does address some of the most important factors relating to human rights law. The Charter condemns violations of the rights of women and children, as well as discrimination against them.³¹⁹ Although the Charter has a

³¹⁴ Art 7 reads: ‘1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall 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. 2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.’

³¹⁵ Mohamed Y Mattar, ‘The Right of Victims of Trafficking to Remedies: An Arab Regional Approach. United Nations Regional Consultation on the Right to an Effective Remedy for Trafficked Persons on January 9, 2012’ 3 <<http://www.ohchr.org/Documents/Issues/Trafficking/Consultation/ConsultationEffectiveRemedy/Fifth/5thConsultationsM.Mattar.pdf>> accessed 8 October 2015.

³¹⁶ *ibid* 128.

³¹⁷ Malekian and Nordlof (n 296) 98.

³¹⁸ *ibid* 99.

³¹⁹ *ibid* 98.

number of shortcomings related to the rights of women, it has a significant function in the prevention of sex trafficking which cannot be overlooked.³²⁰

4.5 Conclusion

This chapter examined the international legal responses to trafficking of women through a crime control approach and human rights approach. The first section analysed the control approach and examined both the provisions of the 1949 Convention and the Trafficking Protocol. This approach has been criticised for focusing on prosecution and preventative measures and failing to protect victims of trafficking or effectively address the root causes of trafficking such as poverty, inequality and gender discrimination.

The second section of the chapter focused on the international and regional human rights instruments that adopt a human rights approach, with relevant provisions related to the protection of trafficked victims and which call for the root causes of trafficking to be addressed. For instance, the provisions in the ICESCR focus on the right to just and favourable conditions of work, the right to health and the right to participate in cultural life. Article 6 of CEDAW states that ‘State parties shall take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of the prostitution of women’.³²¹ Women’s rights to health and employment, amongst other issues, are referred to in Articles 12 and 13. Furthermore, the European Trafficking Convention focuses on gender equality in its provision and includes mandatory measures of protection such as obliging States to provide assistance to all victims of trafficking and provide the necessary legal framework and availability of competence for the identification process.³²²

³²⁰ ‘Over time, the fundamental defects of the Charter must be addressed through revision and the addition of optional protocols. Urgent priorities include the need for provisions that guarantee rights which have been the status of peremptory norms of customary international law. For example, provisions that allow States to arbitrarily deprive persons of their lives; to execute children; deny freedom of thought, conscience and religion; permit the advocacy of national, racial or religious hatred; deny persons of marriageable age the right to marry; or deny minorities the right to enjoy their own culture, profess their own religion, or use their own language must all be eradicated. The failure to address these omissions and inconsistencies will continue to perpetuate the perception that Arab States are not truly committed to universal human rights when, in reality, the Charter in the region.’ Mervat Rishmawi, ‘The Revised Arab Charter on Human Rights: A Step Forward?’ (2005) 5(2) Human Rights Law Review 362.

³²¹ See CEDAW (n 178) art 6.

³²² European Trafficking Convention (n 216) art 10.1.

UAE ratified the ACHR in January 2008 which prohibits various forms of slavery and exploitation. The ACHR was an important step at the regional level in preventing human rights violations and human trafficking as well as combating and prohibiting violations at the national level. Specifically, Article 10 provides that: ‘(a) All forms of slavery and trafficking in human beings are prohibited and punishable by law. No one shall be held in slavery and servitude under any circumstances. (b) Forced labour, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict are prohibited’.³²³ Furthermore, Article 44 of the ACHR requires the Arab countries that ratified the Charter ‘to adopt, in accordance with their constitutional processes and with the provisions of the Charter, the necessary laws or other measures in order to give effect to the rights recognised therein’.³²⁴

From the above discussion it can be argued that in order to combat human trafficking effectively and comprehensively there needs to be a balance between the crime control approach which focuses on punishment and prosecution of the traffickers and the protection of the rights of victims, and this can be achieved through conventions that adopt a human rights approach to their provision. The next chapter examines the situation of trafficking of women in the UAE by analysing the scale of the problem, victims’ characteristics, means of trafficking, how traffickers control their victims in the UAE, and other forms of human trafficking exploitation.

³²³ Arab Charter on Human Rights (entered into force 15 March 2008) art 10.

³²⁴ *ibid* art 44.

Chapter Five: Trafficking of Women in the UAE: An Overview of the Scale of the Problem

Introduction

Human trafficking is one of the fastest growing criminal activities. It violates human rights and no community is immune to it, especially in terms of the sex trafficking of women and children.¹ The 2016 TIP Report recognised that many women, children and men are trafficked in the UAE for the purposes of sex and labour, and also that the UAE has become a transit and destination country for this criminal activity.² Victims of forced prostitution in the UAE come from Central Asia, Southeast and East Asia, Eastern Europe and East Africa.³ The United Nations Special Rapporteur on Trafficking in Persons, especially women and children, Joy Ngozi Ezeilo, has noted that there are foreign workers of over 170 nationalities in the UAE, ‘which makes the uniqueness of the challenges faced by this country in combating this phenomenon’.⁴ The aim of this chapter is to examine the situation of trafficking in the UAE by analysing the scale of women being trafficked for the purposes of forced prostitution, victims’ characteristics, how they are trafficked, how traffickers control their victims in the UAE, and other forms of trafficking. This chapter then analyses how the UAE is classified as a destination and transit country for human trafficking in the US TIPR.

5.1 Migrant Women and Girls Trafficked into ‘Forced Prostitution’: The Scale of the Problem

In 2008, Anwar Gargash, the Minister of State for Foreign Affairs and Chairman of the National Committee to Combat Human Trafficking, emphasised that:

Until a few years ago the UAE did not even imagine that trafficking was a problem we would ever face. But like many successful and rapidly growing societies, the UAE does

¹ Patricia Crane, ‘A Human Trafficking Toolkit for Nursing Intervention’ in Mary De Chesnay (ed), *Sex Trafficking: A Clinical Guide for Nurses* (Springer 2012) 167.

² US Department of State, ‘Trafficking in Persons Report’ (June 2016) 382.

³ *ibid.*

⁴ UN News Centre, ‘Commending UAE Efforts Against Human Trafficking: UN Expert Urges More to Help Victims’ (17 April 2012) <<http://www.un.org/apps/news/story.asp?NewsID=41800#.VsRskmwrFxQ>> accessed 17 February 2016.

suffer its share of this global phenomenon. There is no shame in admitting that this crime afflicts our society as we are committed to tackling human trafficking on every level.⁵

Official agencies released statistics on trafficking in the UAE between 2007 and 2016 which amounted to 291 cases.⁶ In total, 853 criminals⁷ and 498 victims were involved.⁸ For a visual representation of the number of human trafficking cases, criminals and victims as recorded between 2007 and 2016 please see Table 1.

**Number of Human Trafficking Cases, Criminals and Victims in the UAE:
as Recorded between 2007 and 2016**

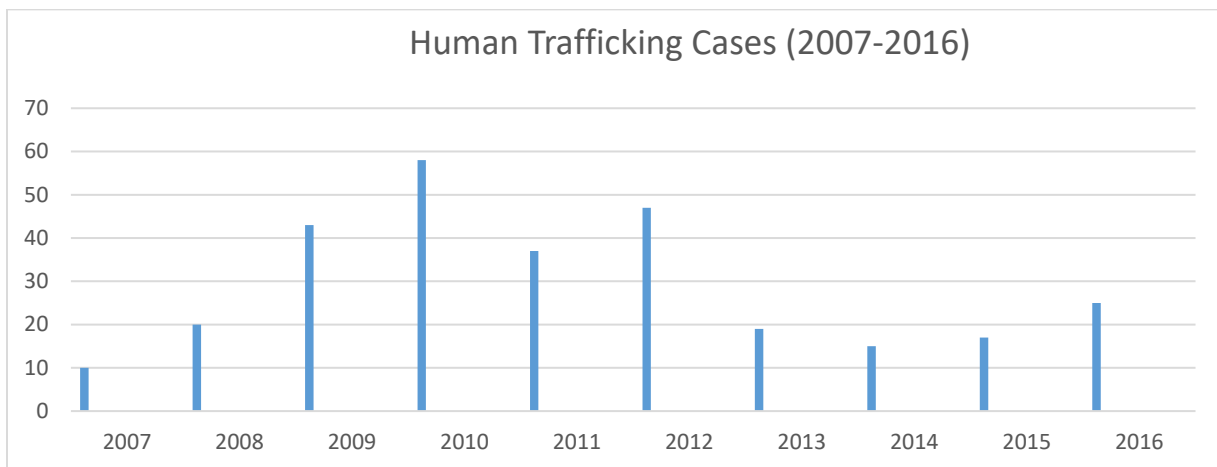


Table 1. (Source:UAE Trafficking Report)

⁵ Speech by HE Dr. Anwar Gargash, Minister of State for Foreign Affairs and Chairman of the National Committee to Combat Human Trafficking at the United Nations General Assembly Thematic Debate on Human Trafficking, New York, 3 June 2008) 2.

⁶ (25 in 2016, 17 in 2015, 15 in 2014, 19 in 2013, 47 in 2012, 37 in 2011, 58 in 2010, 43 in 2009, 20 in 2008, and 10 in 2007) National Committee to Combat Human Trafficking, ‘Combating Human Trafficking in the UAE: Annual Report’ (2015)) 22

⁷ (106 in 2016, 54 in 2015, 46 in 2014, 50 in 2013, 149 in 2012, 111 in 2011, 169 in 2010, 125 in 2009 and 43 in 2008) NCCHT, ‘Combating Human Trafficking in the UAE: Annual Report’ (2007) did not include any information about the number of traffickers.

⁸ (34 in 2016, 24 in 2015, 20 in 2014, 24 in 2013, 75 in 2012, 51 in 2011, 152 in 2010, 86 in 2009, and 32 in 2008) ibid. The report did not include any information about the number of victims.

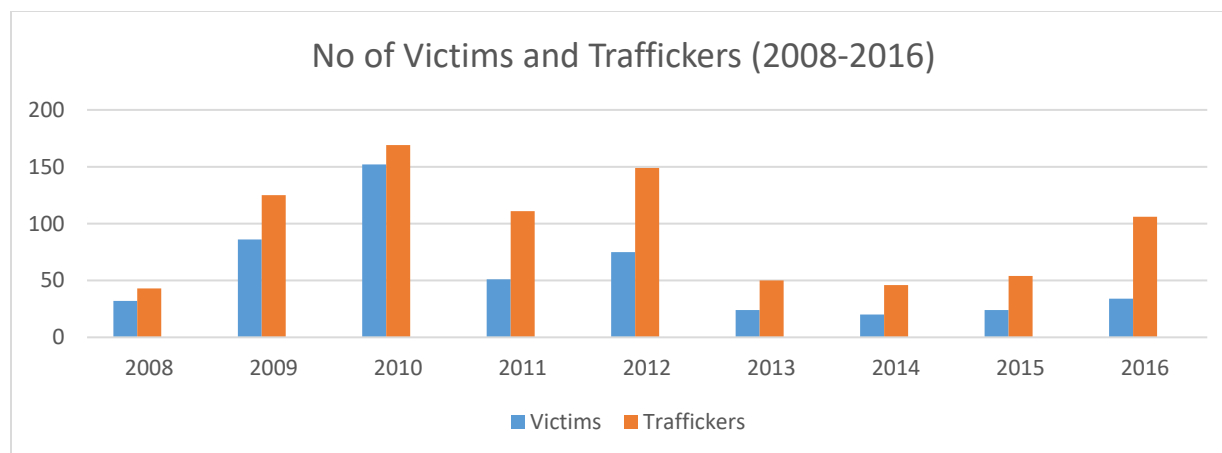


Table 2. (Source:UAE Trafficking Report)

Most of the victims were young women aged between 19 and 35⁹ who came in search of work as housemaids, receptionists or waitresses, but instead were trafficked into the commercial sex industry.¹⁰ A point to note is that all human trafficking cases from 2007 to 2010 related to forced prostitution.¹¹ In 2011, recorded data highlight changes in the pattern of criminal human trafficking activities, with rare cases of forced labour and labour exploitation, and some cases of children being sold during adoption processes, which is a criminal activity in the country.¹² In 2013, nine out of the 11 cases were of commercial sexual exploitation and forced prostitution.¹³ In 2015, 17 human trafficking related cases were registered under Federal Law 51. All these cases were of forced prostitution.¹⁴ The majority of the 25 cases in 2016 were linked to commercial sexual exploitation, apart from three cases which were connected to the sale of children.¹⁵ These findings are supported by the Director of the Dubai Police Human Trafficking Crime Control Centre, Lt Col Dr Sultan Abdul Hamid Al Jammal who reported that most human trafficking criminal acts involved the trafficking of women into the UAE for sexual

⁹ Ayesha Al Khoori, 'Progress in Battle Against Human Trafficking as Cases Fall by 60%' *The National* (16 April 2014) <<http://www.thenational.ae/uae/government/progress-in-battle-against-human-trafficking-as-cases-fall-by-60>> accessed 22 February 2016.

¹⁰ NCCHT, 'Combating Human Trafficking in the UAE: Annual Report' (2013-2014) 27.

¹¹ NCCHT, 'Combating Human Trafficking in the UAE: Annual Report' (2010-2011) 13.

¹² NCCHT, 'Combating Human Trafficking in the UAE: Annual Report' (2011-2012) 13.

¹³ Noorhan Barakat, 'Human Trafficking Cases Down in Dubai' (*Gulf News*, 11 October 2014) <<http://gulfnews.com/news/uae/general/human-trafficking-cases-down-in-dubai-1.1397015>> accessed 26 February 2016.

¹⁴ Ramola Talwar Badam, 'Tough UAE Line Curbs the Human Traffickers' *The National* (22 May 2016) <<http://www.thenational.ae/uae/courts/tough-uae-line-curbs-the-human-traffickers>> accessed 26 May 2017.

¹⁵ Samir Salama, 'UAE Arrested 106 Human Traffickers Last Year' (*Gulf News*, 15 May 2017).

exploitation.¹⁶ Moreover, the UAE is known as a transit country for human trafficking and provides an easy link between Western countries and Eastern countries.¹⁷ No evidence has yet been discovered to suggest that citizens of the UAE are victims of trafficking or being trafficked into other countries, but foreign victims of trafficking are known to have been taken from East and South Asia to Europe and the United States via the UAE for the purposes of sexual exploitation.¹⁸

However, estimates of 10,000 female victims of human trafficking trapped in sexual exploitation in the UAE are reported by many reports from origin countries and international NGOs such as the US TIPR.¹⁹ A point to note is that the Government Accountability Office (GAO)²⁰ reviewed the estimation techniques and methods used by the UNODC, ILO and the US government and challenged the methods of estimation used by them. It found that there was insufficient clarity regarding this high estimate or how data had been collected.²¹ Furthermore, the findings showed that estimates cannot be replicated when their basis is potentially unreliable, which means that analysis over time is not appropriate. This report also explained that the data from the UAE regarding this issue cannot be used for comparison as it is often unavailable or unreliable, which leads to discrepancies between estimated cases of human trafficking victims and the number observed.²² The need for better data is now unanimously recognised by experts as one of the necessary steps for improving anti-trafficking strategies.²³ Researchers from Florida Gulf Coast University believe that ‘it is a mistake to continue to quote statistics that may not be reliable or valid such as those the US government continues to cite based on estimates alone’.²⁴ These

¹⁶ Barakat (n 17).

¹⁷ US Department of State, ‘Trafficking in Persons Report’ (June 2014).

¹⁸ NCCHT, ‘Combating Human Trafficking in the UAE: Annual Report’ (2008-2009) 12.

¹⁹ National Geographic Learning, *National Geographic Reader: Living in the World: Cultural Themes for Writers* (Cengage Learning 2013) 332; US Department of State, ‘Trafficking in Persons Report’ (June 2006).

²⁰ The US Government Accountability Office is a government agency that provides auditing, evaluation and investigative services for the United States Congress. It is the supreme audit institution of the federal government of the United States.

²¹ Johnny E McGaha and Amanda Evans, ‘Where are the Victims? The Credibility Gap in Human Trafficking Research’ 11 <<https://maggiemcneill.files.wordpress.com/2011/10/the-credibility-gap-in-human-trafficking-research.pdf>> accessed 23 February 2016.

²² *ibid.*

²³ *ibid.*

²⁴ *ibid.*

findings are supported by UAE government officials who suggest that there could be exaggeration of the statistics relating to the trafficking of women in the country.²⁵

On the other hand, other findings suggest disappointing efforts by the UAE government after introducing the 2006 Anti-Trafficking Law to prosecute criminals for commercial sexual exploitation. Law enforcement efforts by the UAE during this year had a focus on the deportation, imprisonment and arrest of around 5,000 foreign women discovered to be involved in commercial sex work, who were likely to have been victims of trafficking.²⁶ The UAE police appear to have adopted a strategy of deporting and imprisoning the victims of trafficking, rather than distinguishing between women arrested for illegal immigration and commercial sex work, and trafficking victims and trafficking criminal organisations.²⁷

The researcher argues that the number of cases and victims in the UAE are likely to be much higher than the UAE authorities have registered. This is a belief also held by the UN Special Rapporteur Joy Ngozi Ezeilo, who in her report of her visit to the UAE dated 22 February 2013, remarked that official figures of trafficked people appear to be only ‘a small fraction of the total number’.²⁸ This is not an unreasonable conclusion considering that there are over 8 million migrants in the UAE²⁹ who are not afforded the same protections in law as UAE citizens and so are vulnerable to exploitation by traffickers. Furthermore, there are other factors that could be at play here. Trafficking victims often do not report their experiences to law enforcement agencies, and usually meet police indirectly due to their cases being referred by foreign embassies and NGOs. Additional considerations are concerning the fears that victims may have that their traffickers are in collusion with the police, that they will be deported, that they will be arrested and imprisoned for crimes of ‘prostitution’ and that they (or their families) may face reprisals from their traffickers.³⁰ Trafficked victims may also be unaware that they are in fact victims and

²⁵ Dubai Police, ‘Report on Efforts to Combat Human Trafficking’ (2010/2011).

²⁶ US Department of State, ‘Trafficking in Persons Report’ (June 2005) United Arab Emirates 220.

²⁷ *ibid.*

²⁸ Joy Ngozi Ezeilo, ‘Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum: Mission to the United Arab Emirates’ (22 February 2010) UN Doc A/HRC/23/48/Add.1, 12.

²⁹ International Organization for Migration, ‘World Migration’ <<https://www.iom.int/world-migration>> accessed 23 March 2018.

³⁰ Venla Roth, *Defining Human Trafficking and Identifying its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Martinus Nijhoff 2011) 7.

instead worry about being subjected to the many discriminatory social and political pressures experienced by illegal migrant workers who report abuses in countries that are not their own.³¹

It is important to note that, under Article 11 bis (1) of UAE Trafficking Law 51 as amended in 2015 victims of trafficking can be held liable, both criminally and civilly, in three situations stated in the Article. Firstly, if they contributed in person, without being subject to any coercion whether moral or material, to the perpetration of a human trafficking crime, secondly, if the person is a foreigner coming to the country for work and violated the work contract and the residence regulation, and thirdly, if the person failed to report the crime or the collusion thereof to the competent authorities while being able to.³² A second important issue is that trafficked victims could have previous experience of sexual or violent abuse, and the mental and physical health of trafficked victims would be severely affected by sexual and violent abuse during the processes of trafficking, with the result that victims of trafficking are highly likely to be traumatised. Trafficked victims are also reluctant to agree to participate in police investigations or discuss their experiences with strangers as they fear traffickers might threaten them, and victims are often unable to remember the details of their abuse because of memory loss.³³ Other findings suggest that victims fear rejection by their community or family and shame.³⁴ The third issue is that various countries have made changes to their legislation over recent years to combat and prevent trafficking, with new measures and national plans of action to address human trafficking. This results in insufficient knowledge about the problem of trafficking by the judiciary, prosecution services, police and law enforcement agencies, although training for these professionals has been introduced.³⁵ The fourth issue involves perceptions by victims that their families in their origin country would not be protected from threats by traffickers. They also do not trust the authorities in their home countries. In many cases it has been observed that the victims of trafficking withdraw their testimony due to this pressure, which poses significant problems for judicial and police authorities.³⁶

³¹ *ibid.*

³² UAE Trafficking Law 51 as amended in 2015, art (11)bis1(a)

³³ *ibid.*

³⁴ Hannah Andrevski, Jacqueline Joudo Larsen and Samantha Lyneham, 'Barriers to Trafficked Persons' Involvement in Criminal Justice Proceedings: An Indonesian Case Study' (Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice No 451, 2013) 3.

³⁵ Roth (n 34) 8.

³⁶ *ibid.*

5.2 Human Trafficking Victims: Characteristics

Evidence shows that victims of trafficking travel to the UAE to find a job and earn money through the promises of traffickers but then become trapped in forced prostitution.³⁷ With regard to the work that victims thought they would do and were told by their traffickers, more than half (51%) were informed that they were going to work as housemaids,³⁸ with the rest as cleaners, beauticians, receptionists and waitresses.³⁹ Bangladeshi housemaids topped the list of victims of human trafficking and commercial sexual exploitation between 2008 and 2012.⁴⁰

Most victims of human trafficking and forced prostitution in the UAE were adults.⁴¹ In terms of their nationality, they come from various countries and regions. The largest reported number of trafficked women, which was in 2015, came from Bangladesh (9 cases), followed by Indonesia (5 cases).⁴² In 2014, most victims came from Pakistan (67%), then Bangladesh (33%).⁴³ Bangladesh and Pakistan were also the main countries of origin for human trafficking in 2013 but some victims also came from Yemen, the Philippines, Indonesia and India with one victim from each country, and Moldova and Morocco with two victims from each country.⁴⁴ In 2012, most victims (13 cases) came from Bangladesh, with some from Uzbekistan (5 cases) and the Philippines (5 cases), and a few cases from Indonesia, Sri Lanka, Pakistan and India.⁴⁵ Most victims in 2011 came from Bangladesh (26%), 17% came from China and 13% came from the Philippines.⁴⁶ Other victims given shelter by the Dubai Foundation for Women And Children (hereinafter referred to as the DFWAC) during this year came from Nigeria, Morocco, Thailand, Syria, Moldavia, Azerbaijan, Kazakhstan, Kyrgyzstan, Russia, Pakistan and India.⁴⁷ More than half the victims of human trafficking in 2010 were women from Bangladesh (52%), and 11%

³⁷ DFWAC, Annual Report' (2013) 56.

³⁸ *ibid* 49.

³⁹ *ibid* 61.

⁴⁰ Bassma Al Jandaly, 'Police Log 24 Human Trafficking Cases in 2012' (*Gulf News*, 30 December 2012) <<http://gulfnews.com/news/uae/crime/police-log-24-human-trafficking-cases-in-2012-1.1125127>> accessed 4 October 2016.

⁴¹ In 2014, all trafficked victims were adults aged between 20 years and 26 years, and 73% of trafficked victims were adults in 2013 with an age range of 19 years to 33 years. DFWAC (n 41) 54.

⁴² DFWAC, 'Annual Report' (2015) 52.

⁴³ DFWAC, 'Annual Report' (2014) 55.

⁴⁴ DFWAC (n 41) 56.

⁴⁵ DFWAC, 'Annual Report' (2012) 44.

⁴⁶ DFWAC, 'Annual Report' (2011) 50.

⁴⁷ *ibid* 51.

were women from Indonesia.⁴⁸ In 2009, most victims came from Bangladesh (16 cases), and others came from Iraq (6 cases).⁴⁹ In 2008, 14 victims came from Uzbekistan and 8 victims came from Bangladesh.⁵⁰ For a visual representation of the percentage of human trafficking cases in the UAE as recorded in 2010, 2011 and 2014 please see Table 3.

**Percentage of Human Trafficking Cases in the UAE:
as Recorded in 2010, 2011 and 2014**

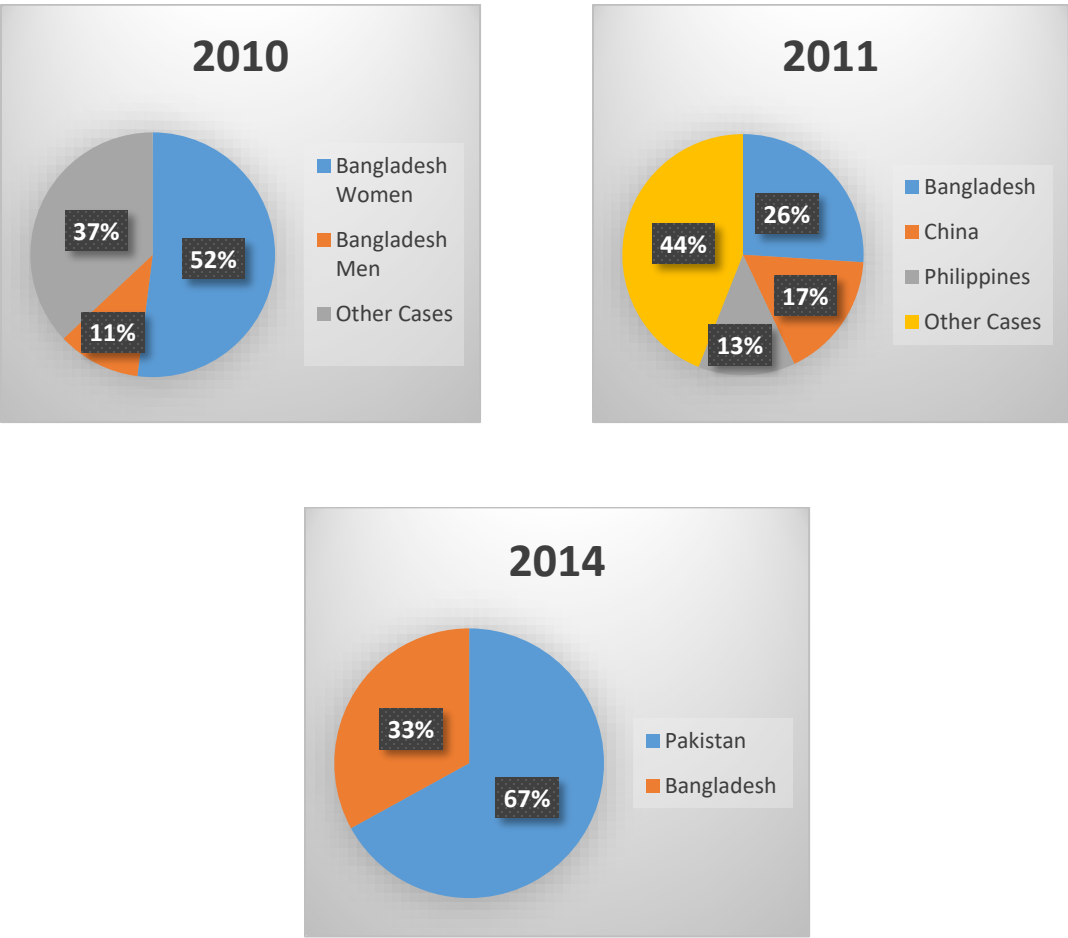


Table 3

(Source: the UAE Trafficking Report)

⁴⁸ DFWAC, ‘Annual Report’ (2010).
⁴⁹ DFWAC, ‘Annual Report’ (2009).
⁵⁰ DFWAC, ‘Annual Report’ (2008).

