



Law Combating Trafficking in Persons: A Welcome Step that Requires Careful Implementation

**Violence & Bodily Integrity Program
Egyptian Initiative for Personal Rights**

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Introduction

In May 2010, Egypt enacted Law 64 of year 2010 on Combating Trafficking in Persons. This law provides a definition of “crimes of trafficking in persons” and stipulates the penalties applicable. It also guarantees certain rights to victims of trafficking and imposes a duty of the state to ensure their full protection. At the time of writing (October 2010), the Implementing Statute of the law has not been issued.

The Egyptian Initiative for Personal Rights welcomes the adoption of the law as an important step towards combating trafficking in persons. This commentary is intended to provide the state and interested stakeholders with a human rights reading to the law. The commentary includes recommendations to the government that will help ensure that the implementation of the law complies with Egypt's international obligations and fully respects human rights. To this end, this commentary recommends that the elements of the crime of trafficking be defined in accordance with internationally agreed definitions, taking into account existing Egyptian laws criminalizing acts that are related to trafficking. The commentary also points to the problems that can result from victims' identification procedures and urges the government to take measures to ensure all victims of trafficking are identified and allowed to benefit from the law's protection. Further, the commentary warns against the collateral damage that can result from measures intended to protect victims and recommends that the government guarantees the victim's rights to freedom of movement and the right to seek asylum at all times. Finally, the commentary recommends that the government considers other state's experiences and best practices in anti-trafficking measures when issuing and implementing a national plan of action.

Acknowledgements

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Section 1: Trafficking and Anti-trafficking Efforts in Egypt

Trafficking in persons is a world-wide phenomenon that affects almost every country in the world. The United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children (hereafter "the Special Rapporteur on Trafficking"), in her 2009 report to the Human Rights Council, states that "in varying degrees and circumstances, men, women and children all over the world are victims of what has become a modern day slave trade".¹ The Special Rapporteur describes trafficking in persons as "one of the fastest growing criminal activities in the world". Moreover, it generates massive profits for criminal groups and results in serious breaches of human rights and dignity. Trafficking in persons includes the trafficking of women, children, and men for the purposes of sexual or labor exploitation; it can occur within or across national borders.

1. Trafficking in persons in Egypt

According to the United States' 2010 *Trafficking in Persons Report*, Egypt is a source country (for children trafficked within the country for commercial sexual exploitation and domestic servitude), a transit country (mainly for women trafficked from Eastern European countries to Israel) as well as a destination country for trafficking in persons. Many of the country's estimated one million street children are forced into begging and are exploited in prostitution. Both boys and girls are recruited for domestic and agricultural labor under conditions often amounting to those of involuntary servitude. "Temporary marriages" between Egyptian women (often under the legal age) and wealthy men from the Gulf states are a widely known phenomenon, and some Egyptian cities are considered destinations for sex tourism.²

The Special Rapporteur on Trafficking conducted a country visit to Egypt in April 2010. While the mission report has not been made public at the time of writing, the Special Rapporteur's preliminary findings identified the most common forms of trafficking in persons in Egypt to include trafficking for the purposes of sexual exploitation through "seasonal" or "temporary" marriage of under-age girls, child labor, domestic servitude and other forms of sexual exploitation and prostitution. She indicated that trafficking for forced marriages, forced labor, transplantation of human organs and body tissues may be much more common than indicated by existing estimates. The Special

Rapporteur also noted that the incidence of internal trafficking is much higher than transnational trafficking. "The prevalence of street children", she warned, "increases their vulnerability to child trafficking".³

While the US report noted that Egypt has made significant efforts to eliminate human trafficking, it still considered these efforts insufficient. The government was said to lack formal identification procedures and adequate protective services for victims of trafficking. The report deplored the fact that many victims of trafficking were criminalized for acts committed as a direct result of being trafficked and that law enforcement officers routinely arrest victims and further mistreat them through verbal, physical or sexual abuse. Egypt was said to have made minimal effort to prevent trafficking and to raise public awareness on trafficking and sex tourism, except on the issue of temporary marriages. Egypt was also considered to have made minimal progress in protecting victims of trafficking. The report recommended that the government fully implement the new anti-trafficking legislation as well as institute and apply a victim identification procedure to ensure that victims are not penalized for acts committed as a result of being trafficked. The government was also urged to provide financial support to NGOs providing protection services to victims and to implement a public information campaign to raise awareness on the phenomenon.⁴

2. Egypt's steps towards the elimination of trafficking in persons

Besides being party to the United Nations Convention against Transnational Organized Crime and the related Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, generally known as the Palermo Protocol, the Egyptian government ratified the following relevant human rights instruments: the United Nations Convention on the Elimination of All Forms of Discrimination against Women in September 1981, the Convention on the Rights of the Child in July 1990, as well as the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in February 1993.

