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The American University in Cairo

School of Global Affairs and Public Policy

**TRAFFICKING OF ERITREANS IN EGYPT: FACTS AND
MISCONCEPTIONS**

A Thesis Submitted to the

Department of Law

**in partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law**

By

Emad Daoud

June 2015

The American University in Cairo
School of Global Affairs and Public Policy

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The American University in Cairo
School of Global Affairs and Public Policy
Department of Law

TRAFFICKING OF ERITREANS IN EGYPT: FACTS AND MISCONCEPTIONS

Emad Daoud

Supervised by Professor Usha Natarajan

ABSTRACT

The Egyptian government has not been able to effectively tackle the problem of trafficking of Eritreans and ensure that this crime would stop. Egypt continues to resist that Eritreans who are identified in the Sinai Peninsula are in most of the cases victims of trafficking. The Egyptian legal and institutional frameworks established have focused mainly on few forms of trafficking, neglecting the problem of Eritreans in the Sinai and framing it as a problem of illegal migration. In this thesis, the efforts carried out in Egypt to address the trafficking of Eritreans are analyzed carefully to highlight where the gaps that require bridging are. One of the reasons having a direct impact on the Egyptian inability to address the problem is the many gaps in the international legal framework addressing human trafficking. These gaps include failure to focus on the root causes that lead to trafficking, inadequate protection provided to the victims, lack of necessary international cooperation, tightened border measures, and low conviction rates for trafficking perpetrators. Egypt is recommended to amend its anti-trafficking law, ensure more effective coordination between the stakeholders involved in addressing trafficking, focus on capacity building of its police force and border-patrol in the Sinai, gear its diplomatic efforts towards international cooperation in this field, and work on eliminating the root causes of the crime by empowering the tribes of the Sinai. The thesis has reviewed primary and secondary literature and gathered a clear picture of trafficking in the Sinai through several interviews conducted with policy-makers and officials from international organizations involved in addressing trafficking of Eritreans in Egypt.

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Introduction

In 2011, a Bedouin tribal leader named Mohamed Rashid in Sinai Egypt recounted to a journalist how he had discovered a mass grave of Eritreans underneath a house belonging to suspected traffickers. The Eritreans had been murdered after having been held in captivity for an unknown period of time. In the vicinity of the grave, were inscriptions on the walls with such phrases as “In God we trust” and “For those who have nobody, there is the Almighty.”¹ They highlight the despair and the misery that these victims endured while in captivity, and their desperate hope for survival.

One of the serious challenges in the world today is the issue of human trafficking. A 2005 report issued by the International Labour Organization estimated human trafficking to be the third most profitable illicit business after drug trafficking and arms dealing.² Furthermore, the United Nations Office on Drugs and Crime (UNODC) indicated that in 2014, victims from 152 nationalities were identified in 124 countries all over the world.³ Recent figures show that 510 different trafficking flows were identified; with 49% of the victims are women, and 33% of the victims of children.⁴ East Asia, Eastern Europe, Central Asia, and Sub-Saharan Africa continue to be the origins of the highest number of victims identified.⁵ Western Europe, North America, and the Middle East are considered the highest destination countries where victims were identified.⁶ Statistics further show that around 53% of the identified victims are victims of sexual exploitation, 40% are victims of forced labour, and about 7% for other reasons.⁷ This reflects the broad scope of this criminal activity.⁸

¹ DANIEL REZENE MEKONNEN & MERON ESTEFANOS, FROM SAWA TO THE SINAI DESERT: THE ERITREAN TRAGEDY OF HUMAN TRAFFICKING 16 (2011), <http://papers.ssrn.com/abstract=2055303> (last visited Sep 3, 2014).

² Refworld | “A Global Alliance Against Forced Labour”. Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights At Work, REFWORLD, <http://www.refworld.org/docid/4289f7254.html> (last visited Aug 22, 2014).

³ UNITED NATIONS, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2014: INCLUDES TEXT ON COUNTRY PROFILES DATA. 5 (2015).

⁴ *Id.* at 5.

⁵ *Id.* at 41.

⁶ *Id.* at 7.

⁷ *Id.* at 9.

Human trafficking is not new to Egypt. There are several forms of human trafficking occurring in Egypt.⁹ One involves the trafficking of Egyptians to countries outside Egypt, mainly for sexual exploitation. It is this crime that receives major attention from the Egyptian authorities. Another form of trafficking involves forced sexual workers from Eastern Europe working in Egyptian nightclubs and underground brothels.¹⁰ Yet another involves the network of Egyptian traffickers who kidnap, torture, and transport African foreigners. This thesis studies a sub-section of this third group: Eritreans victims of trafficking in Egypt. Eritreans either arrive in Egypt willingly and then fall victim to trafficking, or are subject to trafficking beforehand and forced to enter Egypt as part of the trafficking journey. Some of them came to Egypt as the first stage of an intended journey to a better life in Europe or Israel; while others never thought of leaving their countries at all.¹¹

The trafficking of Eritreans in Egypt usually takes them through routes in the Sinai Peninsula. The problem first received attention in 2006.¹² However, the Egyptian government did not pay attention to punishing traffickers for their crime and protecting victims, but instead opted to treat it as a problem of illegal migration. The problem continued to persist without due attention by the government until 2011. With the 2011 Egyptian revolution, the trafficking of Eritreans in Sinai surfaced as a serious problem in Egypt. Several journalists attempted to explore what was happening in Sinai and more than one documentary movie was shot to highlight the problem.¹³ Several reports issued by international organizations and non-governmental organizations (NGOs) on the matter have asserted that media depiction

⁸ Refworld | “A Global Alliance Against Forced Labour”. Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights At Work, *supra* note 2.

⁹ Law Combating Trafficking in Persons: A Welcome Step that Requires Careful Implementation | Egyptian Initiative for Personal Rights, 5, <http://eipr.org/en/report/2010/11/24/1003> (last visited Aug 22, 2014).

¹⁰ LOUISE I SHELLEY, HUMAN TRAFFICKING A GLOBAL PERSPECTIVE 282 (2010), <http://dx.doi.org/10.1017/CBO9780511760433> (last visited May 13, 2014).

¹¹ Interview with the Egyptian National Council for Childhood and Motherhood, (2015).

¹² GERALD SIMPSON & HUMAN RIGHTS WATCH (ORGANIZATION), “I WANTED TO LIE DOWN AND DIE”: TRAFFICKING AND TORTURE OF ERITREANS IN SUDAN AND EGYPT 1 (2014), www.hrw.org/sites/default/files/reports/egypt0214_ForUpload_1.pdf (last visited May 13, 2014).

¹³ See DEATH IN THE DESERT, (2011), https://www.youtube.com/watch?v=Uc1z2hswH9E&feature=youtube_gdata_player (last visited Jan 27, 2015); Saleh, Amal, YOUM7 REVEALS THE SECRETS OF ORGAN TRAFFICKING IN SINAI, <http://english.youm7.com/News.asp?NewsID=347655> (last visited Oct 26, 2014).

and public understanding of the crime was far less than reality.¹⁴ In 2014, The United Nations High Commissioner for Refugees (UNHCR) reported that between 25,000 to 30,000 persons were victims of trafficking in East Africa and the Horn of Africa.¹⁵ Traffickers of sub-Saharan Africans in Egypt alone generated approximately \$622 million of profits between 2009 and 2013.¹⁶

Egypt provides a thriving environment for human trafficking and is a source, transit, and destination country. Unfortunately, it has failed to enact any effective laws that would deter human traffickers. Instead, Egypt prefers to frame the trafficking of Eritreans on its territory as a crime of smuggling and illegal migration, rather than trafficking, in order not to burden the state with further international obligations to punish trafficking perpetrators and protect victims. Adding to that is the assumption by the Egyptian government that admitting the existence of the crime in Sinai would jeopardize the international reputation of the country.¹⁷ As a result of this reluctance, traffickers operated freely in Sinai until 2012 when military attention and operations in the Sinai forced the reduction of the crime.¹⁸ This situation is aggravated by the absence of any actual transnational legal cooperation among states in combating

¹⁴ See WOMEN'S REFUGEE COMMISSION, *YOUNG AND ASTRAY: AN ASSESSMENT OF FACTORS DRIVING THE MOVEMENT OF UNACCOMPANIED CHILDREN AND ADOLESCENTS FROM ERITREA INTO ETHIOPIA, SUDAN AND BEYOND* (2013), womensrefugeecommission.org; UNHCR CAIRO, *VICTIMS OF TRAFFICKING* (2013); UNHCR concern at refugee kidnappings, disappearances in eastern Sudan, UNHCR, <http://www.unhcr.org/510275a19.html> (last visited Jan 28, 2015); Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 1916 (2010) (S/2011/433), RELIEFWEB (2011), <http://reliefweb.int/report/somalia/report-monitoring-group-somalia-and-eritrea-pursuant-security-council-resolution-1916> (last visited Jan 27, 2015); RACHEL HUMPHRIS, *REFUGEES AND THE RASHAIDA: HUMAN SMUGGLING AND TRAFFICKING FROM ERITREA TO SUDAN AND EGYPT* (2013); SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12; MIRJAM VAN REISEN ET AL., *HUMAN TRAFFICKING IN THE SINAI: REFUGEES BETWEEN LIFE AND DEATH* (2012); EveryOne Group, *ERITREAN REFUGEES. WE KNOW WHERE THEY ARE BEING HELD. AUTHORITIES TO INTERVENE NOW* (2010), http://www.everyonegroup.com/everyone/mainpage/entries/2010/12/4_eritrean_refugees._we_know_w_here_they_are_being_held._authorities_to_intervene_now.html; Laurie Lijnders, *CAUGHT IN THE BORDERLANDS Discursive, Bodily, and Collective Frontiers of Violence and Suffering Experienced by Eritrean Refugees in Israel*, December, 2011.

¹⁵ Refworld | Smuggling and Trafficking from the East of Africa : Progress Report, REFworld 2 (2014), <https://intranetapps.unhcr.org/refworld/country,COI,UNHCR,,YEM,,5437a14d4,0.html> (last visited Oct 13, 2014).

¹⁶ *Id.* at 2.

¹⁷ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 60–61.

¹⁸ Egyptian armed forces announce results of “Operation Sinai,” DAILY NEWS EGYPT, <http://www.dailynewsegypt.com/2012/09/08/egyptian-armed-forces-announce-results-of-operation-sinai/> (last visited Jan 28, 2015).

human trafficking including between Egypt and the Horn of Africa countries where most of these trafficked victims originate.¹⁹

As an Egyptian professional working at UNHCR for several years abroad, I was profoundly alarmed following my return. Scores of African asylum-seekers were reporting to the UNHCR about active human trafficking rings located in Egypt and how this network of traffickers were victimizing asylum-seekers who were already escaping from other forms of persecution, whether in Eritrea, Ethiopia or Sudan. In my investigation, I further noted that most of the reports addressing the problem provided descriptive analysis based on the debriefing of the surviving victims.²⁰ What this material largely lacked, however, was in-depth study on the capacity of the Egyptian government to properly combat the crime and how their efforts might be strengthened.

This thesis maps the current efforts exerted by the Egyptian government to address the human trafficking of Eritreans in the Sinai. The thesis argues that Egypt has the capacity to curtail this crime under the current Egyptian legal framework and with the available resources; however, it is the lack of political will that hinders these efforts. In fact, Egypt continues to frame the problem as an issue of illegal migration. And in spite of Egypt having already taken very positive steps towards addressing human trafficking on the legal, institutional, and diplomatic levels, these efforts to date have failed to reduce the numbers of African victims in the Sinai. The main problem is that the institutional framework constructed to address the problem has tailored all its

¹⁹ Refworld | Smuggling and Trafficking from the East of Africa, *supra* note 15.

²⁰ See Laurie Lijnders, *supra* note 14; Einat Fishbein, DESERT HELL - THE JOURNEY OF REFUGEES THROUGH THE SINAI DESERT (2010), http://www.phr.org.il/uploaded/Article_DesertHell_EinatFishbein_Yediot_19.11.10.pdf (last visited Sep 3, 2014); MEKONNEN AND ESTEFANOS, *supra* note 1; REISEN ET AL., *supra* note 14; SIMON M. WELDEHAIMANOT, KIDNAPPING, HOSTAGE-TAKING AND RANSOMING OF ERITREAN ASYLUM SEEKERS IN THE SINAI DESERT (2011), <http://papers.ssrn.com/abstract=1932457> (last visited Sep 3, 2014); HUMPHRIS, *supra* note 14; Sinai Perils: Risks to Migrants, Refugees, and Asylum Seekers in Egypt and Israel, <http://www.hrw.org/node/75943> (last visited Sep 3, 2014); Hotline for Migrant Workers, "THE DEAD OF THE WILDERNESS" TESTIMONIES FROM SINAI DESERT, 2010 (2011), http://ardc-israel.org/sites/default/files/testimonies_from_sinay_122010.pdf (last visited Sep 3, 2014); Mirjam van Reisen, Meron Estefanos & Conny Rijken, *The Human Trafficking Cycle*, (2013), http://www.borderline-europe.de/sites/default/files/background/Small_HumanTrafficking-Sinai2-web-3.pdf (last visited May 13, 2014); N. R Brown, *The Insecurity of Eritreans and Ethiopians in Cairo*, 16 INT. J. REFUG. LAW 661–701 (2004).

planning and implementation towards the service of the Egyptian victims of trafficking solely, with no attention to the needs of non-Egyptian victims.

To support my thesis, I have interviewed several government officials, NGO stakeholders, and UN officials on the usefulness of the Egyptian anti-trafficking legal and institutional framework, and the proposed directions to improve its efficacy. I have also built on previous studies on the matter, although studies covering trafficking in Egypt are a few. During data collection for the thesis, I noticed that, of the main obstacles facing scholars in proposing solutions to combat the issue of trafficking, this issue cannot be easily approached from one angle. The topic can be studied from a migration perspective, or in the context of forced labour, violence against women, prostitution, criminal studies, human rights, child abuse, and many other angles.²¹ Another set of studies focus mainly on analyzing the psychological trauma endured by the victims of trafficking;²² in an attempt to find proper services and treatment for them. Such studies cover the medical and psychological needs of the victims, which is beyond the scope of this thesis. Furthermore, many sources covering human trafficking focus on sexual-exploitation; which is not the situation facing many African victims of trafficking in Egypt.²³

Three particular studies are of interest in providing background for this thesis; one very recent study discusses *the policy alternatives of the Egyptian state towards human trafficking in Egypt*.²⁴ This study focuses mainly on the legal framework that Egypt has in place in its attempt to combat the trafficking of Egyptian children who are sold for sex to the gulf countries. The study exclusively discusses Egyptian

²¹ Jane Nady Sigmon, *Combating Modern-Day Slavery: Issues in Identifying and Assisting Victims of Human Trafficking Worldwide*, 3 VICT. OFFENDERS 245–257, 245–257 (2008).

²² Chris Beyrer, *Is trafficking a health issue?*, 363 THE LANCET 564 (2004); Cathy Zimmerman et al., *The Health of Trafficked Women: A Survey of Women Entering Posttrafficking Services in Europe*, 98 AM. J. PUBLIC HEALTH 55–59 (2008); Elizabeth Miller et al., *Migration, sexual exploitation, and women's health: a case report from a community health center*, 13 VIOLENCE WOMEN 486–497 (2007); Christine A. Courtois, *Complex trauma, complex reactions: Assessment and treatment*, 41 PSYCHOTHER. THEORY RES. PRACT. TRAIN. 412–425 (2004); Ekaterina V. Shkurkin, THE CONSEQUENCES OF THE SEXUAL ABUSE IN HUMAN TRAFFICKING (2004), <http://predoc.org/docs/index-190733.html> (last visited May 17, 2014).