Analysis of this data indicates that the majority of the victims of human trafficking come from Central and South Asia, such as Bangladesh, Pakistan, Uzbekistan, India and Sri Lanka, which are all developing countries. This raises questions about the vulnerability of girls and women from these countries who are trafficked to the UAE for commercial sexual exploitation.⁵¹

The main motivation for migrating to the UAE appears to be insufficient job opportunities in origin countries compared with perceptions of greater job opportunities in the UAE. This motivation is supported by the neo-classical economics theory discussed in chapter three as financial hardship is the main motivating factor that forces people to leave their home country.⁵² Countries of origin often have low incomes and few opportunities for jobs and can be described as underdeveloped or developing. Examples of this motivation to seek work in another country are highlighted in the TIPR published in 2015 which stated that women from Southeast Asia, East Asia, Central Asia and Eastern Europe often choose to travel to the UAE to work as hotel cleaners, beauticians, secretaries or domestic workers, but find that they are forced to work in the sex industry.⁵³ In 2013, the DFWAC published a study on trafficking and found that 80% of cases were externally trafficked (they were planned to be trafficked outside the UAE), with the traffickers bringing their victims under false pretences to work in the UAE as cleaners, nurses, beauticians, receptionists, waitresses and housemaids.⁵⁴

Push and pull factors for migration are described in neo-classical economics theory, with higher wages, job security and improved job opportunities supporting an individual's decision to travel to another country for a better life. Girls and women from Bangladesh, Pakistan, India, Moldova and Morocco are motivated by perceptions of a better life and higher wages to work in the UAE but when trafficked they are forced to become involved in sexual exploitation and work as prostitutes.⁵⁵ The DFWAC found this to be the case and argued that all victims of trafficking in the UAE were motivated to improve their employment opportunities and living

⁵¹ See chapter three, section 3.1.

⁵² See discussion in chapter three section 3.1.1 to understand what makes victims of trafficking an easy target for traffickers and what are the push factors in their home country make them to leave and what attract them to come to work in the UAE (Pull factors) and how their family play an important part of their journey to become victims.

⁵³ US Department of State, 'Trafficking in Persons Report' (June 2015).

⁵⁴ DFWAC (n 41) 34.

⁵⁵ See discussion in chapter three section 3.1.1.

conditions so that they could support their families better because they had been promised a money-earning activity or job.⁵⁶

Furthermore, families are often involved with trafficking organisations which can include friends, family friends,⁵⁷ mothers,⁵⁸ fathers⁵⁹ and husbands⁶⁰. Frederick terms this type of trafficking soft trafficking, whereby ‘the victim’s family’s own agency is involved. Families send their children to the brothels as breadwinners. It is an increasingly common response to poverty, indebtedness and a significant source of rural income’. In hard trafficking, a girl (and/or her family) is duped by promises of employment, marriage or a ‘holiday’, or taken by force, by a trafficker. While the movement itself may be voluntary, her going to a brothel is not. In soft trafficking, a girl is basically sent by the family to work and she might go under pressure.⁶¹

The assessment of trafficked women in terms of their social and economic status shows that while some receive limited high school or secondary and primary education, most receive no education. These findings show that 67% of trafficked women in 2014 received some higher or secondary education but 33% never received any vocational training or school education.⁶² In 2013, 33% of victims had never attended school and just a few attended a primary or secondary school.⁶³ In 2012, it was found that seven victims of trafficking had attended either a university or college, and seven victims had received no vocational training or school education.⁶⁴

5.3 How Victims Are Trafficked

Some countries in Asia have experienced significant growth over recent years which has increased demands for low-skilled workers, such as the UAE, China, Malaysia and Singapore,

⁵⁶ DFWAC (n 47) 56.

⁵⁷ DFWAC (n 49) 53.

⁵⁸ DFWAC (n 46) 58.

⁵⁹ By Bassam Za’za’, ‘Parents Jailed for Forcing their Daughter, 16, Into Prostitution in Dubai’ (*Gulf News*, 26 June 2014) <<http://gulfnews.com/news/uae/courts/parents-jailed-for-forcing-daughter-16-into-prostitution-in-dubai-1.1352716>> accessed 24 May 2017.

⁶⁰ Salam Al Amir, ‘Man Trafficked Wife and Forced her into Prostitution, Dubai Court Hears’ *The National* (9 September 2013) <<http://www.thenational.ae/news/uae-news/courts/man-trafficked-wife-and-forced-her-into-prostitution-dubai-court-hears>> accessed 24 May 2017.

⁶¹ John Frederick, ‘Deconstructing Gita’ (1998) 11(10) *South Asian Magazine* 12, 20.

⁶² DFWAC (n 47) 55.

⁶³ DFWAC (n 41) 58.

⁶⁴ DFWAC (n 49) 46.

and migrant workers mostly from Central and South Asia have filled this need.⁶⁵ People living in developing countries in these regions often lack job opportunities or can only access low paid jobs in their home countries so are motivated to become migrants and work abroad.⁶⁶

Various recruitment techniques are deployed by traffickers to lure their victims. Their success can depend upon the level of education of the victims, their families' expectations, and their financial circumstances. According to the National Committee to Combat Human Trafficking (hereinafter referred to as the NCCHT) 2013 annual report, 80% of victims of trafficking in the UAE are promised employment.⁶⁷ Traffickers tend to target women in developing countries who have a poor educational background and encourage them to take jobs in the UAE so that they can better support their families. They expect to work as beauticians, waitresses, receptionists, nurses or domestic workers. However, when these victims arrive in the UAE, the traffickers take them to isolated villas or apartments where they are sexually exploited. The Director of DFWAC, Sara Shuhail, identifies similar patterns when women are trafficked into the UAE as women working in another country are approached by traffickers who tell them they could earn five times their current wages in the UAE. When the victims arrive at the airport in Abu Dhabi or Dubai, traffickers take away their official paperwork. Victims are then locked in a room and forced to work in the sex industry.⁶⁸ Social media platforms such as Facebook and dating websites are used by traffickers to advertise⁶⁹ attractive opportunities in the UAE which never materialize for

⁶⁵ Hannah Andrevski and Samantha Lyneham, 'Experiences of Exploitation and Human Trafficking Among a Sample of Indonesian Migrant Domestic Workers' (Institute of Criminology, Trends & Issues in Crime and Criminal Justice No 471, 2014) <<http://www.aic.gov.au/publications/current%20series/tandi/461-480/tandi471.html>> accessed 1 March 2016.

⁶⁶ *ibid.*

⁶⁷ NCCHT (n 15) 33.

⁶⁸ Jade Bremner, 'Human Trafficking in the UAE' (*Time Out Abu Dhabi*, 2011) <<http://www.timeoutabudhabi.com/community/features/23001-human-trafficking-in-the-uae>> accessed 3 March 2016.

⁶⁹ Example of such advertisements include the phrase: 'Work abroad; housing provided. No work permit required. Meet interesting and new people, nice co-workers. Comfortable workspace, excellent salary, good benefits. Are you interested?' 'Work abroad' refers to persons leaving their native country and the laws that protect them. 'Housing provided' usually means persons occupying a room or part of a room in a brothel. 'No work permit required' refers to persons working illegally in a foreign country. 'Meet interesting and new people' might be interpreted as being forced to have sexual relations with up to thirty men per night in any number of varying degrees of perversion and degradation. For 'Nice co-workers' one could assume that persons might be held captive in a brothel with other women who had also been tricked. 'Comfortable workspace' could easily be translated as workers being given their own cot. They may be given their own room, or be forced to dance and perform sexually explicit acts in a glass cubicle for men who pay to watch. 'Excellent salary' might refer to the fact that the trafficker takes the money, and 'Good benefits' could mean forced drug use, rapes, beatings, mutilations, sexually transmitted diseases, exposure to

their victims. This is illustrated by two cases that were brought to public attention in 2012. The first involved ‘JFT’ a Filipina who befriended ‘SDB’ via Facebook.⁷⁰ JFT promised SDB, a woman from her home country, a job working as a saleswoman in Dubai, however when SDB arrived in Dubai from the Philippines her passport was seized by JFT and an accomplice (who is accused of repeatedly raping SDB), forcing SDB to work as a prostitute with threats that she would never see her children or family again.⁷¹ The second case involves trafficking via dating websites. Wissam Al Derai, Head of the Dubai Police Human Trafficking Section, reported that his officers had received information about a young woman being held captive by an Arab man who was forcing her to work as a prostitute.⁷² Police went to a flat in the Al Muraqqabat neighbourhood where they found three women and their suspected captor.⁷³ The women told the officers that the man had deceived each of them with promises of love, persuading them to travel to Dubai to meet him, but then took them to bars and nightclubs where he forced them to work as prostitutes.⁷⁴ The women said the man would verbally and physically abuse them if they returned to the flat without money.⁷⁵ Col Abdul Rahim bin Shafiel from the Organised Crime Department said this was the first case he had encountered where social media and dating websites had been used to lure victims to the UAE.⁷⁶

The 2013 Annual Report by the DFWAC found that most cases of human trafficking (80%) into the UAE were for the purpose of external trafficking (the plan was to traffic outside the UAE) for forced prostitution.⁷⁷ The majority of the victims entered the UAE with legal documents⁷⁸ to the cities of Dubai, Abu Dhabi or Sharjah, which are major gateways to the UAE.⁷⁹ After arrival,

HIV/AIDS, and death once they have outlived their usefulness. See Catherine Paris, *Modern Day Slavery – Human Trafficking Revealed* (Claddagh 2007) 12.

⁷⁰ Mohammed Al Sadafy, ‘Facebook Friend Forces her into Prostitution’ *Emirates* 24/7 (2012) <<http://www.emirates247.com/crime/local/gang-busted-for-luring-maids-into-prostitution-2012-04-30-1.456308>> accessed 4 March 2016.

⁷¹ *ibid.*

⁷² Haneen Dajani, ‘Man “Lured Women on Dating Sites”’ *The National* <<http://www.thenational.ae/news/uae-news/man-lured-women-on-dating-sites>> accessed 22 March 2014.

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ DFWAC (n 41) 60.

⁷⁸ *ibid.* 59.

⁷⁹ Mohammad El Sadafy, ‘UAE Takes First Place in Global Fight Against Organised Crime for Second Year’ *Emirates* 24/7 (27 March 2014) <<http://www.emirates247.com/news/emirates/uae-takes-first-place-in-global-fight-against-organised-crime-for-second-year-2014-03-27-1.543313>> accessed 9 March 2016.

the trafficked women realised that the job opportunity they had been promised was non-existent and were forced into situations or jobs without their consent.⁸⁰ Most were discovered in Dubai, Abu Dhabi or Sharjah.⁸¹ The 2014 Annual Report by the DFWAC indicated that victims realised what was expected of them as soon as they arrived or after a few days.⁸² Traffickers used various methods to inform their victims, through verbal threats, beatings or rape.⁸³

As well as fraudulent promises of job opportunities, another strategy used by traffickers is to entice women already working as maids in the UAE to work for another employer by promising better working conditions and higher wages. Many women working as maids are easily attracted by these offers and leave the homes of their sponsors. They are then collected by trafficking gangs and forced against their will to become involved in prostitution activities. This is an internal form of trafficking as it is planned within the UAE. The Director of Dubai's Police Human Rights Department, Dr Mohammed Al Murr, reports that maids are often promised better wages and working conditions if they run away from their sponsors, but become involved in prostitution instead.⁸⁴ A point to note, traffickers prefer to attract their victims to work particularly in the category of domestic work. In 2015, eight victims were housemaids, three worked in a massage centre and as dancers, one was a beautician, and one a waitress.⁸⁵ In 2014, the highest percentage of victims were housemaids at 33%.⁸⁶ In 2013, 26.6% of trafficked victims were housemaids while only 6.6% were in other categories such as cleaners, nurses, receptionists and beauticians.⁸⁷ In 2012, 54% of victims were housemaids.⁸⁸

The answer to the question of why traffickers prefer to place their victims in domestic work is that they take exploit the need of families in the UAE for domestic helpers. Dr Rima Sabban, Associate Professor of Sociology at Zayed University who has studied the UAE's dependence on

⁸⁰ NCCHT (n 15) 7.

⁸¹ NCCHT (n 16) 38.

⁸² DFWAC (n 47) 57.

⁸³ DFWAC (n 41) 61.

⁸⁴ The Shelters for Women and Children (EWA'A), 'Dubai Police Launched a Campaign to Crack Down on Gangs Forcing Domestic Workers into Prostitution' (25 October 2015) <<http://www.shwc.ae/news/rec.offices.aspx>> accessed 6 March 2016.

⁸⁵ NCCHT, 'Combating Human Trafficking in the UAE: Annual Report 2015' 27.

⁸⁶ DFWAC (n 26) 57.

⁸⁷ *ibid* 2013, 61.

⁸⁸ *ibid* 50.

foreign domestic workers for more than 20 years asserts that the country is highly dependent on domestic help.⁸⁹ Everything in the UAE functions with domestic help and support;⁹⁰ employed to clean big houses and care for the children who live in them.⁹¹ This lifestyle has developed in recent years due to the economic prosperity of the country which has fostered a correlation with having domestic help and a family's societal status, social standing and affluence, a corollary of which has fuelled the demand for foreign domestic workers.⁹²

A 2011 report states that 86% of women trafficked into the UAE were domestic helpers who had run away from their sponsors and exploiters.⁹³ They left their employers, lured by promises of better jobs, love or marriage, only to be subsequently forced by their exploiters or traffickers into sexual exploitation. The question is, why are maids who run away from their sponsors easy to exploit and force into commercial sex work? According to Major-General Nasser Al Menhali, acting Assistant Undersecretary for Naturalisation, Residency and Exits Affairs at the Interior Ministry, 3% of housemaids abscond annually.⁹⁴ Many female migrant workers attempt to escape from their UAE sponsor families because a member of the sponsor family sexually or physically abuses them, and as a result they become easy prey for human traffickers and criminal gangs.⁹⁵ These migrant workers are often approached by other UAE residents with offers of higher wages who want to employ domestic workers without paying high fees to agencies or following normal legal procedures. However, when these foreign workers leave their sponsor families, they lose their legal status in the country, and traffickers target these women and imprison them in private villas, apartments and houses. These victims of trafficking then become sexually exploited and vulnerable.⁹⁶ If they manage to escape, their vulnerability to exploitation and abuse only increases. It is illegal in the UAE to run away from an employer according to

⁸⁹ See Janice Ponce de Leon, 'UAE: Are we Ready for a Maid-less Society' (*Gulf News*, 6 July 2014) <<http://gulfnews.com/news/uae/general/uae-are-we-ready-for-a-maid-less-society-1.1356308>> accessed 29 June 2016.

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² *ibid.*

⁹³ See <<http://www.alkhaleej.ae/alkhaleej/page/721e0183-7168-4e91-bbbb-06edf1d5eef4>> accessed 23 May 2014.

⁹⁴ Ahmed Darwesh, '3 Per Cent of Runaway Workers Yearly' *Emarat Elyoum* <<http://www.emaratalyout.com/local-section/other/2013-01-19-1.542303>> accessed 6 June 2015.

⁹⁵ Ramona Ruiz, 'Fast-track Deportation for Runaway Housemaids' *The National* (6 January 2011) <<http://www.thenational.ae/news/uae-news/fast-track-deportation-for-runaway-housemaids>> accessed 5 March 2017.

⁹⁶ Ahmed Abdul Aziz, Fahd Buhindi and Omar Al Halawi, 'Runaway Maids Causes' *Alittihad* (13 March 2012) <<http://www.alittihad.ae/details.php?id=25601&y=2012&article=full>> accessed 7 June 2015.

Article 11 of Ministerial Decree No. 721 of 2006. Anyone found to be living or working in the country illegally faces fines of 100 AED a day for visa offences and 25 AED a day for residency offences.⁹⁷ Once arrested, they are first detained at a police station before being referred to immigration, and when their paperwork is complete and the relevant embassies and consulates have been informed, the person is deported.⁹⁸ Most women in these circumstances are unskilled and poor. They are under immense pressure to support their families in their countries of origin, and due to the constant fear of working illegally in the UAE, combined with the terror of deportation, the likelihood of being controlled and exploited by criminal networks when they have absconded from the cruelty of their legal employers is high. According to the authorities, more than 1,000 housemaids in four months were arrested and charged with running away from their sponsors in Abu Dhabi, Al Ain and Sharjah.⁹⁹

Most victims of trafficking arrive in the UAE on short term work visas, tourist visas or visit visas.¹⁰⁰ The main points of entry for victims of trafficking are the cities of Dubai, Abu Dhabi and Sharjah as these offer direct air travel from origin countries.¹⁰¹ The question is how visas are obtained by traffickers for their victims to enter the UAE. The researcher found that, traffickers arrange visas for the victims to enter the UAE legally in the category of domestic work by taking advantage of the UAE sponsorship system and cooperating with local sponsors to issue work or visit visas. The Commander in Chief of Dubai Police, Lieutenant General Khamis Al Mazeina, has stated that there are citizens who have unwittingly issued visas that are subsequently used for human trafficking. Traffickers approach local men as friends, asking for help to bring a wife from their country to the UAE.¹⁰² The issuer may agree to the issue the visa in good faith - completely unaware of the intended criminal consequences - believing the 'wife' was received

⁹⁷ Yasin Kakande, 'Ajman Clamps Down on Runaway Maids and Absconding Workers' *The National* (5 January 2014) <<http://www.thenational.ae/uae/government/ajman-clamps-down-on-runaway-maids-and-absconding-workers>> accessed 7 June 2015.

⁹⁸ *ibid.*

⁹⁹ Hassan Hassan, 'Police Arrest 1,000 Runaway Maids' *The National* (25 April 2010) <<http://www.thenational.ae/news/uae-news/police-arrest-1-000-runaway-maids>> accessed 7 June 2015.

¹⁰⁰ DFWAC (n 41) 59.

¹⁰¹ El Sadafy (n 74).

¹⁰² For example, in Case number 6526/2011 (Nayef Police Station), the victim who was from Bangladesh came to work as a housemaid under a local sponsor. Upon arriving at the airport two men picked her up, took her passport immediately, locked her in a house and told her she would be working in prostitution. The Emirati sponsor has received 2500 (Dirham) to issue the visa and sell it to traffickers. Furthermore, police discovered that 29 visas have been issued under his name.

by her 'husband' at the airport and lives with him, when in reality the visa was used for a victim of sex trafficking who will be forced into commercial sex work.¹⁰³ There are other cases in which Emirati sponsors cooperate in the issuing of visas and sell them to trafficking rings.¹⁰⁴ For example, in another case of a Bangladeshi victim of forced prostitution, police discovered that her sponsor had 29 visas issued and sold them.¹⁰⁵ In another case, the sponsor of an Indian victim of forced prostitution had 15 visas issued.¹⁰⁶

From the above, we can clearly see that Emirati sponsors play an important part in human trafficking crimes, as they help traffickers and sell visas for them. The researcher notes that police and law enforcement do not question or investigate local sponsors because there is no law that could be applied in cases where sponsors are involved in human trafficking crimes. Therefore, the researcher recommends, firstly, that local sponsors be questioned in human trafficking cases. This would make sponsors think twice before selling visas for money as it may lead them being questioned by the police. Secondly, the migration authority in the country should not allow Emirati sponsors to issue large numbers of visas, as some sponsors have been found to issue up to 29 visas. They should be questioned about their previous housemaids and why all of them have been reported as having run away. Thirdly, Emirati sponsors should be obliged to receive their housemaids at the airport.

5.4 Traffickers' Control Methods

Success for traffickers only comes if they can control their victims as, by definition, a victim of trafficking does not consent to what is happening to them although it might appear in some cases that the victim consents. The UNDOC report states that closer investigation shows that in many cases consent was rendered irrelevant through the use of deception, fraud, coercion or other forms of threat or violence.¹⁰⁷ Measures used to control victims include debt bondage,

¹⁰³ Foda (n 105).

¹⁰⁴ Dubai Police, 'The Role of Local Sponsors in Human Trafficking Crimes' (Unpublished study, Human Trafficking Crime Control Centre, 2012).

¹⁰⁵ Case Number 5391/2012 (Al Muraqqabat Police Station).

¹⁰⁶ Case Number 18956/2011 (Al Muraqqabat Police Station).

¹⁰⁷ UNODC, *Anti-human Trafficking Manual for Criminal Justice Practitioners. Module 4. Control Methods in Trafficking in Persons* (UN 2009) 1.

intimidation, imprisonment, deception, threats of violence and violence.¹⁰⁸ These types of control used by traffickers vary according to opportunities created by circumstances, the nature of the location, the stage of the trafficking process, the type of trafficking and the individual victim. It is important to remember that just because a victim has not been assaulted does not mean that they are not being controlled.¹⁰⁹ Victims can live under conditions of fear of violence without specific threats having been directed at them, such as traffickers telling victims about what happened to other victims who had not complied with their demands, or telling victims that they know where their families live.¹¹⁰

Various methods are used by traffickers in the UAE to control their victims, for instance, using imprisonment or conditions similar to incarceration to control victims. One victim reported being locked inside an apartment with surveillance cameras installed in the room.¹¹¹ During this period of imprisonment, women are often exposed to significant levels of violence and threats of violence.¹¹² In 2014, the DFWAC reported that 100% of victims were subject to emotional, verbal or physical abuse. Sexual or financial abuse and neglect/deprivation comprised 67% of the abuse.¹¹³ In 2012, 83% of victims were exposed to neglect, 89% were sexually abused, and 94% were physically abused.¹¹⁴ Traffickers also take visas, passports and travel documents from trafficked women, and one victim reported that her passport was taken away by a female trafficker, who then told her that she would not work in a salon as promised but as a prostitute. When the victim refused to comply, the trafficker's husband attacked her violently and made threats that if she did not do what they wanted the victim would be imprisoned for 10 years.¹¹⁵

¹⁰⁸ Commonwealth Secretariat, *Gender and Human Rights in the Commonwealth: Some Critical Issues for Action in the Decade 2005-2015* (Commonwealth Secretariat 2004) 181.

¹⁰⁹ UNODC (n 113) 1.

¹¹⁰ She said 'he also threatened to beat up her and her sister and kill their mother'. See 'Human Trafficking Victim Tried to Kill Herself, Dubai Court Told' (*7days*, 23 January 2015) <<http://7days.ae/human-trafficking-victim-tried-kill-dubai-court-told>> accessed 8 March 2016.

¹¹¹ A 22-year-old girl was trafficked and forced into prostitution, reported in Al Khaleej, 'Human Trafficking: 3 get 10 years in Dubai' (2014) <<http://www.emirates247.com/news/emirates/human-trafficking-3-get-10-years-in-dubai-2014-12-07-1.572406>> accessed 7 March 2016.

¹¹² Salam Al Amir, 'Trio who Forced Woman into Prostitution and Held Family Against will Jailed in Dubai' *The National* (31 August 2015).

¹¹³ DFWAC (n 47) 58.

¹¹⁴ DFWAC (n 49) 52.

¹¹⁵ Salam Al Amir, 'Human Trafficking Sentence More than Doubled by Dubai Court' *The National* (22 February 2016) <<http://www.thenational.ae/uae/courts/20160222/human-trafficking-sentence-more-than-doubled-by-dubai-court>> accessed 7 March 2016.

Collusion is another method adopted by traffickers to make it easier to control victims when they are being forced into sexual exploitation. For instance, traffickers may give victims small amounts of money. The victims may accept the money because it allows them to support their families in their home countries but this is intended to make the victim feel guilty as they are getting benefit from their exploitation.¹¹⁶ The above situation is confirmed by the DFWAC reports which examined the estimated amount of money victims received from their traffickers. It shows that 7% of victims received some money on an irregular basis, and 13% received around 1000 AED each month.¹¹⁷

Debt bondage is also frequently used to control victims and trap them in prostitution as traffickers allege that they have expenses associated with the trafficked victims, such as food, accommodation, transport and other fictional costs, which are charged to the victims. This debt is usually very high and interest and charges are also added to this amount so victims are forced to continue working as prostitutes to repay their debt. However, because traffickers add high interest rates, victims find it impossible to clear their debt bondage.¹¹⁸ One victim reported that passports were taken from her and her friend, and both were then told these would not be returned until they had earned enough money to pay for their visas and flights.¹¹⁹

Although traffickers use methods to restrict and control their victims, some victims do successfully escape their imprisonment.¹²⁰ In 2015, the Director General of the DFWAC, Afra Al Basti, reported that eight victims of human trafficking called their hotline number.¹²¹ Sarah Shuhail, the Executive Director of the Shelter Centres, reported that a 24-hour hotline had been

¹¹⁶ UNODC (n 113) 6.

¹¹⁷ DFWAC (n 41) 61.

¹¹⁸ Marie Nammour, 'Man on Trial for "Human Trafficking"' (8 July 2013) <<http://www.khaleejtimes.com/nation/crime/man-on-trial-for-human-trafficking>> accessed 27 May 2017.

¹¹⁹ Ismail Sebugwaawo, 'Traffickers Lure Woman to UAE with Promise of College Course' (7days, 1 April 2015) <<http://7days.ae/traffickers-lure-woman-to-uae-with-promise-of-college-course>> accessed 8 March 2016.

¹²⁰ UAE Interact, 'An Indonesian Domestic Helper Managed to Escape Following Six Months of Sexual Exploitation, Human Trafficking Drops 30%' <http://www.uaeinteract.com/docs/Human_trafficking_drops_30_/34815.htm> accessed 9 March 2016.

¹²¹ WAM, 'Victims of Abuse in UAE Reach Out for Help' (28 July 2015) <<http://www.emirates247.com/news/emirates/victims-of-abuse-in-uae-reach-out-for-help-2015-07-28-1.598338>> accessed 9 March 2016.

established,¹²² with trained employees that speak various languages available to respond to victims, and immediate help available for exploitation and abuse.

5.5 Organised Criminality Levels

In the UAE, human trafficking is shown to have loose networks within organisations that are established on mutually beneficial and temporary relationships. Trafficking can be either internal (planned within the borders of the UAE) or transnational (planned outside the UAE) where victims come from many different countries and are transported directly or via other transit countries. There is insufficient evidence to link organised and well-known criminal groups or mafia structures with human trafficking but research indicates that different people could operate the various processes of trafficking (selling, marketing, transporting and recruiting), such as friends, family friends, mothers, fathers, spouses and employers,¹²³ which appear to be connected loosely with each other but are not organically connected.¹²⁴

However, some cases of trafficking provide evidence that larger, organised criminal groups are involved, but these cases remain low in number.¹²⁵ No mafia groups have been discovered within these criminal groups which are normally characterised by being involved in other types of organised crime, the use of guns, killing and other violence. For instance, Finckenauer emphasises that human trafficking is organised but is not an organised crime, and argues that human traffickers are always made up of smaller, ad hoc groups, loose networks of individuals, more aptly characterised as criminal entrepreneurs. In the field of human trafficking, true organised crime may play some role, such as debt collection or demanding a mob tax to permit

¹²² WAM, 'Multi-language Hotline for Human Trafficking Cases' *24/7 Emirates* (12 April 2011) <<http://www.emirates247.com/news/emirates/multi-language-hotline-for-human-trafficking-cases-2011-04-12-1.380316>> accessed 9 March 2016.

¹²³ DFWAC (n 41) 64.

¹²⁴ Prosecutor Ali Humaid bin Khatam said that the two Asian men and one Asian woman were running a massage parlour and forced the two Asian victims – one of whom was 15 years old – to work as prostitutes and masseuses. The first woman said that she came to the country to work in a decent massage centre but one of the suspects took her from Dubai International Airport to a flat where she found his wife. They took her passport and after a week she started working as a masseuse. The third suspect was transporting her to different flats to do massages for customers. Ali Al Shouk, 'Trio Accused of Human Trafficking in Dubai' (*7days news*, 21 July 2015) <<http://7days.ae/gang-in-dubai-caught-for-human-trafficking>> accessed 9 March 2016.