In an effort to comply with Egypt's international obligations, the National Coordinating Committee for Combating and Preventing Trafficking in Persons was created in July 2007 by a decree of the Prime Minister.⁵ The Committee was created with a mandate to draw a national plan of action and to monitor Egypt's compliance with its international obligations in relation to

trafficking in persons, to draft a legislation to combat trafficking and to propose measures to protect victims of trafficking. The Committee is headed by an Adviser to the Ministry of Foreign Affairs and is composed of representatives of a wide array of governmental bodies and ministries, including the Ministry of Justice, the Ministry of Interior, the Ministry of Defense, the Ministry of Health, as well as the National Council for Human Rights, the National Council for Childhood and Motherhood and the National Council for Women. The National Council for Childhood and Motherhood also formed a special child trafficking unit.

As part of its mandate, the National Committee commissioned the government-affiliated National Center for Social and Criminological Research to conduct a comprehensive study on trafficking in persons in Egypt. While this study was commissioned in 2008, it has not been published yet. The Committee was also mandated to draft a law to criminalize all forms of trafficking in people and to protect victims of trafficking, in compliance with Article 5 (1) of the Palermo Protocol. The draft bill was presented to Parliament at the end of the year 2009 and received final approval from the People's Assembly on 2 May 2010 (Law 64/2010 on Combating Trafficking in Persons).

The law undoubtedly constitutes a step forward towards combating trafficking in persons. It is the first law in Egypt to criminalize all forms of trafficking in people and to provide for legal protection of victims of trafficking and respect for their rights. The Egyptian Initiative for Personal Rights commends the enactment of this law, which has adopted a rights based approach in many of its provisions that are consistent with relevant international instruments and standards. After her visit to Egypt, the Special Rapporteur, , congratulated the Egyptian government on the adoption of the law, stating that it affirms a high level of political will to fight human trafficking and called for its full implementation.⁶

The Special Rapporteur praised the government for its visible commitment to tackling this issue after so much delay. She also acknowledged that there have been a number of other important legislative developments in Egypt recently, such as the adoption of the Organ Harvesting and Transplant Law in 2009 as well as raising the minimum age of marriage for girls to 18 years by the amendments to the Child Law in 2008. The Special Rapporteur also praised Egypt's cooperation with the International Organization for

Migration, which resulted in the establishment of a pilot medical unit that treats victims of human trafficking at the National Bank Hospital, and the launching of an innovative program by the Faculty of Law at the University of Alexandria, which is designed to provide legal aid services to trafficking victims. Moreover, the Special Rapporteur recognized the efforts made by the Suzanne Mubarak Regional Centre for Women, Health and Development, which has set up a clinic to treat female victims of gender-based violence.⁷

The Special Rapporteur noted, however, that despite these significant steps forward, Egypt continues to face serious challenges, since "the trends, forms and manifestations of trafficking in persons are not well understood," and that "there is a general lack of awareness and knowledge" in the country with regard to trafficking in persons.⁸ "The absence of accurate data about trafficking in persons have made it impossible to measure the magnitude and scale" of this crime in Egypt.⁹ Finally, the Special Rapporteur expressed her hope that the full implementation of the new law will contribute to the eradication of trafficking in persons for the purposes of "seasonal marriages" in particular.¹⁰

3. Egypt's inadequate consultation with civil society in the law's drafting process

During the drafting process of the law, the government repeatedly claimed that civil society had been involved at all stages of the drafting process and that a number of representatives of civil society organizations had been consulted.¹¹ However, the Egyptian Initiative for Personal Rights' experience proved that this "consultation" was limited to one meeting held on 9 September 2009 , where government representatives refused to circulate the draft bill, despite indicating that the draft had been completed. Instead, the government circulated a one-page document of bullet points representing the "broad principles" of the bill. Despite repeated requests for the draft during and after the meeting, (even after the draft bill had been submitted to Parliament and was being debated in the Shura Council and the People's Assembly), the government failed to share the bill, thus effectively rendering any real consultation impossible. In addition, since the law was passed, civil society has not been involved in the discussion or the drafting of the Implementing Statute of the law.