²³ Eszter KONYVES-KOLONICS, *Human trafficking for sexual exploitation and its consequences: Focusing on Central-Eastern European trafficking*, , 99, <http://998top.com/fsh/projections/PDFs/5%20Article.pdf> (last visited May 13, 2014).

²⁴ Bernadette Michel Fakhry Guirguis, *School of Global Affairs & Public Policy*, 2012, <http://dar.aucegypt.edu/handle/10526/3126> (last visited May 13, 2014).

women and children victims; who are subjected to a specific environment that leads to their victimization. Although this study acknowledges the existence of the trafficking of Eritreans through Sinai, it focused on the actions taken by the Egyptian government in addressing the needs of the Egyptian victims only.

The second study of particular significance is a report issued by Human Rights Watch that provides a detailed description of human trafficking of Eritreans in Sudan and Egypt.²⁵ For a very detailed report, it only provided a descriptive analysis of the problem through a methodology totally dependent on interviewing different stakeholders, mainly victims, NGOs, and three Egyptian officials.²⁶ The report does not explain how the recommendations reached by this study relate to the study itself, and how these recommendations were reached. A third study by Mekonnen and Estefanos organizes the testimonies of the victims. The study does not discuss the efforts carried out by the Egyptian government and does not provide any recommendations for the Egyptian government.²⁷

The first chapter provides an analysis of the current international framework covering human trafficking, how the law has evolved over the past hundred years, and gaps in international law. This background helps understand where the Egyptian legal framework is derived from and shows the connection between the gaps in the international and domestic legal framework. Chapter Two explains how human trafficking of Eritreans started in Egypt and in the contemporary situation in the Sinai. I also consider the push factors that propel victims on the route through Egypt. In Chapter Three I present the Egyptian legal framework. Although the law offers a progressive step in its text, its application continues to be a serious challenge facing the Egyptian law enforcement. The Egyptian legal framework has a direct impact on the institutional setting designed by Egypt to address the required activities. I discuss this institutional framework in Chapter Four, considering public institutions as well as the role of civil society and international organizations in combating trafficking in Egypt. Unfortunately, Egyptian institutional efforts continue to deal with the trafficking of Eritreans as an illegal migration problem and exclude victims from

²⁵ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12.

²⁶ *Id.* at 14.

²⁷ MEKONNEN AND ESTEFANOS, *supra* note 1.

protection. The last chapter evaluates current efforts to address the trafficking of Eritreans in Egypt, highlighting the gaps in the Egyptian approach, and providing feasible recommendations for Egypt and other stakeholders to effectively combat this crime.

I. Human Trafficking: Mapping the International Legal Framework

The issue of human trafficking is not new to international law and has been addressed on several occasions over the past century.²⁸ In this chapter I present the current international legal framework for combatting human trafficking enshrined in The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter the Trafficking Protocol) starting by defining the crime in international law. Following the definition of the crime, I explain how the Trafficking Protocol was built up on five previous international treaties addressing the same problem. These treaties are: (1) The 1904 International Agreement for the Suppression of White Slave Traffic; (2) The 1910 International Convention for the Suppression of the White Slave Traffic; (3) The 1921 International Convention for the Suppression of Traffic in Women and Children; (4) The 1933 International Convention for the Suppression of the Traffic in Women of Full Age; and (5) The Geneva Convention of 1949 for the Suppression of the Traffic in Persons and the Exploitation of Others. Following this discussion, I consider other international legal instruments that include provisions tackling human trafficking and add to the international obligations of states to combat this crime.

A. Defining Human Trafficking: The Trafficking Protocol

The crime of human trafficking has been historically approached from different angles and the definition of the crime varied accordingly. The crime is generally defined as an act carried out using specific means for the purpose of exploiting other human beings. This involves coercing victims to carry out activities such as prostitution or forced labour.²⁹ Acknowledging the gaps in previous international

²⁸ CHRISTAL MOREHOUSE, COMBATING HUMAN TRAFFICKING POLICY GAPS AND HIDDEN POLITICAL AGENDAS IN THE USA AND GERMANY 25 (2009), <http://public.eblib.com/EBLPublic/PublicView.do?ptiID=750377> (last visited May 13, 2014).

²⁹ UNITED NATIONS OFFICE ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS: 2012. 16 (2012).

treaties addressing human trafficking;³⁰ the United Nations General Assembly established a committee in 1998 tasked with drafting a new treaty to fight international organized crime.³¹ This committee eventually produced the 2000 United Nations Convention against Transnational Organized Crime, supplemented by two protocols: the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol) which entered into force in 2003 after being ratified in record time.³² According to the Trafficking Protocol definition:

‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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.³³

The definition of the crime considers it as a form of modern day slavery. It is estimated that globally between 600,000 to 800,000 persons become victims of trafficking annually.³⁴ The ILO estimates that 20.9 million people are victims of trafficking globally.³⁵ It is a profitable business. Another quantitative study commissioned by the ILO in 2005 estimated annual profits from exploiting forced labour to be US\$44.3 billion, of which trafficking victims provide US\$31.6 billion.³⁶

³⁰ These treaties are: (1) The 1904 International Agreement for the Suppression of White Slave Traffic; (2) The 1910 International Convention for the Suppression of the White Slave Traffic; (3) The 1921 International Convention for the Suppression of Traffic in Women and Children; (4) The 1933 International Convention for the Suppression of the Traffic in Women of Full Age; and (5) The Geneva Convention of 1949 for the Suppression of the Traffic in Persons and the Exploitation of Others.

³¹ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO (2002).

³² A general understanding to the gravity of the problem led to the convention being swiftly ratified by 40 countries to enter into force in 2003. See UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 29 at 17, 81.

³³ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO (2002). Art. 3.

³⁴ KONYVES-KOLONICS, *supra* note 23 at 101.

³⁵ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 29 at 1.

³⁶ The same study adds two alarming notes: one indicating that these estimates are based on very ‘conservative’ data, while the other is that 75% of the profit is made

Disturbing statistics by the UN Office on Drugs and Crime (UNODC) show that from 2003 to 2006, 20 per cent of those trafficked were children. This percentage became 27 between the years 2007 to 2010;³⁷ and further to 33 percent in 2014.³⁸ In the meantime, a UNODC Report highlights that the rates of convictions for criminals continue to be very low.³⁹ As with all crimes, these statistics represent accessible information only and gathering data on such criminal activities is very complicated.⁴⁰ These statistics raise questions about the effectiveness of the current international legal framework on trafficking.

B. Precursors of the Trafficking Protocol

Before the establishment of the League of Nations, there were already multilateral treaties aimed at curbing human trafficking; although mainly Eurocentric and with very narrow scope.⁴¹ These treaties were the 1904 International Agreement for the Suppression of White Slave Traffic and the 1910 International Convention for the Suppression of the White Slave Traffic. Two other treaties came after the League of Nations: the 1921 International Convention for the Suppression of Traffic in Women and Children and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age. After the end of the Second World War another treaty came about at a time when the UN was gathering momentum for a strong human rights regime. This was the Geneva Convention of 1949 for the Suppression of the Traffic in Persons and the Exploitation of Others. The 1949 treaty remained in place for 50 years before it was reinforced by the 2000 United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, supplementing the 2000 United Nations Convention against Transnational Organized

inside industrialized states who ironically claim that they deploy all that is necessary to stop human trafficking and put blame on developing countries where trafficking victims frequently originate. PATRICK BELSER ET AL., FORCED LABOUR AND HUMAN TRAFFICKING: ESTIMATING THE PROFITS 17–18 (International Labour Office) (2005); David A. Feingold, *Human Trafficking*, FOREIGN POLICY 26–32 (2005)

³⁷ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 32 at 1; See SHELLEY, *supra* note 2 at 6.

³⁸ UNITED NATIONS, *supra* note 3 at 5.

³⁹ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 29 at 1.

⁴⁰ *Id.* at 16.; In the past two decades, the numbers of victims more than doubled. SHELLEY, *supra* note 2 at 4.

⁴¹ MOREHOUSE, *supra* note 28 at 26.

Crime. This Trafficking Protocol is considered to be the current cornerstone for the international legal framework for combatting the crime.

Guided by the in-depth analysis conducted by Morehouse⁴² on the similarities and differences between these six international treaties, I explain how the Trafficking Protocol added to the international legal framework and how it bridged several gaps in its predecessors. The Trafficking Protocol serves as a culmination of the previous attempts for drafting a comprehensive treaty to address the crime.

1. From an ethnicity perspective:

The first two international treaties addressing human trafficking (1904-1910) were Eurocentric with clear reference to the supremacy of the white race.⁴³ Both treaties criminalize all forms of trade in victims of white race only, referring mainly to protecting European citizens whether in Europe or any of the colonies of the signatories. Along with the establishment of the League of Nations, and hence the greater involvement of world states in international relations, the preference for the white race had to come to an end. All of the subsequent trafficking treaties had no provisions that specifically focused on a particular race.

2. Being age specific.

It was only the 1904 treaty that excluded the protection of children as it was focused mainly in protecting white women. Therefore, the following 1910 treaty assured the inclusion of female minors (under 20 years) along with adult women.⁴⁴ The 1921, 1933, and 1949 treaties did not have a clear age dimension and focused on defining the victim regardless of his\her age. However, the Trafficking Protocol included in its

⁴² *Id.* at See 27–70.

⁴³ The 1904 agreement only obligates the contracting states which are all European States and their dominions to combat the “White” Slave Traffic. See The International Agreement for the Suppression of the “White Slave Traffic,” 18 May 1904, 35 Stat. 1979, 1 L.N.T.S. 83, entered into force 18 July 1905., , <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1904.html> (last visited Sep 10, 2014); the following convention also only focused on the "White" Slave Traffic crime. See 1910 International Convention for the Suppression of the White Slave Traffic, , <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1910.html> (last visited Dec 2, 2014).

⁴⁴ Article 2 of the Convention covers women under the age of 20; while Article 3 covers women above that age. 1910 Convention, *supra* note 43.

definition of victims all those children who are subjected to the act of trafficking with the purpose regardless of the means deployed.⁴⁵

3. From a gender perspective

Human trafficking was narrowly understood in the first half of the twentieth century as a problem of sex trafficking. The four early treaties (1904, 1910, 1921, and 1933) focused exclusively on combatting the trafficking of women for sexual purposes. The 1949 treaty was a turning point in this regard; it expanded the definition of human trafficking to include male victims. It went further to disregard gender and state that any trafficking victim requires protection and support.⁴⁶ The Trafficking Protocol's articles all apply regardless of gender. However, the title mentions 'Especially for Women and Children', acknowledging the special vulnerability of these two groups.⁴⁷

4. Geographic application:

Prior to the 1949 treaty, all the treaties considered human trafficking as a problem threatening Europe only. The countries involved in negotiating and signing these treaties were either European countries or their colonies. This shows how early international lawmakers assumed that other parts of the world had no rights to be protected from human trafficking.⁴⁸ The 1949 treaty was the first one acknowledging the importance of addressing the problem outside Europe as well.⁴⁹

5. On the position of internal human trafficking:

The issue of internal human trafficking is a source of confusion on both the domestic and international levels. Only the 1904 and 1933 treaties clearly stipulated that identifying a victim of trafficking is conditioned by crossing international borders, hereby defining the human trafficking crime as a transnational crime only.⁵⁰

⁴⁵ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 19. Art. 3(a)(c)(d).

⁴⁶ MOREHOUSE, *supra* note 28 at 31.

⁴⁷ This confusion on the gender aspect of the crime has had its toll on the process of designing national laws to help combatting the crime. Countries that have already drafted anti-trafficking national laws have been confused in this matter, some of them focusing only on women. *Id.* at 31.

⁴⁸ *Id.* at 33.

⁴⁹ *Id.* at 34.

⁵⁰ Final Protocol (D) clarifies that crimes that do not involve border crossing are not covered by the convention; "detention, against her will, of a woman or girl in a brothel could not, in spite of its gravity, be dealt with in the present Convention, seeing that it is governed exclusively by internal legislation". International Agreement for the Suppression of the "White Slave Traffic," 18 May 1904,

However, Article 3 of the current Trafficking Protocol makes no reference to border crossing as an aspect of the human trafficking crime definition.⁵¹ The UNODC website further explains that the definition also includes internal human trafficking crimes.⁵² Nevertheless, Article 4 of the same Protocol states that the scope of the Protocol only covers such crimes that are committed transnationally.⁵³ This creates confusion whether the drafters of the Trafficking Protocol intended only to cover the transnationally committed crimes, or all forms including internal trafficking. This issue has repercussions on the process of identifying the victims and offering support and rights.

6. Inclusion of different forms of human trafficking other than forced sexual labour:

The inclusion of different forms of human trafficking is considered to be an improvement brought about by the Trafficking Protocol, as all its predecessors focused only on abolishing sexual exploitation. The Trafficking Protocol gives more space for inclusion of other forms of trafficking including forced labour and organ theft as per Article 3.⁵⁴

7. Agency for identifying victims:

35 Stat. 1979, 1 L.N.T.S. 83, entered into force 18 July 1905., *supra* note46,; Article 1 of the 1933 Convention covers only the crimes '*carried out in another country*'. League of Nations, 1933 INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN WOMEN OF FULL AGE, https://www.oas.org/juridico/mla/en/traites/en_traites-inter-women_1933.pdf (last visited Sep 10, 2014).

⁵¹ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note5, Art 3.

⁵² "Once initial control is gained, victims are moved to a place where there is a market for their services and where they often lack language skills and other basic knowledge that would enable them to seek help. Destinations are commonly in foreign countries, but that is not always the case – international borders do not have to be crossed. Upon arrival at their destination, victims are forced to work in difficult, dangerous and usually unpleasant occupations, such as prostitution, the production of child pornography or general labour, in order to earn profits for the traffickers." UN Office on Drugs and Crime, SUMMARY PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, <http://cjei.org/publications/IAWJ%20Conference/Protocol-Summary.doc> (last visited Sep 10, 2014).

⁵³ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 31. Article 4 states that "This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established . . . , where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences."

⁵⁴ Article 3 states that "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." *Id.* Art. 3.

As one of the main pillars for combatting trafficking, all the six treaties covering human trafficking identified the agency with responsibility for identifying victims.⁵⁵ The 1904 Treaty assigned agency to the state where the victim is found.⁵⁶ The 1921 Treaty specifically placed this responsibility on the immigration and emigration authorities of the countries;⁵⁷ showing the tendency towards interpreting human trafficking as a policing problem, shifting the focus to pursuing criminals rather than healing victims. The 1933 Treaty was a prosecution-oriented agreement and had no provisions for victim identification.⁵⁸ The 1949 Convention in Article 17 reiterated the responsibility of both the immigration and emigration authorities of the contracting parties.⁵⁹ The Trafficking Protocol puts the responsibility on the immigration and border control authorities in Article 10.⁶⁰

8. Rehabilitation of victims:

All six international treaties have put responsibility for the rehabilitation of victims on the shoulders of the government. However, the scope of rehabilitation services has

⁵⁵ MOREHOUSE, *supra* note 28 at 41–42.

⁵⁶ Article 2 of the 1904 treaty stated that: “Each of the Governments undertakes to have watch kept, especially in railway station, ports of embarkation, and en route, for persons in charge of women and girls destined for an immoral life.” International Agreement for the Suppression of the “White Slave Traffic,” 18 May 1904, 35 Stat. 1979, 1 L.N.T.S. 83, entered into force 18 July 1905., *supra* note 43.

⁵⁷ 1921 INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN WOMEN AND CHILDREN, , http://treaties.un.org/doc/Treaties/1950/04/19500424%2010-31%20PM/Ch_VII_2p.pdf (last visited Sep 10, 2014). Art. 7 mentions that “The High Contracting Parties undertake in connection with immigration and emigration to adopt such administrative and legislative measures as are required to check the traffic in women and children.”