¹²⁵ A runaway maid escaped from a gang that forced her into prostitution only to be captured by two other men who made her work in a massage parlour. Salam Al Amir, 'Gang Forced Maid into Prostitution' *The National* (16 August 2015) <<http://www.thenational.ae/uae/courts/gang-forced-maid-into-prostitution-dubai-court-hears>> accessed 10 April 2016.

trafficking through their territory, but to label all human traffickers as organised criminals or worse, as mafia, he asserts, is both incorrect and unwise.¹²⁶ The Deputy Commander General of Dubai Police, Lieutenant General Khamis Matar Al Mazina, argues that there is no evidence of organised human trafficking crimes within the UAE.¹²⁷ Amira Agarib in one of her article mentioned Dr Abdul Al Qoudos Al Abdaili who argues that human trafficking cases in the UAE are not organised crimes – ‘they are complicated cases but of a personal nature’.¹²⁸

5.6 Other Forms of Trafficking in the UAE

5.6.1 Camel Jockeys

Another form of human trafficking common in the UAE is the trafficking of camel jockeys.¹²⁹ In the UAE, Saudi Arabia, Oman, Qatar and other Gulf countries camel racing is a long-established sport that is rooted in the culture. It uses young children who have been trafficked from other countries as jockeys.¹³⁰ The main reasons for using young children in camel races is their light weight. Lighter weights and smaller bodies are best for camel jockeys so that the camels can run fast.¹³¹

Although young children aged between five and 10 years are trafficked to become camel jockeys, they face the significant safety risks of being trampled to death, falling and being dragged by camels, and being trapped underneath the camels during the race.¹³² Findings suggest that most child victims of human trafficking in the UAE are lured away from their origin countries with false promises of employment opportunities,¹³³ and when they are trafficked into

¹²⁶ Eugene McLaughlin and John Muncie, *Criminological Perspectives: Essential Readings* (Sage 2013) Trafficking in person and transnational organised crime.

¹²⁷ WAM, ‘No Organised Human Trafficking in the UAE: Dubai Police’ *Emirates news agency* (10 April 2008) <<http://www.wam.ae/en/news/emirates/1395228092674.html>> accessed 10 March 2016.

¹²⁸ Amira Agarib, ‘Dubai Recorded 11 Human Trafficking Cases in 2013’ *Al Khaleej Times* (31 March 2014) <<http://www.khaleejtimes.com/nation/crime/dubai-recorded-11-human-trafficking-cases-in-2013>> accessed 30 May 2017.

¹²⁹ PM Nair and Sankar Sen, *Trafficking in Women and Children in India* (Orient Blackswan 2005) 613.

¹³⁰ Ato Quayson and Antonela Arhin, *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows* (Routledge 2013) 83.

¹³¹ Lukman Harees, *The Mirage of Dignity on the Highways of Human “Progress”: The Bystanders’ Perspective* (AuthorHouse 2012) 517.

¹³² Quayson and Arhin (n 136) 83.

¹³³ To avoid scrutiny at airports, overland routes have ensured that children are trafficked through pilgrimage treks from Baluchistan, through Iran to UAE. *ibid.*

the destination country they are forced to become camel jockeys.¹³⁴ Moreover, parents of young children in origin countries are also implicated as they sell or rent their young children to traffickers to become camel jockeys for financial gain.¹³⁵

A report by the Committee of the International Confederation of Free Trade Unions (ICFTU) indicated that the UAE was the destination country for the trafficking of children to become camel jockeys from Yemen, Sudan, Pakistan, Bangladesh and other countries.¹³⁶ This report included photographic evidence that showed many boys aged between four and seven years who were trafficked from Bangladesh to work as camel jockeys in the UAE.¹³⁷ The International Organisation for Migration (IOM) asked the government of the UAE to urgently punish those responsible for trafficking children into the country to work as camel jockeys with criminal sanctions and apply measures to stop all future trafficking of children.¹³⁸

As the UAE is a member of the UN Convention of the Worst Forms of Child Labour No 182 which prohibits children from being trafficked and forced to work as camel jockeys,¹³⁹ it is subject to various regulations and laws that prohibit using children as jockeys in camel racing. For example, Decree No 1/6/266 was issued in 2002 by the Minister for Foreign Affairs and the Chairman of the Emirates Camel Racing Federation, Sheikh Hamdan bin Zayed Al Nahyan. This prohibited the employment of children of less than 45 kg in weight and under the age of 15 years in camel races.¹⁴⁰ The Decree also required the Camel Racing Federation to provide a medical certificate for all camel jockeys and prove their ages with passports. The penalties were various for violations of this law; the owner or responsible person could be fined 20,000 AED for the

¹³⁴ *ibid.*

¹³⁵ Rana P Behal and Marcel van der Linden, *Coolies, Capital and Colonialism: Studies in Indian Labour History* (Cambridge University Press 2006) 252.

¹³⁶ International Confederation of Free Trade Unions (ICFTU), 'Application of International Labour Standards 2006 (I)' 226.

¹³⁷ *ibid.*

¹³⁸ International Organization for Migration, *World Migration 2005 Costs and Benefits of International Migration* (Academic Foundation 2006) 67.

¹³⁹ ILO, *Application of International Labour Standards 2006 (I)* (ILO 2006) 179.

¹⁴⁰ Hugh Hindman, *The World of Child Labor: An Historical and Regional Survey* (Routledge 2014) 752.

first offence; be banned from camel racing for one year for a second offence; fined 20,000 AED and receive a three-month prison sentence for the third offence.¹⁴¹

The Ministry of Interior introduced other measures, including camel jockeys being subjected to DNA tests if inspectors suspect the rules have been broken; all children being required to have their own passport when entering the UAE; and stringent immigration checks to enforce the ban on children being trafficked to work as camel jockeys.¹⁴² In addition to ending the use of the practice of using children as camel jockeys, the UAE passed Federal Act No 15 in 2005 which prohibits the trafficking of children under 18 for camel racing,¹⁴³ and a penalty of up to three years' detention and/or a fine of not less than 50,000 AED was prescribed for any infringement of those provisions, the penalty being doubled in the event of recidivism.¹⁴⁴

As soon as the Act was promulgated, the UAE allocated an initial 9 million USD to introduce a programme to protect and rehabilitate former child jockeys and ensure their social reintegration in their countries of origin.¹⁴⁵ It is noteworthy that children were identified and assembled in specially prepared shelters equipped with all the facilities needed for their medical, psychological and recreational welfare, after which they were repatriated to their home countries under the supervision of the United Nations Children's Fund (UNICEF).¹⁴⁶ A point to note is that, since the anti-human trafficking Law No 51 was passed by the UAE government in 2006, no cases or victims of camel jockeys have been recorded in the country. This is because camel jockeys have been replaced with robots so children are no longer exploited.¹⁴⁷

¹⁴¹ United Nations Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights. Working Group on Contemporary Forms of Slavery, *UN Report on Slavery. Trafficking and Forced Labour of Children in the Gulf Region* (6-10 June 2005) <<http://www.skeptically.org/ehum/id8.html>> accessed 3 October 2016.

¹⁴² Mike Gapes, *Foreign Policy Aspects of the War Against Terrorism: Fourth Report of Session 2005-06* (Stationery Office 2006) 69.

¹⁴³ Elizabeth Wilcox, *Digest of United States Practice in International Law 2008* (Oxford University Press 2010) 229.

¹⁴⁴ UNICEF, *Starting Over: Children Return Home from Camel Racing* (UNICEF 2006) 5 <<https://www.unicef.org/infobycountry/files/StartingOver.pdf>> accessed 29 May 2017.

¹⁴⁵ Hindman (n 146) 752.

¹⁴⁶ Committee on the Rights of the Child, 'List of Issues in Relation to the Second Periodic Report of the United Arab Emirates. Replies of the United Arab Emirates to the List of Issues' (6 July 2015) 15.

¹⁴⁷ Adam Rasmi, 'Dubai's Camel Races Embrace Robot Jockeys' (*The Daily Beast*, 12 July 2013) <<http://www.thedailybeast.com/articles/2013/12/07/dubai-s-camel-races-embrace-robot-jockeys.html>> accessed 4 October 2016.

5.6.2 Forced Labour

As noted in this chapter, the majority of human trafficking cases officially reported in the UAE are for forced prostitution. However, a TIP Report found that workers from the Middle East, South and Southeast Asia, and smaller numbers from East Africa who travel willingly to work as hotel cleaners, massage therapists, beauticians, domestic workers and in other sectors, become victims of forced labour in the UAE.¹⁴⁸ Women have experienced threats, physical sexual abuse, non-payment of wages, restriction of movement and the withholding of their passports.¹⁴⁹

The only human trafficking case of forced labour or labour exploitation in the UAE was recorded in 2011.¹⁵⁰ The victims were promised work in Dubai in a female massage centre. However, when they arrived they were forced to work in the massage centre for men and provide sexual services to them.¹⁵¹ They were threatened by the traffickers who forced them to work 16 hours every day without payment. In addition, an Asian woman and two other men were employed by the traffickers to control all movements of these victims and subject them to physical abuse if they refused to give sexual services to customers.¹⁵²

5.6.3 Sale of Children (Adoption)

As discussed in chapter two, the buying and selling of babies under the umbrella of adoption is another type of practice similar to slavery¹⁵³ and constitutes a form of human trafficking.¹⁵⁴ In the UAE there have only been four recorded cases of the sale of children (linked to adoption). The first case was in 2011¹⁵⁵ when a 23-year-old Asian mother attempted to sell her six-month-old child for 6,000 AED and was arrested by Dubai police.¹⁵⁶ The other three cases were

¹⁴⁸ US Department of State (n 2) 382.

¹⁴⁹ Jagran Josh, *Current Affairs* (ebook, April 2016) 48.

¹⁵⁰ UAE, 'Annual Trafficking Report' (2012/2013) 26.

¹⁵¹ Penal Case No 2843 of 2011, Dubai Court of Appeal (11 September 2011).

¹⁵² *ibid.*

¹⁵³ See Chapter two for more details.

¹⁵⁴ Kimberly A McCabe, *The Trafficking of Persons: National and International Responses* (Peter Lang 2008) 13; illegal adoption can be prosecuted as a crime of human trafficking according to the United Nations Office on Drugs and Crime. It stated that 'In some countries, particularly those with an already established adoption market, illicit adoption practices are becoming more common and can be prosecuted under the umbrella of trafficking crime'. UNODC, *Anti-human Trafficking Manual for Criminal Justice Practitioners. Module 1: Definitions of Trafficking in Persons and Smuggling of Migrants* (UNODC 2009) 7.

¹⁵⁵ NCCHT (n 16) 27.

¹⁵⁶ Agarib (n 134).

recorded in 2016 according to the Minister of State for Foreign Affairs and chairman of the NCCHT, Anwar Gargash.¹⁵⁷ A point to note in regards to other forms of human trafficking is that, according to the Dubai Police Deputy Chief Maj Gen Al Mazeina there have been ‘absolutely no other cases of human trafficking such as selling of organs and enslavement in UAE’.¹⁵⁸

5.7 UAE in the US Trafficking in Persons Reports

The US government produces the Trafficking in Persons Reports as a diplomatic tool to engage foreign governments in combating human trafficking.¹⁵⁹ The report uses a tier system to rank countries according to their compliance with the ‘minimum standards for the elimination of trafficking’.¹⁶⁰ Countries are ranked in four tiers. Tier 1 is for countries whose governments fully comply with the minimum standards of protection for trafficking victims.¹⁶¹ Tier 1 does not mean that a country has no human trafficking problem.¹⁶² Tier 2 is for countries whose governments are not fully compliant with minimum standards but make ‘significant efforts to bring themselves into compliance’.¹⁶³ The Tier 2 Watch List contains countries that are between Tier 2 and Tier 3.¹⁶⁴ Tier 3 contain countries whose governments are not fully compliant with minimum standards and are not making significant efforts to become so.¹⁶⁵ Tier 1 is therefore the best ranking and Tier 3 the worst.¹⁶⁶

¹⁵⁷ Salama (n 19).

¹⁵⁸ Siham Al Najami, ‘Dubai Police Intensify Battle Against Human Trafficking’ (*Gulf News*, 26 April 2010) <<http://gulfnews.com/news/uae/crime/dubai-police-intensify-battle-against-human-trafficking-1.617800>> (accessed 30 May 2017).

¹⁵⁹ Nancy D Erbe, *Cross-Cultural Collaboration and Leadership in Modern Organizations* (IGI Global 2015) 287.

¹⁶⁰ US Government, *United States Code: Supplement III* (Government Printing Office 2005) 212; Rudolph Alexander, *Human Behavior in the Social Environment: A Macro, National, and International Perspective* (Sage 2009) 307.

¹⁶¹ Jennifer L Hesterman, *The Terrorist-Criminal Nexus: An Alliance of International Drug Cartels, Organized Crime, and Terror Groups* (CRC Press 2013) 14.

¹⁶² David A Jenks and John Randolph Fuller, *Global Crime and Justice* (Taylor & Francis 2016) 71

¹⁶³ Dorothy V Stickle, *Women's Issues: Economic, Societal, and Personal* (Nova 2008) 140.

¹⁶⁴ *ibid.*

¹⁶⁵ Helen Fein, *Human Rights and Wrongs: Slavery, Terror, Genocide* (Routledge 2015) 47.

¹⁶⁶ The TVPA lists three factors to be considered in determining whether a country should be in Tier 2 (or Tier 2 Watch List) or in Tier 3. First, the extent to which the country is a country of origin, transit or destination for severe forms of trafficking. Second, the extent to which the government of the country does not comply with the TVPA’s minimum standards including, in particular, the extent of the government’s trafficking-related corruption. Third, the resources and capabilities of the government to address and eliminate severe forms of trafficking in persons. Sara Dillon, *International Children's Rights* (Carolina Academic Press 2010) 362; Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 484.

The first TIPR in 2001 and 2002 placed the UAE in Tier 3.¹⁶⁷ These reports cited UAE as a destination country for trafficked persons and identified two main problems. First, women were trafficked from Eastern Europe, Africa and Asia into the country for sexual exploitation. Second, boys were trafficked from Bangladesh and Pakistan into the country for the camel racing industry to work as camel jockeys.¹⁶⁸ In 2003, however, the TIPR ranking for the UAE jumped to Tier 1.¹⁶⁹ This report noted that the government provided protection and assistance to victims and also did not deport, jail or detain any victims of human trafficking.¹⁷⁰ The following year's ranking of the UAE changed to Tier 2.¹⁷¹ This report was critical of the country's ability to deal with sex trafficking and strongly urged the government to be more proactive in identifying and rescuing victims of sex trafficking.¹⁷²

In 2005, the UAE was given the lowest ranking¹⁷³ as it did not comply with the minimum standards to prevent human trafficking nor did it make sufficient efforts to address this criminal activity.¹⁷⁴ The report specifically criticised the country for becoming a destination country for males subjected to forced labour as camel jockeys and females for commercial sexual exploitation.¹⁷⁵ Moreover, the report noted a lack of statistics on trafficking in the country, making it difficult to assess its efforts to combat the problem.¹⁷⁶ It also mentioned the failure to prosecute traffickers.¹⁷⁷ A final reason was the lack of support and help needed by trafficked victims in the country, such as outreach centres and official shelters.¹⁷⁸

¹⁶⁷ Pardis Mahdavi, *GridLock. Labour, Migration, and Human Trafficking in Dubai* (Stanford University Press 2011) 22.

¹⁶⁸ Louise Shelley, *Human Trafficking. A Global Perspective* (Cambridge University Press 2010) 143.

¹⁶⁹ Peter Andreas and Kelly M Greenhill, *Sex, Drugs, and Body Counts: The Politics of Numbers in Global Crime and Conflict* (Cornell University Press 2011) 106; Mahdavi (n 173) 22.

¹⁷⁰ Mahdavi (n 173) 22.

¹⁷¹ *ibid.*

¹⁷² *ibid.*

¹⁷³ Pardis Mahdavi, *From Trafficking to Terror: Constructing a Global Social Problem* (Routledge 2013) 65.

¹⁷⁴ Asif Efrat, *Governing Guns, Preventing Plunder: International Cooperation Against Illicit Trade* (Oxford University Press 2012) 190.

¹⁷⁵ US Department of State (n 23) UAE 218.

¹⁷⁶ *ibid.*

¹⁷⁷ *ibid.*

¹⁷⁸ Mahdavi (n 173) 22.

In 2006 and 2007, the TIPR placed the UAE on the Tier 2 Watch List¹⁷⁹ because it failed to increase its efforts to combat trafficking over the past years, especially in sexual exploitation and using children as camel jockeys, and victims had been jailed and deported.¹⁸⁰ Furthermore, men migrated from Pakistan, India and Bangladesh to work in the country as construction workers and were subjected to low wages or work without pay. They suffered injury and death due to dangerous working conditions and were in debt to recruitment agencies.¹⁸¹

The ranking of the country was upgraded to Tier 2 in 2008 because of its success in establishing an anti-trafficking task squad and shelters.¹⁸² Moreover, although in 2009 the UAE was downgraded again to the Tier 2 Watch List, the report itself represented a significant turning point. This report, in contrast with previous reports, made no mention of the situation of boys trafficked into the country as camel jockeys but placed a focus on male labour issues and women suffering sexual exploitation.¹⁸³

From 2010 to 2016, the UAE remained on Tier 2.¹⁸⁴ This happened for a number of reasons. The main reason being that the UAE was a destination and transit country for women and men, largely from Central, South and Southeast Asia, for sex and forced labour. It also failed to comply with requirements to eliminate human trafficking to minimum standards.¹⁸⁵ The second reason for its Tier 2 ranking was that sponsorship laws restricted the ability to leave an existing employer and often gave employers the power to control foreign domestic workers' movements, deny workers the ability to change employer, cancel residence permits, deny permission to leave the country, and threaten employees with abuse of legal processes, thus making them vulnerable to exploitation.¹⁸⁶

¹⁷⁹ US Department of State (n 23) UAE 250.

¹⁸⁰ *ibid.*

¹⁸¹ *ibid.*

¹⁸² Mahdavi (n 173) 23.

¹⁸³ *ibid.*

¹⁸⁴ US Department of State, 'Trafficking in Persons Report' (June 2010) 334; (June 2011) 367; (June 2012) 355; (June 2013) 375; (June 2014) 392; (June 2015) 347; (June 2016) 382.

¹⁸⁵ *ibid.* (June 2016) 382.

¹⁸⁶ *ibid.* (June 2016) 382; *ibid.* (June 2013) 392.

However, the TIPR is not without controversy. It has been accused of racism, Islamophobia and of constructing the global phenomenon of human trafficking as a crime of the Eastern Other.¹⁸⁷ Its critics protest that countries such as the United Kingdom, Sweden and Italy, located in the West, receive Tier 1 rankings, whereas countries such as Iran, Qatar and Saudi Arabia, located in the East, receive Tier 3.¹⁸⁸ They believe that this reflects prejudice and differential treatment based on the racial and religious make-up of a country.¹⁸⁹ Furthermore, the TIPR has been accused of being a mechanism to exercise diplomatic pressure, in this regard attention has been directed to the Tier 3 rankings of Cuba and North Korea.¹⁹⁰ Critics have also been sceptical of the fact that the United States 'remained conspicuously absent' from the TIPR, which is issued by the US State Department Office, for a decade.¹⁹¹

5.8 Conclusion

This chapter has examined the current situation of human trafficking in the UAE on the ground from various angles, for instance, the scale of the problem, victims' characteristics, how they came to be trafficked, methods used by traffickers to control their victims, the level of organised criminality, and various forms of trafficking. Analysis of the available data shows that the majority of cases and victims of trafficking in the country were for sexual exploitation, fewer cases were of forced labour or the sale of children.

This chapter shows that most victims come from developing countries in South and Central Asia and only a few attend a primary and secondary school. Traffickers use various methods for recruiting their victims such as deception about the nature of the job. In this situation the place of trafficking is external (planned outside the UAE). Once victims arrive in the UAE, they realise that the work they have been promised does not exist and they are forced into sexual exploitation. Another strategy used by traffickers is to lure victims already working as maids in the UAE to work for another employer by promising better working conditions and higher wages. In this situation, the trafficking is internal (planned inside the country).

¹⁸⁷ Pardis Mahdavi and Christine Sargent, 'Questioning the Discursive Construction of Trafficking and Forced Labor in the United Arab Emirates' (2011) 7(3) *Journal of Middle East Women's Studies* 6.

¹⁸⁸ *ibid* 23.

¹⁸⁹ *ibid*.

¹⁹⁰ *ibid*.

¹⁹¹ *ibid*.

This chapter has also examined how traffickers control their victims. This can take the form of locking their victims in private flats or houses controlled by guards with cameras to keep them away from public view. Violence and threats of violence are used against victims and their families. Although the majority of human trafficking cases were for forced prostitution in the UAE, other forms of trafficking have also been recorded such as the sale of children, forced labour and trafficking young boys as camel jockeys.

Moreover, this chapter has highlighted the ranking of the UAE in the TIPR from the period 2001 to 2016 and the reasons for the country being placed in each tier. A point to note is that the TIPR prompted the country to take up the fight against human trafficking and protect victims of trafficking, as well as leading to the creation of shelters and the enactment of Federal Law 51 to combat human trafficking.¹⁹² The next chapter examines how human trafficking was addressed before Federal Law 51 to combat human trafficking and analyses of Law 51 as amended in 2015.

¹⁹² Mahdavi (n 173) 23.

Chapter Six: A Critical Analysis of Human Trafficking in UAE Law

Introduction

In November 2006, the UAE enacted Federal Law No 51 of 2006 in Combating Human Trafficking Crimes (hereinafter referred to as Law 51 of 2006).¹ Prior to this law there was no specific legislation related to trafficking, instead the UAE constitution, Penal Code and other relevant legislation which directly and indirectly intersected with human trafficking was utilised to investigate and criminalise some of the diverse forms and aspects of this crime. The aim of this chapter is to evaluate human trafficking in women under UAE legislation, mainly through Federal Law No 51 of 2006 in Combating Human Trafficking Crimes as amended under Federal Law No 1 of 2015 (hereinafter referred to as Law 51 as amended in 2015). The first section examines the UAE's legal framework prior to Law 51 of 2006 to assess its effectiveness. The second section examines Law 51 as amended in 2015 and appraises some of the motivating factors behind the UAE government's decision to enact a law explicitly aimed at combating trafficking in 2006. The section incorporates a review of the definition of trafficking under Law 51 as amended in 2015, and considers if it is consistent with the standards established internationally. The third section critiques the 2015 provisions of this law in order to identify and appraise its strengths and weaknesses.

6.1 The Prohibition of Human Trafficking and Exploitation in UAE National Legislation

Human trafficking and slavery was prohibited under Article 34 of the 1971 Temporary Constitution.² In the third paragraph, it states that 'a person may not be enslaved',³ and the same article prohibits forced labour and the exploitation of workers.⁴ In addition, Article 346 of

¹ Mahmood Monshipouri, *Human Rights in the Middle East: Frameworks, Goals and Strategies* (Springer 2011) 238.

² The word 'temporary' was deleted by Constitutional Amendment 1/1996. Article 1 of Act 1/1996 provides as follows: 'There is hereby deleted the word temporary from the Constitution of the United Arab Emirates State wherever it exists'. The previous title of the Constitution reads as follows: 'The Temporary Constitution of the United Arab Emirates'. United Arab Emirates Constitution (by Law of the Federal National Council, 2011) 3.

³ UAE Constitution of 1971, art 34.

⁴ *ibid.*

Federal Law No 3 of 1987 on Penal Code for the United Arab Emirates (hereinafter referred to as the Federal Penal Code) prohibits human trafficking:

[W]hoever smuggles someone into or out of the country with the intention of taking possession of him or disposing of him, and whoever possesses, buys, sells, offers for sale, or disposes in any manner whatsoever of a person as a slave, shall be punished by a term of imprisonment.⁵

The majority of acts contained in the Trafficking Protocol that are concerned with sexual exploitation are prohibited and criminalised in the Federal Penal Code.⁶ The Federal Penal Code protects women and children from forced prostitution and sexual exploitation. These prohibitions are evident in Articles 354 to 358 which proscribe rape, violations of honour, indecent acts and indecent assault, and impose strict penalties on any violations. For example, Article 354 states: ‘Without prejudice to the provisions of the Juvenile Delinquents and Homeless Law, whoever resorts to coercion in sexual intercourse with a female or homosexuality with a male, shall be punished by the death penalty. A case of coercion shall arise if the victim at the time of the crime was under fourteen years of age.’⁷ Article 355 criminalizes any ‘attempt to commit any of the crimes provided for in the preceding Article shall be punishable by life imprisonment’.⁸ Article 356 delineates the penalties incurred for ‘indecent assault’, consensual sex between unmarried adults, and the offense of voluntary debasement, which is penalized by detention for a minimum of one year.⁹ If the victim is under fourteen years of age coercion is assumed, and all cases of coercive sex carry the penalty of imprisonment. Additionally, Article 357 states that a rapist should be given the death penalty if the action caused the death of the victim.¹⁰ Finally, Article 358 states that ‘whoever commits a disgraceful act with a girl or boy who has not completed fifteen years of age even if it is not committed openly, shall be punished by detention for at least a period of one year’.¹¹

⁵ *ibid* art 346c <<http://mublegal.com/wp-content/uploads/2014/07/Federal-law-penal-code.pdf>> accessed 6 March 2017.

⁶ Adel Majed, ‘Combating Human Trafficking in International Conventions and National Law’ (2007) Institute of Training and Judicial Studies 61.

⁷ Federal Law No 3 art 354.

⁸ *ibid* art 355.

⁹ *ibid* art 356.

¹⁰ *ibid* art 357.

¹¹ *ibid* 358.

According to the Federal Penal Code, it is a crime to entice, tempt or induce another person to commit debauchery or prostitution, or to assist them in carrying out these acts, to do so carries the punishment of detention for a minimum of one year and a fine.¹² If the victim is under the age of eighteen, then the penalty increases to a minimum of two years and a fine.¹³ Article 364 imposes the punishment of up to ten years imprisonment for enticing another person by means of threat, coercion or deception to debauchery or prostitution, a penalty which increases if the victim is under the age of eighteen.¹⁴ The same Article also punishes anyone who detains a person against their will by means of coercion, threat or deception with the intention of enticing him/her to commit one or more acts of debauchery or prostitution.¹⁵ Notably, Article 364 only covers the use of force or threats to detain or entice women into debauchery or prostitution and does not cover other means contained in the Trafficking Protocol, such as the exploitation of their vulnerability or the abuse of power (as previously discussed in Chapter 2).

Article 365 of the Federal Penal Code punishes individuals involved in establishing, keeping or managing a place for debauchery or prostitution, and delineates the penalties imposed for these activities.¹⁶ Under Article 366, anyone convicted of exploiting others through prostitution is subject to up to five years in prison and it is considered an aggravating circumstance if the crime is committed by a custodian or someone who exercises control over the victim.¹⁷ For increased child protection, Article 327 states that: ‘whoever abducts a newborn child from his legitimate guardian, conceals him or substitutes another for him, or falsely attributes him to other than his legitimate parent, shall be punished by imprisonment’.¹⁸ Article 349 bans the exploitation of teenagers and stipulates that they should not be exposed to risk. On this matter it directs that anyone ‘shall be sentenced to detention for a term not exceeding two years, whoever personally or through an intermediary exposes to danger a juvenile who did not complete fifteen years of age or a person unable to defend himself because of his health, mental or physical condition’.¹⁹

¹² Federal Law No 3 art 363.

¹³ *ibid.*

¹⁴ *ibid* art 364.

¹⁵ *ibid.*

¹⁶ Federal Law No (3) art 365.

¹⁷ *ibid* art 366; Melissa Hope Ditmore, *Encyclopedia of Prostitution and Sex Work*, Volume A-N (Greenwood 2006) 42.