Following her mission to Egypt, the Special Rapporteur on Trafficking advised the government to increase the participation and consultation of civil society organizations at a greater scale in formulating anti-trafficking programs and policies, as well as to strengthen partnerships with NGOs. The Egyptian Initiative for Personal Rights strongly supports Special Rapporteur in deplored the lack of meaningful civil society participation and consultation in the drafting process of the anti-trafficking law, despite Egypt's contention of doing so.¹²

Section 2: The Law's Implementation

The enactment of the law is only the first step towards combating trafficking in persons. In order for the law to be fully implemented, a comprehensive Implementing Statute needs to be adopted. Article 29 of the law stipulates that the Implementing Statute of the law will be adopted by the Head of the Council of Ministers within one month of adoption of the law. However, at the time of writing, which is five months after the adoption of the law, the Implementing Statute has not yet been enacted. While the government is working on drafting these implementing regulations, the Egyptian Initiative for Personal Rights would like to bring to the government's attention a number of areas of concern in relation to the implementation of the law. These points are related to the definition of trafficking, the definition and identification of a victim of trafficking, as well as the rights and protection services granted to victims by virtue of the law.

4. What is trafficking in persons?

i. Trafficking and other related crimes

The law's definition of the crime of trafficking is largely inspired by the Palermo Protocol, but it gives a broader understanding of the crime. Article 2 defines trafficking as a crime composed of three elements:

1. An act of trafficking: "including selling, exposing for sale, buying, promising to sell or buy, using, transporting, handing over, harboring or receiving a person, either inside the country or across its borders."
2. Committed by certain means: "using force or violence or threats thereof, or by abduction or fraud or deception, or the exploitation of a position of power or the exploitation of a state of weakness or need, or the promise of

financial compensation or benefits in exchange for the consent of a person to the trafficking of another person he/she has control over".

3. For the purposes of exploitation: "Exploitation includes exploitation in prostitution and all other forms of sexual exploitation, sexual exploitation of children or exploitation of children in pornography, forced labor or services, slavery and slavery-like practices, begging, and the removal of organs or human tissue or parts thereof".

Article 3 renders the victim's consent irrelevant when any of the coercive means set forth in Article 2 are used. If the victim of trafficking is a child or a person without legal capacity, there is no need to prove the use of these means and the victim's consent or the consent of their guardian is deemed irrelevant.

Hence, for the crime of trafficking to be proved, the three defining elements need to be combined. If one of the elements is missing, the crime will not be defined as trafficking in persons, but it might fall under other existing penal provisions. The distinction between trafficking and other related crimes bears great importance as the penalties applicable are different depending on whether the act is defined as trafficking or not. The anti-prostitution law for instance stipulates a maximum of three years imprisonment for the crime of "exploitation in prostitution",¹³ while the Law to Combat Trafficking in Persons stipulates a maximum of 15 years rigorous imprisonment for the crime of "trafficking for purposes of sexual exploitation". The difference between the two crimes should be made clear in the implementing regulations.

Other existing provisions that are related to trafficking crimes include smuggling, illegal adoption, begging, the sale of children and child pornography. Therefore, the Egyptian Initiative for Personal Rights urges the government, while drafting the implementing regulations, to explicitly engage with any other penal provisions related to trafficking crimes.

ii. Defining exploitation

The third element of the definition of trafficking – that the act be committed for the purposes of exploitation - requires a clear definition of each form of exploitation in the implementing regulations. Many of the terms used in the law are new to Egyptian law, but most have been used in international law

instruments ratified by Egypt. It is therefore recommended that the implementing regulations define these terms in accordance with existing internationally-agreed definitions, when possible..

- "Exploitation in acts of prostitution and all forms of sexual exploitation".

The Palermo Protocol uses the terms "sexual exploitation" and "exploitation of the prostitution of others", but these terms are undefined in international law. The implementing regulations should therefore define what is meant by "exploitation in prostitution and all forms of sexual exploitation" in light of the existing provisions in the 1961 Egyptian anti-prostitution law. In order to avoid the confusion resulting from the use of different terminology under the anti-prostitution law and the anti-trafficking law, it is recommended that "exploitation in acts of prostitution" be equated with the similar term "exploitation of the prostitution or immorality of another" in the anti-prostitution law.¹⁴

Furthermore, "all forms of sexual exploitation" should include, in addition to exploitation in prostitution, child prostitution, forcing someone into sexual servitude or into the production of pornographic material.¹⁵ "Child prostitution" should be defined as per the Optional Protocol on the Sale of Children, Child prostitution and Child pornography (hereafter OP-CRC), ratified by Egypt in 2002, where child prostitution is defined as "the use of a child in sexual activities for remuneration or any other form of consideration" (Art 2(b)). "All forms of sexual exploitation" should by no means include any form of private sexual activities between consenting adults.