⁵⁸ MOREHOUSE, *supra* note 28 at 42.

⁵⁹ League of Nations, *supra* note 50. Article 17 states that: “The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, ... to check the traffic in persons of either sex for the purpose of prostitution. In particular they undertake: To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route; ... To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution; To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.”

⁶⁰ Article 10 states that “Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine: (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons; (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.” CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 31. Art. 10.

varied from one treaty to another. The 1904 Convention offered the victims the possibility of housing and time to recover from their trauma. The 1921 Convention only made one reference to the rehabilitation of victims in Article 7.⁶¹ There was no description of what type of rehabilitation would be offered for victims other than utilizing general terms such as accommodation and assistance without identifying time frames or the quality of such services. The 1949 Convention only mentioned the rehabilitation of victims in articles 16 and 19. Article 16 was vague enough to allow the contracting parties leeway in deciding the measures of rehabilitation offered to victims;⁶² Article 19 mentions that this rehabilitation was temporary until the victim was repatriated back to her home country. Furthermore, the rehabilitation of victims was only to serve those who were victims of sexual exploitation, excluding all other forms of trafficking.⁶³

The Trafficking Protocol comes with an elaborate Article 6 that details all of the rehabilitation services that should be provided to the victims of trafficking. Article 6 covers a variety of rights including a state's responsibility to ensure the physical and legal safety of the victims; the confidentiality of legal proceedings relating to the crime; and the provision of psychological and social recovery services. The same article requires the involvement of NGOs and other civil society experts. The article further details provisions of proper housing, medical services, material assistance,

⁶¹ Article 7 states that "The High Contracting Parties...arrange for the exhibition, in railway stations and in ports, of notices warning women and children of the danger of the traffic and indicating the places where they can obtain accommodation and assistance." 1921 INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN WOMEN AND CHILDREN, *supra* note 146.

⁶² Article 16 states that "The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention." 1949 CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS, <http://www.ohchr.org/Documents/ProfessionalInterest/trafficpersons.pdf> (last visited Sep 10, 2014).

⁶³ Article 19 states that "The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations thereunder and so far as possible:
(1) Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance;" *Id.*

education, employment prospects, and a legal capacity to pursue litigation for obtaining compensation from the perpetrators.⁶⁴

9. Providing legal residence to victims

The legal residence of victims is at the heart of any effective attempt to protect victims of trafficking. In most cases, victims are lured by false promises of a better life in a new country. Other victims had contracted a smuggler to take them to another country before falling victim to trafficking while en-route. The 1904 Convention only mentioned the voluntarily repatriation of victims back to their home countries, without mentioning any possibility of obtaining a legal residence in the country where victims were identified.⁶⁵ The 1949 Convention conditioned the victim's legal residence on the duration of the investigation of the crime hence, assuming the return of the victims to their home countries at the end of the investigation.⁶⁶ The same Convention left the issue of providing legal residence to victims to be handled by the national laws of the contracting parties.⁶⁷ The Trafficking Protocol states clearly that providing legal residence to victims is at the discretion of the governments according to their national laws.⁶⁸

10. International Cooperation:

All six treaties covering human trafficking had provisions on international cooperation. It was clear from the beginning that this was a crime that would require international cooperation in order to restrain it. However, the nature of this cooperation was expressed differently in each treaty. The first three Conventions (1904, 1910, and 1921) had general provisions covering international cooperation.⁶⁹

⁶⁴ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 31. Art. 6.

⁶⁵ International Agreement for the Suppression of the "White Slave Traffic," 18 May 1904, 35 Stat. 1979, 1 L.N.T.S. 83, entered into force 18 July 1905., *supra* note 43. Art. 3.

⁶⁶ 1949 CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS, *supra* note 67, Art. 5; MOREHOUSE, *supra* note 2 at 49.

⁶⁷ MOREHOUSE, *supra* note 28 at 50.

⁶⁸ Article 7 of the 2000 Protocol states that "(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." CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 31. Art. 7.

⁶⁹ See International Agreement for the Suppression of the "White Slave Traffic," 18 May 1904, 35 Stat. 1979, 1 L.N.T.S. 83, entered into force 18 July 1905., *supra* note 145. Art. 1; See also 1921

The 1933 Convention, being a prosecution-oriented Convention, increased the level of international cooperation by adding the exchange of records of convictions and any other useful information.⁷⁰ In its Article 13, the 1949 Convention regulated the agencies of international cooperation including the judicial authorities, the Ministries of Justice, and diplomatic and consular cooperation.⁷¹ This was in addition to Article 15 which stipulated prosecution-related cooperation.⁷²

The Trafficking Protocol Article 18 discusses detailed “mutual legal assistance” which provides a framework for legal cooperation.⁷³ Furthermore, the Trafficking Protocol lists in Article 10 the different forms of cooperation between state parties in the form of information exchange. This cooperation is conditioned as being “appropriate” and in accordance with relevant domestic laws.⁷⁴ This creates a huge gap in the article especially because cooperation in domestic criminal investigations often gives rise to confidentiality and other domestic legal rights. Other forms of cooperation in the Trafficking Protocol include cooperation with NGOs when it comes to public campaigning for the prevention human trafficking.⁷⁵

C. Other international treaties addressing human trafficking

There are several provisions in other international legal instruments that address human trafficking. These include multilateral human rights law treaties. It is first

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN WOMEN AND CHILDREN, *supra* note 146. Art. 3.

⁷⁰ Article 3 of the 1933 convention states that “Records of convictions, together with any useful and available information with regard to the offender, such as his civil status, description, finger-prints, photograph and police record, his method of operation, etc. Particulars of any measures of refusal of admission or of expulsion which may have been applied to him.”, League of Nations, *supra* note 50. Art. 3.

⁷¹ 1949 CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS, *supra* note 62. Art. 13

⁷² Article 15 of the 1949 Convention states that “To the extent permitted by domestic law and to the extent to which the authorities responsible for the services referred to in article 14 may judge desirable, they shall furnish to the authorities responsible for the corresponding services in other States the following information: (1) Particulars of any offence referred to in the present Convention or any attempt to commit such offence; (2) Particulars of any search for any prosecution, arrest, conviction, refusal of admission or expulsion of persons guilty of any of the offences referred to in the present Convention, the movements of such persons and any other useful information with regard to them. The information so furnished shall include descriptions of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.” *Id.* Art. 15

⁷³ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 33.

⁷⁴ *Id.* Article 10.

⁷⁵ *Id.* Article 9.

important to note the relationship between the Trafficking Protocol and the Protocol against the Smuggling of Migrants by Land, Sea and Air that supplements the Convention against Transnational Organized Crime (hereafter the Smuggling Protocol), which entered into force 28 January 2004. The importance of the Smuggling Protocol lies in the fact that there is a thin line differentiating between the crime of trafficking and that of smuggling. In many situations authorities identify a crime of trafficking as that of smuggling. This matter leads to direct repercussions on the rights entitled to the victims of the crime, and on the conviction of the perpetrators. In order to clarify the relationship between the Trafficking Protocol and the Smuggling Protocol; the definition of smuggling according to the Smuggling Protocol states the following:

Smuggling of migrants shall mean 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 (UN General Assembly, 2000a).⁷⁶

Compared to the definition of trafficking mentioned earlier in this chapter, it is evident that smuggling does not involve the same means, or purpose, as human trafficking.⁷⁷ The crime of smuggling only involves the act of transferring a person across borders illegally. Smuggling does not involve any use of allurement or coercion, and does not involve any exploitation of the victim. On the other hand, in practice, it is sometimes very difficult to differentiate between smuggling and trafficking. In many cases victims voluntarily contract with a smuggler. They later lose control over the situation and find themselves in a condition by which they forfeit their freewill.⁷⁸ This is commonly seen amongst Eritrean victims of trafficking in Egypt.⁷⁹ These potential victims in some cases initially contract a smuggler who turns into a trafficker and exploits the victims in different ways.⁸⁰

⁷⁶ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 5. Article 3.

⁷⁷ WELDEHAIMANOT, *supra* note 20 at 5.

⁷⁸ RACHEL HUMPHRIS, REFUGEES AND THE RASHAIDA: HUMAN SMUGGLING AND TRAFFICKING FROM ERITREA TO SUDAN AND EGYPT, 3 (2013).

⁷⁹ See HUMPHRIS, *supra* note 14; WOMEN'S REFUGEE COMMISSION, *supra* note 14; MEKONNEN AND ESTEFANOS, *supra* note 1; WELDEHAIMANOT, *supra* note 20.

⁸⁰ MEKONNEN AND ESTEFANOS, *supra* note 1.

The Smuggling Protocol also provides a set of protection measures to the victims of smuggling;⁸¹ however, the scope of these measures is narrower compared to the protection measures provided in the Trafficking Protocol. Article 16(5) of the Smuggling Protocol goes further in diminishing the rights of the victims to give contracting states the right to detain the victims of smuggling.⁸²

Another relevant international instrument that addresses human trafficking is the Universal Declaration of Human Rights (UDHR) which prohibits all forms of slavery.⁸³ It also assures the equality of every person before the law,⁸⁴ and secures the right to work freely with favorable conditions.⁸⁵ These provisions cut across the definition of trafficking as they prohibit exploitation, which is the purpose behind trafficking. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) also includes a provision for fair employment conditions.⁸⁶

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also includes provisions for the protection of women's health⁸⁷ and employment rights that guarantee equal opportunities with men.⁸⁸ These provisions correspond to the protection of victims as included in Article 6 of the Trafficking Protocol.⁸⁹ The Convention Against Torture (CAT) covers many aspects of the

⁸¹ Article 16 provides a set of protection and assistance measures. UN GENERAL ASSEMBLY, PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2000), <http://www.refworld.org/docid/479dee062.html> (last visited Feb 27, 2015).

⁸² Article 16(5) states that "In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers." *Id.*

⁸³ Refworld | Universal Declaration of Human Rights, REFWORLD, <http://www.refworld.org/docid/3ae6b3712c.html> (last visited Aug 22, 2014). Art. 4.

⁸⁴ *Id.* Art. 2.

⁸⁵ *Id.* Art. 23.

⁸⁶ See Philip Alston, *United Nations' Specialized Agencies and Implementation of the International Covenant on Economic, Social, and Cultural Rights, The*, 18 COLUM J TRANSNATL L 79 (1979).

⁸⁷ Refworld | Convention on the Elimination of All Forms of Discrimination Against Women, REFWORLD, <http://www.refworld.org/docid/3ae6b3970.html> (last visited Oct 9, 2014). Art. 12.

⁸⁸ *Id.* Art. 13.

⁸⁹ Article 6 covers the assistance to and protection of victims of trafficking in persons; it includes in sub-article (3) providing victims with medical, psychological and material assistance. Sub-article (4) pays attention to the age, gender and special needs of victims. This indicates a special attention to the needs of women. PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN (15 NOVEMBER 2000), A/RES/55/25, SUPPLEMENTING THE

punishments of perpetrators of torture; Articles 12 and 14 stipulate the rights of victims in receiving compensation for what they have endured.⁹⁰ These articles correspond to Article 6(6) of the Trafficking Protocol which ensures that domestic legal systems should allow for victims to be compensated.⁹¹ In addition, the Convention on the Rights of the Child (CRC) includes many provisions covering the right not to be trafficked,⁹² not to be economically abused,⁹³ to be protected from sexual exploitation,⁹⁴ right to preserve the child's identity and protect the child from being illicitly transferred,⁹⁵ and the right to be protected from forcible recruitment in armed conflict.⁹⁶

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) goes a further step to cover compensation not only for trafficked victims but for their families as well.⁹⁷ Article 10 of ICRMW also addresses protection against degrading treatment and torture, while a specific provision combatting human trafficking is included in Article 11.⁹⁸ Article 16(2) of the same convention covers the responsibility of the state to provide protection to the migrant worker from physical violence and physical injury.⁹⁹ This specific article is

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, G.A. RES. 25, ANNEX II, U.N. GAOR, 55TH SESS., SUPP. NO. 49, AT 60, U.N. DOC. A/45/49 (VOL. I) (2001), ENTERED INTO FORCE DEC.25, 2003., 41–51.

⁹⁰ Art.12, Art. 14. Refworld | Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, REFWORLD, <http://www.refworld.org/docid/3ae6b3a94.html> (last visited Oct 9, 2014).

⁹¹ Article 6(6) PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN (15 NOVEMBER 2000), A/RES/55/25, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, G.A. RES. 25, ANNEX II, U.N. GAOR, 55TH SESS., SUPP. NO. 49, AT 60, U.N. DOC. A/45/49 (VOL. I) (2001), ENTERED INTO FORCE DEC.25, 2003., *supra* note 89.

⁹² Refworld | Convention on the Rights of the Child, REFWORLD, <http://www.refworld.org/docid/3ae6b38f0.html> (last visited Oct 9, 2014). Art. 35.

⁹³ *Id.* Art. 32.

⁹⁴ *Id.* Art. 34.

⁹⁵ *Id.* Art. 7,8, and 11.

⁹⁶ *Id.* Art. 38.

⁹⁷ Refworld | International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, REFWORLD, <http://www.refworld.org/docid/3ae6b3980.html> (last visited Oct 9, 2014).

⁹⁸ This article states that “(1) No migrant worker or member of his or her family shall be held in slavery or servitude. (2) No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.” *Id.* Art. 11.

⁹⁹ *Id.* Art 16.

cross-cutting with Article 6 of the Trafficking Protocol under which the physical safety of victims must be assured.¹⁰⁰

The principle of non-refoulement as enshrined in customary international law adds responsibility over contracting states not to forcibly return a person to a location where their life or freedom is threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion. This principle is also included in Article 33 of the 1951 Convention Relating to the Status of Refugees (hereafter the 1951 Convention).¹⁰¹ This principle is relevant to the protection of victims because in almost all of the cases, forced repatriation of a trafficking victim would subject this person to possible persecution at the hands of the same criminals who victimized him/her in the first place. Thus, states have a duty not to forcibly return victims of trafficking.¹⁰² As explained by Raffaella Di Chio, trafficking victims are protected on the grounds of being members of a particular social group in most of the cases; or on the grounds of race if a specific minority group was targeted owing to their vulnerable status in a country.¹⁰³ Furthermore, according to Article 31 of the 1951 Convention, refugees should not be penalized for illegal border crossing and residence.¹⁰⁴

¹⁰⁰ Article 6(5) states that: Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory. PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN (15 NOVEMBER 2000), A/RES/55/25, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, G.A. RES. 25, ANNEX II, U.N. GAOR, 55TH SESS., SUPP. NO. 49, AT 60, U.N. DOC. A/45/49 (VOL. I) (2001), ENTERED INTO FORCE DEC.25, 2003., *supra* note 89.

¹⁰¹ Article 33 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.” UN GENERAL ASSEMBLY, CONVENTION RELATING TO THE STATUS OF REFUGEES (1951), <http://www.refworld.org/docid/3be01b964.html> (last visited Feb 28, 2015).

¹⁰² See Raffaella Di Chio, *THE INTERNATIONAL PROTECTION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS AND THE GENEVA CONVENTION RELATING TO THE STATUS OF REFUGEES.*, 16 PAK. J. WOMENS STUD. (2009), <http://search.ebscohost.com/login.aspx?direct=true&profile=ehost&scope=site&authtype=crawler&jrnl=10241256&AN=45411022&h=uQwaeOdTBxpX6m3Sy6ZHg1fwa27dkspa7NxL3xRB%2Bxn7qqSgONi%2BPxyi4%2BRxskSZ1JigzOCaXZn2Ua3Cn5XztQ%3D%3D&crl=c> (last visited May 13, 2014).