¹⁸ Federal Law No (3) art 327.

¹⁹ *ibid* art 349.

6.1.1 Other UAE Legislation Applicable to Human Trafficking

As noted above, although there was no specific legislation to combat human trafficking prior to Law 51 of 2006, there was in existence other legislation in the UAE that was applicable to human trafficking crimes. For instance, Federal Law No 6 of 1973 on Entry and Residence of Foreigners²⁰ contains provisions related to the smuggling of people illegally into the country. According to Article 1, foreigners are prohibited from entry to the country unless they have a passport or travel document valid for entry into the State and return to the country in which they reside or from where the passport or travel document was issued.²¹ The central issue to note here is that this Article prevents the smuggling of people into the UAE for the purpose of human trafficking and it is in accord with the UN Smuggling Convention.²²

In an effort to maintain greater security of the border and protect victims from smugglers, Article 6 states that ‘ship captains and commanders of means of transportation and their agents shall notify the concerned authority upon the arrival or departure of the names of passengers who do not hold passports, or those who do not hold permits, visas, or residence permits ... they should prevent such passengers from leaving or boarding’.²³ Article 22 gives the local security authority the right to search any sea vessel suspected of transporting persons who have committed any act punished under the provisions of the Law, or plan to do so, and arrest these persons.²⁴

In order to provide protection to juveniles and ensure that they are not exploited, Federal Law No. 9 on Delinquent and Vagrant Juveniles was promulgated in 1976.²⁵ Article 42 of the Law states:

²⁰ Federal Law (6/1973) on Entry and Residence of Foreigners of the UAE.

²¹ International Business Publications, *Dubai Company Laws and Regulations Handbook* (Int'l Business Publications 2008) 179.

²² Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (entered into force 28 January 2004) art 3(b). The term ‘illegal entry’ means ‘crossing borders without complying with the necessary requirements for legal entry into the receiving State’.

²³ Federal Law No 6 of 1973 art 6.

²⁴ *ibid.*

²⁵ According to this law, a juvenile is defined as a person who is no older than 18 years of age. The UAE National Report presented in accordance with Article 15 (a) of the Appendix to the Decision of the Human Rights Council 1/5, 10.

[A] penalty of up to one year in prison or a fine of from 2,000 to 5,000 AED shall be imposed on anyone who exposes a minor to delinquency, by preparing him for it, inciting him to engage in such behaviour or in any way facilitating his involvement therein, even if the delinquency does not actually materialise as far as the law is concerned.²⁶

Article 13 defines delinquency as a situation in which a person ‘commits acts involving prostitution, depravity, moral turpitude, gambling or drugs’.²⁷ The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Najat M’jid, argues that this article could feasibly cover any situation in which a juvenile is used in pornography.²⁸

With regard to the protection of individuals, and specifically women and children, from labour exploitation, Federal Law No 8 of 1980 on Regulation of Labor Relations of the UAE (hereinafter referred to as the Labour Law of 1980)²⁹ sets forth several restrictions. It forbids the employment of young persons below the age of fifteen,³⁰ and prohibits young people from working in industrial projects during the night.³¹ It also bans young people from being employed in jobs which are considered hazardous, exhausting or detrimental to their health.³² Criminal liability extends to include the guardians or trustees of juveniles if they consent to the employment of the young under these injurious conditions.³³ Women are also protected under the Labour Law of 1980. Article 27 states that ‘women may not be required to work at night’.³⁴ Article 29 guarantees the protection of women’s health and prohibits their employment where jobs are hazardous, harmful or detrimental to their health or morals.³⁵

In the light of the discussion above, a number of observations can be made. The first observation is that the provisions contained in the Constitution, Penal, and Labour Laws are not in line with international standards or the Trafficking Protocol in addressing human trafficking. For instance,

²⁶ Federal Law No 9 of 1976 on Delinquent and Vagrant Juveniles, art 42.

²⁷ Najat Maalla M’jid, ‘Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M’jid’ UN Doc A/HRC/16/57/Add.2.

²⁸ *ibid.*

²⁹ Federal Law No 8 of 1980 on the Regulation of Labour Relations of the UAE.

³⁰ *ibid* art 20.

³¹ The term night shall mean a period of not less than twelve consecutive hours including the period from 8 pm to 6 am; *ibid* art 23.

³² *ibid* art 24.

³³ *ibid* art 34.

³⁴ The term night means a period of not less than eleven consecutive hours including the period from 10 pm to 7 am; *ibid* art 27.

³⁵ *ibid* art 29.

the *action, means and purpose* elements contained in the Trafficking Protocol definition (and as previously described in Chapter 2) are not covered by the legislation or codes.³⁶ The second is that the punishment prescribed for traffickers is inadequate.³⁷ The third observation is that there is a failure to take the necessary precautionary measures to both prevent the crime of trafficking and to protect the victims of it.

Domestic workers, who habitually become victims of trafficking, are not covered under Federal Law No 8 of 1980 on Regulation of Labor Relations. They are excluded from workers' legal protection,³⁸ such as exemption from court fees (at all stages),³⁹ wage regulation,⁴⁰ set hours of work,⁴¹ holiday entitlement,⁴² social care and health and safety protection,⁴³ as well as compensation for diseases and injuries associated with occupational activities.⁴⁴ A report submitted by the Migrant Forum in Asia to the 45th session of the Committee on the Elimination of Discrimination Against Women argues that the exclusion of domestic workers in the UAE from the legal protection of the Labour Law of 1980 clearly violates CEDAW Article 2.⁴⁵ Article 2 stipulates that States Parties should 'condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women'.⁴⁶ The exclusion of domestic workers from policy also violates CEDAW General Recommendation No. 26 on Women Migrant Workers, as set out in Paragraph 26b.⁴⁷ This recommendation emphasises that governments should give female migrant workers the

³⁶ For example, article 364 only contains the use of force or threatening to detain or entice women into debauchery or prostitution and does not cover other forms of means such as the exploitation of their vulnerability or by an abuse of power.

³⁷ See, for example, arts 356, 358, 363 and 363 of the Federal Penal Code.

³⁸ Federal Law No 8 of 1980, art 3: 'the provisions of this law shall not apply to the following categories: Employees of the Federal government and of governmental department, employees of municipalities ... Domestic servants employed in private households'; Also see Earth Globie, *Only in UAE, If You Dare! Living in Harmony* (Strategic Book 2012) 35.

³⁹ UAE Labour Law No 8 of 1980, art 5.

⁴⁰ *ibid* arts 55-64.

⁴¹ *ibid* arts 65-73.

⁴² *ibid* arts 74-90.

⁴³ *ibid* arts 91-141.

⁴⁴ *ibid* arts 142-153.

⁴⁵ Migrant Forum in Asia, 'Women Migrant Workers in the UAE: Not Quite in the Portrait' (NGO Submission to the 45th Session of the Committee on the Elimination of Discrimination against Women) 5.

⁴⁶ Convention on the Elimination of All Forms of Discrimination Against Women (signed 18 December 1979, entered into force 3 September 1981) (CEDAW Convention) art 2.

⁴⁷ Migrant Forum in Asia (n 45) 5.

same protection and rights given to all other workers under the Labour Law of 1980, such as regulations that cover holiday leave, health and safety, working hours and wages.⁴⁸

A key factor is foregrounded by Singh and Rajan who note that government inspectors cannot visit private houses that use domestic workers since the individuals who comprise family homes are not considered to be employers. Using this rationale, domestic workers are not construed as employees.⁴⁹ This is a situation that violates CEDAW Article 2 and General Recommendation No. 26, Para 26h, as monitoring mechanisms, and concomitantly protections, are not in place. The Recommendation states that governments should have legal regulations for monitoring systems so that employers and recruiting agencies respect the legal rights of female migrant workers.⁵⁰ As a result of this oversight, sending countries such as the Philippines⁵¹ and Indonesia⁵² stopped allowing their citizens to work as domestic workers in the UAE. However, the UAE and the Philippines governments have recently reached a new agreement that demarcates the rights of domestic workers in a memorandum – an attempt which is seen as an important step in overturning the existing ban on Philippine migrant workers taking positions as

⁴⁸ ‘States parties should ensure that constitutional and civil law and labour codes provide to women migrant workers the same rights and protection that are extended to all workers in the country, including the right to organize and freely associate. They should ensure that contracts for women migrant workers are legally valid. In particular, they should ensure that occupations dominated by women migrant workers, such as domestic work and some forms of entertainment, are protected by labour laws, including wage and hour regulations, health and safety codes and holiday and vacation leave regulations. The laws should include mechanisms for monitoring workplace conditions of migrant women, especially in the kinds of jobs where they dominate (articles 2 (a), (f) and 11).’ Committee on the Elimination of Discrimination Against Women, ‘General Recommendation No 26 on Women Migrant Workers’ (5 December 2008) CEDAW/C/2009/WP.1/R, para 26.b.

⁴⁹ A Didar Singh and S Irudaya Rajan, *Politics of Migration: Indian Emigration in a Globalised World* (Routledge 2015) 47.

⁵⁰ CEDAW (n 48) para 26h.

⁵¹ UAE residents have not been able to hire Filipino domestic workers legally since June 2014. This issue arose when the Ministry of Interior introduced a unified contract for domestic workers that led to the suspension of consular role in verifying and attesting contracts. The Philippine government insisted that it is mandated to verify the contracts to protect their workers. Another major point of contention is the Philippine government's setting of a minimum wage for Filipino domestic workers at 400 USD (1,468 AED), while UAE does not have a set minimum wage. Other conditions include ensuring HSWs should be at least 23 years old and receive a week off. Their salary must be deposited in a bank and they should not be required to pay placement fees to recruiters. Angel Tesorero, ‘No Agreement Yet on Hiring Filipino Domestic Workers’ *Khaleej Times* (21 January 2016) <<http://www.khaleejtimes.com/nation/general/no-agreement-yet-on-hiring-filipino-domestic-workers>> accessed 8 November 2016.

⁵² Silvia Radan, ‘No Indonesian Maids and Drivers from 2017 in UAE’ *Khaleej Times* (22 September 2015) <<http://www.khaleejtimes.com/nation/general/no-indonesian-maids-and-drivers-from-2017-in-uae>> accessed 8 November 2016.

domestic servants in the UAE.⁵³ Additionally, the very first labour law for all foreign domestic workers was approved in September 2017, Federal Law No.10 of 2017, which seeks to address many of the abuses endured by domestic workers related to late or non-payment of wages, overwork with no time off or holiday, confiscation of passports by their employers and the inability of migrant workers to terminate their contracts.⁵⁴

The fifth observation is related to the Labor Law of 1980 and the use of the Kafala or sponsorship system. As Bales argues, the Kafala or sponsorship system is ‘contract slavery’, a system which comprehensively controls migrant workers in destination countries.⁵⁵ The US TIP Report 2016 notes that current employment sponsorship laws make foreign workers vulnerable to exploitation as they are threatened with abuses of legal processes, denied permission to leave the destination country, unable to change their employer and routinely have their residence permits cancelled.⁵⁶ If migrant workers have no written consent from their employers to leave their workplace, they are considered to be absconding and can be charged with a criminal offence.⁵⁷ What this means is, they either are forced to endure abuse and/or exploitation by their employers, or risk being classified as a criminal if they abscond.⁵⁸

6.2 Combating Human Trafficking Crimes in National Legislation after Enacting Law No 51 of 2006 on Combating Human Trafficking

Law 51 of 2006 is the first piece of legislation to directly criminalise human trafficking in the UAE; it prohibits all forms of trafficking and prescribes punishment from one year to life imprisonment.⁵⁹ Three aspects of this seminal law will be considered in this section. The first concerns the impetus for enacting Law 51. The second is with respect to defining human

⁵³ Emirates247, ‘Philippines to Lift Ban on Domestic Workers: Dh1,500 New Minimum Salary for Maids’ (15 August 2016) <<http://www.emirates247.com/news/emirates/philippines-to-lift-ban-on-domestic-workers-dh1-500-new-minimum-salary-for-maids-2016-08-15-1.639120>> accessed 11 August 2016.

⁵⁴ Migrant-Rights, ‘UAE Approves Law on Domestic Workers’ (*Migrant-Rights*, 28 September 2017) <<https://www.migrant-rights.org/2017/09/uae-approves-law-on-domestic-workers/>> accessed 2 May 2018.

⁵⁵ Kevin Bales, *New Slavery: A Reference Handbook* (ABC-CLIO 2004) 121; Andrew Gardner, *City of Strangers: Gulf Migration and the Indian Community in Bahrain* (Cornell University Press 2010) 58.

⁵⁶ US Department of State, ‘Trafficking in Persons Report’ (July 2016) 382.

⁵⁷ Migrant Forum in Asia, ‘Reform of The Kafala (Sponsorship) System’ 1 <<http://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf>> accessed 31 October 2016.

⁵⁸ *ibid* 1.

⁵⁹ Graeme R Newman, *Crime and Punishment around the World* (ABC-CLIO 2010) 380.

trafficking under Law 51 as amended in 2015 and whether the definition therein is consistent with international legal instruments, in particular the Trafficking Protocol. The third concerns a focus of the Trafficking Law's provisions to combat human trafficking on prosecuting, arresting and punishing traffickers and the number of services available to victims.

6.2.1 Why Did the UAE Enact Law 51 of 2006?

There were several reasons for enacting Law 51 of 2006. Firstly, the UAE is a Muslim country and Islam is a way of life for the Emirati people.⁶⁰ Although UAE legislation combines Islamic and European concepts of civil law,⁶¹ the core principle of the law is Sharia. Article 7 of the Provisional Constitution states that 'Islam is the official religion of the Federation and Islamic Sharia is a main source of its legislation'.⁶² As an Islamic country with Sharia law, human trafficking, especially for sexual exploitation⁶³ and forced labour is prohibited.⁶⁴

Secondly, the country had been criticised in the US TIPR and by other human rights organisations for the pervasive exploitation of migrant workers, the growth of the commercial sex industry and widespread commercial sexual exploitation. The UAE government has responded to these allegations and international pressure by enacting an anti-trafficking legislation to improve the country's human rights reputation.⁶⁵ Thirdly, as part of the UAE's human rights reputation, the adoption of several human rights conventions⁶⁶ henceforth imposed

⁶⁰ Khalid S Almezaini, *The UAE and Foreign Policy: Foreign Aid, Identities and Interests* (Routledge 2012) 152.

⁶¹ International Business Publications, *UAE Insolvency (Bankruptcy) Laws and Regulations Handbook - Strategic Information and Basic Laws* (Int'l Business Publications 2014) 34.

⁶² United Arab Emirates Constitution of 1971. Hunt Janin and André Kahlmeyer, *Islamic Law: The Sharia from Muhammad's Time to the Present* (McFarland 2007) 167.

⁶³ Holy Quran 24:33 'But force not your maids to prostitution when they desire chastity, in order that ye may make a gain in the goods of this life. But if anyone compels them, yet after such compulsion, is Allah Oft-Forgiving, Most Merciful (to them).' Also see Mohamed Y Mattar, *Combating Trafficking in Persons in Accordance with the Principles of Islamic Law* (UNODC 2010) 25.

⁶⁴ Holy Quran 7:85 'Give just measure and weight, and do not withhold [f]rom the people the things that are their due; and do no mischief on the earth after it has been set'; Mattar (n 63) 22.

⁶⁵ Sanja Kelly and Julia Breslin, *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (Rowman & Littlefield 2010) 525.

⁶⁶ Human rights conventions to which the UAE is a party: Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; Convention on the Prevention and Punishment of the Crime of Genocide; International Convention on the Elimination of All Forms of Racial Discrimination; International Convention on the Suppression and Punishment of the Crime of Apartheid; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child Amendment to Article 43(2) of the Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities; Optional Protocol to the Convention on the Rights of Persons with Disabilities; UN Convention against Transnational Organized Crime

obligations upon the government to introduce new legal measures and to evaluate its existing policies and laws, in order to gauge their effectiveness in combating human trafficking.

Fourthly, there was a major economic consideration for the enactment of Law 51 of 2006. The UAE, Dubai in particular, had become an important centre for international trade and had established a very successful tourist industry. These developments regularly attract wealthy investors and thousands of visitors to the region. However, international media coverage revealing that property developments in the UAE were built by foreign workers languishing in conditions of slavery and exploitation were tarnishing its international image and economic attainments. In short, they threatened the future economic growth of the UAE. One final reason for a new law was that the existing legislation in the country, such as the Penal Code and Labour Law, was archaic and inadequate, and in the past even enabled human trafficking to take place in the country. The need to enact a new law and mechanisms to combat human trafficking and protect victims' rights was therefore vital.

6.2.2 The Definition of Human Trafficking in Law 51 as Amended in 2015

Article 1 of Law 51 as amended in 2015 defines human trafficking as:

Selling persons, offering persons for selling or buying, or promising the same; Soliciting persons, employing, recruiting, transferring, deporting, harbouring, receiving, receiving or sending the same whether within the country or across the national borders thereof, by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability the person for the purpose of exploitation; giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation of the latter.⁶⁷ Exploitation includes all forms of sexual exploitation, engaging others in prostitution, servitude, forced labour, organ-trafficking, coerced service, enslavement, mendicancy, and quasi-slavery practices.⁶⁸

(Palermo Convention) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol); Cairo Declaration on Human Rights in Islam; Declaration of the Member States of the Organisation of the Islamic Conference – Arab Charter on Human Rights. The UAE is also party to six ILO conventions and is considering accession to the two Optional Protocols to the Convention on the Rights of the Child, one on the sale of children, child prostitution and child pornography, the other on the involvement of children in armed conflict. In addition, it is studying the withdrawal of a number of reservations to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

⁶⁷ Federal Law 51 as amended in 2015, art 1.

⁶⁸ *ibid* art 1.3.

This Article also states that ‘recruiting a child, transferring, deporting, harbouring or receiving the same for the purpose of exploitation and the selling a child, offering the same for selling or buying shall be considered human trafficking even if this does not involve any of the means’.⁶⁹ It is evident that the definition of human trafficking in accordance with Law 51 as amended in 2015 is relatively in accord with the definition provided in the Trafficking Protocol, which is considered the most widely, internationally-accepted definition of human trafficking.⁷⁰ Notably, the definition of human trafficking in Law 51 includes all elements that are defined in the Trafficking Protocol; the *action* (what is done), the *means* (how it is done), and the *purpose* elements (why it is done).⁷¹

There are a number of observations that can be made with respect to the definition of human trafficking in Law 51 as amended in 2015. The first observation is related to the use of the expression ‘persons’ in the plural form when referring to victims.⁷² This suggests that the trafficking of a single victim, or person, does not accord with the definition of human trafficking in Law 51.⁷³ Therefore, since trafficking a single person fails to constitute a human trafficking crime, it could be argued that there is no punishment for committing this crime based on the principle of legality which states: ‘no crime, no punishment, without law’.⁷⁴ This principle was confirmed in the UAE Constitution.⁷⁵

⁶⁹ *ibid* art 1.2.

⁷⁰ Burns H Weston and Anna Grear, *Human Rights in the World Community: Issues and Action* (University of Pennsylvania Press 2016) 95.

⁷¹ Valsamis Mitsilegas, Maria Bergström and Theodore Konstadinides, *Research Handbook on EU Criminal Law* (Edward Elgar 2016) 424; Rob T Guerette, *Migration, Culture Conflict, Crime and Terrorism* (Routledge 2016) 137; Alicia W Peters, *Responding to Human Trafficking: Sex, Gender, and Culture in the Law* (University of Pennsylvania Press 2015) 90; Naparat Kranrattanasuit, *ASEAN and Human Trafficking: Case Studies of Cambodia, Thailand, and Vietnam* (Martinus Nijhoff 2014) 113.

⁷² By using the expression ‘persons’. For instance, selling persons, offering persons for selling or buying, or promising persons, soliciting persons. Federal Law No 51 of 2006 (art 1bis(1)) on Combating Human Trafficking Crimes as amended under Federal Law No. (1) of 2015.

⁷³ Wijdan Suliman Irtemah, *General Provisions of Crimes of Human Trafficking: A Comparative Study* (Arabic edn, Daralthaqafa 2014) 177.

⁷⁴ John M Scheb, *Criminal Law* (Cengage Learning 2014) 4.

⁷⁵ Crimes and punishments shall be prescribed by the law. No punishment shall be imposed for any act of commission or act of omission which was completed before the issue of the law which provided for such punishment. UAE Constitution, art 27.

A further point to note is, that it appears that Law 51 as amended in 2015 adopts the same definition of human trafficking stated in the Trafficking Protocol and uses the same words.⁷⁶ The Trafficking Protocol uses the plural form because this Protocol supplements the Trafficking Convention. Therefore, it is common for trafficking, as a transnational crime including an organised criminal group (more than one person) operating across national borders, to be committed against more than one person.⁷⁷ Nonetheless, this view may not be acceptable according to Law 51 as amended in 2015, since this Law relates to human trafficking crimes that are committed nationally. In this situation, human trafficking could be committed against only one victim by one trafficker. Therefore, the researcher argues that the UAE legislator should have used the word ‘person’ in the definition of Law 51 as amended in 2015 instead, for the reason that employing the plural could lead to a situation where traffickers escape punishment if the crime is committed against one person, due to there being no legal provision in place.⁷⁸ Examples of legislation that use the singular word ‘person’ are the US Trafficking Victims Protection Act (TVPA) of 2000⁷⁹ and the Egyptian Trafficking Law.⁸⁰ In addition, the French Penal Code uses the word to define the crime (*traite des êtres humains*) as ‘the act of recruiting, transporting, transferring, housing, or receiving a person’.⁸¹

The second observation is that the term ‘harbouring’ is not included in Law 51 of 2006.⁸² However, it is included in the *action* element of the Trafficking Protocol⁸³ and the European Trafficking Convention.⁸⁴ Notably, in Law 51 as amended in 2015⁸⁵ the federal legislator added the term ‘harbouring’ to the *action* element in the trafficking definition in line with the

⁷⁶ Trafficking in ‘persons’ shall mean ...’ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (entered into force 25 December 2003) 2237 UNTS 319, art 3 (Trafficking Protocol).

⁷⁷ Irtemah (n 73) 177.

⁷⁸ *ibid* 387.

⁷⁹ ‘Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person’. The Trafficking Victims Protection Act (TVPA) of 2000 supplemented existing laws, primarily 18 U.S.C. Section 1590.

⁸⁰ ‘A person who commits the crime of human trafficking shall be considered one who deals in any manner in a natural person’ Human Trafficking Law No (64) of 2010, art 2.

⁸¹ Library of Congress, ‘Training Related to Combating Human Trafficking: France’ <<https://www.loc.gov/law/help/human-trafficking/france.php>> accessed 14 November 2016.

⁸² ‘recruiting, transporting, transferring, or receiving persons by means’. UAE Law No 51 of 2006, art 1.

⁸³ ‘the recruitment, transportation, transfer, harboring or receipt of persons, by means’ Trafficking Protocol (n 76) art 3; Margaret Malloch, *Human Trafficking* (Edinburgh University Press 2016) 3.

⁸⁴ ‘the recruitment, transportation, transfer, harbouring or receipt of persons’. Council of Europe Convention on Action Against Trafficking (CETS No 197, 16 May 2005) art 4.

⁸⁵ ‘recruiting, transferring, deporting, harbouring, receiving,’ Federal Law 51 as amended in 2017. Article 1bis(1)b.

Trafficking Protocol and the European Trafficking Convention. The third observation is that the *action* element provided in the definition, which takes the form of soliciting, employing, recruiting, transferring, deporting, harbouring and receiving of trafficked persons, is not defined in Law 51 as amended in 2015,⁸⁶ nor is it interpreted in the Trafficking Protocol or its *travaux préparatoires*. Nonetheless, some of these definitions are provided in a study conducted by the Council of Europe and the UN on the trafficking of organs.⁸⁷

The fourth observation is that the *means* element provided in the definition is not defined in Law 51 as amended in 2015, including threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or position, taking advantage of the vulnerability the person for the purpose of exploitation, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. Importantly, such means are not relevant to child trafficking and only refer to adult trafficking.⁸⁸ In setting out to delineate these *means*, the word ‘coerce’ is defined as: to ‘persuade an unwilling person to do something by using

⁸⁶ Majed (n 6) 87.

⁸⁷ Recruitment is to be understood in a broad sense, meaning any activity leading from the commitment or engagement of another individual to his or her exploitation. It is not confined to the use of certain means and therefore also includes the use of modern information technologies. As the term is described generally, recruitment by one of the means for the purpose of organ removal is regarded as trafficking in human beings for the purpose of organ removal regardless of how the recruitment is performed – whether through personal contact or contact through third persons, newspapers, advertisements or the Internet. Transportation is also a general term and does not define any particular means or kinds of transportation. The act of transporting a person from one place to another constitutes this element; as in the cases of trafficking in human beings for sexual or labour exploitation, it is not necessary for the victim to have crossed any borders, nor is it necessary for the victim to be present illegally in a state’s territory. The offence therefore includes transnational and national trafficking. The transfer of a person includes any kind of handing over or transmission of a person to another person. This is particularly important in certain cultural environments where control over individuals (mostly family members) may be handed over to other people. As the term and the scope of the offence are broad, the explicit or implied offering of a person for transfer is sufficient; the offer does not have to be accepted for the offence of trafficking in human beings to be constituted if the other elements are also present. The harbouring of persons means accommodating or housing persons in whatever way, whether during their journey to their final destination or at the place of the exploitation. This, of course, also includes the accommodation of persons in a medical clinic or other place where the illegal removal of organs is conducted – and the criminal liability of the individuals involved who use one of the means described below to exploit the victims. The receipt of persons is not limited to receiving them at the place where the exploitation takes place either, but also means meeting victims at agreed places on their journey to give them further information on where to go or what to do. *ibid*; Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Martinus Nijhoff 2012) 353; Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 30.

⁸⁸ Federal Law 51 as amended in 2015, art 2; Trafficking Protocol (n 76) art 3(c); Emma Kelly and Farhat Bokhari, *Safeguarding Children from Abroad: Refugee, Asylum Seeking and Trafficked Children in the UK* (Jessica Kingsley 2012) 70; Pete Fussey and Paddy Rawlinson, *Child Trafficking in the EU: Policing and Protecting Europe’s Most Vulnerable* (Taylor & Francis 2017) 69.

threats or force to obtain something'.⁸⁹ Burke argues that it is imperative to understand 'coerce' in the context of human trafficking and suggests that it refers to: threats of harm or physical restraint; an intention to make someone believe that failure to perform an act will result in physical restraint or harm; or threats of abuse or abuse of the legal process.⁹⁰ Elliott adds that psychological coercion contains threats, intimidation and bullying, and argues that 'invisible chains exist by way of psychological coercion and are as effective as physical means in holding a person in slavery, and range from strong to weak pressure'.⁹¹ Therefore, the police, judges and the public prosecutor in the UAE should pay attention to these diverse forms of coercion used by traffickers to control their victims.⁹²

The Model Law Against Trafficking in Persons provides two definitions of 'deception'. Firstly, 'any conduct that is intended to deceive a person';⁹³ and secondly, any deception by words or conduct about the nature of work or services, such as 'the conditions of work, the extent to which the person will be free to leave his or her place, and other circumstances involving exploitation of the person'.⁹⁴ Aronowitz⁹⁵ describes three methods of deception habitually used to recruit victims of trafficking:

1. Full deception about nature of the work - where victims are promised a job in a legitimate business which is a complete fabrication.
2. Half truths about the work – where victims are originally told that they will be working as escorts, but are forced to have sexual contact with their customers.
3. Deception about the conditions of work – where victims know that they will be employed in the commercial sex industry and agree to it, but are subjected to exploitative working conditions, such as being forced to have sex with more than five clients a day, seven days a week, without pay or access to medical care.