- "Sexual exploitation of children" and the "exploitation of children in pornographic materials"

Child pornography should be defined as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes", the definition given by the OP-CRC.¹⁶

It is important to note that the Law to Combat Trafficking in Persons will be applied in conjunction with existing Penal Code and Child Law provisions on child trafficking and exploitation. The Penal Code has, since 2008, a specific provision criminalizing child trafficking. Article 291 of the Penal Code

criminalizes the "selling, buying or exposing for sale of a child; handing over, receiving or transporting a child as a slave; exploiting a child sexually or commercially; or using a child in forced labor or in any other illicit use", which is punished with a minimum of five years rigorous imprisonment. The same article prohibits "any infringement on the child's right to protection from trafficking or sexual, commercial or economic exploitation". Other offenses related to child pornography (producing or exposing child pornography) are dealt with under the Child Law, Article 116bis (a) and are subject to imprisonment terms of no less than two years. The government should therefore ensure coherence in the various implementing regulations of these laws regarding the definitions used for child exploitation and child pornography.

- "Forced labor and services"

"Forced labor and services" should be defined in line with the internationally accepted definition of "forced labor". The International Labor Organization Convention concerning Forced Labor No. 29, ratified by Egypt in 1955, defines forced labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."¹⁷

- "Slavery or practices similar to slavery or servitude"

"Slavery" and "practices similar to slavery" should be defined in the Egyptian law in line with their internationally accepted definition. The UN Slavery Convention, ratified by Egypt in 1954, defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."¹⁸ The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ratified by Egypt in 1960, defines practices similar to slavery as follows:¹⁹

“(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

“(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

“(c) Any institution or practice whereby:

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

“(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor.”

Although "servitude" is not defined in international law, it is understood that slavery or practices similar to slavery are forms of servitude.²⁰

- "The removal of organs or human tissue or parts thereof"

The implementing regulations should ensure coherence between all the laws that deal with organ trafficking and organ transplant in order to ensure that the definition given to "removal of organs" is harmonized. The Organ Harvesting and Transplant Law passed in 2010 addresses the removal of organs or human tissue.²¹ The Penal Code also criminalizes the transportation of organs from a child, a crime that bears the same penalty as the crime of trafficking.²²

- Begging

Egyptian law defines exploitation more broadly than the Palermo Protocol and explicitly lists begging amongst criminalized exploitative practices. The UNICEF's *Guidelines on the Protection of Child Victims of Trafficking*²³ also include begging among the different forms of exploitation when they explain

the relevant article of the Palermo Protocol. Therefore, the Egyptian law cannot be considered as a unique example.

Exploitation in begging is a form of forced labor.²⁴ As such, it requires the victim to have been forced into begging "under the menace of any penalty" and that the victim "has not offered him/herself voluntarily to it" (see definition of forced labor above). It is therefore important to emphasize in the implementing regulations the requirement that the victim be forced into begging and that he/she be unable to leave the exploitative situation, including when the victim is a child. If begging is practiced voluntarily, it should not fall under the application of this law.

It is important to note that the Law on Begging, dating back to 1933,²⁵ gives a very broad understanding of begging and could include *anyone found selling anything in a public place*.²⁶ Using this definition in the implementation of the anti-trafficking law may result in children from poor families being deprived of all social and economic support, as their guardian or provider may be considered to have trafficked them for purposes of exploitation in begging. The implementing regulations have to ensure that the anti-trafficking law does not go against the chief principles of the Child Law, namely the right of the child to protection from harm and the principle that the best interests of the child be a primary consideration in all matters affecting them. In addition, when the victim is a child, the police and prosecuting authorities are under a duty to refer any child found begging to the local Childhood Protection Committee, in accordance with the Child Law as amended.²⁷ All authorities also are under a duty to take the best interests of the child into account as a priority consideration in all decisions and procedures concerning them.²⁸ This includes decisions to prosecute the child or his/her provider.

iii. Applying the law to domestic workers

The Law to Combat Trafficking in Persons is an important step forward towards the protection of domestic workers. The crime of trafficking for forced labor or services, or for slavery or practices similar to slavery, will help protect those workers who are living under slavery-like conditions.