¹⁰³ *Id.* at 106–112.; Refworld | Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked, REFWORLD 12–14, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=443679fa4&skip=0&query=Guidelines%20on%20International%20Protection%20No.%207> (last visited Nov 3, 2014).

¹⁰⁴ Mary A. Young, *The Smuggling and Trafficking of Refugees and Asylum Seekers: Is the International Community Neglecting the Duty to Protect the Persecuted in the Pursuit of Combating Transnational Organized Crime?*, 27 SUFFOLK TRANSNATL REV 101–381, 111 (2003).

The next chapter describes the trafficking of Eritreans in Egypt. Following from this, Chapter Three describes the legal approach adopted by the Egyptian authorities, which is heavily influenced by the Trafficking Protocol.

II. Human Trafficking of Eritreans in Egypt

This chapter describes the reasons Eritreans flee their home country and how they fall victim to trafficking. The chapter then highlights several obstacles to mapping the crime in Egypt.

A. Overview

The issue of smuggling people from Sub-Saharan Africa through Egypt, across the Mediterranean, into Europe and beyond is not a new thing. This route has been sought by many people over a large span of time.¹⁰⁵ People have always sought to emigrate in pursuit of a better life. One of the negative impacts of colonization has been ideas of cultural domination that encourages sub-Saharan Africans to believe that only in the West exists a decent life worth aspiring to.

Eritreans sought to illegally cross borders into Sudan and moving onwards through Libya before boarding illegal vessels across the Mediterranean Sea to Europe. Overtime, however, tight policing by Libya in collaboration with Italy made this route unfavorable.¹⁰⁶ Therefore, the shift towards illegally crossing the Egyptian Sinai into Israel became preferred.¹⁰⁷

Smuggling Eritreans from Egypt to Israel was first reported in 2006.¹⁰⁸ However, the issue of travelling illegally and contracting with smugglers took a dramatic up-turn after the Egyptian revolution broke out on 25 January 2011. The country fell into chaos and Egyptian border patrols' weakened. Suddenly reports started surfacing

¹⁰⁵ WELDEHAIMANOT, *supra* note 20 at 6.

¹⁰⁶ MEKONNEN AND ESTEFANOS, *supra* note 1 at 13.

¹⁰⁷ This route from Kassala to Israel required smugglers to guide the person through a 3000 km journey. Karen Jacobsen, Sara Robinson & Laurie Lijnders, *Ransom, Collaborators, Corruption: Sinai Trafficking and Transnational Networks*, , 5 (2013),

<http://www.globalinitiative.net/dev/download/human-trafficking/subsaharan-africa/Feinstein%20International%20Center%20-%20A%20Case%20Study%20of%20the%20Eritrean%20Migration%20System%20from%20Eritrea%20to%20Israel%20Aug%202013.pdf> (last visited May 13, 2014).

¹⁰⁸ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 22.

from different sources that not only was smuggling of illegal immigrants taking place in Egypt; in fact it was a wide-scale and full blown process of human trafficking.¹⁰⁹

The perpetrators of human trafficking in the Sinai have been identified. As the tribe in control of east Sudan, the Rashaida tribe traffickers have been operating continuously from the borders with Eritrea to the south of Egypt.¹¹⁰ Upon crossing the borders to Egypt, some members of the Sawarka Bedouins of Egypt – specifically in the Sinai - have deployed heavy resources in order to extort money out of their victims.

Otherwise they trade in the victims' organs, in some cases kill them, or leave them to die in the desert.¹¹¹

It has been reported that most of the victims of trafficking in Egypt are Eritreans who have been either lured by smugglers turned traffickers to cross Sudan and Egypt all the way to Israel, or have been actually kidnapped from refugee camps in Sudan and forced to travel to Egypt.¹¹² In Egypt they are sold to other Egyptian tribes who further force the victims to pay large sums of money in exchange for release,¹¹³ or forcibly remove body organs and leave the victim to die.¹¹⁴ There are other testimonies that show that victims are forced to engage in involuntary labour in

¹⁰⁹ Hotline for Migrant Workers, *supra* note 20; “Stand in the Sinai” now online, , <http://thecnnfreedomproject.blogs.cnn.com/2012/09/26/stand-in-the-sinai-now-online/> (last visited Oct 8, 2014); Sinai Perils, *supra* note 20; Laura King, *Rights group: Egypt turns blind eye to human trafficking in Sinai*, LOS ANGELES TIMES, February 11, 2014, <http://www.latimes.com/world/worldnow/la-fg-wn-rights-group-egypt--trafficking-sinai-20140211-story.html> (last visited Oct 8, 2014); HUMPHRIS, *supra* note 14; WELDEHAIMANOT, *supra* note 20; Harriet Sherwood, *Hundreds of Eritreans enslaved in torture camps in Sudan and Egypt*, THE GUARDIAN, February 11, 2014, <http://www.theguardian.com/world/2014/feb/11/eritreans-enslaved-traffickers-sudan-egypt-torture-camps> (last visited Oct 8, 2014); REISEN ET AL., *supra* note 14; Egypt/Sudan: Traffickers Who Torture | Human Rights Watch, , <http://www.hrw.org/news/2014/02/11/egyptsudan-traffickers-who-torture> (last visited Oct 8, 2014); MEKONNEN AND ESTEFANOS, *supra* note 1; Egypt: “In Sinai, I saw hell”; refugees are easy prey for brutal human traffickers, THE WASHINGTON TIMES, <http://www.washingtontimes.com/news/2013/jul/21/in-sinai-i-saw-hell-refugees-are-easy-prey-for-bru/> (last visited Oct 8, 2014); Egypt: Human Trafficking in Sinai, , <http://thinkafricapress.com/egypt/human-trafficking-sinai-eritrea-israel-sudan> (last visited Oct 8, 2014); Fishbein, *supra* note 20; Laurie Lijnders, *supra* note 14.

¹¹⁰ HUMPHRIS, *supra* note 14 at 10.

¹¹¹ *Id.* at 10.

¹¹² WOMEN’S REFUGEE COMMISSION, *supra* note 14 at 17; MEKONNEN AND ESTEFANOS, *supra* note 1 at 13; SHELLEY, *supra* note 10 at 267.

¹¹³ WELDEHAIMANOT, *supra* note 20 at 7.

¹¹⁴ DEATH IN THE DESERT, *supra* note 13.

slavery-like conditions.¹¹⁵ The traffickers set varying ransom payments in exchange for release.¹¹⁶

Eritreans victims usually encounter the traffickers in Sudan for the first time.¹¹⁷ Either the Eritreans search for the smugglers directly themselves out of eagerness to leave quickly and arrive at their ideal destinations, or are surrendered to them through corrupt local authorities. In its 2014 report, Human Rights Watch documented eight cases of victims who had been handed over to the traffickers directly by Sudanese police.¹¹⁸ Others are kidnapped directly from one of the many insecure Eritrean refugee camps that are located in the east of Sudan.¹¹⁹ Some testimonies also indicate that some of the refugees themselves inside the camps in East Sudan become trafficking brokers themselves; owing to the economic hardship endured in the camp, during long sojourns there.¹²⁰

The number of trafficked Eritrean victims who were reported by UNHCR peaked in 2012.¹²¹ Victims started reporting various abuses committed on the road: torture, extortion of large sums of money to continue the journey, rape,¹²² organ theft,¹²³ and in some cases murder of those who did not comply. Documented testimonials of victims¹²⁴ support the contention that the Bedouins requested ransom payments exceeding 30,000 USD in many cases, and possessed large stocks of weaponry, manpower, and enough cash for bribing authorities frequently.¹²⁵ UNHCR estimates that victims are held captive from six months to more than a year.¹²⁶ Furthermore, traffickers are able to match all the challenges posed by state border controls should a

¹¹⁵ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 35; information shows that Eritrean victims of trafficking are forced to work in marijuana fields in north Sinia. MEKONNEN AND ESTEFANOS, *supra* note 1 at 14.

¹¹⁶ One report mentioned that traffickers discriminate in the ransom requests offering lower ransoms for Muslims against exaggerated sums for releasing Christians. WELDEHAIMANOT, *supra* note 20 at 9.

¹¹⁷ HUMPHRIS, *supra* note 14 at 7.

¹¹⁸ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 25.

¹¹⁹ *Id.* at 12.

¹²⁰ *Id.* at 14.

¹²¹ UNHCR CAIRO, *supra* note 14.

¹²² WELDEHAIMANOT, *supra* note 20 at 7.

¹²³ A car crash in Sinai in 2011 revealed evidence of a death of a doctor holding iceboxes including human organs. Saleh, Amal, *supra* note 13.

¹²⁴ See Hotline for Migrant Workers, *supra* note 20.

¹²⁵ WELDEHAIMANOT, *supra* note 20 at 9; MEKONNEN AND ESTEFANOS, *supra* note 1 at 14.

¹²⁶ Confidential interviews conducted by UNHCR Cairo in 2012, 2013.

new system be implemented. In Sinai, there have been some local attempts made by the Bedouin community to curtail the human trafficking of Eritreans.¹²⁷ Bedouin leaders have attempted to dissuade the traffickers from resuming this business for it defames Islam and is against Islamic Shariah law. However, these efforts lack a strong security presence and support for the task and therefore are ineffective.¹²⁸

As mentioned above, the reasons behind the growth of human trafficking networks in the region was that the Egyptian Revolution had further weakened the government. In the meantime, the measures taken by Israel to fortify its borders with Egypt have led many to take more desperate measures to reach Israel, and traffickers have eagerly stepped in to fill this gap. UNHCR statistics show that the number of Eritreans illegally crossing the borders from Egypt to Israel increased from 1,348 in 2006 to 17,175 in 2011.¹²⁹ In 2012, Israel passed a controversial law by amending the 1954 Prevention of Infiltration Law, by which all those who crossed the borders into Israel irregularly were considered to be “infiltrators” that could harm the Israeli state, allowing the authorities to detain them for three years before making a final decision to deport them back to their respective countries.¹³⁰ This law does not differentiate between refugees and economic migrants, and does not account for any special considerations for victims of trafficking.¹³¹ Even worse, in 2011 Israel started constructing a fence along the border with Egypt.¹³² In 2012, it was noted that the number of smuggled illegal migrants dropped from 1,706 in May to 289 in July.¹³³ It is therefore easy to understand that smugglers would seek different sources of income if the borders were blocked; and that is one of the factors that have contributed to smuggled illegal migrants becoming victims of human trafficking.

On the other side of the border, Egypt did not stand still. In August 2012, the Egyptian military launched a military operation called Operation Eagle with the

¹²⁷ Saleh, Amal, *supra* note 13.

¹²⁸ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 41–42; HUMPHRIS, *supra* note 14 at 11.

¹²⁹ HUMPHRIS, *supra* note 14 at 1. Data provided by UNHCR Israel.

¹³⁰ All this law was struck down twice by the Supreme Court; however, in vain. Refworld | Smuggling and Trafficking from the East of Africa, *supra* note 15 at 6.

¹³¹ HUMPHRIS, *supra* note 14 at 4.

¹³² Jacobsen, Robinson, and Lijnders, *supra* note 107 at 7.

¹³³ HUMPHRIS, *supra* note 14 at 5. Data provided by Saharonim prison authorities in Israel.

objective of eliminating extremist strongholds in Sinai, enhancing border security, and preventing smuggling.¹³⁴ Since then the numbers of reported victims of trafficking have dropped sharply in 2013 and further in 2014,¹³⁵ indicating either that different routes are being sought by traffickers or that the effectiveness of the operation to eliminate the activity is becoming more successful. Nevertheless, a human rights activist in Sinai informed Human Rights Watch that around 140 Eritreans were rounded up by the Egyptian military in 2013 and were transferred to prisons. It was uncertain whether the Egyptian government deported them to Eritrea or what actually happened to them.¹³⁶ In 2013, UNHCR also observed a change of route from Sinai to Libya, and more attempts to illegally exit Egypt by sea towards Italy and Greece.¹³⁷ This however, does not negate the fact that the problem continues to persist and victims also have been reported in the Sinai in 2014.¹³⁸

B. Push Factors

There are a number of push factors that drive individuals to approach traffickers voluntarily, whether desperation to leave their countries of origin, or hoping to seek better opportunities in Western Europe or Israel. Eritreans find no other way but to resort to smugglers in order to escape the harsh living conditions in their home country in pursuit of an assumed better life in Europe.¹³⁹ Eritreans escape from a persecutory regime.¹⁴⁰ A devastating war from 1998 to 2000 between the Eritrea and Ethiopia that ended with around 100,000 fatalities and a stalemate further added to the impoverishment of many citizens of both countries.¹⁴¹

It has been observed that children from the age of 10 opt to escape from the prolonged Eritrean compulsory national military service that has been reported to recruit as

¹³⁴ Egyptian armed forces announce results of “Operation Sinai”, *supra* note 18.

¹³⁵ United States Department of State, 2014 TRAFFICKING IN PERSONS REPORT REFORLD 163 (2014), <http://www.refworld.org/docid/53aaba0114.html> (last visited Jan 29, 2015).

¹³⁶ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 64.

¹³⁷ UNHCR CAIRO, *supra* note 14.

¹³⁸ United States Department of State, *supra* note 135 at 163.

¹³⁹ SHELLEY, *supra* note 10 at 267.

¹⁴⁰ See HUMAN RIGHTS WATCH (ORGANIZATION), SERVICE FOR LIFE: STATE REPRESSION AND INDEFINITE CONSCRIPTION IN ERITREA (2009); MEKONNEN AND ESTEFANOS, *supra* note 1 at 5; Jacobsen, Robinson, and Lijnders, *supra* note 107 at 4.

¹⁴¹ MEKONNEN AND ESTEFANOS, *supra* note 1 at 5.

young as the age of 15 years.¹⁴² Escaping national military service and traveling abroad in pursuit of better opportunities adds a social pressure on youth which has created a large wave of immigrants that later become prey to traffickers.¹⁴³ Some Eritreans also escape from religious persecution.¹⁴⁴ This has led UNHCR to recommend that almost all Eritreans who escape from the country be granted refugee status under the 1951 Refugee Convention.¹⁴⁵

Furthermore, Eritrea suffers from UN imposed sanctions due to its commonly known support for the Islamic Mujahideen group in Somalia known as Al-Shabab.¹⁴⁶ This has led to a prevailing state of a frail economy and a very low standard of living for Eritreans. An active Eritrean Diaspora that wires remittances back to Eritrea amounting to 30% of the country's GDP adds to a perception that living outside Eritrea will lead to a better and wealthy life.¹⁴⁷

The above mentioned push factors have led many Eritreans to escape from their home countries seeking asylum in neighboring Sudan. UNHCR reports around 109,594 Eritrean refugees in Sudan as of November 2014.¹⁴⁸ They find themselves unwelcomed by a Sudanese regime that is unwilling to offer much for them and considers them to be economic migrants.¹⁴⁹ Adding to the complexity of their situation in Sudan, the Eritrean refugee groups are often hostile towards each other

¹⁴² WOMEN'S REFUGEE COMMISSION, *supra* note 14 at 9; UNHCR, REFWORLD | UNHCR ELIGIBILITY GUIDELINES FOR ASSESSING THE INTERNATIONAL PROTECTION NEEDS OF ASYLUM-SEEKERS FROM ERITREA REFWORLD 16–17, <http://www.refworld.org/docid/4d4fe0ec2.html> (last visited May 17, 2014).

¹⁴³ A survey of 105 Eritrean minors in Sudanese camps has shown that social pressure to join relatives abroad is the force deriving more than half of this group to escape from the country. WOMEN'S REFUGEE COMMISSION, *supra* note 14 at 10 and 13; MEKONNEN AND ESTEFANOS, *supra* note 1 at 6 & 12.

¹⁴⁴ Muslims in Eritrea complain of being unable to practice Islam freely; while Protestant Eritreans were previously systematically targeted by the Eritrean regime. WOMEN'S REFUGEE COMMISSION, *supra* note 14 at 10; UNHCR, *supra* note 142.