⁸⁹ Oxford Living Dictionaries, 'coercion' <<https://en.oxforddictionaries.com/definition/coercion>> accessed 12 November 2016.

⁹⁰ Mary C Burke, *Human Trafficking: Interdisciplinary Perspective* (Routledge 2013) 5.

⁹¹ Jessica Elliott, *The Role of Consent in Human Trafficking* (Routledge 2014) 61.

⁹² See Chapter five, section 5.5 for details on how traffickers control their victims.

⁹³ UNODC, *Model Law Against Trafficking in Persons* (UN 2009) 12.

⁹⁴ *ibid.*

⁹⁵ Alexis A Aronowitz, *Human Trafficking: A Reference Handbook* (ABC-CLIO 2017) 21.

Furthermore, the terms ‘abuse of power’ and ‘positions of vulnerability’ are referred to in the *travaux préparatoires* as ‘any situation in which the person involved had no real acceptable alternative but to submit to the abuse involved’.⁹⁶ Means of seduction or natural obligation fall within the scope of application of the Trafficking Protocol under the abuse of power or vulnerability provisions, for instance, male family members exercising power over female members; the power that parents exercise over children;⁹⁷ and the obligations upon spouses, ‘if they trick a vulnerable person to accept to be transported for a purpose which she later discovers was exploitation’.⁹⁸

Roth added other factors to the terms ‘abuse of power’ and/or ‘positions of vulnerability’. For instance, social or economic status, age of the victim, personal characteristics, psychological condition, and previous traumatic experiences that may make a person vulnerable to exploitation.⁹⁹ A detailed list of situations is provided by the Model Law Against Trafficking in Persons, and includes entering the country illegally and without proper documentation; pregnancy, mental or physical disability, substance addiction; being a child with reduced judgement; illness, infirmity, mental or physical disability; promises of money or other advantages to those having authority over a person; being in a dangerous social survival situation; or other relevant factors.¹⁰⁰

The term ‘giving or receiving of payments or benefits to achieve the consent of a person having control over another person’ is not interpreted or defined in Law 51 as amended in 2015.¹⁰¹ This term refers to the misuse of authority over another person, with reference specifically to

⁹⁶ Vijayarasa (n 252) 170.

⁹⁷ *ibid* 170.

⁹⁸ Winston P Nagan, John AC Cartner and Robert J Munro, *Human Rights and Dynamic Humanism* (Brill 2016) 318.

⁹⁹ Venla Roth, *Defining Human Trafficking and Identifying its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Martinus Nijhoff 2011) 300.

¹⁰⁰ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) 9-10; Gallagher (n 87) 33; Vijayarasa (n 252) 171.

¹⁰¹ UNODC, *Issue Paper: Abuse of a Position of Vulnerability and Other “Means” Within the Definition of Trafficking in Persons* (UNODC 2013) 18.

children and those incapable of giving their consent.¹⁰² It occurs when parents sell their children¹⁰³ or give their daughters in marriage to traffickers.¹⁰⁴

The fifth observation is that, unlike the Trafficking Protocol, exploitative acts are restricted and tightened under Law 51 as amended in 2015.¹⁰⁵ For instance, the Protocol uses the term ‘at a minimum’,¹⁰⁶ which means additional acts of exploitation could be added to the list.¹⁰⁷ For instance, the Lebanon Anti-Trafficking Law adds the recruitment of children in armed conflict and forced involvement in terrorist acts to the list of exploitations.¹⁰⁸ Additionally, the Saudi Arabian Anti-Trafficking Law includes subjecting a person to medical tests.¹⁰⁹

The sixth observation is that Law 51 as amended in 2015 does not define or interpret the list of exploitive acts, which similarly remain undefined in the Trafficking Protocol.¹¹⁰ The Interpretative for the *travaux preparatoires* note that these terms are not covered in the Trafficking Protocol and so national governments should address them as they see fit under national law, stating that the Protocol is ‘without prejudice to how States address these terms in their domestic law’.¹¹¹ A salient point to note is, not defining these terms might violate the principle of legality which states ‘no crime, no punishment, without law’.¹¹² Furthermore, not

¹⁰² United Nations/Council of Europe, ‘Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs’ (2009) 79.

¹⁰³ Neil Boister, *An Introduction to Transnational Criminal Law* (Oxford University Press 2012) 42.

¹⁰⁴ Traffickers try to convince the parents to give their daughters in marriage by luring them with handsome sums of money and hopes of a bright future for their children. PM Nair and Sankar Sen, *Trafficking in Women and Children in India* (Orient Blackswan 2005) 138.

¹⁰⁵ Exploitation includes all forms of sexual exploitation, engaging others in prostitution, servitude, forced labor, organ-trafficking, coerced service, enslavement, mendicancy, and quasi-slavery practices. Federal Law 51 as amended in 2015, art 1(bis)1.

¹⁰⁶ Trafficking Protocol (n 76) art 3(a).

¹⁰⁷ Gallagher (n 87) 35.

¹⁰⁸ Lebanon Anti-trafficking Legislation No 164 of 2011, art 586(1).

¹⁰⁹ Saudi Arabia Law Regarding Combating Crimes of Trafficking in Persons, Royal Decree No.M/40 of 2009, art 2, Saudi Arabia.

¹¹⁰ Trafficking Protocol (n 76) art 3(a); Law 51 as amended in 2015, art 1. Exploitation includes all forms of sexual exploitation, engaging others in prostitution, servitude, forced labor, organ-trafficking, coerced service, enslavement, mendicancy, and quasi-slavery practices.

¹¹¹ Junius P Rodriguez, *Slavery in the Modern World: A History of Political, Social, and Economic Oppression*, Vol 2 (ABC-CLIO 2011) 444; Dominika Borg Jansson, *Modern Slavery: A Comparative Study of the Definition of Trafficking in Persons* (Martinus Nijhoff 2014) 84; Gallagher (n 87) 29; Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery* (Oxford University Press 2008) 6.

¹¹² Crimes and punishments shall be prescribed by the law. No punishment shall be imposed for any act of commission or act of omission which was completed before the issue of the law which provided for such punishment. UAE Constitution, art 27.

defining them creates ambiguity, for example terms such as ‘all forms of sexual exploitation’, it is unclear whether this refers only to commercial sexual exploitation or also includes non-commercial cases, such as forced marriage.

The seventh observation is that the definition uses the expression ‘for the purpose of exploitation’, which could be understood to mean that the specific intention of exploitation is a necessary element of human trafficking under Law 51 as amended in 2015. This could lead to traffickers escaping punishment for this crime, as well as indirectly being granted immunity from legal liability.¹¹³ There are cases where traffickers have not been punished for human trafficking crimes, but charged with other offences - such as forgery – owing to the fact that the court could not reach a conclusion on whether the specific intention of the traffickers was to exploit their victims. This is exemplified in Case No 146/2007 where a man and a woman with two children were arrested at Dubai Airport. The suspects claimed to be parents of the children, however, an inspection of the children’s passport by immigration officers revealed that their passports were forged. The suspects later admitted that they were not the parents of the children and were transferring them from their country of origin, India, to France via Dubai Airport for 15,000 USD. The couple had received half of this payment in India. Since the suspects pleaded ignorance as to the ultimate purpose of the children's journey – that they did not know if they were to be exploited - the investigation by the prosecution was unable to determine the true purpose of the financial transaction. The Cassation Court stated that the investigation did not confirm special intent, which is required for conviction in attempted human trafficking crime as the third element of trafficking offence. In the final outcome, the suspects could only be charged with forgery and the use of forged documents. A similar situation occurred in Case No 3220/2011 in Dubai.¹¹⁴ It is for these reasons that Majed argues that specific criminal intention to commit human trafficking crimes should not be considered a critical element since it is difficult

¹¹³ Majed (n 6) 107.

¹¹⁴ A Singaporean couple was arrested with four children aged between 11 and 16 years old of Singaporean nationality at Dubai Airport following suspicion over the children's passports. The couple claimed that they had received the children in Malaysia from someone who asked them to deliver the children to their relatives in Italy, through Dubai, then Frankfurt, and finally to Rome for 2,000 USD. It was later found that the children's passports were forged. Public Prosecution investigations failed to identify the purpose of the journey, whether exploitation was involved, nor the real intent behind the transfer. As there was insufficient evidence for a prosecution, a human trafficking charge was abandoned. Since there was no evidence of intention to exploit, the accused were referred to the court on charges of forging passports.

for investigators and public prosecution to ascertain the special intention of traffickers, especially in the case of child trafficking.¹¹⁵

In this respect, a number of countries do not consider the purpose of exploitation a necessary element of committing human trafficking crimes. For instance, Article 119 of the Vietnam Penal Code criminalises trafficking in women regardless of the occurrence of exploitation,¹¹⁶ and increases the penalty if it is committed for the purpose of prostitution; for the purpose of sending women overseas; in an organised manner; being of a professional character; trafficking in more than one person; and trafficking more than once.¹¹⁷ Furthermore, the Italian Measure against Trafficking Law¹¹⁸ criminalises trafficking acts independently¹¹⁹ and increases the penalty if the exploitation (the *purpose* element) is proved. It states that ‘the aforesaid penalty becomes harsher, increasing by one third to 50%, if the offences referred to in this present article are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ removal purposes’.¹²⁰

The researcher suggests that Law 51 as amended in 2015 should follow the same definition as the Vietnam and Italian laws that criminalises trafficking acts independently, and deems the crime human trafficking even if the third element (exploitation) is not proved (and if exploitation was a factor then the crime can be regarded as aggravating circumstances).

6.3 Analysis and Evaluation of Law 51 as Amended in 2015

It can be argued that the UAE’s Law 51 as amended in 2015, is in line with the Trafficking Protocol as it takes the traditional approach (crime control approach) to human trafficking and exploitation which relies on criminalisation, arrest, and prosecution of traffickers with a number

¹¹⁵ Majed (n 6) 109.

¹¹⁶ Those who traffic in women shall be sentenced to between two and seven years’ imprisonment. Vietnam Penal Code 1999, art 119.

¹¹⁷ *ibid* art 119.2.

¹¹⁸ Law No 228 (11 August 2003).

¹¹⁹ Trafficking Law (amendment of Article 600 of the Italian Penal Code) art 2.

¹²⁰ *ibid* art 2 (amendment of Article 601 of the Italian Penal Code) art 2.

of services made available to victims (as discussed in Chapter 4).¹²¹ Human trafficking is criminalised as a felony under the Federal Penal Code.¹²² The punishment for felony under the Law is temporary imprisonment for a term of no less than three years.¹²³ Notably, under Article 2 of Law 51 as amended in 2015, the punishment for those who commit any human trafficking crimes is temporary imprisonment for a term of no less than five years, together with a minimum fine of 1,000 AED.¹²⁴ In other words, Law 51 increases the punishment for felony from three to five years' imprisonment which means that it considers human trafficking a serious criminal offence which should be punished with tough penalties.

Punishment under Article 2 of Law 51 also complies with the Trafficking Convention requirements relating to proportionate and effective sanctions. The Trafficking Convention states that 'each State Party shall make the commission of an offence established in accordance with articles ... liable to sanctions that take into account the gravity of that offence'.¹²⁵ Article 2 of Law 51 increases the penalty to life imprisonment in aggravated circumstances, for instance, if the victim is a child or a person with a disability; if the act is committed by threat of murder or grave harm or involves physical or psychological torture, or if the perpetrator is armed; the perpetrator of the crime has created or assumed a leading role in an organised criminal gang, has been a member therein or participated in the actions thereof while being aware of the purposes of such a gang; the perpetrator is the victim's spouse, relative, antecedent or descendant or the guardian of the victim; if the perpetrator is a public servant, or assigned to public service, where he exploited the occupation or assignments thereof to commit the crime; a transnational crime; or if the victim has been inflicted with an incurable disease or permanent disability as a result of the crime.¹²⁶ An additional aggravated circumstance was added to the French Penal Code under Article 225-4-2 if the crime was against two or more people.¹²⁷ Furthermore, the Jordanian Anti-

¹²¹ Pete Fussey and Paddy Rawlinson, *Child Trafficking in the EU: Policing and Protecting Europe's Most Vulnerable* (Taylor & Francis 2017) 73; Tsachi Keren-Paz, *Sex Trafficking: A Private Law Response* (Routledge 2013) 9.

¹²² Felony shall be a crime punishable by temporary imprisonment. UAE Penal Code, art 28.

¹²³ The term of temporary imprisonment shall neither be less than three years, nor more than fifteen years, unless the law provides otherwise. Penal Code, art 68.

¹²⁴ Law 51 as amended in 2015, art 2.

¹²⁵ United Nations Convention Against Transnational Organized Crime (signed 12 December 2000, entered into force 29 September 2003) 2225 UNTS 209, art 11.1 (Trafficking Convention).

¹²⁶ Law 51 as amended in 2015, art 2.

¹²⁷ French Penal Code, art 225-4-2.

Trafficking Law recognises an aggravating circumstance if the crime is committed against women.¹²⁸ The researcher suggests that adding these situations to Article 2 of Law 51 as amended in 2015 would provide greater effectiveness.

A key factor is that under Article 1, if the crime is committed by means of threat or use of force, the punishment is no less than five years.¹²⁹ However, under Article 2.2 if the crime is committed by threat of murder or grave harm, or involves physical or psychological torture, the punishment is life imprisonment.¹³⁰ This creates confusion because the same *means* are used in Articles 1 and 2, however the punishments differ.

Article 8 of Law 51 is in compliance with Article 5 of the Trafficking Protocol which requires States to criminalise human trafficking, an attempt to commit an offence, and participating, organising or directing other persons to commit an offence.¹³¹ Article 8 states that ‘any person who attempts to commit one of the crimes enumerated in Articles 2, 4 or 6 of this Law shall be punished by the penalty of a complete crime; any person who collaborates in committing one of the crimes provided for in Articles 1 bis (1), (2), (4), (5) and (6) of this Law, as a direct participant or accomplice shall be deemed a perpetrator of the crime’.¹³² Additionally, Law 51 extends criminal liability to any person who is aware of a plan to commit any of the crimes provided in the Law but fails to inform the concerned authorities; they shall be punished by imprisonment for a period of no less than one and no more than five years.¹³³

Article 7 of Law 51 extends criminal liability to cover legal persons, including financial sanctions as provided in the Trafficking Convention and the European Trafficking Convention.¹³⁴ Article 7 provides a minimum fine of 100,000 AED, and a maximum of one million AED if agents, directors or representatives commit a human trafficking crime. In addition, a court may order total closure or temporary dissolution of a corporate entity, or one or

¹²⁸ Jordanian Anti-Trafficking in Persons Law No 9 of 2009, art 9.2.

¹²⁹ Law 51 as amended in 2015, arts 1 and 2.1.

¹³⁰ *ibid* art 2.2.

¹³¹ Trafficking Protocol (n 76) art 5.2.

¹³² Law 51 as amended in 2015, art 8.

¹³³ *ibid* art 3.1.

¹³⁴ Trafficking Convention (n 125) art 10; Council of Europe Convention on Action against Trafficking in Human Beings (entered into force 1 February 2008) ETS 197, art 22.

more of its branches.¹³⁵ A point to note is that the punishment for legal persons under the 51 Law is tougher than that included in the UAE Penal Code which does not exceed 50,000 AED.¹³⁶

Additional details are provided by the European Trafficking Convention.¹³⁷ Article 22 imposes liability where someone in a leading position (such as a director) fails to supervise or check on an employee or agent of the entity.¹³⁸ In addition, paragraph 2 of Article 22 requires States to impose liability on a legal person where the crime is committed, not by the leading person, but by another person acting on the entity's authority, such as an employee or agent acting within their powers under three conditions. First, the offence is committed by an employee or agent of the legal entity, second, the offence is committed for the entity's benefit, and third, the commission of the offence is made possible by the leading person's failure to supervise the employee or agent.¹³⁹

With regard to the liability of the buyers, users or customers of the services provided by trafficked victims, Law 51 does not prosecute those who create demand for this illegal activity.¹⁴⁰ The Syrian anti-trafficking legislation is the only Arab legislation that places liability on customers, users or purchasers of the victims' services and imposes a punishment of up to two years in prison and a fine.¹⁴¹ The researcher suggests that Law 51 as amended in 2015 should follow the same approach adopted by the Syrian Trafficking Law as this would lead to reducing the demand for this crime.¹⁴²

¹³⁵ Law 51 as amended in 2015, art 7.

¹³⁶ Penal Code, art 65 deals with the liability of legal persons: 'No sentence shall be imposed on them other than a fine, forfeiture and criminal measures provided for the crime by law; however, if the law provides for the crime a principal penalty other than a fine, the penalty shall be limited to the fine, which shall not exceed fifty thousand Dirhams maximum.'

¹³⁷ Gallagher (n 87) 375.

¹³⁸ The term leading position refers to someone who is organizationally senior. Based on A power of representation of the legal person; B an authority to take decisions on behalf of the legal person; C an authority to exercise control within the legal person. European Trafficking Convention (n 134) art 22.1.

¹³⁹ *ibid* art 22.2; Council of Europe, 'The European Trafficking Convention Explanatory Report' (CETS No 197, 16 May 2005) 92; Gallagher (n 87) 375.

¹⁴⁰ Mohamed Y Mattar, 'Human Rights Legislation in the Arab World: The Case of Human Trafficking' (2011) 3(1) Michigan Journal of International Law 116.

¹⁴¹ *ibid*; Aware of the fact of trafficking and benefited physically or mentally from the services of the victim shall be punished by imprisonment from six months to two years and a fine of one hundred thousand to two hundred thousand Syrian pounds. Legislative Decree No 3 for 2010 on trafficking crimes, art 9.

¹⁴² UN Protocol, art 9 makes it clear that addressing the demand for the services of trafficking victims is an essential part of effectively preventing and combating trafficking in persons:

Although Article 9 of Law 51 allows for confiscation of the crime's tools, monies and proceeds,¹⁴³ victims of trafficking in the UAE are not supported or compensated for the confiscated assets.¹⁴⁴ Al Maktoum Charity Foundation found there was a need to give 150,000 AED as financial support to these victims.¹⁴⁵ Morehouse argues that confiscating the profits of human traffickers would be an effective way to combat human trafficking for two reasons. Firstly it targets one of the main motivations of human traffickers, financial profit. This lower return on their risk would potentially deter human traffickers from trafficking.¹⁴⁶ Secondly, the assets confiscated from traffickers could be used to finance State efforts to combat human trafficking and pay the cost of victim rehabilitation and victim support services.¹⁴⁷ The European Trafficking Convention states that:

States Parties are required to guarantee pecuniary compensation for victims for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of [confiscation] measures.¹⁴⁸

Therefore, the researcher suggests that tools, monies and profits confiscated under Article 9 of Law 51 as amended in 2015 could be used as a fund to compensate and support victims of trafficking.

Article 11 of Law 51 is in tandem with Article 26 of the Trafficking Convention with regard to taking appropriate measures to encourage traffickers to cooperate with law enforcement

5) States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking. Trafficking Protocol (n 76) art 9.5; Mattar (n 140) 116.

¹⁴³ Law 51 as amended in 2015, art 9.1.

¹⁴⁴ Abdul Daher Ahmed, 'Legislative Mechanisms to Protect Victims of Human Trafficking: A Comparative Study' (Research Paper presented to a Symposium on Protection of the Victims of Human Trafficking, Human Rights Department, Ministry of Interior, Abu Dhabi, 2009) 73.

¹⁴⁵ Bassma Al Jandaly, 'Dubai Logged 37 Human Trafficking Cases in 2012' (*Gulf News*, 16 May 2013) <<http://gulfnews.com/news/uae/general/dubai-logged-37-human-trafficking-cases-in-2012-1.1184555>> accessed 17 June 2017.

¹⁴⁶ Christal Morehouse, *Combating Human Trafficking: Policy Gaps and Hidden Political Agendas in the USA and Germany* (Springer Science & Business Media 2009) 66.

¹⁴⁷ *ibid.*

¹⁴⁸ European Trafficking Convention (n 134) art 15.4; Anne T Gallagher, 'The Right to an Effective Remedy for Victims of Trafficking in Persons: A Survey of International Law and Policy' (2010) 13.

authorities, and in so doing mitigate their punishment.¹⁴⁹ Article 11 of Law 51 as amended in 2015 states that:

[A]ny of the perpetrators of a crime, who takes the initiative to report to judicial or administrative authorities of what he/she knows about the crime before its commission, which results in discovering the crime before its occurrence, or in the arrest of its perpetrators or preventing its commission, shall be exempted from the penalties provided for in this law. If an individual reports a crime after its discovery, such individual may be exempted from the penalty or may be subject to mitigated penalty, in the event that he/she has assisted the concerned authorities during investigation to arrest other perpetrators of the crime.¹⁵⁰

It is worth noting that Law 51 of 2006 does not include any provision related to assistance or protection of victims of trafficking.¹⁵¹ However, Law 51 as amended in 2015 provides more support for the victims, and protection for any eyewitnesses.¹⁵² Article 1 bis (2) gives a number of rights, for instance, providing victims and witnesses with information, in particular about their legal rights, in a language they can understand and enable them to express their social and legal needs; a medical examination to receive physical or psychological treatment as well as to be admitted to a rehabilitation centre if needed; providing shelters; ensuring appropriate victim/witness security protection; allowing victims and witnesses to remain in the country during the course of an investigation and prosecution when needed, and allowing victims to hire a lawyer.¹⁵³ Nevertheless, victims cannot remain in the country when their trial ends. Even if they have cooperated during the investigation with the authorities, they are deported back to their country of origin or another country and banned from ever entering the UAE again.

The researcher argues that the UAE government should pay attention to the principle of non-refoulement, which is a significant protection that is potentially applicable to all non-citizens.¹⁵⁴ This principle is well established in international law and the importance of protecting it in the

¹⁴⁹ Trafficking Convention (n 125) art 26.1-2.

¹⁵⁰ Law 51 as amended in 2015, art 11.

¹⁵¹ Law 51 of 2006.

¹⁵² Dana Moukhallati, 'UAE Human Trafficking Law Tightened' *The National* (25 March 2015) <<http://www.thenational.ae/uae/uae-human-trafficking-law-tightened>> accessed 17 June 2017.

¹⁵³ Law 51 as amended in 2015, art 1bis(2).

¹⁵⁴ Gallagher (n 87) 346.

context of measures to deal with trafficking is widely accepted.¹⁵⁵ The purpose of this principle is to stop countries returning trafficked victims to their countries of origin when there is a serious risk of them being subjected to abuse, degrading punishment, inhuman treatment or cruel situations,¹⁵⁶ and instead to give victims permission to stay in the destination country temporarily (as previously discussed in Chapter 4).¹⁵⁷ Gallagher argues that in some cases victims' security remains an ongoing risk over a long time period so repatriation is not the most appropriate action.¹⁵⁸

The Trafficking Protocol was the first instrument to address the issue of the right to remain for trafficking victims.¹⁵⁹ However, it only requires States to consider measures allowing victims to remain temporarily or permanently.¹⁶⁰ In contrast, the European Trafficking Convention directly addresses the rights of victims to stay in their destination country and obliges States to give a thirty-day period of reflection.¹⁶¹ Following this period of reflection, when cooperating with police authorities, victims are recommended to be given a residence permit that can be renewed based on their circumstances.¹⁶²

Several countries offer victims permanent residence when they cooperate with police authorities. For instance, in the UK, victims can have a permit for residence for one year and then request to remain in the country permanently.¹⁶³ Another example is Australia where those thought to be

¹⁵⁵ Human rights treaty bodies and regional human rights courts have also confirmed that return which risks torture or cruel, inhuman or degrading treatment or punishment is contrary to international law. United Nations, 'Human Rights and Human Trafficking' (Fact Sheet No 36, 2014) 25.

¹⁵⁶ Ann M Oberhauser and Ibipo Johnston-Anumonwo, *Global Perspectives on Gender and Space: Engaging Feminism and Development* (Routledge 2014) 76.

¹⁵⁷ Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a More Holistic Approach* (Martinus Nijhoff 2006) 155-156.

¹⁵⁸ Gallagher (n 87) 351.

¹⁵⁹ Kaiyan Homi Kaikobad and Michael Bohlander, *International Law and Power: Perspectives on Legal Order and Justice: Essays in Honour of Colin Warbrick* (Brill 2009) 119.

¹⁶⁰ Trafficking Protocol (n 76) arts 6-7.

¹⁶¹ Article 13 of the European Trafficking Convention (n 134).

¹⁶² *ibid* art 13; Kaikobad and Bohlander (n 159) 119.

¹⁶³ 'The victim may be granted discretionary leave to remain in the UK for one year to allow them to cooperate fully in any police investigation and subsequent prosecution. The period of discretionary leave can be extended if required.' 'If a victim of trafficking or modern slavery is not involved in the criminal justice process, the Home Office may consider a grant of discretionary leave to remain in the UK, dependent on the victim's personal circumstances.' National Crime Agency, 'National Referral Mechanism' <<http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>> accessed 18 June 2017.

victims of trafficking, before investigations begin, are given a thirty-day visa. Then, if these victims agree to cooperate with police authorities, they are granted a criminal justice stay visa. Following this visa period, victims of trafficking are offered a witness protection visa, which means that they can apply for permanent or temporary residence.¹⁶⁴ Another approach is adopted by Bahrain's legislation to combat trafficking. This legislation specifies that the trafficking committee is empowered to investigate the needs of victims before repatriating them to their origin country¹⁶⁵ and give them help to find employment if they need to stay in the country on a long-term basis.¹⁶⁶ It is for all of these reasons that the researcher suggests that victims should not be deported back to their origin country (or another country) according to the principle of non-refoulement, rather the repatriation of victims should be a safe process that is voluntary.¹⁶⁷ Offering residence permits to victims of trafficking complies with international standards¹⁶⁸ and provides better protections for female victims of trafficking in the UAE. It has a very positive effect upon victims. It can encourage them to report incidents to police authorities and act as witnesses in court to testify against traffickers.¹⁶⁹

It should be noted that under Article 11 bis (1) of Law 51 victims of trafficking shall not be criminally or civilly liable for any of the crimes stipulated in this Law whenever the crime that occurred was directly connected to being a victim.¹⁷⁰ However, victims can be held liable, both criminally and civilly, in three situations stated in the Article. Firstly, if they contribute in person, without being subject to any coercion whether moral or material, to the perpetration of a human trafficking crime.¹⁷¹ Secondly, if the person is a foreigner incoming to the country for

¹⁶⁴ Maggy Lee, *Human Trafficking* (Routledge 2013) 199.

¹⁶⁵ Bahrain Trafficking Law No 1 of 2008, art 7(2).

¹⁶⁶ *ibid* art 5(7).

¹⁶⁷ European Trafficking Convention (n 134) art 16.2.

¹⁶⁸ 'each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim'. Article 13 of the European Trafficking Convention (n 134): 'each State Party shall 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.' Trafficking Protocol (n 76) art 7(1).

¹⁶⁹ UNESCO, *Trafficking in Human Beings – N° 3 – Human Rights and Transnational Criminal Law, Developments in Law and Practices* (UNESCO 2010) 82.

¹⁷⁰ Law 51 as amended in 2015, art 11bis(1).