Although this new protective legislation is welcome, it remains insufficient to guarantee the full enjoyment of their rights to all domestic workers. Indeed, this protection will only apply in limited cases, as the worker will have to

prove that he or she was trafficked, using force or violence or any of the means cited in Article 2, in addition to proving that the domestic worker was subjected to mistreatment that amounts to forced labor or to practices similar to slavery. Until today, the Labor Code of 1994 explicitly excludes domestic workers from its protection, and domestic workers have no legally guaranteed labor rights. Despite a recommendation in 2007 by the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families to the government of Egypt to amend the Labor Code to ensure protection to domestic workers, Egypt has failed to take steps towards implementing the recommendation.²⁹

While the Egyptian Initiative for Personal Rights commends the Egyptian government for having introduced protection for domestic workers victims of trafficking, we reiterate our previously made call to the government to amend the Labor Code and remove the exclusion of domestic workers from its protection, as well as to take all necessary measures to combat all forms of violence and abuse committed against domestic workers.³⁰

5. Who is a victim of trafficking?

Article 1(3) of the Law to Combat Trafficking in Persons defines a victim of trafficking as "the natural person that has been exposed to any damage or physical or moral harm, and in particular physical, mental, psychological harm or damage or economic loss, when such damage, harm or loss is directly caused by one of the crimes stipulated in this law." Article 23 stipulates that, at all stages of the investigations and trial, effort should be made to identify the victims, in order to ensure their removal from the perpetrator's grip. However, the definition of the victim of trafficking in Article 1(3) imposes the burden of proof on victims, who need to establish not only that the crime has been perpetrated against them, but also that the crime directly caused material or moral harm. A victim of trafficking seeking the state's protection therefore will have to prove the crime, the resulting harm *and* that there was a direct causal relationship between the two.

In order for the anti-trafficking law to fulfill its purpose of protection of victims, it is essential to ensure that all victims of trafficking are identified in each case and that they all benefit from the protection and assistance they need. This is all the more important as the US trafficking report found that "despite receiving training in victim identification, the government did not

employ formal procedures to identify victims of trafficking and refer them to providers of care; as a result, trafficking victims, including street children and women arrested for prostitution, were often treated as criminals rather than victims.³¹

Therefore, it is recommended that the implementing regulations allow non-governmental bodies to participate in the identification of victims. Law enforcement authorities should also receive training in the identification of victims of trafficking. As soon as a person is identified as a potential victim of trafficking, regardless of the stage or state of the prosecution, he or she should be referred to the authorities responsible for their protection. The identification of victims of trafficking should in no way be linked to a conviction of the perpetrators, and the protective measures should be available to all those who were victims to a crime of trafficking, whether willing to cooperate with prosecuting authorities or not. The practices of law enforcement officers in this regard should also be subject to regular monitoring and review.

The Egyptian Initiative for Personal Rights further recommends that during and after the drafting phase of the implementing regulations, the government conducts a review of the evolving best practices of other states that have gained relevant experience in combating human trafficking, in particular in relation to challenges in identifying human trafficking cases. It appears to be a universal phenomenon that many of these cases are encountered during the course of other investigations. Law enforcement personnel therefore should be trained in identifying victims of trafficking. Red flags could be the following: nervousness when asked about how the person came to the country, languages spoken, country of origin, behavior, lack of personal belongings present and the appearance of coercive relationship among parties. Law enforcement should also learn how to distinguish trafficking victims from victims of other crimes, such as smuggling. A good starting point may be the increase of the authorities' understanding of the human trafficking issue by providing appropriate training to relevant state authorities and officials in identifying trafficking cases and protecting the rights of the victims.³²

6. Protection of the victim

The law's fifth section entitled "The Victim's Protection" contains provisions guaranteeing certain rights to victims of trafficking and imposing a duty on the state to take protective measures for victims.

i. General observations

Article 21 stipulates that a victim of trafficking cannot be held responsible for any trafficking offense committed as a direct result of being a victim of trafficking. This applies both for criminal and civil responsibility. This provision represents an important safeguard for the protection of victims of trafficking, as many victims are forced to commit acts that are criminalized or subject to civil penalties as a result of being trafficked. The implementing regulations therefore should clarify that any crime or civil tort committed by the victim as a result of being trafficked cannot be prosecuted. It is also recommended that the Implementing Statute provide a non-exhaustive list of provisions under which victims of trafficking cannot be prosecuted. This should include laws on prostitution, begging, labor regulations and rules on clandestine immigration and illegal residence on the territory.