¹⁴⁵ UNHCR, *supra* note 142 at 9.

¹⁴⁶ HUMPHRIS, *supra* note 19 at 2.

¹⁴⁷ GAIM KIBRAEB, THE ERITREAN DIASPORA, THE WAR OF INDEPENDENCE, POST-CONFLICT RECONSTRUCTION AND DEMOCRATIZATION, 97-116, IN JOHANSSON DAHRE SIRC CONFERENCE ON THE HORN OF AFRICA ULF ET AL., THE ROLE OF DIASPORAS IN PEACE, DEMOCRACY AND DEVELOPMENT IN THE HORN OF AFRICA: [PROCEEDINGS OF THE 5TH SIRC CONFERENCE ON THE HORN OF AFRICA, AUGUST 19-20, 2006] (2007).

¹⁴⁸ Sharp increase in number of Eritrean refugees and asylum-seekers in Europe, Ethiopia and Sudan, UNHCR, <http://www.unhcr.org/5465fea1381.html> (last visited Jan 25, 2015).

¹⁴⁹ Sudan forces the refugees to remain in camps under a strict movement policy without allowing refugees any right to work. WOMEN'S REFUGEE COMMISSION, *supra* note 14 at 8.

owing to the ongoing hatred between the two countries. The conditions of Eritrean refugees in Ethiopia are not very different, with around 106,859 Eritrean refugees in Ethiopian camps.¹⁵⁰ These Eritreans are forced to reside in camps without any freedom of movement.

The push factors from their home countries and the treatment that they endure in Sudan eventually result in unfavorable asylum conditions that force helpless refugees to contract with smugglers to escape the conditions they are enduring.¹⁵¹ With no access to work opportunities, and poor protection services provided in Sudan and Ethiopia, leaving the camps becomes a vital necessity for the refugees. The tribes residing on Sudan-Ethiopia-Eritrea borders find it a very lucrative business and reports indicate that trafficking starts there.¹⁵² This availability of a large number of people who are voluntarily willing to illegally travel in order to leave their impoverished lives has led to the growing number of traffickers and the fortifying of their networks.¹⁵³

C. Difficulties in Mapping Human Trafficking in Egypt

There are complexities that arise when studying human trafficking of Eritreans in Egypt. All of them directly relate to the issue of the lack of will on the Egyptian government's part to make it a priority on its political agenda.

¹⁵⁰ *Id.* at 9.

¹⁵¹ HUMPHRIS, *supra* note 14 at 14.

¹⁵² This problem revives the classical economic theory of Jean-Baptiste Say that '*supply creates its own demand*'. J. MILL, JAMES, COMMERCE DEFENDED, CHAPTER VI: CONSUMPTION, 81 (1808); WOMEN'S REFUGEE COMMISSION, *supra* note 14 at 17.

¹⁵³ Eritreans become very desperate to the extent that testimonials note that most Eritreans are aware of the dangers of this process of illegal travelling across Sinai and to Israel, and the threat of ending up as victims of trafficking; therefore, no matter what their relatives advise them not to take this route, many Eritreans opt for it despite the clear surrounding dangers. It has been reported that some women even prepare themselves by taking contraceptive injections prior to the process of illegal smuggling because they are aware of the large possibility of being raped on the road. Interview with Karin Keil, Hotline for Migrant Workers, 11 July 2012. Based on referrals for gynecological treatments and pregnancy terminations arranged by PHR-Israel in 2010, more than 600 women suffered sexual assault or rape. Furthermore; testimonies provided to UNHCR Cairo office in 2013 by victims of trafficking have regularly reported rape among women victims. HUMPHRIS, *supra* note 19 at 7.

The first problem concerns relations between Egypt and its southern neighbors which is currently undergoing difficulties owing to conflicts over Nile water usage. This matter has taken a negative toll on the eagerness of these countries to provide the necessary cooperation for understanding the networks of traffickers that are operating transnationally. Without collective action in gathering information, it is impossible for Egypt to work on curbing this crime.

The second problem relates to the trafficking routes. Tracing the routes of these networks is complicated owing to many factors including ease of global communications; and the fact most of the source and transit countries lack the economic capacity and technology to control their borders efficiently in a manner that would combat this crime. The lack of sufficient information concerning the routes assumed by the traffickers adds to the complexity of tackling the problem.

Most of the testimonies provided by surviving victims are unable to reveal specific routes used by traffickers and testimonies point to a large geographical span that is very complicated to monitor. However, these testimonies do point to the inception of this crime around refugee camps in east Sudan (Shagareb and Wad Sharifa).¹⁵⁴ Upon reaching Egypt, there is an absence of clear and credible information on the routes taken by traffickers to reach the Sinai. A few testimonies indicate using a boat via the Red Sea all the way from Kassala in Sudan to north Sinai. However, almost all the surviving victims refer to a land trip from Sudan to Sinai in different vehicles.¹⁵⁵

A third problem is that there is an absence of studies related to trafficking of Sub-Saharan Africans in Egypt concerning the routes used by traffickers to move their victims all the way from Eritrea (or Sudan) through the Sinai and past the borders with Israel. Without detailed information, authorities will continue being unable to curb the crime. Most of the information acquired on the issue is derived from victims' testimonies, which are unreliable. This is a direct result of the lack of resources deployed by the Egyptian government to effectively combat the crime. In fact, as Egypt is a party member to the Convention Against Transnational Organized Crime and the Trafficking Protocol, the Egyptian government prefers to frame the issue as

¹⁵⁴ UNHCR concern at refugee kidnappings, disappearances in eastern Sudan, *supra* note 14.

¹⁵⁵ Confidential information obtained from persons of concern to UNHCR in 2013.

one of smuggling illegal immigrants in an attempt to evade its international legal obligations towards victims. .

The aforementioned obstacles make it difficult to accurately map and understand the trafficking of Eritreans in Egypt.

III. Egyptian Legal Framework on Human Trafficking

To address the human trafficking crime in Egypt, the Egyptian government exerted efforts over three years from 2008 to 2010 that culminated in the drafting of the Egyptian Law No.64 commonly known as the anti-trafficking law.¹⁵⁶ In this chapter I present the international legal obligations of Egypt to address this crime, followed by a careful analysis of the Egyptian anti-trafficking law. The chapter ends with a discussion of the dilemma facing the application of the law to the service of the victims. This dilemma revolves around the fact that the Egyptian government insists on perceiving the issue as one of trafficking rather than smuggling.

Egypt has legal obligations to address trafficking. It is a party member to a large number of international instruments that place obligations on the state to address the problem. Being a party to the Convention against Transnational Organized Crime and its Protocols, it has a direct responsibility to address the commission of human trafficking on its territory. Egypt is also a party to the ICCPR, CEDAW, CRC and its optional protocol, ICESCR, CAT, ICRMW, the 1957 Abolition of Forced Labour Convention, and the 1999 Worst Forms of Child Labour Convention.¹⁵⁷ All of these treaties have provisions that oblige Egypt to address human trafficking. Egypt, as well, as a party to the African Charter on Human and Peoples' Rights is obliged by article 5 to prohibit human trafficking.¹⁵⁸ As a result, Egypt has a clear responsibility

¹⁵⁶ Interview with the Egyptian Ministry of Justice, (2015).

¹⁵⁷ JOY NGOZI EZEILO, REPORT OF THE SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, MISSION TO EGYPT 6 (2011), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/129/17/PDF/G1112917.pdf?OpenElement> (last visited Nov 18, 2014).

¹⁵⁸ Article 5 states that 'All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'. African Charter on Human and Peoples' Rights ("Banjul Charter"), REFWORLD Article 5, <http://www.refworld.org/cgi->

to work to stop the commission of this crime on its territories.¹⁵⁹ This has eventually culminated in the adoption of a national legal framework to combat human trafficking as will be explained below.

A. Egyptian Anti-Trafficking Law No 64 (2010)

In 2010, Egypt promulgated a law on combatting human trafficking - Law No. 64 of 2010¹⁶⁰ (hereinafter the Egyptian anti-trafficking law). This law is divided into six chapters in this order: definitions, crimes and punishments, scope of the territorial application of the law, international judicial cooperation, protection of the victims, and concluding provisions.¹⁶¹ The law was followed by Executive Regulations issued by the Prime Minister Decision No. 3028 of the year 2010. These regulations provide some practical guidance on the application of the law. An amendment was made to Article 291 of the Egyptian Child Law that includes a provision on protecting children from trafficking to make sure that it does not conflict with the Egyptian anti-trafficking law.¹⁶² The anti-trafficking law also complements the organ harvesting and transplant law issued in 2009.¹⁶³ The anti-trafficking law crosscuts the Egyptian Law No. 68 of 1951, as amended by Law No. 10 of 1961, criminalizing the act of “employing or enticing a person to engage in debauchery or prostitution.”¹⁶⁴ Furthermore, the Egyptian 2014 Constitution included two articles 80 and 89 that had clear provisions prohibiting different forms of human trafficking.¹⁶⁵

The Egyptian anti-trafficking law reflects a good attempt at drafting a comprehensive law. The first thing to notice in the law is that it does not fail to define the victims of

bin/texis/vtx/rwmain?page=search&docid=3ae6b3630&skip=0&query=Adopted%2027%20June%201981 (last visited Jan 28, 2015).

¹⁵⁹ WELDEHAIMANOT, *supra* note 20 at 10–11.

¹⁶⁰ AL-JARIDA AL-RASMIYYA, LAW NO. 64 OF 2010 (LAW REGARDING COMBATting HUMAN TRAFFICKING) (2010).

¹⁶¹ *Id.*

¹⁶² Article 291. AL-JARIDA AL-RASMIYYA, LAW NO. 12 OF 1996 AMENDED BY LAW NO. 126 OF 2008 (THE CHILD LAW) (2010).

¹⁶³ Law Combating Trafficking in Persons, *supra* note 9 at 7.

¹⁶⁴ JOY NGOZI EZEILO, *supra* note 157 at 6.

¹⁶⁵ Article 80 covers the protection of children ‘from commercial and sexual exploitation’, while Article 89 covers all forms of slavery, and thus human trafficking. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, (2014), <http://www.sis.gov.eg/Newvr/consttt%202014.pdf>.

trafficking.¹⁶⁶ This is one step ahead of the Palermo Protocol and Egypt is to be commended for it. By defining victims, the law recognizes an obligation on the part of government officials to identify the victims in order to further provide protection and assistance to them. Detailed definitions also remove any forms of ambiguity during the process of prosecuting traffickers which facilitates the work of the prosecution and judges.

As mentioned, the definition of the crime of human trafficking as per Article 2 of the Egyptian law is more detailed and comprehensive compared to Article 3 of the Palermo Protocol:

A person who commits the crime of human trafficking shall be considered one who deals in any manner in a natural person, including: the sale, offer for sale, purchase, or promise thereof; or the use, transport, delivery, harboring, reception, or receipt, whether within the country or across its national borders; if this occurred through the use of force, violence, or threat thereof; or through abduction, fraud, deception, abuse of power, or exploitation of a position of vulnerability or need; or through a promise to give or receive payments or benefits in exchange for obtaining the consent of a person to traffic another having control over him; or if the purpose of the transaction was exploitation in any of its forms, including: exploitation of acts of prostitution and all forms of sexual exploitation, exploitation of children in such acts and in pornography, forced labor or services, slavery or practices similar to slavery or servitude, or begging or removal of human organs, tissues or a part thereof.¹⁶⁷

The drafters of the law worked on including as many forms of the act, means, and purposes of trafficking in the law, making it more inclusive of crimes and more incriminating of those persons who even simply promise to sell others. Another observation on the definition is that the drafters worked on the forms of exploitation that are observed in Egypt and defined the crime accordingly.

Articles 7 to 15 that cover the crime and punishments of trafficking are detailed and inclusive of the different aspects of the crime involving the confiscation of funds of the perpetrators,¹⁶⁸ the punishing of public officials involved,¹⁶⁹ and of anyone who reveals the identity of a victim putting him\her in danger.¹⁷⁰

¹⁶⁶ Article 1(2). AL-JARIDA AL-RASMIYYA, *supra* note 160.

¹⁶⁷ Article 3. *Id.*

¹⁶⁸ Article 13 *Id.*

The chapter about the scope of application of the law also assures that anyone involved in trafficking, whether Egyptian or foreign, falls under the jurisdiction of the Egyptian anti-trafficking law.¹⁷¹

Generally speaking, the Egyptian anti-trafficking law is considered a serious step towards combatting human trafficking, given the fact that it is the first legal attempt taken by Egypt. It has opened the door for translating this law into institutional efforts aimed towards practically addressing the problem.

B. Smuggling or Trafficking of Eritreans in Egypt?

As explained earlier in chapter one, the difference between human trafficking and smuggling is that trafficking involves coercion of the victims, while smuggling takes place after consent is made by the smuggler and the contracting person(s). It is understandable that many Eritreans in Sudan initially seek the services of smugglers in attempts to reach Egypt; however, many of them report becoming eventually trafficking victims.¹⁷²

Until very recently,¹⁷³ Egypt had officially and continuously denied the existence of human trafficking of Eritreans in the Sinai explaining that all Eritreans in the Sinai were intruders who had contracted with smugglers to take them there.¹⁷⁴ The previous Egyptian Anti-Trafficking Coordinator, Ms. Naela Gabr, has herself dismissed the reports on trafficking in the Sinai and concluded that until victims opt to speak up and testify against traffickers, it cannot be argued as being more than propaganda given the lack of concrete evidence.¹⁷⁵ The ongoing public statements used by the Egyptian Anti-Trafficking Coordinator refer to trafficking victims as “infiltrators”.¹⁷⁶ The only forms of trafficking that Egypt has acknowledged as being a problem on its territory

¹⁶⁹ Article 12 *Id.*

¹⁷⁰ Article 9 *Id.*

¹⁷¹ Article 16 of the law covers the commission of the crime on Egyptian land, air, or waters; or if one identified victim is Egyptian; or if any preparation of trafficking took place in Egypt; or if committed by an organized criminal group that is operating in Egypt; or if a perpetrator of this crime was found in Egypt. *Id.*

¹⁷² WOMEN’S REFUGEE COMMISSION, *supra* note 14 at 17.

¹⁷³ State officials in North Sinai until the end of 2012 have continuously denied the existence of any form of trafficking in North Sinai. SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 60.

¹⁷⁴ WELDEHAIMANOT, *supra* note 20 at 9.

¹⁷⁵ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 62.

¹⁷⁶ HUMPHRIS, *supra* note 14 at 4.

are: the issue of sex trafficking of Egyptian girls into forced marriages, and the trafficking of workers for forced domestic labour.¹⁷⁷ This refusal of Egypt to acknowledge the existence of a problem in Sinai was also raised by the UN Special Rapporteur on trafficking.¹⁷⁸

Aggravating matters is the consideration of the police and military authorities in the Sinai to the trafficking of Eritreans as being merely a problem of smuggling.¹⁷⁹ This gives a reason for not providing the victims with any adequate shelter or understanding of what they have been through. In fact, the Egyptian authorities have systematically arrested and detained the victims prior to deporting them.¹⁸⁰ In 2008, for example, Egypt deported around 1400 Eritreans for committing illegal entry and residence in Egypt. These Eritreans were detained in the Qanatir prison without giving access to UNHCR in order to determine whether any of the detained had a refugee claim.¹⁸¹

As reported by UNHCR, the police authorities in North Sinai arrest all the victims of trafficking under the suspicion of attempting to illegally exit Egypt given that most of them are unable to produce any legal documents or residency permits in Egypt.¹⁸² In most cases, victims are denied their access to asylum procedures and treated as criminals without any proper understanding of their victimization.¹⁸³ Another indication of how the matter is handled poorly in Egypt is that Egypt has not prosecuted any official or filed a case involving colluding with traffickers to date¹⁸⁴

¹⁷⁷When the UN Human Rights Council Special Rapporteur on Trafficking visited Egypt to report on the problem, there was no mention of Sinai and any trafficking of Eritreans. JOY NGOZI EZEILO, *supra* note 157 at 3–4; Guirguis, *supra* note 24.