¹⁷¹ *ibid* art 11bis1(a).

work, and violates a work contract or residence regulation.¹⁷² Thirdly, if the person fails to report the crime or the collusion thereof to the competent authorities when they could have done so.¹⁷³

Accordingly, if the person is a foreigner who has come to the UAE for work, and they violate their work contract or residence regulations, they can be charged and punished. This means that most victims of trafficking in the UAE, specifically maids who run away from their sponsors¹⁷⁴ (as previously discussed in Chapter 5) and become victims of forced prostitution, could be charged under this Article. The principle of non-criminalisation of victims has been confirmed by the Human Rights Council, the General Assembly and human rights treaty bodies.¹⁷⁵ Although the issue of prosecution of trafficking victims is not addressed in the Trafficking Protocol,¹⁷⁶ the matter is dealt with in the European Trafficking Convention (Article 26).¹⁷⁷ The Recommended Trafficking Principles and Guidelines include the most explicit statement on this issue.¹⁷⁸ Guideline 2 states that ‘trafficked persons should not be prosecuted for violations of immigration laws or for the activities they are involved in’.¹⁷⁹

Furthermore, criminalising victims of trafficking makes them unable to seek help or report their victimisation to the relevant authorities in the country. As a UK human trafficking report notes: ‘the threat of criminalisation increases the coercive power of traffickers who are known to deter victims from contacting the authorities by telling them that they will be treated as criminals and risk facing imprisonment if they go to the police to seek help’.¹⁸⁰ The aim of such protection (non-punishment) is to safeguard the human rights of victims, avoid further victimisation and encourage them to act as witnesses in criminal proceedings against the perpetrators.¹⁸¹

¹⁷² *ibid* art 11bis1(b).

¹⁷³ *ibid* art 11bis1(c).

¹⁷⁴ It is illegal in the UAE to run away from an employer according to Article 11 of Ministerial Decree No 721.

¹⁷⁵ Oberhauser and Johnston-Anumonwo (n 156) 17-18.

¹⁷⁶ Malloch (n 83) 45.

¹⁷⁷ ‘Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.’ European Trafficking Convention (n 134) art 26.

¹⁷⁸ Gallagher (n 87) 285.

¹⁷⁹ OHCHR, ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ (E/2002/68/Add.1) guideline 2, para 5.

¹⁸⁰ Home Affairs Committee, *The Trade in Human Beings: Human Trafficking in the UK: Sixth Report of Session 2008-09, Vol 2: Oral and Written Evidence, Volume 2* (The Stationery Office 2009) 190.

¹⁸¹ Malloch (n 83) 45.

Several countries state that victims of trafficking should not be punished and apply the principle of non-punishment in their legislation, for instance, in Article 4 of the Qatari Human Trafficking Law.¹⁸² Moreover, Article 25 of the Qatari Law specifically exempts a victim from all penalties stipulated in Law No. 4 of 2009 regarding violations of entry, residency and kafalah laws by aliens.¹⁸³ In Jordan, victims of trafficking cannot be prosecuted or investigated for any crimes defined in the country's anti-trafficking legislation¹⁸⁴ and this is also the case under Egyptian law (Article 21).¹⁸⁵

6.4 Conclusion

This chapter has evaluated human trafficking of women under UAE legislation and Law 51 as amended in 2015. The first section addressed how human trafficking was tackled in the national legislation before Law No 51 of 2006 was enacted. This section dealt with the prohibition of human trafficking and exploitation of women and children in the Constitution, Penal Code and other relevant legislation. The section concluded by arguing that the provisions provided in the Constitution, Penal Code, Migration and Labour Law are not in line with international standards, in particular the Trafficking Protocol. The *action*, the *means*, and the *purpose* element included in the Trafficking Protocol definition are not covered by them. Moreover, the punishment prescribed for traffickers is inadequate.¹⁸⁶ The UAE has failed to take the necessary measures to prevent this crime and protect victims of trafficking.

The second section highlighted the reasons behind enacting Law 51 of 2006. This section examined the extent to which the definition in Law 51 as amended in 2015 is aligned with the definition in international standards, in particular the Trafficking Protocol. This section made observations related to the UAE Law 51 as amended in 2015 definition, such as the use of the plural form to refer to trafficked victims; there being no definition or guidance on how the *action*

¹⁸² Law No 15 of 2011 Combating Trafficking in Human Beings 15/2011. Article 4 stated 'Victims of human trafficking offences (HTO) shall not themselves be subject to criminal or civil liabilities arising from that crime so long as these liabilities directly relate to that HTO.'

¹⁸³ *ibid* art 25; Mattar (n 140) 119.

¹⁸⁴ Jordanian Anti-Trafficking in Persons Law No 9 of 2009 art 12.

¹⁸⁵ Egyptian Law on Combating Human Trafficking No 64 of 2010. Article 21 stating that 'the victim shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was directly related to being a victim.'

¹⁸⁶ See, for example, arts 356, 358, 363 and 363 of the Federal Penal Code.

and *means* elements should be interpreted or applied, which in turn limits the list of exploitative acts; and adopting the phrase ‘for the purpose of exploitation’ which suggests that the specific intention of exploitation is a necessary element of the human trafficking under Law 51 as amended in 2015, thus potentially leading courts to grant immunity to traffickers.

The third section showed that UAE legislators have chosen traditional approaches to human trafficking and exploitation which rely on criminalisation, and this has had an effect on the resources and services available for victims. For instance, Law 51 as amended in 2015 increases the punishment to temporary imprisonment for a minimum of five years instead of three years. Furthermore, Article 7 includes harsher penalties for legal persons than provided in the Penal Code. Law 51’s provisions have been criticised for allowing the deportation of victims of trafficking to their countries of origin or other countries and banning them from entering the UAE. Victims can be held liable, both criminally and civilly. Not only does this punish victims of trafficking it also increases the coercive power of traffickers who have been known to deter victims from contacting the authorities by telling them that they will be treated as criminals and risk facing imprisonment.

The next chapter analyses the government’s four strategies to address this crime: prevention, prosecution and punishment, protection, and the promotion of international cooperation.

Chapter Seven: A Critical Analysis of the UAE Government Strategy and Policy Framework to Combat Human Trafficking

Introduction

The aim of this chapter is to analyse the UAE's strategy and policy framework to combat human trafficking. The chapter will analyse five main aspects. The first is the government's prevention strategy which incorporates enacting of Law 51 of 2006 and the amendment in 2015 (as discussed in the previous chapter), ratifying the Trafficking Convention and the Trafficking Protocol, the work of the National Committee to Combat Human Trafficking (hereinafter referred to as the NCCHT), the Ministry of Interior, Dubai Police and Ministry of Labor in raising awareness about the crime of trafficking. The second aspect is the prosecution and punishment strategy. The challenges here are many, for example, the failure to identify victims of forced labour and an undue focus on sexual exploitation. The third aspect concerns the protection strategy and the services available to trafficked victims. Article 1 bis (2) of Law 51 as amended in 2015 contains a number of protection mechanisms, such as, offering legal support to victims in their own language, medical support, counselling, shelter and others. The fourth aspect is promoting regional and international cooperation and being a State Party to a number of international conventions that deal with human trafficking directly or indirectly. The final aspect concerns situations where States can be held responsible for, or have obligations towards, trafficked victims as a result of internationally wrongful acts.

7.1 Adopting the UAE National Strategy to Combat Human Trafficking

In 2007, the UAE government adopted the National Strategy to Combat Human Trafficking, based on a five pillar action plan: legislation, enforcement, victim support, bilateral agreements and international cooperation.¹ Several objectives needed to be met to ensure the success of this strategy: preventing human trafficking;² punishing and prosecuting traffickers;³ protecting

¹ NCCHT, 'Combating Human Trafficking in the UAE: Annual Report' (2007) 9.

² NCCHT, 'Combating Human Trafficking in the UAE: Annual Report' (2012-2013) 8.

³ *ibid* 25.

victims of trafficking;⁴ and combating the crime by promoting cooperation at international and regional levels.⁵

A central issue is that the UAE National Strategy failed to comply with the international ‘5 Ps’ approach to combating human trafficking. They are:

1. Prevention
2. Prosecution
3. Punishment
4. Protection
5. Promotion (of international cooperation)⁶

Equal attention was to be given to each P. In contrast, the aim of the UAE National Strategy was on prosecuting, punishing and preventing trafficking, rather than the protection of its victims.⁷ However, Law 51 as amended in 2015 now gives more support and protection to victims (and eyewitnesses), a feature that adds value to the national strategy.⁸ Each strategic pillar of the UAE National Strategy to Combat Human Trafficking will be analysed below.

7.1.1 First Strategic Pillar: Prevention

The prevention strategy is firstly achieved through legislation. Law 51 of 2006 and its amendments in 2015, provide a legal framework for dealing with human trafficking cases.⁹ Since 2006, more people have become aware of the law.¹⁰ In addition, as part of its international commitment to preventing human trafficking, the UAE ratified the Trafficking Convention in

⁴ *ibid* 29.

⁵ *ibid* 42.

⁶ OHCHR, ‘Human Trafficking – The Human Rights Framework’

<<http://bangkok.ohchr.org/news/events/human-trafficking-human-rights-framework.aspx>> accessed 25 May 2018.

⁷ Law 51 of 2006 does not contain any specific provisions for the protection and assistance of victims. For more details, see chapter six, section 6.5.

⁸ Law 51 Law as amended in 2015, art 1bis2; Naser Al Remeithi, ‘Laws Give UAE Human Trafficking Victims More Protection’ *The National* (12 May 2015) <<http://www.thenational.ae/uae/laws-give-uae-human-trafficking-victims-more-protection>> accessed 23 June 2017.

⁹ NCCHT, ‘Combating Human Trafficking in the UAE: Annual Report’ (2014) 4.

¹⁰ NCCHT (n 2) 7.

2005 which contains provisions for international cooperation in anti-trafficking efforts.¹¹ More importantly, in February 2009 the UAE ratified the Trafficking Protocol¹² which requires State Parties to establish comprehensive policies, programmes and measures to prevent trafficking.¹³

The second prevention strategy is to be found in the creation of the NCCHT. This committee was established in 2007 in accordance with Article 12 of Law 51 of 2006.¹⁴ Its responsibilities include drawing up a national comprehensive strategy to prevent human trafficking, developing the mechanisms needed to implement this strategy,¹⁵ coordinating with other authorities to secure protection and protect victims, and promoting public awareness of trafficking prevention through seminars, conferences and training programmes.¹⁶ To this end, the NCCHT launched a human trafficking media campaign in Abu Dhabi, Al Ain and Dubai international airport terminals with the cooperation of the Dubai Police.¹⁷ The campaign contained information about human trafficking in six languages (Arabic, English, Urdu, Hindi, Russian and Tagalog), and the contact details of police, shelters and other relevant departments that help victims of trafficking.¹⁸ The rationale for airport campaigns is that, as the NCCHT notes, the majority of victims of forced prostitution are trafficked outside the UAE (in their origin countries),¹⁹ so supplying them with information, and the support and protection available to them, plays a vital role in the prevention of trafficking. In 2015, the government embarked on its biggest ever campaign for the prevention of human trafficking. Aimed at all nationalities and communities, victims, potential victims and traffickers; it was available in multiple languages, and disseminated via diverse print sources, and electronic and social media channels.²⁰

Notably, in accordance with Article 9.3 of the Trafficking Protocol, States Parties are obligated to cooperate with NGOs, relevant organisations and civil society organisations in bringing about

¹¹ NCCHT, 'Combating Human Trafficking in the UAE: Annual Report' (2009-2010) 9.

¹² NCCHT, 'Combating Human Trafficking in the UAE: Annual Report' (2011-2012) 9.

¹³ Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 416.

¹⁴ The Council of Ministers shall set up a National Committee to Combat Human Trafficking. Law 51 of 2006, art 12.

¹⁵ Law 51 as amended in 2015, art 13.1.

¹⁶ *ibid* art 13.8.

¹⁷ NCCHT (n 9) 9.

¹⁸ NCCHT, 'Combating Human Trafficking in the UAE: Annual Report' (2013) 13.

¹⁹ *ibid*.

²⁰ NCCHT (n 2) 13.

such policies and programmes.²¹ Several authors assert that civil society plays an important role in preventing human trafficking.²² The question is: how does the government of the UAE address this obligation under Law 51 as amended in 2015? In other words, does Law 51 as amended in 2015 allow NGOs and other elements of civil society in the country to participate in the government's strategy to prevent human trafficking? The answer is that although Article 13 of Law 51 as amended in 2015 identifies that one of main responsibilities of the NCCHT is to cooperate with competent authorities to prevent and support victims, no reference is made to civil society.²³ An example of a country that allows civil society to participate in its strategy to prevent trafficking and support victims is Jordan. Article 5(g) of the Jordanian Anti-Human Trafficking Law stipulates that cooperation should occur 'with all official and private entities to provide physical, psychological and social recovery programmes necessary for supporting victims of human trafficking crimes and affected crime victims, and supervising their stay in special shelters established or accredited for this purpose'.²⁴

Mattar argues that Arab anti-trafficking laws, including those of the UAE, should make greater efforts to coordinate with NGOs to prevent human trafficking. He suggests five elements of civil society that can play an active role in the fight against this crime which he terms 'A.C.M.N.R.':²⁵ A refers to academic institutions that could educate the public and officials about human trafficking; C refers to corporations involved in the fight against this crime; M refers to the responsibility of the media to raise public awareness and report the problems to society; N refers

²¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (entered into force 25 December 2003) 2237 UNTS 319, art 9.3.

²² Tom Obokata, *Transnational Organised Crime in International Law* (Bloomsbury 2010) 81; UNODC, *Toolkit to Combat Trafficking in Persons* (UN 2008) 439; Prabha Kotiswaran, *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge University Press 2017) 385; Kristina Touzenis, *Trafficking in Human Beings – N° 3 – Human Rights and Transnational Criminal Law, Developments in Law and Practices* (UNESCO 2010) 84.

²³ 'draw up a national comprehensive strategy to combat human trafficking, and develop the plans and mechanisms implementing the same, in coordination with the competent entities of the State.' Law 51 as amended in 2015, art 13.1; 'coordinate with the competent authorities and the competent entities to secure protection and support to victims of human trafficking; including the Care and Rehabilitation Program for Victim's Social Integration.' *ibid* art 13.6; 'participate with the competent entities of the State, in international conferences and forums of relevance to combatting human trafficking, and convey the State's message in this regard during international ceremonies.' *ibid* art 13.9.

²⁴ Jordanian Anti-Trafficking in Persons Law No 9 of 2009, art 5(g).

²⁵ Mohamed Y Mattar, 'Human Rights Legislation in the Arab World: The Case of Human Trafficking' (2011) 33 *Michigan Journal of International Law* 129.

to NGOs providing valuable care and support services for victims of trafficking; and R represents religious institutions.²⁶

The third aspect of the prevent strategy is the work of the Ministry of Interior. This included establishing special units to prevent human trafficking in the police departments of Ajman, Umm Al Quwain, Sharjah, Ras Al Khaimah, and Fujairah;²⁷ holding sessions, symposia, conferences and workshops either in the country or abroad;²⁸ cooperating with Interpol, especially in cases related to sexual exploitation;²⁹ and using iris and fingerprint recognition technologies to identify wanted traffickers, as well as other modern equipment to detect visa or passport fraud at entry points.³⁰ Equally important is the role of the Human Trafficking Crimes Control Centre of the Dubai Police. According to the 2016 TIPR, this centre provides workshops, programmes and training to 4,490 students, government employees and workers on preventing human trafficking.³¹ Moreover, in cooperation with the NCCHT and the Dubai Judicial Institute, the centre established the first anti-human trafficking diploma in an Arab country with a focus on detecting and preventing human trafficking crimes, as well as supporting and protecting victims.³²

²⁶ *ibid.*

²⁷ It coordinates joint programmes and plans, some of which include conducting research, investigating and gathering evidence about organized crime; identifying sources and methods, and criminal association; determining the means and evolving plans to arrest the perpetrators and controlling the crime; educating the community about the dangers of human trafficking and penalties that are imposed on those who facilitate or support human trafficking activities; recruiting informants to monitor individuals and groups dealing with human trafficking activities; and coordinating with police and security agencies in the emirate by sharing the collected information and evidence; developing a database on the crime; coordinating with the concerned ministry regarding relevant international agreements pertaining to human trafficking. NCCHT (n 12) 17.

²⁸ In 2013, 44 ministry personnel participated in at least 15 regional and international workshops. NCCHT, 'Combating Human Trafficking in the UAE: Annual Report 2013-2014' 19.

²⁹ *ibid.* 15.

³⁰ NCCHT (n 2) 15.

³¹ US Department of State, 'Trafficking in Persons Report' (July 2016) 384.

³² This programme contains a four-month study; 17 lectures will be delivered in 100 hours. The first week will cover the UAE federal law and international laws pertaining to human trafficking; the second week will cover issues of forced labour, money laundering law, crimes and exploitation of house maids and children; the third week will discuss investigation techniques and how to deal with the victims; and the fourth month will discuss best practices in terms of human trafficking. Amira Agarib, 'Dubai Police Introduce Diploma in Human Trafficking' *Khaleej Times* (16 November 2015) <<http://www.khaleejtimes.com/nation/crime/dubai-police-introduce-diploma-in-human-trafficking>> accessed 27 June 2017.

Finally, the Ministry of Labor established an anti-trafficking section to support Law 51 in 2009.³³ This section monitors the labour market through inspection visits, reports, raising awareness about forced labour, and preparing studies and periodic reports on the working terms and conditions in the inspected institutions.³⁴ Its remit also covers checking working hours, holidays, gender discrimination at work, problems related to women's rights, wages and salaries.³⁵

7.1.2 Second Strategic Pillar: Prosecution and Punishment

As noted in chapter five, statistics show that 291 human trafficking cases were recorded between 2007 and 2016. In total, 853 traffickers and 498 victims were recorded³⁶ across the cities of the Emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Ras Al-Khaimah and Fujairah.³⁷ Most importantly, the majority of human trafficking cases were related to forced prostitution and sexual exploitation. For instance, in 2016, 25 cases were recorded, 22 of which were sexual exploitation.³⁸ In 2015³⁹ and 2014, all the human trafficking cases were related to sexual exploitation.⁴⁰ In 2013, of the 11 cases, nine were of sexual exploitation or forced prostitution.⁴¹

A number of observations can be made in light of the punishment and prosecution strategies. The first is that, as noted by the US TIPR, the UAE government focuses more on human trafficking cases concerned with sexual exploitation, than that of forced labour.⁴² Its efforts are primarily concentrated on identifying victims of sexual exploitation, while paying comparatively little, to no attention, to victims of forced labour.⁴³ There could be for several reasons for this narrow focus. The first is the lack of NGOs who could assist with identifying victims of forced labour in

³³ NCCHT, 'Combating Human Trafficking in the UAE: Annual Report' (2016) 18.

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ See chapter five, sec 5.2.

³⁷ NCCHT (n 11) 11.

³⁸ NCCHT (n 33) 23.

³⁹ NCCHT (n 2) 22.

⁴⁰ NCCHT (n 17) 17.

⁴¹ Noorhan Barakat, 'Human Trafficking Cases Down in Dubai' *Gulf News* (11 October 2014) <<http://gulfnews.com/news/uae/general/human-trafficking-cases-down-in-dubai-1.1397015>> accessed 26 February 2016.

⁴² US Department of State (n 31) 384.

⁴³ *ibid.*

the country. On this subject, the International Centre for Justice and Human Rights (ICJHR), in their report dated July 2017, condemned the closure of NGO institutions in the UAE that could expose human rights violations and they revealed that Amnesty International and Human Rights Watch, who have written in-depth on the subject of human trafficking in the UAE, are prohibited from establishing their branches in the region.⁴⁴ Correspondingly, during her 2012 visit, UN Special Rapporteur Joy Ngozi Ezeilo recorded that apart from the Emirates Human Rights Association there did not appear to be any other registered NGO working on human rights in the UAE'.⁴⁵ Since 2012 there has been an escalation of the expulsion of NGOs in the UAE working for the betterment of civil society.⁴⁶ This is a cause for grave concern since NGOs play an integral role in the implementation of international instruments in State territories and championing human rights when government protections are lacking.

The second reason is a lack of experience of dealing with suspected cases of forced labour. For instance, the TIPR notes that 'when victims of potential labour trafficking were identified by law enforcement authorities, criminal investigations were not initiated; instead the cases were often referred to the Ministry of Labor (MOL) to file an administrative complaint'.⁴⁷ The third reason is that trafficking for the purposes of forced labour is more difficult to identify than sexual exploitation, especially if professionals are not trained to recognise critical indicators (such as acute health issues) that these individuals exhibit. As McCabe argues, victims of labour trafficking are often hidden in plain sight in legitimate jobs, so there is no reason to suspect illegal activity.⁴⁸ The fourth reason is that government inspectors in the UAE do not visit private houses that use domestic workers to check the nature of the work or the working hours or identify any acts of exploitation, deception or coercion.⁴⁹

⁴⁴ International Centre for Justice and Human Rights, 'Alternative Report on the UAEs' Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination' <http://www.ic4jhr.org/images/UAE_CERD_session93__Report_icjhr_06.07.2017.pdf> accessed 25 March 2018.

⁴⁵ Joy Ngozi Ezeilo, 'Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum: Mission to the United Arab Emirates' (22 February 2010) UN Doc A/HRC/23/48/Add.1, 17.

⁴⁶ Freedom House, 'United Arab Emirates' (2013) <<https://freedomhouse.org/report/freedom-world/2013/united-arab-emirates>> accessed 27 January 2018.

⁴⁷ US Department of State, 'Trafficking in Persons Report' (July 2009) 293.

⁴⁸ Kimberly A McCabe, *The Trafficking of Persons: National and International Responses* (Peter Lang 2008) 40.

⁴⁹ See chape 6 section 6.1.1

The researcher suggests that the UAE government should improve its efforts to identify victims of forced labour, especially domestic migrant workers who have run away from their employers and violated immigration laws, as they are frequently arrested and imprisoned. Government inspectors should be allowed to visit private houses that use domestic workers to identify any situations of labour exploitation. Furthermore, all victims of trafficking should be provided with protection, and male and female victims treated equally.⁵⁰

The second observation is that the punishment for human trafficking crimes under Law 51 of 2006 is imprisonment for no less than five years,⁵¹ and its amendment in 2015 also allows for imprisonment of no less than five years and a fine of no less than 100,000 AED.⁵² However, records show that convicted traffickers have only been sentenced to between one and three years in jail.⁵³ In one case two women lured a Moroccan girl to Dubai with fake promises and forced her into prostitution. They were sentenced to less than five years in jail. Similarly, a Syrian trafficker was sentenced to two years in jail, and another Moroccan trafficker was sentenced to three years.⁵⁴

In this regard, the researcher argues that the punishment for perpetrating human trafficking should be commensurate with the gravity of the crime. Although the Trafficking Protocol does not specify the punishment for human trafficking, under Article 2b of the Trafficking Convention it states that a serious crime should be punished with a minimum prison sentence of four years, or an even more serious penalty.⁵⁵ A function of punishment should be retribution and deterrence. Retribution recognises that the offence of trafficking is ‘a grave and legitimate offence that should be treated seriously, and deterrence seeks to discourage the individual traffickers (specific deterrence) and potential traffickers (general deterrence) from engaging in

⁵⁰ US Department of State, ‘Trafficking in Persons Report’ (July 2014).

⁵¹ Article 2 sets an imprisonment term of at least five years for whoever commits a human trafficking crime. Law 51 of 2006.

⁵² Law 51 as amended in 2015, art 2.

⁵³ NCCHT (n 2) 22.

⁵⁴ Salah Al Deberky, ‘Two Women Convicted of Human Trafficking in Dubai’ *Khaleej Times* (30 December 2014) <<http://www.khaleejtimes.com/nation/crime/two-women-convicted-of-human-trafficking-in-dubai>> accessed 3 July 2017).

⁵⁵ United Nations Convention Against Transnational Organized Crime (signed 12 December 2000, entered into force 29 September 2003) 2225 UNTS 209, art 2(b).

this crime for fear that they will be punished'.⁵⁶ The United Nations affirms that effective human trafficking punishment must be sufficient and proportional.⁵⁷ Sufficient means that those guilty of human trafficking crimes should be punished the same as those who commit kidnap, murder or rape, which are defined as serious crimes. Proportional means that the punishment 'fits the crime' and must not be just a 'slap on the wrist'.⁵⁸ In other words, effective prosecution accompanied by harsh penalties can serve as a deterrent to future traffickers.⁵⁹

In addition, it should be noted that under Article 2 of Law 51 as amended in 2015, traffickers should be punished by fine as well.⁶⁰ However, there are cases where traffickers are just punished with imprisonment without being fined, for instance, case numbers 10055/2015⁶¹, 21595/2015⁶² and 58122/2015.⁶³ In this regard, the researcher points out that Law 51 increases the punishment by adding a fine in order to give the Article greater effectiveness and deterrence. Therefore, judges and courts must impose such a financial punishment according to the Article.

7.1.3 Third Strategic Pillar: Victim Protection

Law 51 as amended in 2015 defines various rights for trafficked victims similar to those contained in the Trafficking Protocol.⁶⁴ These rights include informing victims and witnesses of their legal rights in a language they understand, enabling them to know their social rights, providing appropriate security and shelters for victims, admitting them to rehabilitation centres for any physical or psychological needs, and allowing them to remain in the country if the trial or investigation requires them to stay.⁶⁵ Law 51 as amended in 2015 contains a provision about the right of trafficked victims to compensation, stating in Article 13 bis that 'the victim of human-trafficking crimes shall be exempted from civil-case fees upon filing the same to claim

⁵⁶ UN ECOSOC Asia and the Pacific, *Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices* (United Nations 2003) 40.

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ UN, *Crime Scene and Physical Evidence Awareness for Non-forensic Personnel* (No date) xi.

⁶⁰ 'shall be punished by temporary imprisonment for a term of no less than five years, and a fine of no less than one hundred thousand dirhams.' Law 51 as amended in 2015, art 2.1; *Al Muraqabat Police Station Case No 7676/2015. Traffickers fined 100,000 AED.*

⁶¹ Alrifaa Police Station.

⁶² AlQusais Police Station.

⁶³ Bur Dubai Police Station.

⁶⁴ Trafficking Protocol (n 21) art 6.

⁶⁵ Law 51 as amended in 2015, art 1bis2.

compensation for the damage resulting from the exploitation thereof in a human trafficking crime'.⁶⁶

The NCCHT issued Resolution 7/18 (2010) in order to support and protect human trafficking victims, especially during the time they are in contact with police and public prosecution departments at the investigation stage and when they arrive at shelters.⁶⁷ The Committee also issued Resolution 8/21 (2010), which focuses on the conduct of interviews with trafficked victims so that ethical standards are understood and followed by the media. Newspapers, radio, television, the internet and other publications must protect the privacy and identity of trafficked victims by following these ethical standards.⁶⁸

The Judicial Department plays an important part in ensuring victims' rights. For example, a new Department of Crime has been established in the Dubai courts, which accelerates the legal processes in human trafficking cases.⁶⁹ Additionally, the Human Trafficking Crimes Control Centre at Dubai Police's Human Rights Department uses innovative technology to support trafficked victims. Dr Mohammed Murr, Director of the General Department for Human Rights, states, 'the centre has introduced a first of its kind smart application to combat trafficking which will help human trafficking victims to report through a smart app so that police officials can reach out and provide them with assistance, including legal support'.⁷⁰ The centre has also established a care section for victims that provides necessary services such as, legal and psychological support.⁷¹ Dr Sultan Al Jamal, Director of the Centre, added that it provides financial support to victims if they have no source of income while they remain in the country during the investigation process as well as when they return to their origin country.⁷² The centre is responsible for arranging training programmes to ensure that the rights of victims are

⁶⁶ *ibid* art 13bis.

⁶⁷ NCCHT (n 2) 8.

⁶⁸ NCCHT (n 19) 9.

⁶⁹ NCCHT (n 12) 4.

⁷⁰ Agarib (n 32).