Article 22 places a duty on the state to protect the victim and to create the appropriate circumstances for their medical, psychological, educational and social care as well as their rehabilitation and reintegration into society in a frame of freedom and human dignity. This provision is extremely important as it places a clear duty on the state to create the appropriate circumstances for the victim's protection while emphasizing the importance of respect for their freedom and human dignity. The implementing regulations should clearly detail how the state is to fulfill this duty.

Article 23 lists the rights guaranteed to victims of trafficking. These rights include the right to physical, psychological and moral integrity, the protection of the privacy and identity of the victim, the right to be heard and have their opinion and interests taken into account at all stages of the criminal process and the right to legal assistance. The law also requires the competent court to take appropriate measures to ensure the protection of victims and witnesses during the judicial process and the non-disclosure of their identity. This is complemented by Article 9 which provides for criminal penalties against anyone exposing victims or witnesses to danger by revealing their identity,

facilitating the perpetrators' contacting them or providing them with false information on their legal rights with the intention of harming them.

It is recommended that implementing regulations place a duty on the police officer or prosecutor who first comes into contact with a victim of trafficking to inform him or her of their rights, as contained in Article 23. This should be carried out in a language that the victim can understand. The same should apply to any information given to the victim at all stages of the investigations and trial, in accordance with Article 6(3)b of the Palermo Protocol. The victim should also be informed of their right to seek civil compensation for the harm suffered, in compliance with Article 6(6) of the Protocol.

ii. Shelters for victims

The law gives victims of trafficking the right to be protected and offered support services (Article 22). However, no guarantees are provided to ensure that the victim should consent to such protection and assistance, in particular in relation to measures of deprivation of liberty. Article 24 stipulates that the state should provide appropriate shelters for victims of trafficking, different from those where criminals are held. It does not specify whether detention in such shelters will be automatic for victims of trafficking, nor does it elaborate on the conditions of admission and stay.

It is common practice around the world for victims of trafficking to be detained in public or private shelters. The detention in shelters often is justified by the need to provide victims with housing and support as well as to protect them from further harm.³³ However, the detention of victims of trafficking can violate certain principles of international law such as right to freedom of movement and the prohibition on arbitrary detention. According to the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* of the Office of the United Nations High Commissioner for Human Rights, detention of victims is inappropriate, because it is often directly linked to their criminalization. The Guidelines explicitly stipulate that States should "consider protecting the right of all persons to freedom of movement and ensuring that anti-trafficking measures do not infringe upon this right."³⁴ Freedom of movement can only be restricted by measures that are lawful, necessary and proportionate.³⁵ Moreover, victim detention in shelters can amount to arbitrary detention if it is imposed routinely on victims of trafficking rather than on a case-by-case basis, if it is imposed for an

unspecified or indefinite period, or if it is not subject to administrative or judicial review.³⁶

The implementing regulations therefore should ensure that the detention of victims of trafficking will be carried out on a case-by-case basis. All detained victims should be given the right to challenge the legality of their detention through an administrative review process or in court in a timely manner, and be informed of that right upon their arrival at the shelter in a language they understand. Detained victims should also be given access to free legal assistance to enable them to assert this right. Further, the implementing regulations should guarantee that victims sign consent forms upon entering the shelter and that the consent of victims is reviewed periodically. Victims should be regularly informed of their rights, including their right to change their mind and leave at any time.³⁷

iii. Return to the country of origin

Article 22 places a duty on the state to return the victim to their country of origin in a safe and rapid manner, if they are foreign nationals or do not have a temporary residence in the country, in accordance with the rules and procedures established in a Decree to be issued by the Council of Ministers.