¹⁷⁸ JOY NGOZI EZEILO, *supra* note 157 at 8.

¹⁷⁹ HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 140 at 69; UNHCR CAIRO, *supra* note 14 at 13; United States Department of State, *supra* note 135 at 163; Law Combating Trafficking in Persons, *supra* note 9 at 6 & 21.

¹⁸⁰ Given the international pressure reiterated on not to forcibly return Eritreans back to Eritrea, Egypt had arranged a deal with Ethiopia allowing these Eritreans to travel there.

¹⁸¹ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 78; United States Department of State, *supra* note 135 at 163.

¹⁸² Jacobsen, Robinson, and Lijnders, *supra* note 107 at 11; UNHCR CAIRO, *supra* note 14 at 9; United States Department of State, *supra* note 135 at 165.

¹⁸³ UNHCR CAIRO, *supra* note 14 at 9.

¹⁸⁴ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 4; United States Department of State, *supra* note 135 at 164.

and continues to deny any presence of collusion.¹⁸⁵ In the meantime, Egypt has a legal obligation to prosecute all those who are proven to collude in trafficking.¹⁸⁶ Egypt continues to perceive the problem of illegal immigration as being more important than human trafficking. Adding to that, the priorities set by the Egyptian government are oriented towards the illegal emigration of Egyptians through the Mediterranean.¹⁸⁷

¹⁸⁵ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 43.

¹⁸⁶ According to the UN Committee on Torture, which reviews State compliance with the Convention, where state officials have ‘reasonable grounds to believe ... that acts of torture or ill-treatment are being committed by ... private actors’ and ‘fail to exercise due diligence to prevent, investigate, prosecute and punish such ... actors,’ such that the state ‘facilitates and enables [traffickers] to commit acts impermissible under the [Torture] Convention with impunity,’ the state then ‘bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the [Torture] Convention for consenting to or acquiescing in such impermissible acts.’ *Id.* at 4.

¹⁸⁷ In 2014, Egypt established the National Coordinating Committee on Preventing and Combatting Illegal Migration after several vessels drowned, and others were intercepted in the Mediterranean sea in hopeless attempts to reach Europe illegally. The National Coordinating Committee on preventing and combatting illegal migration, FUTURE WORK PLAN FOR THE NATIONAL COORDINATING COMMITTEE ON PREVENTING AND COMBATING ILLEGAL MIGRATION (2014), http://www.mfa.gov.eg/English/Ministry/illegal_migration/Pages/default.aspx (last visited Feb 6, 2015).

IV. Mapping Egyptian Institutional Efforts

It is undeniable that Egypt has taken many steps on the legal and institutional arenas to combat human trafficking. Egypt has also sought support from international organizations holding expertise in combatting human trafficking.

To explain how the law has been translated into action, this chapter covers the Egyptian institutional efforts exerted, and the impact of the work carried out by stakeholders whether international organizations or non-governmental organizations.

A. Public Institutions

Having a law in place without a parallel institutional framework to implement it would be fruitless. In July 2007, a Presidential Decree established Egypt's National Coordinating Committee on Preventing and Combating Human Trafficking (hereafter the Egyptian Trafficking Coordinator).¹⁸⁸ This committee was mandated to coordinate all the tasks of relevant state agencies in combatting human trafficking.¹⁸⁹ In its early efforts to gather information on the crime in Egypt, the committee acknowledged the existence of five forms of trafficking only: forced marriages of Egyptian girls; organ trafficking; exploitation of street children; forced labour; and sexual exploitation.¹⁹⁰ This committee commissioned the government-affiliated National Center for Social and Criminological Research to conduct a comprehensive study on trafficking in persons in Egypt.¹⁹¹ Although this study was completed in late 2010,¹⁹² the study focused only on the forms of trafficking that were recognized by the Egyptian government at that time, namely forced marriages of girls, trafficking for sexual exploitation; and the exploitation of street children. The study did not include any coverage on the trafficking of Eritreans in the Sinai.

¹⁸⁸ JOY NGOZI EZEILO, *supra* note 157 at 7.

¹⁸⁹ Initially headed by the Ministry of Foreign Affairs advisor Ambassador Naela Gabr, the committee is made up of various representatives, including the Ministries of Defense, Health, Justice and Interior, the public prosecutor, the police, the National Council for Human Rights, the National Council for Women, and the National Council for Childhood and Motherhood. Egyptian Initiative for Personal Rights. Law Combating Trafficking in Persons, *supra* note 9. Prime Ministerial Decree no. 1584 of 2007, <http://www.mfa.gov.eg> (last visited December 13, 2013).

¹⁹⁰ Interview with the Egyptian National Council for Childhood and Motherhood, *supra* note 11.

¹⁹¹ This study was completed in December 2010.

¹⁹² Interview with the Egyptian National Council for Childhood and Motherhood, *supra* note 11.

One effort that involved planning on how to address trafficking in Egypt was undertaken at the national level. In December 2010, the Egyptian Anti-Trafficking Coordinator drafted a National Action Plan to Address All Aspects of Trafficking 2011-2013.¹⁹³ This plan represented the Egyptian approach to addressing human trafficking based on prevention, protection, prosecution, and participation commonly known as the 4Ps.¹⁹⁴

The plan initially failed to acknowledge the African victims of trafficking in the Sinai, and targeted only the sex trafficking of Egyptian women and young girls.¹⁹⁵ However, in its final evaluation report, the Egyptian Anti-Trafficking Coordinator indicated that two posters were distributed to African embassies producing migrants to Egypt, and in certain refugee camps in Sudan, warning potential African victims against the forms and danger of trafficking.¹⁹⁶

Through this National plan, the Egyptian Anti-Trafficking Coordinator also participated in several diplomatic forums covering human trafficking, ranging from bilateral diplomatic meetings to international conferences that covered the different aspects of the crime and the challenges that it posed.¹⁹⁷ The plan also included collaborating with the Egyptian Ministry of Interior to include the subject of human trafficking in its periodic training sessions for police officers of various ranks.¹⁹⁸

In 2013, a Second National Action Plan was developed to continue Egyptian efforts to address the crime. It included many activities that acknowledged the existence of the

¹⁹³ NATIONAL COORDINATING COMMITTEE FOR COMBATING AND PREVENTING HUMAN TRAFFICKING, EVALUATING THE EXECUTION OF THE NATIONAL PLAN OF ACTION AGAINST HUMAN TRAFFICKING (JAN 2011 - DEC 2013) 31 (2013), <http://www.mfa.gov.eg/English/Ministry/TraffickinginPersons/naational/Pages/default.aspx> (last visited Jan 3, 2015).

¹⁹⁴ NATIONAL COORDINATING COMMITTEE ON PREVENTING AND COMBATING HUMAN TRAFFICKING, NATIONAL PLAN OF ACTION AGAINST HUMAN TRAFFICKING (JANUARY 2011 TILL JANUARY 2013) 16 2 (2010), <http://www.mfa.gov.eg/English/Ministry/TraffickinginPersons/naational/Pages/default.aspx>.

¹⁹⁵ The plan stated in its introduction that it aims at addressing the forms of trafficking in Egypt which are[...trafficking in women and girls for the purpose of marriage, exploitation of children in labor, trafficking in street children, sexual exploitation and prostitution and trafficking in human organs." *Id.* at 1.

¹⁹⁶ NATIONAL COORDINATING COMMITTEE FOR COMBATING AND PREVENTING HUMAN TRAFFICKING, *supra* note 193 at 16.

¹⁹⁷ Interview with the Egyptian National Council for Childhood and Motherhood, *supra* note 11.

¹⁹⁸ AMBASSADOR NAELA GABR, FIFTH EXECUTIVE SUMMERY REPORT OF THE NATIONAL COORDINATION COMMITTEE FOR THE PREVENTION AND COMBATTING OF HUMAN TRAFFICKING 13 6 (2012).

problem of trafficking Eritreans in Sinai, including more research work on victims in the Sinai;¹⁹⁹ raising awareness of African refugees in Egypt on the dangers of contracting smugglers in Sinai;²⁰⁰ assuring that the state fund for victims of trafficking is also available to non-Egyptian victims;²⁰¹ establishing a special anti-trafficking police unit;²⁰² establishing a database to hold statistics on victims and prosecuted cases;²⁰³ and planning trips to countries of source and destination for law practitioners.²⁰⁴ Unfortunately, Ambassador Naela Gabr had explained that this plan was disrupted in March 2013 owing to the transfer of the Egyptian Anti-Trafficking Coordinator secretariat to the Ministry of Justice, and appointment of the Assistant Minister of Justice for Human Rights Affairs as the coordinator.²⁰⁵ That took place at all implies that addressing trafficking crimes is the responsibility of the Ministry of Justice.²⁰⁶

1. Protection of Victims

A set of activities aiming at protecting identified victims in Egypt is central to any efforts taken to address trafficking. The Egyptian Ministry of Health has established a specialized medical unit for treating victims of trafficking located inside the National Bank Hospital in Cairo. Although an isolated unit with limited geographical outreach, it is a welcome step given the overall lack of government resources spent in general to date.²⁰⁷

¹⁹⁹ NATIONAL COORDINATING COMMITTEE ON PREVENTING AND COMBATING HUMAN TRAFFICKING, SECOND NATIONAL PLAN OF ACTION AGAINST HUMAN TRAFFICKING (JANUARY 2013 UNTIL DECEMBER 2015) 10 2 (2013), <http://www.mfa.gov.eg/English/Ministry/TraffickinginPersons/nationalplan2015/Pages/2ndNationalPlanofActionagainstHumanTrafficking.aspx>.

²⁰⁰ *Id.* at 4.

²⁰¹ *Id.* at 6.

²⁰² *Id.* at 10.

²⁰³ *Id.* at 10.

²⁰⁴ *Id.* at 11.

²⁰⁵ Ambassador Naela Gabr, THE CASE OF HUMAN TRAFFICKING (2014), http://www.mfa.gov.eg/Arabic/Ministry/illegal_migration/Pages/peaceafrica.aspx (last visited Feb 6, 2015).

²⁰⁶ In an interview conducted with NCCM, the interviewee stated that as a result of changing the secretariat of the committee lead to interrupting the plan, and many activities were halted. Interview with the Egyptian National Council for Childhood and Motherhood, *supra* note 11.

²⁰⁷ United States Department of State, *supra* note 135 at 164. It is noteworthy that the numbers of patients received by this unit was 177 in 2012; and dropped in 2013 to 68 survivors, most of whom were Eritreans.

In addition to the mentioned unit, in 2010, the government also established a legal aid clinic in collaboration with the Faculty of Law in Alexandria University.²⁰⁸ This clinic is designed to provide the victims with legal aid to pursue legal prosecution of the traffickers.

These are not the only efforts. The NCCM has also been active with the collaboration of the IOM in establishing a hotline for victims of trafficking.²⁰⁹ In August 2010, NCCM also established a regional shelter in Al-Salam neighborhood in Cairo for women and children victims to provide rehabilitation and reintegration support.²¹⁰ Two years later, the NCCM developed a referral mechanism by which different stakeholders could refer cases of identified victims to the shelter managed by NCCM.²¹¹ In June 2014, NCCM announced that the shelter had hosted 64 foreign victims since January 2013, the number of Eritrean victims of trafficking of Sinai was unmentioned.²¹²

2. Prevention Activities

Working on preventing the commission of the crime in the first place by raising awareness on the nature of the crime, and how it takes place, is considered one of the pillars of combatting human trafficking. The NCCM has also been active in this area. It has held ongoing training sessions on combatting human trafficking for many groups in Egyptian society including government officials, local NGOs, and the public in general; unfortunately, most - if not all – of the sessions have targeted the Egyptian officials working on preventing child marriage, and preventing sex trafficking of Egyptian children;²¹³ The issue of human trafficking in the Sinai was completely ignored.

²⁰⁸ Law Combating Trafficking in Persons, *supra* note 9 at 8.

²⁰⁹ Hotline Number 16021. International Organization for Migration (IOM) Cairo, COUNTER TRAFFICKING FACT SHEET EGYPT (2012), <http://www.egypt.iom.int/Doc/Counter%20Trafficking%20Fact%20Sheet%20Egypt%20%282012%29.pdf> (last visited Jan 11, 2015).

²¹⁰ JOY NGOZI EZEILO, *supra* note 157 at 16; International Organization for Migration (IOM) Cairo, *supra* note 209.

²¹¹ Interview with the Egyptian National Council for Childhood and Motherhood, *supra* note 11.

²¹² EGYPTIAN NATIONAL COUNCIL FOR CHILDHOOD AND MOTHERHOOD, ACTIVITY REPORT OF THE ANTI-TRAFFICKING OF WOMEN AND GIRLS UNIT 52 40–41 (2014).

²¹³ United States Department of State, *supra* note 135 at 165.

NCCM has also worked on designing several publications that address the crime,²¹⁴ and launched a website dedicated to human trafficking.²¹⁵ Still, these publications focus on the forms of trafficking officially acknowledged as being widespread by the government only leaving out African victims in the Sinai altogether.

B. Civil Society

The role of civil society in addressing societal problems has often proven effective. Civil society organizations are effective in mobilizing communities, raising awareness, and monitoring the work of governments in specific areas in order to assure that proper attention is given. Unfortunately, the Egyptian civil society continues to be hampered by strict laws that curb its activities in Egypt through strong oversight by the Ministry of Social Solidarity. Furthermore, a proposed draft law in 2013 for regulating the operation of NGOs also constrained the work of local NGOs especially those that criticize the Egyptian government.²¹⁶

Although the government institutions rely heavily on the support provided by local and international NGOs in implementing assistance programs directed at victims, it is clear that the government continues to deal with these NGOs cautiously without involving them in the planning process of the programs.²¹⁷ This has resulted in designing programs that do not match with the capacities of different NGOs and the actual needs of victims. One of the local NGOs complained that the government called for a meeting of several NGOs to introduce the anti-trafficking law without allowing them to provide any comments or suggestions.²¹⁸

Some NGOs have sought to provide basic legal assistance to trafficking victims; however, these services are usually confined to a small area of coverage by the NGO,

²¹⁴ These publications included: a guide on accessing internet; victim stories; a guide on human trafficking in Egypt; the Law No. 64 of 2010 (anti-trafficking law); stories on child marriages; Islamic official opinion on trafficking edited by the Mufti; a brochure on the rehabilitation shelter; a study on child marriages in Assiut Governorate; a study on forced marriages of girls to foreigners in 6th of October district of Cairo; the Law No. 12 of 1996, amended by the Law No. 126 of 2008 (the law of the child).

²¹⁵ <http://www.child-trafficking.org/>

²¹⁶ Egyptian Initiative for Personal Rights, PROPOSED GOVERNMENT LAW MAKES NGOS SUBORDINATE TO SECURITY AND MINISTRY CONTROL (2014), <http://eipr.org/en/pressrelease/2014/07/09/2154> (last visited Dec 12, 2014).

²¹⁷ JOY NGOZI EZEILO, *supra* note 157 at 15.