⁷¹ The Dubai Foundation for Women and Children in 2009 offered 36 victims of human trafficking psychological and legal support. Siham Al Najami, 'Dubai Police Intensify Battle Against Human Trafficking' *Gulf News* (26 April 2010) <<http://gulfnews.com/news/uae/crime/dubai-police-intensify-battle-against-human-trafficking-1.617800>> accessed 23 February 2017.

⁷² Noorhan Barakat, 'Human Trafficking Cases Down to Dubai' *Gulf News* (11 October 2014) <<http://gulfnews.com/news/uae/general/human-trafficking-cases-down-in-dubai-1.1397015>> accessed 23 February 2017.

protected, the law is strictly implemented at times of interrogation and arrest, and all support services for victims are made available to them.⁷³

Other services afforded to trafficked victims are through comprehensive services in government-run shelters in Dubai, Abu Dhabi, Sharjah and Ras Al-Khaimah.⁷⁴ The first non-profit licensed shelter that opened in the UAE was the DFWAC in July 2007.⁷⁵ The DFWAC provides protection and support services for all trafficked victims in accordance with international human rights obligations.⁷⁶ The foundation plays a vital role in improving social services for trafficked victims by providing support to overcome the physical and psychological effects of oppression, violence and neglect.⁷⁷ Services provided for victims include vocational training and education, legal support, consular support, immigration support, case management and urgent psychological and medical care, as well as psychological counselling for groups and individuals.⁷⁸ There are international and national organisations that collaborate with the foundation to ensure that the quality of care for victims remains continuous.⁷⁹ The DFWAC operates a twenty-four hour hotline to facilitate the process of helping and protecting victims in various languages. Afra Al Basti, Director of DFWAC, confirms that during 2015, eight calls were received from trafficked victims asking for help.⁸⁰

In 2008, the victim support facility, Ewa'a, was opened in Abu Dhabi. This operates under the umbrella of the Red Crescent in the UAE and provides legal, psychological and medical support, as well as rehabilitation programmes for victims.⁸¹ In January 2014, Ewa'a opened its first shelter for male victims of human trafficking.⁸² One of the purposes of the establishment of this centre is to provide free services to all trafficked victims such as legal counselling, immigration

⁷³ NCCHT (n 11) 19.

⁷⁴ Zoi Constantine, 'Secret Shelters Where Abused Women are Safe' *The National News* (1 February 2011) <<http://www.thenational.ae/news/uae-news/secret-shelters-where-abused-women-are-safe>> accessed 6 July 2017.

⁷⁵ Samia Abul, *Professionals' Perceptions of Child Sexual Abuse: A Cultural Difference* (Xlibris 2015) xxv.

⁷⁶ *ibid.*

⁷⁷ NCCHT (n 19) 34.

⁷⁸ Stephanie Hepburn and Rita J Simon, *Human Trafficking Around the World: Hidden in Plain Sight* (Columbia University Press 2013) 67.

⁷⁹ NCCHT (n 11) 27.

⁸⁰ Mary Achkhanian, 'Victims of Abuse in the UAE Using Helpline to Report their Cases' *Gulf News* (27 July 2015) <<http://gulfnews.com/news/uae/society/victims-of-abuse-in-the-uae-using-helpline-to-report-their-cases-1.1556909>> accessed 20 February 2017.

⁸¹ NCCHT (n 2) 37.

⁸² NCCHT (n 1) 24.

and consular services, psychological support, medical care and case management, along with a hotline.⁸³ In addition to these core services, the centre also offers secondary support services including skills training, empowerment support, physical fitness, vocational services, recreational activities and children's education.⁸⁴

The length of time that victims can remain in shelters varies. For instance, a DFWAC report indicates that 28% remain for less than three months in detention, 41% remain between four and seven months, 26% remain more than seven months, and 5% remain for up to one year.⁸⁵ Furthermore, the UN Special Rapporteur on Trafficking, Joy Ngozi Ezeilo, argues that shelters become detention centres for victims who remain in shelters for long periods. This violates their human rights as their right to freedom of movement is restricted.⁸⁶ Therefore, the researcher argues that unnecessary delays in dealing with human trafficking cases should be avoided as these can subject victims to acute emotional and psychological distress.

In terms of the protection strategy, there are a number of observations that can be made with regard to Law 51 as amended in 2015. The first observation is that Law 51 does not protect trafficked victims from deportation. All trafficked victims are sent back to their home countries.⁸⁷ Therefore, victims are at risk of being re-trafficked.⁸⁸ The second observation is that Law 51 does not comply with Article 8 of the Trafficking Protocol because there is no Article in Law 51 regarding the repatriation of trafficked victims.⁸⁹ In this respect, Article 22 of the Egyptian Trafficking Law guarantees that foreign victims should be returned to their origin country in an expeditious and safe manner.⁹⁰ A similar approach is taken in the Jordanian Trafficking Law which states that the repatriation of trafficked victims to their home countries, or any other chosen country that agrees to receive them, should be facilitated.⁹¹ Therefore, it is recommended that a similar article be adopted in Law 51 as amended in 2015 and that the

⁸³ DFWAC, 'Annual Report' (2009-10) 22.

⁸⁴ DFWAC, 'Annual Report' (2013) 20-21.

⁸⁵ DFWAC, 'Annual Report' (2011) 56.

⁸⁶ Stated in Minky Worden, *The Unfinished Revolution: Voices from the Global Fight for Women's Rights* (Policy Press 2012) 192.

⁸⁷ DFWAC, 'Annual Report' (2014) 59; DFWAC, 'Annual Report' (2013) 65.

⁸⁸ Laura Sjoberg, *Gender and International Security: Feminist Perspectives* (Routledge 2009) 222.

⁸⁹ Trafficking Protocol (n 21) art 8 Repatriation of victims of trafficking in persons.

⁹⁰ Egyptian Law on Combating Human Trafficking No 64 of 2010, art 22.

⁹¹ Jordan Anti-Trafficking in Persons Law, art 5(c).

repatriation of trafficked persons should be coupled with the safety of these victims. The third observation is one noted by the TIPR that Law 51 does not provide permanent residency status to trafficked victims.⁹²

The fourth observation is that UAE law enforcement officials do not appear proactive in identifying potential victims of human trafficking. For instance, as discussed in chapter five, most female victims of human trafficking enter the UAE legally on work visas, visit visas or tourist visas without being identified by immigration authorities. Law enforcement officials often fail to notice male victims owing to the fact that their cases are frequently dismissed as labour infractions, rather than investigated as human trafficking crimes. Male victims are habitually deported and considered illegal migrant workers, rather than victims of human trafficking. Research has shown that health problems can be a vital indicator that a person is a victim of trafficking.⁹³ An individual who presents with malnutrition, dehydration, accidental injuries, respiratory problems, high blood pressure and psychological trauma and stress that is usually associated with victims of torture is likely to be exhibiting medical symptoms of forced labour exploitation, which an appropriately trained and vigilant professional will be able to recognise, assess and urgently respond to.⁹⁴ On this matter, the TIPR cites problems with identifying victims of trafficking in the UAE, and suggests improving screening for indications of trafficking.⁹⁵

Although the Trafficking Protocol does not oblige States Parties to identify trafficked victims, the obligation and importance of identifying victims is explained clearly by the Trafficking Guidelines and Trafficking Principle, which states:

[A] failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place. States are also obliged to exercise due diligence in

⁹² US Department of State (n 31) 384.

⁹³ Maria Beatriz Alvarez and Edward J Alessi, 'Human Trafficking is More than Sex Trafficking and Prostitution: Implications for Social Work' (2012) 27(2) *Affilia* 142.

⁹⁴ *ibid.*

⁹⁵ US Department of State, 'Trafficking in Persons Report' (July 2006) 251.

identifying traffickers, including those who are involved in controlling and exploiting trafficked persons.⁹⁶

Furthermore, the European Trafficking Convention contains particular stipulations on the mechanism for victim identification. Article 10 states that ‘each party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims’.⁹⁷

Mishra argues that it is vital to take proactive measures to recognise victims before they become trapped and controlled by traffickers.⁹⁸ Foiling human trafficking involves proactive raids, surveillance, investigation and searches to locate potential victims and identify criminal behaviour.⁹⁹ The researcher therefore recommends that more proactive measures be developed by border immigration officers and law enforcement agencies in the UAE instead of relying on victims asking for help.¹⁰⁰ For instance, the Polaris Project adopts a useful technique of applying red flags to indicate a possible situation of human trafficking because victims rarely present themselves to police authorities.¹⁰¹ When a red flag appears, this suggests that further investigation is needed.¹⁰² A similar approach can be found in Jordan, where the National Screening Team is responsible for identifying victims of human trafficking, successfully discovering 27 cases in 2013.¹⁰³ This team produces a checklist that border officials can use to help proactively identify victims of human trafficking. Therefore, the researcher recommends

⁹⁶ OHCHR, ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ (E/2002/68/Add.1) guideline 2 on identification of trafficked persons and traffickers: states and, where applicable, intergovernmental and non-governmental organizations, should consider developing guidelines and procedures for relevant state authorities and official such as police, border guards, immigration official and others involved in the detection, detention, reception and processing of irregular migrants to permit the rapid and accurate identification of trafficked persons; and providing appropriate training to relevant state authorities and official in the identification of trafficked persons. Karen Beeks and Delila Amir, *Trafficking and the Global Sex Industry* (Lexington Books 2006) 146.

⁹⁷ Council of Europe Convention on Action against Trafficking in Human Beings (entered into force 1 February 2008) ETS 197, art 10.

⁹⁸ Veerendra Mishra, *Combating Human Trafficking: Gaps in Policy and Law* (Sage India 2015) 180.

⁹⁹ Marie Segrave, Sanja Milivojevic and Sharon Pickering, *Sex Trafficking: International Context and Response* (Routledge 2012) 49.

¹⁰⁰ Providing law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers. States should encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony. OHCHR (n 97) guideline 5.3.

¹⁰¹ The Polaris Project developed a toolkit that identifies red flag warning indicators that an individual may be a victims of trafficking.

¹⁰² Kevin Corcoran and Albert R Roberts, *Social Workers' Desk Reference* (Oxford University Press 2015) 334.

¹⁰³ US Department of State (n 46) 224, Jordan.

that border immigration officers and law enforcement authorities in the UAE adopt similar measures to improve their effectiveness at identifying victims of trafficking.

The fifth observation is that trafficked victims in the UAE cannot access services in shelters without filing a criminal case. In other words, shelters do not receive any victim who is vulnerable. Shelters receive victims from the police,¹⁰⁴ public prosecution and organised crime departments.¹⁰⁵ Nevertheless, there were no shelters in the UAE for male trafficked victims until the government officially designated one in January 2014.¹⁰⁶ Therefore, the researcher argues that this delay in protecting male victims of trafficking conflicts with the UAE's claim of compliance with the Trafficking Protocol as stated in Article 6.3 which says a State is required to provide trafficked victims with appropriate housing.¹⁰⁷

The sixth observation is that Law 51 defines a crime against a child or person with a disability as having an aggravating circumstance¹⁰⁸ and does not require a *means* element (force, coercion, abduction, fraud, deception, abuse of power or position, or taking advantage of the vulnerability of a person) if the crime involves child exploitation or selling children.¹⁰⁹ However, the law is silent on whether a *means* element is required in the case of a person with a disability. Therefore, the researcher suggests that a person with a disability should be included.

The seventh observation is that Law 51 as amended in 2015 is considered to be the first law in the region that punishes victims of trafficking.¹¹⁰ The question which arises here is: if a person is a victim of trafficking and guilty at the same time of violating a work contract according to Article 11 bis 1, is that person punished first then sent to a shelter? Is a person in that position

¹⁰⁴ DFWAC received 18 victims of human trafficking during 2015 referred to by Dubai Police. DFWAC, 'Annual Report 2015' 24.

¹⁰⁵ NCCHT (n 2) 25.

¹⁰⁶ No male trafficking victims have entered the shelter to date. US Department of State (n 31) 384.

¹⁰⁷ Trafficking Protocol (n 21) art 6(3)(a).

¹⁰⁸ Law No 51 as amended in 2015, art 2.1.

¹⁰⁹ 'The following shall be deemed human trafficking, even if the same does not incorporate the use of any of the means provided in the previous paragraph: a. recruiting a child, transferring, deporting, harbouring or receiving the same for the purpose of exploitation. b. selling a child, offering the same for selling or buying. *ibid* art 1bis1(2).

¹¹⁰ 'It shall be permissible to interrogate the victim civilly and criminally on the human trafficking crime if he/she contributed in person, without being subject to any coercion whether moral or material, to the perpetration of one of the human trafficking crimes; if the person is a foreigner incoming to the country for work, and violated the work contract and the residence and if the victims failed to report the crime or the collusion thereof to the competent authorities while being able to.' *ibid* art 11bis1(2).

exempted from civil case fees according to Article 13?¹¹¹ Furthermore, does that person have the right to claim compensation? Will shelters agree to receive that person after being in jail? The law is silent about these situations. Therefore, the researcher suggests that the NCCHT should clarify this.

7.1.4 Fourth Strategic Pillar: Promoting Regional and International Cooperation

The UAE has demonstrated its commitment to combating human trafficking by being a State Party to various international conventions that directly or indirectly deal with human trafficking. To begin with, in 1974, the UAE acceded to the International Convention on the Elimination of All Forms of Racial Discrimination.¹¹² Next, in 1982, the UAE ratified the Forced Labour Convention, 1930 (No. 29).¹¹³ Subsequently, in 1997, the UAE acceded to the Convention on the Rights of the Child.¹¹⁴ In the same year, the UAE ratified the Abolition of Forced Labour Convention¹¹⁵ and the Equal Remuneration Convention.¹¹⁶ Then, in 2001, the country ratified the Convention for the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour¹¹⁷ and also the Discrimination (Employment and Occupation) Convention.¹¹⁸ The country also ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 2004,¹¹⁹ and the following year ratified the United Nations Convention against Transnational Organized Crime.¹²⁰ More importantly, the country ratified the Trafficking

¹¹¹ ‘The victim of human-trafficking crimes shall be exempted from civil-case fees upon filing the same to claim compensation for the damage resulting from the exploitation thereof in a human trafficking crime.’ *ibid* art 13.

¹¹² International Convention on the Elimination of All Forms of Racial Discrimination (signed 7 March 1966, entered into force 4 January 1969). The UAE ratified this Convention on 20 June 1974.

¹¹³ Forced Labour Convention, 1930 (No 29) (adopted 28 June 1930, entered into force 1 May 1932). The UAE ratified this Convention on 27 May 1982.

¹¹⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990). The UAE ratified this Convention on 3 January 1997.

¹¹⁵ Abolition of Forced Labour Convention, 1957 (No 105) (adopted 25 June 1957, entered into force 17 Jan 1959). The UAE ratified this Convention on 24 February 1997.

¹¹⁶ Equal Remuneration Convention 1951 (No 100) (adopted 29 June 1951, entered into force 23 May 1953). The UAE ratified this Convention on 24 February 1997.

¹¹⁷ Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (adopted 17 June 1999, entered into force 19 November 2000). The UAE ratified this Convention on 28 June 2001.

¹¹⁸ University of Minnesota, Human Rights Library, ‘Ratification of International Human Rights Treaties – United Arab Emirates’ <<http://hrlibrary.umn.edu/research/ratification-uae.html>> accessed 28 February 2017.

¹¹⁹ Convention on the Elimination of All Forms of Discrimination Against Women (signed 18 December 1979, entered into force 3 September 1981). The UAE ratified this Convention on 6 October 2004.

¹²⁰ NCCHT (n 2) 29.

Protocol in 2009, which is associated with the Trafficking Convention.¹²¹ In addition, in 2012, the country acceded to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹²² In 2016, the country ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.¹²³ It is clear from this that there is genuine political motivation in the UAE to comply with international standards to combat human trafficking.¹²⁴

However, a question that can be raised here is: how have these conventions been integrated into the UAE legal system? The researcher argues that because there is no provision within the country's Constitution to organise the relationship between national legislation and international conventions, the self-executing mechanism could be used to integrate conventions into the national legislation of the UAE.¹²⁵ Article 47 of the UAE Constitution gives the Supreme Council of the Union responsibility for the ratification of treaties and international agreements, and such ratification shall be accomplished by decree.¹²⁶ Furthermore, Article 124 of the UAE Constitution states that 'before the conclusion of any treaty or international agreement which may affect the special position of any one of the Emirates, the competent Union authorities shall consult that Emirate in advance'.¹²⁷ Article 123 of the Constitution states that 'member Emirates of the Union may conclude limited agreements of a local and administrative nature with the neighbouring State or regions, provided that such agreements are not inconsistent with the

¹²¹ NCCHT (n 19) 45.

¹²² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987). The UAE ratified this Convention on 19 July 2012.

¹²³ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002). The UAE ratified this Convention on 2 March 2016.

¹²⁴ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) art 2 reads: '(b) "ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty. Article 2 of the 1986 Convention provides: (b) "ratification" means the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty; (b ter) "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State or an international organization establishes on the international plane its consent to be bound by a treaty.' Gabriel Franceschi, *The African Human Rights Judicial System: Streamlining Structures and Domestication Mechanisms Viewed from the Foreign Affairs Power Perspective* (Cambridge Scholars 2014) 44.

¹²⁵ A self-executing treaty that operates automatically without the need for any municipal implementing legislation. Boleslaw Adam Boczek, *International Law: A Dictionary* (Scarecrow Press 2005) 14; Virginia A Leary, *International Labour Conventions and National Law: The Effectiveness of the Automatic Incorporation of Treaties in National Legal Systems* (Springer 2013) 71.

¹²⁶ United Arab Emirates Constitution of 1971 with Amendments through 2004, art 47.4.

¹²⁷ *ibid* art 124.

interests of the Union or with Union laws and provided that the Supreme Council of the Union is informed in advance'.¹²⁸ Owing to this it can be said that in accordance with the previous provisions, any conventions, treaties or international agreements ratified by the Supreme Council of the Union that do not affect the special position of any one of the Emirates, or any conventions, and that are not inconsistent with the interests of the Union, or with Union laws, can be implemented automatically after they are ratified.

Another significant issue that arises when responding to human trafficking crimes is how a conflict between the Trafficking Protocol and the UAE Trafficking Law 51 as amended in 2015 can be addressed. Article 4 of the Trafficking Protocol answers this issue as it states that 'this Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with Article 5 of this Protocol, where those offences are transnational in nature and involve an organised criminal group'.¹²⁹ This means that the Protocol applies only when human trafficking crimes involve an organised criminal gang and are transnational in nature.¹³⁰ Therefore, when human trafficking crimes are committed nationally, Law 51 applies, not the Trafficking Protocol.

Although the Trafficking Protocol requires the crime to be transnational in nature and to involve an organised criminal group, Article 34.2 of the Trafficking Convention states that 'the offences established in accordance with Articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organised criminal group'.¹³¹ This means that the requirement to establish human trafficking crimes does not need these conditions and applies to both situations of transnational and individual crime. In this regard, Article 147 of the UAE Constitution states clearly that 'treaties or agreements concluded by member Emirates with States or international organisations shall remain in force until such time as these treaties or agreements are amended or abrogated by

¹²⁸ *ibid* art 123.

¹²⁹ Trafficking Protocol (n 21) art 4.

¹³⁰ Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (Routledge 2012) 104; Venla Roth, *Defining Human Trafficking and Identifying Its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Martinus Nijhoff 2011) 88.

¹³¹ United Nations Convention Against Transnational Organized Crime (signed 12 December 2000, entered into force 29 September 2003) 2225 UNTS 209, art 34(2).

agreement between the parties concerned'.¹³² From this, it can be understood that the Protocol will take precedence if there is a contradiction between the Trafficking Protocol and Law 51 as amended in 2015. Article 16 of the Trafficking Protocol states:

Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration those States Parties are unable to agree on the organisation of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.¹³³

7.1.4.1 Bilateral and Multilateral Cooperation

The UAE government reports that most human trafficking cases are planned outside the UAE,¹³⁴ and that the majority of victims and traffickers originate from the same country, making it difficult for the authorities to discover the crime.¹³⁵ This challenge is addressed through bilateral and multilateral cooperation, as one aspect of the UAE's holistic approach to combating human trafficking. The UAE government responds to bilateral and multilateral cooperation in two ways. The first is promoting national, regional and international cooperation in combating the crime through the adoption of agreements between countries. For instance, to stop unscrupulous private recruitment agencies in foreign countries from cheating and trafficking workers, the government signed labour agreements with various countries that require labour ministries and departments in the origin countries of migrant workers to process the contract transactions for those who want to work legally in the UAE.¹³⁶ Furthermore, the Ministry of Interior has signed agreements with more than 30 countries for combating human trafficking.¹³⁷ As part of its effort to promote

¹³² UAE Constitution (n 127) art 147.

¹³³ Trafficking Protocol (n 21) art 16.2.

¹³⁴ A report by the DFWAC stated that 80% of human trafficking cases were externally trafficked (trafficked outside the UAE), mostly in their homelands, and brought to the UAE for the purpose of sexual exploitation. DFWAC, 'Annual Report' (2013) 60.

¹³⁵ NCCHT (n 2) 42.

¹³⁶ NCCHT (n 2) 29.

¹³⁷ For example, agreements with 16 countries have been ratified – Saudi Arabia, Morocco, India (2), Pakistan (2), Germany, Italy, Russia, Azerbaijan, Uzbekistan (2), Malta, France, China, and Bahrain; agreements are awaiting ratification with five countries – Turkey, Kazakhstan, Algeria, Afghanistan, and Bangladesh; memorandum of understandings are in force with 12 countries – Qatar, Iran, Yemen, the United Kingdom, Sudan, Great Britain and Northern Ireland, South Africa, Belarus, Singapore, Lebanon, Jordan, and Kyrgyzstan. Further, draft agreements have been concluded with 20 countries Tunisia, Finland, Syria, Hungary, Ukraine, Romania, the Netherlands,

international cooperation to combat human trafficking and promote human rights issues, the Ministry of Labor has signed agreements with 18 countries and three protocols with three countries.¹³⁸ Protocols were signed in 2005 with Yemen and in 2007 with Morocco, both related to work and social affairs, and another was signed in 2012 in Abu Dhabi between the Ministry of Overseas Affairs in India and the Ministry of Labor of the UAE to give protection to workers from India through a new system of accreditation and the electronic recording and review of workers' contracts.¹³⁹ The benefits of this system are that it prevents human trafficking and improves worker conditions by finding discrepancies in contracts and providing a valuable record of not just recruitment but also any violations that employers may commit.¹⁴⁰ The signing of these agreements and memoranda of understanding is significant. If workers' rights are protected and the process of employment is organised, by both sending and receiving countries, it can lead to a reduction in the vulnerability factors and conditions that lead to trafficking.

The second response in accordance with the bilateral and multilateral cooperation strategy is learning and sharing experiences of combating human trafficking with international organisations such as the UNODC, the IOM, Interpol and the ILO through training programmes and workshops.¹⁴¹ An example of this is a workshop held in Dubai in cooperation with the ILO on how to identify, investigate and assist forced labour victims using new e-learning tools.¹⁴² Officers of the Ministry of Interior received training from Interpol officials on the international dimension of human trafficking.¹⁴³ In cooperation with the UNHCHR, the Dubai Foundation for Women and Children held regional discussion sessions on international cooperation and victims' rights.¹⁴⁴ The NCCHT also participated in a discussion in Cairo on issues related to human trafficking cases, and there was another workshop in Manila on return and reintegration of trafficked victims.¹⁴⁵ In addition, the UAE has joined a group of 20 countries that fight against human trafficking called the 'Group of Friends United against Human Trafficking', and the

Tajikistan, Poland, Spain, Austria, Thailand, Australia, Armenia, Cyprus, South Korea, Portugal, Kenya, Nigeria and Sri Lanka. NCCHT (n 9) 24 and 25.

¹³⁸ NCCHT (n 2) 42.

¹³⁹ NCCHT (n 18) 46.

¹⁴⁰ *ibid.*

¹⁴¹ NCCHT (n 2) 26.

¹⁴² NCCHT (n 18) 46.

¹⁴³ NCCHT (n 9) 27.

¹⁴⁴ *ibid.*

¹⁴⁵ NCCHT (n 2) 12.

government was represented at a meeting of this group in New York in 2015.¹⁴⁶ This discussion demonstrates that the UAE government has made notable efforts to combat human trafficking through its five pillar strategies. However, the researcher notes that the UAE national strategy lacks systems of evaluation and periodic review which would be useful tools in practice.

7.2 State Responsibility and the Obligation to Combat Human Trafficking

As noted in chapter three, human trafficking violates a number of the fundamental rights of individuals guaranteed by various human rights conventions.¹⁴⁷ Therefore, it is important to understand the principles of State responsibility which would help define the obligations towards trafficked victims, on the basis that a responsibility is the corollary of a right.¹⁴⁸ This in turn offers a measure for standards of assistance and protection. State-held responsibilities in combating human trafficking arise in various situations. Firstly, the State is responsible when its acts or omissions directly cause or contribute to trafficking.¹⁴⁹ In this situation, State actors themselves are involved in human trafficking. An example of this is where a border guard or police officer takes a bribe from a trafficker in order not to report a person being held against their will for sexual exploitation.¹⁵⁰

Secondly, a State is responsible for preventing and punishing injurious acts committed by a private agent within the State's control. Failure to do so amounts to a breach of the State's international obligations.¹⁵¹ In this situation, the State breaches its human rights obligation not directly because of the acts of the private abusers but as a result of its own omission, which can be linked to harm.¹⁵² Therefore, State responsibility under human rights law could be triggered by acts of private abusers.

¹⁴⁶ *ibid* 30.

¹⁴⁷ See Chapter three on human trafficking and human rights.

¹⁴⁸ Kneebone and Debeljak (n 131) 217.

¹⁴⁹ *ibid*; Gallagher (n 13) 237; Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017) 320; Carin Benninger-Budel, *Due Diligence and Its Application to Protect Women from Violence* (Brill 2008) 21;

¹⁵⁰ Michael Bothe and Boris Kondoch, *International Peacekeeping: The Yearbook of International Peace Operations* (Martinus Nijhoff 2002) 80.

¹⁵¹ Mohamed Y Mattar, 'State Responsibilities in Combating Trafficking in Persons in Central Asia' (2005) 27 *International Comparative Law Review* 211.

¹⁵² Stoyanova (n 150) 320.

Thirdly, under the traditional principle of international law, the State is responsible for a wrongful act that constitutes a breach of its international obligations.¹⁵³ Therefore, a State is held responsible when it breaches its obligation to prevent and protect victims of trafficking. For instance, a State is responsible for protecting foreigners within its borders.¹⁵⁴ This principle is affirmed by Article 2.1 of the ICCPR which imposes State responsibility for the welfare of persons living within the State's national borders who are subject to its jurisdiction.¹⁵⁵ Furthermore, the Trafficking Protocol contains a number of international obligations that a State should fulfil in order to combat human trafficking effectively.¹⁵⁶ As the UAE has ratified the UN Trafficking Convention and the Trafficking Protocol, it has an international obligation to adopt a number of measures to prevent human trafficking, protect victims, and prosecute traffickers.¹⁵⁷ Therefore, the failure to attempt to prosecute or punish traffickers or provide a remedy for a violation clearly implies a failure to exercise due diligence on the part of the State.¹⁵⁸ An example of this is *Rantsev v Cyprus*, where it was found that Cyprus was responsible to the parents of a Russian national for its failure to exercise 'due diligence' in implementing its anti-trafficking obligations.¹⁵⁹

Understanding State responsibility is imperative in defining State obligations in combating human trafficking, and a failure to assist and protect trafficked victims is considered a breach of international obligations. Therefore, this may lead to the imposition of two obligations on the breached State. Firstly, a State has to cease its illegal practices and offer appropriate assurances and guarantees of non-repetition.¹⁶⁰ Secondly, a State has to make full reparation of any material

¹⁵³ Mattar (n 152) 172; Gallagher (n 13) 226; Rebecca J Cook, 'State Responsibility for Violations of Women's Human Rights' (1994) 7 Harvard Human Rights Journal 125, 126-127.