When implementing this article, the government should take into account its obligations under international refugee law, including the United Nations Convention Relating to the Status of Refugees to which it has been party since May 1981. Article 33 of the Convention states that “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”³⁸ The principle of non-refoulement suggests that in cases of foreigners, there are other options than repatriation available, such as asylum, third-country resettlement or long term residence permit. The human rights approach makes thorough individual, case by case risk assessment indispensable in order to avoid that the measures taken by the authorities result in serious collateral damage for the victim of trafficking in persons.³⁹ Any decision related to the return of the victim to their country of origin should be taken in collaboration with the regional office of the UN High Commission on Refugees (UNHCR) that, in turn, applies the UNHCR's *Guidelines on International Protection* for the application of refugee status to

victims of trafficking or persons at risk of being trafficked.⁴⁰ It is also essential for law enforcement authorities to collaborate closely with the UNHCR when identifying foreign victims of trafficking, to ensure that trafficking victims who might qualify as asylum seekers have access to the UNHCR.

Besides, the Egyptian government may consider providing victims of human trafficking with legal status and temporary residence permits in the long run. This would ensure that irregular immigration status is not used as a justification for the detention of foreign victims.⁴¹ One recommended practice in this regard may be the relevant Dutch legislation that offers any possible victim a three-month reflection period at the outset, during which the person might decide to officially report the crime to the authorities. If so, he or she is granted a residence permit for a certain time in the Netherlands. The Dutch National Trafficking Law indicates the understanding of the prolonged availability of those victims or witnesses of human trafficking who report an offence to the law enforcement institutions of the utmost importance.⁴²

On humanitarian grounds, it is advisable by all means to provide victims with long-term residence permits regardless of their willingness to testify. This concept points to the direction drawn by Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings, which stipulates that “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. [...] During this period it shall not be possible to enforce any expulsion order against him or her [...] (and) the Parties shall authorize the person concerned to stay in their territory.”⁴³

Section 3: Recommendations to the Government for Future Steps

The enactment of the law represents the first step towards the combating of trafficking and the protection of all victims. Yet, to be effective, the law needs to be accompanied by a comprehensive policy on the local and national levels. After her visit to Egypt, the UN Special Rapporteur recommended that the government develop a comprehensive, holistic and integrative national plan of action on combating trafficking in persons. This plan of action should clearly set out strategic objectives, responsibilities of all stakeholders, measurable indicators as well monitoring and evaluation tools.⁴⁴

In developing this plan of action, the government is urged to consider the experiences of other countries in combating trafficking in persons and

examples of good practices. When examining the international experience in the fight against human trafficking, it is advisable to establish a strong institutional mechanism responsible for tackling the issue of trafficking in persons as well as to set up a national action plan that serves as a country-specific check-list for the goals the state aims to achieve. Finland, for instance, besides having a governmental action plan on human trafficking, which was revised in 2008 in order to fully include the human rights approach, has recently mandated its Ombudsman for Minorities to serve as a National Rapporteur for Trafficking in Human Beings. The new office is responsible, *inter alia*, for providing the government with recommendations on legal aid.⁴⁵ A similar role could be taken on in Egypt by an Ombudsman office within the National Committee for Combating and Preventing Trafficking in Persons.

In relation to law enforcement, international and comparative experience show that the most common barriers in preventing or resolving trafficking cases are the victims' distrust of the criminal justice system, fear of law enforcement (retaliation and deportation in particular), sense of shame, lack of knowledge about their rights, public personnel's lack of training, lack of resources and lack of interpreters. In Egypt, distrust in the criminal justice system is exacerbated by the fact that law enforcement agencies are known for their mistreatment of many of the groups at risk of being trafficked, namely street children, people involved in sex work and migrants.

Jamaica's experience of establishing a dedicated taskforce within the national police to deal with human trafficking, together with a robust anti-trafficking legislation, has proved effective in gradually increasing the vigor with which perpetrators are prosecuted.⁴⁶ Law enforcement agencies could also benefit from training on the impact of trauma on a victim's memory of events that may explain inaccuracies in victim testimonies. This may be of special importance, since inaccuracies in testimonies are often mentioned among the greatest challenges for the authorities.

Developing information campaigns for the general public aimed at promoting awareness of the dangers associated with the crime of trafficking in persons is another area that deserves more attention in Egypt, since the government continues to do very little to raise awareness of trafficking and sex tourism. Another reason for concern is the fact that Egypt did not provide anti-trafficking training for its troops before they got deployed on international

peacekeeping missions last year.⁴⁷ These practices must change in light of the new piece of legislation.

Finally, the state should ensure that civil society is fully involved as an active partner in the fight against human trafficking. To this end, the state should strive to increase the capacity of civil society organizations working on trafficking in persons and use their knowledge and experience to engage with them in a meaningful collaboration to help provide the maximum protection possible for victims of trafficking.

Endnotes

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