²¹⁸ Law Combating Trafficking in Persons, *supra* note 9 at 8.

and service face discontinuity owing to lack of funding.²¹⁹ Since 2011, there has only been one NGO operating in Al-Arish, North Sinai that has direct activities aimed at providing support to identified human trafficking victims.²²⁰ This NGO had access to detention facilities in Al-Arish where it distributed food and clothes to foreign Africans who had been detained there, mostly victims of trafficking.²²¹ The basic resources that the NGO had at its disposal did not allow it to carry out further activities.²²² In the meantime, this NGO was labeled by Egyptian officials as fraudulent and pursuing an international agenda of defaming Egypt.²²³ In spite of its efforts to remain open, by mid-2013, the NGO was forced to shut down its services due to the ongoing military campaign carried out by the Egyptian army in the Sinai.²²⁴

The role of community based initiatives is also noteworthy; especially in the context of Bedouin society in the Sinai. There have been some basic attempts by local leaders in the Bedouin community to put an end to the crime in Sinai; however, these efforts have been in vain.²²⁵

C. International Organizations

Solving the issue of human trafficking in Egypt requires the deployment of ample resources; however, this can only be presumed effective if taking the form of a collaborative transnational process that engages key parties, mainly the states of Egypt, Sudan, Ethiopia and Eritrea on the one hand, and the role of international organizations to fill in the gap of expertise that the countries may lack. This includes the involvement of the UN specialized agencies, and the League of Arab States that has also been alerted to the seriousness of the crime taking place in the Middle East.

The main financiers of victim assistance programs are the international organizations operating in Egypt.²²⁶ Since 2008, a consortium of stakeholders has already started to

²¹⁹ JOY NGOZI EZEILO, *supra* note 157 at 11.

²²⁰ Interview with an Egyptian NGO, (2015).

²²¹ *Id.*

²²² *Id.*

²²³ Interview with the Egyptian Ministry of Justice, *supra* note 156.

²²⁴ Interview with an Egyptian NGO, *supra* note 220.

²²⁵ A community leader told Human Rights Watch that he knew of 15 traffickers who had halted their activities because it was against Islamic Shariah. SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 41–42.

²²⁶ United States Department of State, *supra* note 135 at 164.

address the human trafficking of Eritreans. The IOM and UNHCR have assumed leading roles in these efforts, with the additional support from some other international NGOs like CARITAS, Catholic Relief Services (CRS), and Médecins Sans Frontières (MSF).²²⁷ These agencies have collaborated in providing different forms of assistance to surviving victims. The assistance has revolved around a phase of three to six months after the victim has been identified. The victim is offered financial assistance, medical and psychological assistance, legal aid if required, and a temporary shelter until the victim can reintegrate into the society once again.²²⁸ The efforts are commended; however, they continue to rely heavily on the availability of funding which varies over time.

1. UNHCR

Another organization in Egypt which is mandated to address human trafficking is UNHCR. UNHCR takes a leading role in supporting identified victims who fall under the protection mandate of the organization.²²⁹ UNHCR has a dedicated team composed of two staff members who coordinate all the assistance provided by the agency to victims of trafficking.²³⁰ In October 2014, UNHCR reported that it was providing assistance to 350 victims of trafficking.²³¹ In the same report, UNHCR estimated the number of victims from 2009 to October 2014 to have been between 25,000 and 30,000.²³² These numbers indicate how serious the problem is, and the attention that is needed to stop human trafficking of Eritreans. UNHCR has worked on the capacity building level for local authorities by providing training workshops on international refugee law to the public prosecutor's office, judges, border patrol officers, and university students.²³³ Collaborating with the Cairo Regional Center for Training on Conflict Resolution and Peace Keeping in Africa (CCCPA), in February 2013, UNHCR also facilitated a session on special protection concerns for victims of trafficking.²³⁴

²²⁷ UNHCR CAIRO, *supra* note 14 at 10.

²²⁸ *Id.* at 10.

²²⁹ Interview with UNHCR Cairo, Egypt, (2015).

²³⁰ *Id.*

²³¹ Refworld | Smuggling and Trafficking from the East of Africa, *supra* note 15.

²³² *Id.*

²³³ UNHCR CAIRO, *supra* note 14 at 14.

²³⁴ *Id.* at 14.

2. IOM

With UNHCR, IOM is at the forefront in providing activities to address human trafficking in Egypt. It has fuelled most of the programs carried out in Egypt through its funding. IOM works on the three pillars of prevention, protection and prosecution to address the crime. There is a dedicated team within IOM that is tasked with helping the Egyptian government to address human trafficking.²³⁵ Since 2008, IOM has been engaged in several training seminars for different law enforcement agencies in Egypt, with the objective of gathering a momentum towards addressing the crime.²³⁶

In January 2010,²³⁷ IOM fully funded a project named *Supporting the Government of Egypt's Efforts to Combat Human Trafficking by Enhancing Key Investigation and Prosecution Capacities*.²³⁸ Under this project, Egypt managed to train a group of police officers, diplomats, some local NGOs, and police cadets on essential information regarding human trafficking in an attempt to relay its expertise to the law enforcement function. The same project helped in designing an identification mechanism that would help law enforcement officials to determine if identified victims fall under the application of the law or not.²³⁹

To support the Egyptian anti-trafficking law, IOM published the *Guidelines on Investigation and Prosecution of Trafficking in Persons and Treatment of Victims during Law Enforcement Proceedings*.²⁴⁰ Through this publication the IOM attempted to provide Egyptian law enforcement with a comprehensive guide to the existing Egyptian legal framework that covers trafficking in Egypt. The Executive Regulations issued by the government had failed to address the practical application of the law. IOM has followed up this publication with the funding of several training seminars targeting prosecutors and judges on the implementation of the law.²⁴¹ By 2013, IOM

²³⁵ Interview with IOM Egypt, (2015).

²³⁶ International Organization for Migration (IOM) Cairo, *supra* note 209.

²³⁷ *Id.*

²³⁸ Guirguis, *supra* note 24.

²³⁹ Interview with IOM Egypt, *supra* note 235.

²⁴⁰ International Organization for Migration (IOM) Cairo, *supra* note 209.

²⁴¹ By the end of 2012, five training seminars were conducted for Judges of the First Instance Court, and six seminars for deputy-prosecutor general had already been conducted. Interview with IOM Egypt, *supra* note 235.

had already started providing consultations to the Sudanese government in drafting an anti-trafficking law; however this law has not come to life to date.²⁴²

On the protection level, the IOM was the main financial supporter for the establishment of the NCCM regional shelter for women and children victims; however, the government viewed this shelter as targeting Egyptian victims rather than African victims of trafficking.²⁴³ This is because the government perceived the Eritreans as illegal migrants rather than victims of trafficking. The IOM then produced a documentary to raise awareness of different forms of trafficking in Egypt. Unfortunately, this movie also failed to acknowledge the issue of trafficking in the Sinai and only focused on the forms of trafficking that were on the Egyptian government's agenda.²⁴⁴

3. United Nations Office on Drugs and Crime (UNODC)

As the office mandated to provide assistance to governments in the field of combatting crimes, the United Nations Office on Drugs and Crime (UNODC) has also exerted several efforts in addressing trafficking in Egypt. The UNODC efforts have focused mainly on the publication of reports²⁴⁵ and the carrying out of monitoring activities of the government of Egypt to address human trafficking. Under a special project funded by Norway since 2011, UNODC carries out coordination activities among governments in the Arab League to assure a proper regional address of the crime.²⁴⁶ These activities target legislators, parliamentarians, policy makers, criminal

²⁴² Bureau of Public Affairs Department Of State. The Office of Website Management, *TRAFFICKING IN PERSONS REPORT 2013 342* (2013), <http://www.state.gov/j/tip/rls/tiprpt/2013/> (last visited Aug 22, 2014).

²⁴³ Although there were some instances for receiving African victims in these shelters; however, the established referral mechanism focused mainly on Egyptian victims. Interview with IOM Egypt, *supra* note 235; Interview with the Egyptian National Council for Childhood and Motherhood, *supra* note 11; JOY NGOZI EZEILO, *supra* note 157 at 10.

²⁴⁴ The movie covered forced marriages of Egyptian girls, forced child labour, and organ trafficking. *THE PATH: A DOCUMENTARY ON HUMAN TRAFFICKING IN EGYPT*, (2012), https://www.youtube.com/watch?v=T_eRKraxmbQ&feature=youtube_gdata_player (last visited Jan 13, 2015).

²⁴⁵ On its website, UNODC lists many publications covering the Middle East and North Africa in general, <http://www.unodc.org/middleeastandnorthafrica/en/publications/publications-trafficking-crime-and-terrorism.html>

²⁴⁶ UNODC, *STRENGTHENING THE FRAMEWORK OF THE ARAB REGION TO PREVENT AND COMBAT HUMAN TRAFFICKING*, <http://www.unodc.org/middleeastandnorthafrica/en/project-profiles/xmex19.html>.

justice practitioners, and victim service providers.²⁴⁷ Most of these activities are of a diplomatic nature and are not translated into direct implementation of activities carried out with the victims.²⁴⁸

4. League of Arab States (LAS)

The problem of human trafficking has also found its way to the agenda of the League of Arab states (LAS), given the dependency of the Gulf States on foreign labour. The Arab League aims at assuring that the foreign labour are not exposed to different forms of human trafficking. LAS first addressed human trafficking in the Middle East in 2009. It worked on intensifying diplomatic efforts with the aim of establishing a comprehensive strategy for addressing human trafficking. This strategy came into existence in February 2012 with the aim of providing consultative guidance to governments on how to develop domestic legal frameworks to address the crime.²⁴⁹ The strategy as well included drafting a model law for combatting human trafficking in 2010.²⁵⁰ Of note is the fact that the model law was built on the Egyptian Anti-Trafficking Law No.64.²⁵¹ The same strategy also called for establishing an LAS anti-trafficking unit tasked with mapping the crime inside member states, creating a centralized database for the collection of information and analysis, and the offering of expertise to member states.²⁵²

This chapter has described how Egyptian public institutions, civil society, and international organizations have attempted to implement the international and domestic legal framework. As presented, recognizing non Egyptian victims of trafficking continues to be one of the major challenges that Egypt faces. The next Chapter analyzes the obstacles facing Egypt in effectively addressing the problem of

²⁴⁷ *Id.*

²⁴⁸ AMBASSADOR NAELA GABR, *supra* note 198 at 11.

²⁴⁹ LEGAL AFFAIRS UNIT, TECHNICAL SECRETARIAT OF THE ARAB MINSTERS OF JUSTICE, ARAB COMPREHENSIVE STRATEGY FOR COMBATTING HUMAN TRAFFICKING 42 (2012).

²⁵⁰ *Id.* at 7.

²⁵¹ Legal Affairs Unit, Technical Secretariat of the Arab Minsters of Justice, ARAB MODEL LAW FOR COMBATTING HUMAN TRAFFICKING (2010), http://www.lasportal.org/wps/wcm/connect/LAS/las/las_ar_aln/model_arab_laws/?WCM_PI=1&WCM_PI=1&WCM_Page.559e0e80497d19518869eb69b7aacf42=1 (last visited Mar 13, 2015).

²⁵² LEGAL AFFAIRS UNIT, TECHNICAL SECRETARIAT OF THE ARAB MINSTERS OF JUSTICE, *supra* note 249 at 38–41.

the human trafficking of Eritreans and proposes different initiatives to strengthen Egyptian efforts.

V. Conclusion and Recommendations

We have seen how human trafficking of Eritreans takes place in Egypt via networks of smugglers from Sudan, leading all the way to the Sinai. Egyptian efforts in response to this crime through an established legal framework along with institutional efforts have also been highlighted. This chapter is divided into two parts: the first analyzes why the efforts carried out to date continue to be ineffective in curbing human trafficking in Egypt. These reasons include lack of proper identification of the problem, loopholes in the legal framework, ineffective institutional activities, and continuous de-prioritization of the problem. The second part of the chapter discusses major areas of improvement that Egypt can work on to curb human trafficking. These areas include: addressing the root causes that have lead many Bedouins in the Sinai to be involved in this crime; applying changes to the current institutional framework; exerting greater effort in preparing the Egyptian law enforcement in addressing the crime; and continuously reviewing the legal framework in place to bridge any gaps in it.

A. Reasons for Ineffectiveness

1. Loopholes in the Trafficking Protocol

One reason for ineffectiveness is the loopholes in the Trafficking Protocol. Egypt has designed its legal framework for addressing human trafficking on the model provided by the Trafficking Protocol.²⁵³ As explained in chapter three, Egypt introduced further features in its national law to ensure that the anti-trafficking law no. 64 is tailored towards specific forms of trafficking that are particular to Egypt. Because any loopholes in the Trafficking Protocol are automatically reflected in the Egyptian national law, there are several issues with the Trafficking Protocol that represent challenges on the international level and have an impact on Egypt. While the process of amending and international treaty is a very slow process, if not almost impossible;

²⁵³ JOY NGOZI EZEILO, *supra* note 157 at 6.

by acknowledging the loopholes in the Trafficking Protocol, Egypt will be able to fill these gaps in its own national law.

The effectiveness and impact of the Trafficking Protocol can be characterized as minimal. It was hoped that the Palermo Protocol would take strides in combatting human trafficking especially that it is built on efforts of five earlier treaties that address the same problem. However, because the two earlier treaties were built on such erroneous assumptions of white race supremacy, it is understandable that the following treaties, along with the current framework in place – set by the Trafficking Protocol – would also reflect notions of the supremacy of Europe and the West in general over other parts of the world.²⁵⁴

A large number of NGOs participated in the Trafficking Protocol negotiation process, accompanied by an organized UN Inter-Agency Group composed of the UN Human Rights Commission, UN High Commissioner of Refugees, UN Children's Fund, and the International Organization for Migration.²⁵⁵ However, the end result did not meet the awaited expectations. The UN 2000 Protocol is a clear example of a well-crafted UN document employing a non-obligatory language.²⁵⁶ The 2000 Protocol is full of gaps that have rendered it incapable of providing a comprehensive legal framework that would put an end to this crime. In an analysis of the Palermo Protocol *travaux-preparatoire*, Anne Gallagher observes how several issues were either skipped deliberately or were not given due attention by the committee which raises questions on the intentions of the negotiators and the effectiveness of the Protocol.²⁵⁷ This became clearer when other regional bodies adopted anti-trafficking treaties²⁵⁸ in an

²⁵⁴ As indicated in chapter one, the first two international treaties addressing human trafficking (1904-1910) were Eurocentric with clear reference to the supremacy of the white race. See MOREHOUSE, *supra* note 28.

²⁵⁵ Anne Gallagher, *Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis*, 23 HUM. RIGHTS Q. 975–1004, 1001–1002 (2001).

²⁵⁶ *Id.* at 995.

²⁵⁷ The negotiations around Organ trafficking and provisions on child trafficking were both briefly debated by the committee and the resulting provisions were viewed by the UN specialized agencies' observers as inadequate and didn't meet their expectations as other international legal instruments. See Gallagher, *supra* note 255.

²⁵⁸ The European Union Council adopted in 2002 the Framework Decision on Combating Trafficking in Human Beings, and followed it by the Council of Europe Convention on Action against Trafficking in Human Beings in 2005. SHELLEY, *supra* note 10 at 11.

attempt to bridge the gaps in the convention and “supplement the limited or non-existent protection scheme of the UN Trafficking Protocol.”²⁵⁹

2. Failure to Address Root Causes

The Trafficking Protocol has failed in addressing the root causes of the crime. A general problem in the language of the Protocol is that it focuses on the criminal aspect of the crime and takes a law enforcement perspective instead of focusing on the socio-economic problems that underlie it and lead people to become victims in the first place.²⁶⁰ Being a treaty drafted by states under the auspices of the United Nations, the Palermo Protocol ended as a document insuring the interests of governments over the interests of individuals.²⁶¹ As indicated in the first paragraph of its preamble, the Palermo Protocol states that to prevent and combat the trafficking of persons, a comprehensive international approach is required;²⁶² unfortunately, this is not the case. Article 9 of the Trafficking Protocol - addressing the prevention of trafficking - states in paragraph 4 that “to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment, and lack of equal opportunity.”²⁶³ There are many reasons that contribute to trafficking that are unaddressed by the Trafficking Protocol. For instance, the issue of facilitating legal labour migration was not included at all although it is one of the main reasons why people fall victim to traffickers in the first place because of how complicated it has become to pursue legal migration.²⁶⁴ Other factors include regional conflicts that create waves of refugees that are unattended by the international community, and businesses dependency on trafficking to provide the cheap labour necessary to remain competitive.²⁶⁵ Furthermore, thousands of people

²⁵⁹ CORNELIUS FRIESENDORF ET AL., STRATEGIES AGAINST HUMAN TRAFFICKING: THE ROLE OF THE SECURITY SECTOR 331–332 (2009).