¹⁵⁴ Gallagher (n 13) 232; Kneebone and Debeljak (n 131) 217.

¹⁵⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, 23 March 1976) art 2(1).

¹⁵⁶ These are to prohibit human trafficking, prosecute traffickers, undertake measures to prevent trafficking, provide protection for the victims and promote cooperation between state parties in order to meet those objectives. Gallagher (n 13) 125; Satvinder Singh Juss and Colin Harvey, *Contemporary Issues in Refugee Law* (Edward Elgar 2013) 143.

¹⁵⁷ Gallagher (n 13) 233.

¹⁵⁸ Michael Bothe and Boris Kondoch, *International Peacekeeping: The Yearbook of International Peace Operations* (Martinus Nijhoff 2002) 84.

¹⁵⁹ *ibid.*

¹⁶⁰ Gallagher (n 13) 252; Anthony Aust, *Handbook of International Law* (Cambridge University Press 2005) 418; Mario Silva, *State Legitimacy and Failure in International Law* (Martinus Nijhoff 2014) 138; Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures against Wrongful Sanctions* (Oxford University Press 2013) 141.

and moral damage to the injured State caused by the internationally wrongful act or omission.¹⁶¹ Gallagher argues that reparations cover the accepted range of remedial elements including restitution, compensation and rehabilitation.¹⁶² These obligations arise automatically upon the commission of the wrongful act.

7.3 Conclusion

This chapter examined the UAE national strategy and policy framework to combat human trafficking. It evaluated the government strategy in order to find gaps and areas of concern, and suggest ways to address them. In the first strategy, efforts to prevent human trafficking by the government were highlighted through the enacting of Law 51 of 2006, its amendment in 2015, ratification of the Trafficking Protocol, public awareness campaigns and other measures. The second strategy focussed on challenges facing prosecution and punishment efforts in the country and how these should be addressed. The third strategy analysed the protection measures available to trafficked victims under Law 51 as amended in 2015, the Dubai Police through the Crime Control Centre, and shelters in Abu Dhabi and Dubai. In this section, observations relating to the prevention strategy in the Law as amended in 2015 were investigated, such as how the Law does not protect trafficked victims from deportation and all trafficked victims are sent back to their home countries. Neither does Law 51 as amended in 2015 comply with Article 8 of the Trafficking Protocol because it contains no articles on the repatriation of trafficked victims. There is also no mention of providing permanent residency status to trafficked victims. Recommendations were suggested by the researcher in this regard.

The situation where a State is held responsible for breaching their international obligations in combating human trafficking was also discussed in this chapter. As Cook argues, international Law imposes a responsibility on a State for human rights violations and requires governments to take measures to investigate human trafficking, prosecute and punish traffickers, and provide

¹⁶¹ Gallagher (n 13) 252; UN Responsibility of States for Internationally Wrongful Acts 2001, art 31; Arthur W Rovine, *Contemporary Issues in International Arbitration and Mediation: The Fordham Papers 2007* (Brill 2008) 70; R Rajesh Babu, *Remedies Under the WTO Legal System* (Martinus Nijhoff 2012) 6.

¹⁶² Anne T Gallagher, 'The Right to an Effective Remedy for Victims of Trafficking in Persons: A Survey of International Law and Policy' (Paper Submitted for the Expert Consultation Convened by the UN Special Rapporteur on Trafficking in Persons, especially women and children, Ms. Joy Ngozi Ezeilo on 'The Right to an Effective Remedy Trafficked Persons', Bratislava, Slovakia, 22-23 November 2010) 6.

protection to victims.¹⁶³ For example, when the act or omissions directly causes or contributes to trafficking, a State may be responsible for the effects of the conduct of private parties if it failed to take necessary measures to prevent those effects. It can also be held responsible when an act of trafficking or acts related to trafficking breach their obligation to prevent and protect victims of trafficking as the consequence of an internationally wrongful act. In this regard, there are two obligations upon States as a consequence of breaching their international obligations, cessation and non-repetition of the wrongful act, and reparation for the injury caused.

¹⁶³ Rebecca J Cook, *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 2012) 229.

Chapter Eight: Conclusion and Recommendations

8.1 Conclusion

As stated at the outset of the thesis, the research aim was to critically evaluate the UAE's legislative framework for combating human trafficking. To help in the achievement of this stated objective, the research was driven by the following six research questions:

1. How effective is UAE law in providing protection to victims of trafficking who are women? What are its strengths and weaknesses and how can it be fortified overall?
2. How does the UAE's legislative framework measure up to key international legal instruments on trafficking?
3. What factors make migrant women especially vulnerable to trafficking for commercial sexual exploitation in the UAE?
4. Can a crime control approach adequately deal with the issue of human trafficking?
5. Can a focus on human rights assist with a more comprehensive understanding of the trafficking of women in the UAE?
6. In what ways does a victim-centered human rights approach enhance protection for trafficked women and victims of human trafficking overall?

The thesis employed the doctrinal ('black-letter') approach and comparative approach for its research methodology to comprehensively examine the appropriate primary and secondary legal sources on human trafficking in the context of both international and UAE law. The key research findings inspired by the research aim, and directed by the above research questions, are provided as follows:

Chapter Three, entitled ‘Conceptualising Human Trafficking in the UAE: Migration, Human Rights and Islam’, employed theories of migration to show the reasons why there has been a massive influx of people to the UAE in recent years. One of the key ‘push’ factors is economic, with people seeking better job opportunities, job security and higher wages. Yet, the chapter showed how these reasons are closely linked to human rights violations which are compounded for women and girls. Due to sex and gender discrimination women and girls are subjected to an even greater lack of access to educational and later employment opportunities, they are more likely to receive a lower income, are frequently forced to take on child bearing and rearing responsibilities, and habitually endure domestic and familial violence. These circumstances increase their economic and social vulnerability making them more susceptible to unscrupulous traffickers seeking to profit by filling the huge demand for migrant women in the UAE’s commercial sex industry. Traffickers lure migrant women from their home countries into conditions of commercial sexual exploitation, bondage and slavery with false promises of a better life and attractive economic and social opportunities in the UAE. The chapter recognised the correlation between the pervasive economic, cultural and social factors that normalise the discrimination of women and girls, legitimise their victimisation and subordination, and therefore create (and perpetuate) conditions which cause large numbers to fall prey to traffickers.

The human rights-based approach offered a conceptual and normative framework that can provide direction to the development of anti-trafficking policies. This framework enabled the evaluation and monitoring of anti-trafficking actions and practices in terms of their real and potential impact on trafficked persons. Chapter three also examined the Islamic legal framework on human trafficking. It showed how Islamic law and principles, which call for the elimination of the institution of slavery, the prohibition of exploitation of human beings in all its forms, and the rejection of oppression and hardship, are very applicable to the crime of trafficking in the UAE and can be used to impose a public duty to protect victims of trafficking, particularly women and children, in Muslim societies.

Chapter Four, entitled ‘Combating Human Trafficking: International and Regional Legal Responses to the Trafficking of Women’, appraised the crime control and victim-centred human

rights approach to human trafficking. The crime control response is one that is based on the criminalisation of trafficking and the punishment of traffickers. The impetus for this criminal justice solution is to deter convicted criminals and would be offenders in order to stem the flow of this criminal activity. However, where it falls short is in its neglect of trafficked victims. It fails to comprehensively recognise the vulnerability of victims and potential victims of trafficking by overlooking the structural inequalities of sex, gender, race, class and poverty that lead to their exploitation and victimisation.

Chapter Four illustrated how this is evident in the provisions of the Trafficking Protocol. Although hailed as the seminal international instrument on human trafficking, critics have condemned the criminalisation provisions within the Trafficking Protocol which delineate that the criminalisation of traffickers within national legislation and the establishment of penalties for trafficking are *mandatory* obligations, whereas provisions for the assistance of trafficked victims - to aid their physical, psychological and social recovery - are *facultative*. It is an oversight that severely compromises the protection of the human rights of victims, leading to situations where victims are frequently detained and deported. This is owing to the fact that they are not identified as victims of trafficking, rather, they are erroneously perceived as criminal collaborators due to: their illegal or precarious immigration status, the illegal labour they have been forced to perform, or their unwillingness to cooperate with authorities (for fear of reprisals from their traffickers). Additionally, the safety and security of these victims is habitually subordinated to the prosecution and trial of traffickers, in this way, victims are primarily constructed as witnesses and/or informants rather than the victims of a devastatingly abusive crime.

By contrast, the victim centred human rights approach understands and reflects the multi-faceted and multi-dimensional features of human trafficking. It foregrounds the needs of trafficked victims by prioritising their identification, ascertaining whether they are equipped to participate in criminal proceedings (if it is their wish to do so) and prohibits the victimisation and ostracization of them by the authorities in their home or destination countries. Chapter Four presented some of the international instruments that are undergirded by the victim centred human rights model, such as the UDHR, ICCPR, ICESCR and CEDAW. It showed how the Recommended Principles and Guidelines was specifically drafted to address the flaws of the

Trafficking Protocol in these matters surrounding its provisions for vulnerable trafficked victims. It is for this reason the Recommended Principles and Guidelines could be said to exemplify a victim centred human rights approach. Its provisions include recommendations that the dignity and rights of victims are always to be respected, and never harmed. Regardless of their status in the destination country, victims of trafficking should not be prosecuted, charged or detained. They should receive access to physical and psychological care and be protected from further exploitation. Moreover, the cooperation of trafficked victims with authorities should not dictate the level of care that they receive.

Chapter Six, entitled ‘A Critical Analysis of Human Trafficking in UAE Law’, determined that the provisions contained in the UAE’s Constitution, Penal Codes and Labour Laws (prior to 2006), failed to align with international legislation on trafficking. Rather, the constituent *action*, *means* and *purpose* elements of human trafficking, as examined in Chapter Two, were not addressed. Punishment for traffickers was menial, crime prevention measures were inadequate and not proactive, and victim protection mechanisms were lacking. Although, the Federal Law No.51 of 2006 and as amended in 2015 marked a pivotal moment in the UAE’s efforts to confront and combat trafficking, Chapter Six revealed some concerning legal loopholes contained within it. Examples included the use of the plural ‘persons’ when referring to trafficked victims which legitimately authorises the perpetrator of a single victim of trafficking - a ‘person’ - to escape punishment. Furthermore, there is no explanation in the law for how the *action* and *means* elements should be interpreted or applied and the phrase ‘for the purpose of exploitation’ dangerously implies that the intention of exploitation has to be present for trafficking to have taken place, leading courts to grant immunity to traffickers if this cannot be clearly and convincingly established, such as in the Dubai cases involving children Case No 146/2007 and Case No 3220/2011.

As appraised in Chapter Four, in tandem with international law criminalisation undergirds Federal Law No.51 of 2006 and as amended in 2015. The new legislative framework on trafficking in the UAE carries tougher penalties of imprisonment for those found guilty of trafficking than its legal forerunners. Critically, this crime control response comes at the expense of the protection of trafficked victims, who can find themselves deported from the UAE and

banned from re-entry, exacerbating their already tenuous circumstances, such as, economic/social problems, psychological tensions and familial responsibilities. Chapter Six described how these legal practices increase the coercive power of traffickers in the UAE who utilise them to control and manipulate their victims, knowing that they fear being branded and treated as criminals which poses the threat of imprisonment or deportation by their host authorities.

Chapter Seven, entitled ‘A Critical Analysis of the UAE Government Strategy and Policy Framework to Combat Human Trafficking’, revealed several government strategies and policies created to supplement the Federal Law No. 51 and as amended in 2015. These included ratification of the Trafficking Protocol, formation of the National Committee to Combating Human Trafficking, creation of Dubai Foundation for Women and Children and Ewa’s shelters for victims of trafficking, and the rolling out of several public human trafficking awareness campaigns. Notwithstanding these efforts, the chapter showed that an undue focus on trafficking for sexual exploitation fails to identify *all* victims of trafficking. It obscures the large numbers of migrants in situations of forced labour, slavery and debt bondage, including many migrant women and girls who are domestic workers in the UAE. Concomitantly, what this also suggests is that the official figures for human trafficking in the UAE are far higher than reported. Furthermore, the Law 51 is considered to be the first law in the region that punishes victims of trafficking and does not comply with Article 8 of the Trafficking Protocol because there is no Article in Law 51 regarding the repatriation of trafficked victims.

8.2 Recommendations

Based on the above research findings, as explicated in the Conclusion, the researcher would like to offer the following recommendations.

1) Recommendations for the definition contained in Law 51 as amended in 2015

The extent of human trafficking is limited by the definition as it uses the plural rather than singular form. This requires the human trafficking crime to be committed against ‘persons’. A recommendation therefore is that this be amended to criminalise its commission regardless of whether it is committed against one person or more. The definition also restricts exploitative acts. A further proposal is that flexible phrases are employed to enable the list to be broadened. Law 51 as amended in 2015 should use a similar phrasing to the Trafficking Protocol which uses ‘at a minimum’. This would mean that additional acts of exploitation could be added to the list.

The present definition defines a crime against a child or person with a disability as having an aggravating circumstance¹ and does not require a *means* element (force, coercion, abduction, fraud, deception, abuse of power or position, or taking advantage of the vulnerability of a person) if the crime involves child exploitation or selling children.² However, the law is silent on whether a *means* element is required in the case of a person with a disability. Therefore, the third suggestion is that the category of disabled person be added to the list of those that do not require illicit means.

The definition uses the expression ‘for the purpose of exploitation’. This could be understood to mean that special intention of exploitation is a necessary element of human trafficking. It is suggested that Law 51 as amended in 2015 should follow the same definition as the Vietnamese and Italian Law that criminalises trafficking acts independently, considers the crime to be human

¹ Law No 51 as amended in 2015, art 2.1.

² ‘The following shall be deemed human trafficking, even if the same does not incorporate the use of any of the means provided in the previous paragraph: a. recruiting a child, transferring, deporting, harbouring or receiving the same for the purpose of exploitation. b. selling a child, offering the same for selling or buying. *ibid* art 1bis1(2).

trafficking even if the third element (exploitation) is not proved, and considers that if exploitation occurs then the crime can be regarded as having an aggravating circumstance.

2) General Recommendations for Law 51 as amended in 2015

Law 51 as amended in 2015 does not clarify the *action* element. The definition, which includes such things as soliciting, employing, recruiting, transferring, deporting, harbouring, receiving of trafficking persons, or the *means* element which includes threat, use of force, other forms of coercion, abduction, fraud, deception, abuse of power or position, taking advantage of the vulnerability of a person for the purpose of exploitation, and giving or receiving of payments or benefits to achieve the consent of a person having control over another person. A further suggestion is therefore that a guideline be included as an annex to the law to clarify both elements. Another point of contention is that the use of the services of victims of trafficking is not criminalised under Law 51 as amended in 2015. There are examples from other countries of it being criminalised, for instance it is criminalised in the European Trafficking Convention³ and the Syrian Trafficking Law.⁴ Such criminalisation is important because it can reduce demand for these types of services. Accordingly, a recommendation is that a similar approach is adopted in Law 51 as amended in 2015.

There is no article in Law 51 regarding the repatriation of trafficked victims.⁵ In this respect, Article 22 of the Egyptian Trafficking Law guarantees that foreign victims are returned to their origin county in an expeditious and safe manner.⁶ A similar approach is used in the Jordanian Trafficking Law which defines the right to facilitate the repatriation of trafficked victims to their home countries or any other chosen country that agrees to receive them.⁷ Therefore, it is recommended that a similar Article be adopted in Law 51 and that the repatriation of trafficked persons should be coupled with the safety of these victims.

³ Council of Europe Convention on Action against Trafficking in Human Beings (entered into force 1 February 2008) ETS 197, art 19.

⁴ Syrian Legislative Decree (No 3 of 2010) on the Crimes of Trafficking in Persons, Art. 9(2).

⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (entered into force 25 December 2003) 2237 UNTS 319 (Trafficking Protocol), art 8 Repatriation of victims of trafficking in persons.

⁶ Egyptian Law on Combating Human Trafficking (No 64 of 2010) art 22.

⁷ Jordan Anti-Trafficking in Persons Law, No 9 of 2009, art 5(c).

This thesis argues that more aggravated circumstances could be added to the list in Article 2 of Law 51 as amended in 2015 as this would make it more effective. These could include the crime being committed against two or more people,⁸ and the crime being committed against women.⁹ The punishment for human trafficking crimes under Law 51 and its amendment in 2015 is imprisonment of no less than five years and a fine of no less than 100,000 AED.¹⁰ However, records show that convicted traffickers have been sentenced to between one and three years in jail.¹¹ In this regard, the researcher argues that the punishment for committing human trafficking should be commensurate with the gravity of the crime. Furthermore, the functions of punishment include retribution and deterrence. Retribution recognises that the offence of trafficking is ‘a grave and legitimate offence that should be treated seriously and deterrence seeks to deter the individual traffickers (specific deterrence) and potential traffickers (general deterrence) from committing the crime of trafficking because they know that they will be punished’.¹² Additionally, the United Nations affirms that effective human trafficking punishment must also be sufficient and proportional.¹³ In other words, effective prosecution accompanied by harsh penalties can serve as a deterrent to future traffickers. A proposal is therefore that the UAE government ensures that the penalties and sanctions are suitable and proportionate to the gravity of the crime.

The government should take the necessary measures to ensure that the current legislation and policies conform to international human rights standards with respect to victims’ rights. For instance, the UAE government must heed the principle of non-refoulement. Even though Article (1) bis (2) allows victims to remain in the country if the investigation or proceedings require this,¹⁴ the reality is that victims are not able to remain in the country when the trial ends. This is the case even if they have cooperated fully with the authorities. Not only are they deported but

⁸ French Penal Code, art 225-4-2.

⁹ Jordanian Anti-Trafficking in Persons Law No 9 of 2009, art 9.2.

¹⁰ Law 51 as amended in 2015, art 2.

¹¹ NCCHT, ‘Combating Human Trafficking in the UAE: Annual Report’ (2015) 22.

¹² UN ECOSOC Asia and the Pacific, *Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices* (UN 2003) 40.

¹³ *ibid.*

¹⁴ This enables victims and witnesses to remain in the State if the investigation or trial requires it. It is based on an order issued by the public prosecution or the court. *ibid* art 1bis(2.5).

also banned from re-entry. It is therefore recommended that the government follows the approaches of the UK¹⁵ and Australia.¹⁶ Offering victims of trafficking residence permits is in line with international standards¹⁷ and would give better protection to female victims of trafficking in the UAE. It would also have a positive effect on victims, encouraging them to report such crimes to the authorities and testify in court against criminals.

The government must also take on board the principle of non-criminalisation of victims. The aim of the principle is to protect victims' human rights, avoid continued victimisation and encourage them to testify against perpetrators in criminal trials.¹⁸ However, Article 11 bis (1) of law 51 as amended in 2015 states that victims of trafficking can be held both criminally and civilly liable. The proposal put forward here is for the UAE government to follow the same path as other countries that neither punish nor prosecute victims of trafficking. This includes Qatar in its Human Trafficking Law;¹⁹ Jordan in its Trafficking Law,²⁰ and also Egypt in its Trafficking Law.²¹

Law 51 as amended in 2015 is silent on a number of other critical aspects which require attention, for example, what to do with a person who is both a victim of trafficking and criminally liable for violating their work contract according to Article 11 bis (1). Should they be punished first and then offered a place in a shelter? It needs to be determined whether victims ought to be exempted from civil case fees according to Article 13.²² Would such a person have

¹⁵ Victims can have an annual residence permit and then ask to stay in the country permanently.

¹⁶ Those who are considered to be victims of trafficking and prior to investigations are given a thirty-day visa. If these victims agree to cooperate with the police, they are given a Criminal Justice Stay Visa. After this period, the victims are given a witness protection visa. This means they can apply for permanent or temporary residence.

¹⁷ 'Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim'. Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings (entered into force 1 February 2008) ETS 197: 'each State Party shall 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.' Trafficking Protocol (n 3) art 7(1).

¹⁸ Margaret Malloch, *Human Trafficking* (Edinburgh University Press 2016) 45.

¹⁹ Law No 15 of 2011 Combating Trafficking in Human Beings 15/2011. Article 4 stated 'Victims of human trafficking offences (HTO) shall not themselves be subject to criminal or civil liabilities arising from that crime so long as these liabilities directly relate to that HTO.'

²⁰ Jordanian Anti-Trafficking in Persons Law (No 9 of 2009) art 12.

²¹ Egyptian Law on Combating Human Trafficking (No 64 of 2010). Article 21 stating that 'the victim shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was directly related to being a victim'.

²² 'The victim of human-trafficking crimes shall be exempted from civil-case fees upon filing the same to claim compensation for the damage resulting from the exploitation thereof in a human trafficking crime.' *ibid* art 13.

the right to seek compensation? The researcher suggests that the solution would be to task the National Committee to Combat Human Trafficking in the UAE with setting out clear guidance on this. At present, the length of time victims to remain in shelters varies. It is recommended that UAE government avoid unreasonable delays in addressing human trafficking cases as this places victims in difficult emotional and psychological situations.

UAE law enforcement officials currently make no effort to identify potential victims of human trafficking. For example, as discussed in Chapter Five, the majority of female victims enter the UAE legally and unhindered by the immigration authorities on work, visit or tourist visas. This could be rectified by heeding the work of the Polaris Project which formulated a useful technique of using red flags to indicate a potential situation of human trafficking. This overcomes the issue that trafficked people rarely present themselves to the authorities.²³ When a red flag is raised, this indicates that further investigation is needed.²⁴ A similar approach is used by the National Screening Team in Jordan which is responsible for identifying victims of human trafficking. It has a strong track record, having uncovered 27 cases in 2013.²⁵ This body also compiled a checklist that border guards can use to identify victims of human trafficking. The recommendation of this thesis is that border and law enforcement authorities in the UAE adopt similar measures to improve the identification of victims.

Article 9 permits confiscation of the tools, monies and proceeds that result from these crimes but the victims in the UAE are not supported by or compensated out of these confiscated assets.²⁶ For instance, Al Maktoum Charity Foundation has given 150,000 AED (41,000 USD) as financial support to victims. Law 51 as amended in 2015 therefore needs to adopt the approach used in the Egyptian Law on Combating Human Trafficking which allows compensation of victims from the confiscated tools and monies of the crime.²⁷

²³ The Polaris Project created a toolkit that gives red flag warning indicators that a person is a victim of trafficking.

²⁴ Kevin Corcoran and Albert R Roberts, *Social Workers' Desk Reference* (Oxford University Press 2015) 334.

²⁵ US Department of State, 'Trafficking in Persons Report' (July 2009) 224, Jordan.

²⁶ Abdul Daher Ahmed, 'Legislative Mechanisms to Protect Victims of Human Trafficking: A Comparative Study' (Research Paper presented to a Symposium on Protection of the Victims of Human Trafficking, Human Rights Department, Ministry of Interior, Abu Dhabi, 2009) 73.

²⁷ Egyptian Law on Combating Human Trafficking (No 64 of 2010) art 27.

This thesis has provided a comprehensive analysis of the trafficking of women in the UAE. It has examined and depicted the scope and extent of the problem; from the vulnerable position of victims (at home and abroad) to the exploitative motives and methods of traffickers. Therefore, it is suggested that the UAE government uses this research for the education and training of their border control, law enforcement agencies, Interpol and other relevant agencies (in countries of origin, transit and destination) to meaningfully fight this crime nationally, regionally and internationally.

The UAE government should pay attention to local sponsors who have working visas issued in order to sell them to traffickers, and they should be questioned by the authorities. This would make sponsors think twice before selling visas for money. Furthermore, the migration authority in the country should not allow Emirati sponsors to be issued a large number of visas, as some sponsors have had up to 29 visas issued. They should be questioned about previous housemaids and why they have been reported as run away. Additionally, Emirati sponsors should be obliged to receive their housemaids at the airport, not others.

During her 2012 visit, UN Special Rapporteur Joy Ngozi Ezeilo recorded that apart from the Emirates Human Rights Association there did not appear to be any other registered NGO working on human rights in the UAE'.²⁸ This is a cause for grave concern since NGOs play an integral role in the implementation of international instruments in State territories and championing human rights when government protections are lacking. Therefore, the UAE government should allow NGOs to become involved in the fight against trafficking. This could take the form of information gathering and research, conducting media campaigns, taking part in preparing national reports and making sure that the authorities implement the law.

Most migrant women become trafficking victims in their countries of origin. As such, labour exporting countries must be as proactive as labour importing countries to restrict these activities at source rather than simply reacting after the trafficking has occurred. There should therefore be new mechanisms and increased cooperation between the UAE and labour exporting countries. It

²⁸ Joy Ngozi Ezeilo, 'Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum: Mission to the United Arab Emirates' (22 February 2010) UN Doc A/HRC/23/48/Add.1, 17.

is proposed that the UAE government and the countries of origin begin to cooperate through information exchange, greater use of law enforcement and judicial collaboration, and increased awareness, taking a far-reaching approach to foreign migrant workers.

The UAE government should not only address the domestic, social, economic and political aspects that increase trafficking of women in the UAE but also arrive at an understanding of the aspects that bring women to agree to the dangerous proposals made to them in their countries of origin. By doing so and through a cooperative framework with countries of origin, they could reduce and address these issues. Widening the scope of policy to considering and tackling the motivations of such people could allow government policy to become better at prevention. Such measures could target the social and cultural practices which place women at a disadvantage, support violence and discrimination against women, and heighten women's vulnerability to becoming victims of trafficking. The measures should aim to empower women and enable them to access education, employment and other ways of pursuing a fulfilling life.

Training those at the forefront of the fight against trafficking is very important. However, due to the special nature of trafficking, this training should be structured in a specific way and be as comprehensive as possible. To this end, the UAE government should put in place a training programme for those involved in the fight against trafficking, not just training the UAE's law enforcement agencies and public officials, but also other private institutions that have contact with victims of trafficking. The training could include the identification of victims and their social, medical and legal needs, taking great account of their human rights.

Trafficking awareness campaigns should be directed at the general public, the business community and policymakers. This would foster an environment in which no form of trafficking is accepted. They should warn about the dangers of trafficking and the damage that prostitution brings. They should also highlight the benefits available to victims of trafficking who come forward. The majority of trafficked victims are foreign women. It is therefore recommended that the UAE government engages in increasing awareness through a comprehensive approach to targeting foreign migrant workers.

The UAE is a Muslim country and the core principle of the law is Sharia. As Islamic religion and Islamic law are in compliance with international law on the issue of human trafficking. It is therefore recommended that adopting Islamic principles can play a significant role in addressing the acts, means, and forms of trafficking. The Quran and Islamic teachings condemn slavery and slavery like practices, therefore Muslim countries are under an obligation to more proactively combat trafficking.

The UAE is one of the few States that is not a party of the ICCPR which include basic rights for trafficked victims such as no one shall be held in slavery, the right to be free from imprisonment for debt or the right to liberty and security of the person. Since the UAE has not ratified the ICCPR, the government is not legally bound to implement the principles laid out in it. Therefore, it is recommended that the UAE to sign and ratify the ICCPR which obliges States to protect victims of trafficking.

The UAE has not ratified the ICESCR which demonstrates weak international commitment to human rights issues specially towards trafficked victims. It is recommended that the UAE to sign and ratify the ICESCR and this would be an important step towards the improvement of the victims' human rights and protection.

The final recommendation is that the UAE government Strategy to Combat Human Trafficking be reviewed, monitored and updated with a view to improving it, and including additional measures and changes to national policy.

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