²⁶⁰ *Id.* at 65.; SHELLEY, *supra* note 2 at 2; Martina Pomeroy, *Left out in the Cold: Trafficking Victims, Gender, and Misinterpretations of the Refugee Convention’s Nexus Requirement*, 16 MICH J GEND. L 453, 458 (2009); See STORMY MICHELLE SLIDER, *HUMAN TRAFFICKING: LAW ENFORCEMENT’S PERCEPTIONS AND KNOWLEDGE*, December, 2012.

²⁶¹ SHELLEY, *supra* note 10 at 10.

²⁶² CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 33. *See preamble.*

²⁶³ *Id.* Art. 9.4

²⁶⁴ If there were accessible means of migration, many people would not fall as victims to traffickers who easily pose themselves as human smugglers. SHELLEY, *supra* note 10 at 3.

²⁶⁵ *Id.* at 3.

are trafficked to Western Europe which is in dire need of labour because of low birth rates.²⁶⁶

It can therefore be deducted that demand for domestic labour at a low cost is one reason that fuels trafficking.²⁶⁷ People who consume sexual services never think or wonder how their prostitutes ended in this business.²⁶⁸ The negotiations over the Protocol almost failed to include organ removal; however, it managed to survive despite questionable objections by some negotiators that argued against its inclusion claiming that it was not the focus of the committee.²⁶⁹ Instead of allowing for safer migration channels, the more tightened borders, and the more restrictive immigration policies actually led to increased demand for trafficking.²⁷⁰

The above mentioned issues are central to combatting human trafficking. For a comprehensive approach to the problem, the Palermo Protocol should have addressed the impact of economic disparity between states, and tightened migration laws that feed directly into trafficking.²⁷¹

3. Gaps in Providing Assistance to Victims

Another weakness of the Trafficking Protocol is its inability to address the needs of the victims. Article 6 of the 2000 Protocol is full of gaps that actually raise serious doubts on the intention of the drafters; it starts in 6.1 by requesting states to intervene in “appropriate cases and to the extent possible under its domestic law.”²⁷² Allowing states to differentiate between victims by classifying them as appropriate and non-appropriate opens the door to states determining who deserves protection;²⁷³ which then leads to states claiming different reasons for evading from responsibilities. This

²⁶⁶ *Id.* at 13.

²⁶⁷ *Id.* at 39.

²⁶⁸ *Id.* at 39.

²⁶⁹ Gallagher, *supra* note 255 at 988.

²⁷⁰ Trafficking flows reported by the UNODC show that 73% of the trafficking victims are exploited in destination countries which are rich countries. The poor socioeconomic conditions of the victims help the traffickers to exploit them by raising false hopes. Hathaway, *supra* note 260 at 71; UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 29 at 40–41; Gallagher, *supra* note 255 at 976.

²⁷¹ See SIDDHARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY 41 (2008); SHELLEY, *supra* note 10 at 44–45; David A. Feingold, *Human Trafficking*, FOREIGN POLICY 26–32, 32 (2005).

²⁷² CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 33. Art 6.1.

²⁷³ MOREHOUSE, *supra* note 28 at 46.

clearly is not a humanitarian approach that seeks to protect the victims; in fact, it aims only at preserving state resources and denies obligations towards the victims.

The same article does not explain what the “to the extent possible” comprises, setting no minimum standards for assistance and allowing every state to determine this assistance domestically. This article has three gaps instead of one, allowing states to evade any responsibilities towards the victims.²⁷⁴

The practice following the entry into force has proven that states are good at exploiting these gaps.²⁷⁵ States like Egypt have continuously labeled victims of trafficking as illegal migrants in order to evade their international obligation to provide protection and assistance to these unidentified victims. Following these gaps, article 6.3 requests that states “shall consider” providing physical, psychological and social recovery of victims. The use of the term “shall consider” gives states space to elude their responsibilities towards the victims. It offers states the liberty to domestically decide whether an action is worth or not. It is also worth noting that most of the victims are identified in the destination countries - mostly Western states - rather than the origin and transit countries.²⁷⁶ And the way the Protocol text is drafted reflects the destination states’ intentions to minimize their responsibilities toward the victims.

Because of the very vague language of article 6, it is therefore not surprising that the drafters ensure that the following article 7 - that addresses the legal status of victims upon identification – has several loopholes allowing states to deport the victims back to their home countries at will.²⁷⁷ Article 7 allows states to only “consider” allowing victims to reside in their territory “temporarily or permanently” and in “appropriate case.” The confusing same threshold argument extends here. These terms are very open to interpretation and allow member states to interpret their obligations at will.

²⁷⁴ Sigmon, *supra* note 21 at 252.

²⁷⁵ *Id.* at 253.

²⁷⁶ Origin countries are defined as the countries where the victim originates. Transit countries are defined as the countries where victims are transited before reaching their final destination.

²⁷⁷ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 33. Art 7.1

This has led, in many cases, to states' deporting victims back to their home countries without due attention given to the trauma that they have endured.²⁷⁸

Another serious gap in the protection of victims of trafficking is found in Article 8 which covers the conditions of repatriating victims back to their home countries. Article 8.1 obliges states to return victims "without undue or unreasonable delay".²⁷⁹ The article was drafted in a language that ensures that the victims are offered a narrow opportunity to reside in the countries of destination; and at the same time undermines the fact that in most trafficking cases, these victims fell as prey to traffickers in their countries of origin.²⁸⁰ The Palermo Protocol stresses that these countries of origin should not delay the repatriation of their nationals. In the following paragraph of the same article, the protocol states during the process of returning the victims back to their countries of origin it "shall be preferably voluntary".²⁸¹ The use of the term "preferably" allows destination states to force victims to return to their home countries according to provisions in domestic legislation. This does not place the best interest of the victims in the forefront. In fact its focus is to not jeopardize the interests of destination states. The *travaux-preparatoires* also clearly points out that the use of the term "preferably" adds no obligation on the returning states whatsoever.²⁸²

The way the Trafficking Protocol deals with repatriating victims clearly conflicts with protecting asylum seekers and refugees. It fails to provide sufficient protection for this group.²⁸³ It conflicts with the principle of *non-refoulement*, and the obligation of states to not penalize this group for illegal entry and residence. Although the Protocol does include a clause protecting the rights of the victims under the 1951 convention,

²⁷⁸ It is important to note that this optional tone of the provisions for the protection of the victims was criticized and pointed out clearly by the NGO observers and the UN Inter-Agency Group that observed the work of the committee, however, in vain. Gallagher, *supra* note 255 at 990.

²⁷⁹ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 33. Art 8.1.

²⁸⁰ Many of the trafficking victims are deceived in their home countries by traffickers who offer them different incentives to lure them into different trafficking schemes. When victims are forced to return back to their home countries, they return back to the same people who lured them before and would retaliate against them.

²⁸¹ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 33. Art 8.2.

²⁸² Gallagher, *supra* note 255 at 993; Feingold, *supra* note 271 at 30.

²⁸³ Young, *supra* note 104 at 116.

other articles, specifically Articles 5,6,7,8, and 11²⁸⁴ give states the liberty to take penalizing decisions according to their domestic laws. This creates confusion and internal inconsistency that eventually leads to the loss of victims' rights.

4. International Cooperation at its Weakest

When tackling international cooperation, the Trafficking Protocol fails to include any provisions allowing effective cooperation. Although the Trafficking Protocol states in Article 2(c) that one of its main purposes is to promote international cooperation, it actually does very little to achieve this.²⁸⁵ Articles 9 and 10 of the Trafficking Protocol that discuss international cooperation, information exchange, and training fail to use a language that clearly obligates states to cooperate towards this goal. In article 9.4, the protocol uses the term “shall take, or strengthen,”²⁸⁶ which creates a gap in the text allowing states to evaluate themselves what the measures they are obliged to carry out in this matter are. This leads to a wide interpretation of the text and eventually the loss of its power. Further, article 10 starts by requesting states to cooperate “as appropriate,” and “in accordance with their domestic law”;²⁸⁷ the use of these terms offers the states leeway to determine what they want to invest in when combatting this crime - as if the crime was not serious enough for the states to choose what to commit to.

The seriousness of these gaps in the Protocol is that the destination countries that profit enormously from this crime are actually dissuaded from investing in combatting it. As explained by Peter Klerks, controlling a network of international criminals would require an approach involving more flexible modalities of international cooperation between different authorities²⁸⁸ something that the Trafficking Protocol

²⁸⁴ *Id.* at 118–119. As explained in this section, all these articles include loopholes allowing states to take necessary measures under their own domestic laws which allows the states to evade their obligations towards the victims accordingly.

²⁸⁵ CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 33. Art 2(c).

²⁸⁶ *Id.* Art 9.4.

²⁸⁷ *Id.* Art 10.1

²⁸⁸ Peter Klerks & Eysink Smeets, *The Network Paradigm Applied to Criminal Organizations: Theoretical nitpicking or a relevant doctrine for investigators? Recent developments in the Netherlands*, 24 CONNECTIONS 53–65, 53 (2001).

fails to stipulate clearly. As long as states have flexibility to interpret their responsibilities vis-à-vis the Protocol, it will never be effective.²⁸⁹

5. Border Measures: How to Criminalize the Victim

The Trafficking Protocol emphasizes border management as a main tool for identifying victims and unraveling networks. However, the provisions drafted for this aim also fall short in leading to efficient results. Articles 10, 11, 12, and 13 address information exchange, border measures, security and control of documents, the legitimacy and validity of documents; all focus on crime prevention at the border although this process is a difficult task.²⁹⁰ This task is complicated because the tightened migration laws force the victims to comply with the traffickers in order to reach their destinations. These traffickers with their huge resources manage to smoothly arrange border crossings and are seldom identified at this point. Furthermore, the traffickers manage not to reveal their actual intentions while at border points; in fact they seldom require the use of coercion until the victims arrive at their destinations because they hide their true intentions until after the victim arrives to the destination.²⁹¹

Article 11 of the Trafficking Protocol covers the border measures to be taken by states in curbing the crime.²⁹² Unfortunately this article does not serve any of the victims; in

²⁸⁹ In another note by Anne Gallagher, during the negotiations of the Palermo Protocol, penalties for trafficking were negotiated and accepted by the committee, however, it was quietly removed from the final version. Gallagher, *supra* note 255 at 984.

²⁹⁰ Hathaway, *supra* note 260 at 72.

²⁹¹ *Id.* at 73.

²⁹² Article 11 states that “1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons. 2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol. 3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State. 4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article. 5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol. 6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and

fact the tightened borders are the first reason why many victims opt voluntarily to seek the services of smugglers and traffickers.²⁹³ The principle emphasis of Article 11 is to identify the criminal but not the victim.²⁹⁴ As a result, this focus on tightening border measures feeds directly into the demand for traffickers.²⁹⁵ With tightened borders, more people would use smugglers for attempting to cross borders. This would eventually allow traffickers to find more victims. The strict border measures undermine, as well, the rights of asylum seekers and refugees who have already escaped from persecution by complicating their plight.²⁹⁶ Owing to the call for tightened borders, victims of trafficking have no other option than adhering carefully to the traffickers' commands as it is their only hope for reaching the destination. As a result, once arrived they reside illegally in the country and enjoy even fewer rights as undocumented illegal residents.²⁹⁷ These victims further feel reluctant to approach the authorities out of fear of deportation, and therefore endure all forms of exploitation to avoid it. The other side of the problem is that upon identification of the victims, authorities in destination countries commonly treat them as illegal residents with fewer rights and subject them to prosecution for entering the country illegally.²⁹⁸

Compounding these poor protection provisions for the victims, the identified victims are often extremely reluctant to report their traffickers as the victims are eventually repatriated back to their countries – to the same places where they were initially victimized – and fear retaliation. This explains a situation whereby victims opt to protect the traffickers as a means to a lesser harm.²⁹⁹

Identification of victims at border points provides incentives for the authorities to falsely identify them as smuggled economic migrants rather than trafficking victims or other refugees who have been subjected to persecution and opted to escape;³⁰⁰ the

maintaining direct channels of communication.” CENTRE FOR INTERNATIONAL CRIME PREVENTION (UNITED NATIONS), *supra* note 33.

²⁹³ Feingold, *supra* note 271 at 27.

²⁹⁴ Gallagher, *supra* note 255 at 994.

²⁹⁵ Hathaway, *supra* note 260 at 75; Pomeroy, *supra* note 260 at 456.

²⁹⁶ Young, *supra* note 104 at 101.

²⁹⁷ Hathaway, *supra* note 260 at 75–76; Pomeroy, *supra* note 260 at 456.

²⁹⁸ Hathaway, *supra* note 260 at 76.

²⁹⁹ Gallagher, *supra* note 255 at 991.

³⁰⁰ Young, *supra* note 104 at 106.

result is granting them lesser rights and evading their international obligations towards the protection of these victims.³⁰¹ This creates a lacuna that jeopardizes the intention behind the Palermo Protocol. The UN Inter-Agency Group raised this problem during the negotiation phase. It explained that there was no clear mechanism, neither in the trafficking protocol nor in the smuggling one, to differentiate between victims of trafficking and smuggled migrants; and that the two drafted instruments would continue to create confusion between these two groups which would lead to states determining upon will and perpetuate the failure to identify the victims of trafficking efficiently.³⁰²

The problem of identification does not stop here; in reality, it is compounded by other variables such as the trauma suffered by the victims, their loss of trust in authorities, the fear for the victims' lives and the lives of their families back home, the language barriers, and a lack of knowledge of their rights.³⁰³ All of these factors complicate the process of identification of the victims.

6. Low Conviction Rates

A major problem facing the Trafficking Protocol is that after 11 years from entering into force, human trafficking continues to be the only serious crime dealt with by most courts in the world with leniency.³⁰⁴ Most national legislation in the world is unable to effectively deal with the crime.³⁰⁵ The conviction rate for this crime continues to be “embarrassingly low”.³⁰⁶ The Global Report on Trafficking in Persons issued by UNODC mentions that although by 2009, about 80% of the 162 countries that had ratified the protocol had included domestic legislation addressing trafficking as a crime;³⁰⁷ the number of convictions recorded has been “0.154 per 100,000 people, such as homicides in Iceland or kidnapping in Norway.”³⁰⁸ This reflects an absence of political will, inadequate investment of resources, and insufficient

³⁰¹ Gallagher, *supra* note 255 at 995.

³⁰² *Id.* at 1000–1001.; Young, *supra* note 104 at 123.

³⁰³ Sigmon, *supra* note 21 at 253–254.

³⁰⁴ SHELLEY, *supra* note 10 at 12.

³⁰⁵ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 29 at 81.

³⁰⁶ *Id.* at 81.

³⁰⁷ *Id.* at 83.

³⁰⁸ *Id.* at 86.

protection for the victims.³⁰⁹ There is even a common understanding that the victims are to be blamed for their situation as they are the ones who put themselves in this precarious position.³¹⁰ This reflects no understanding of the core reasons behind the commission of the crime, and hence, increases the unlikelihood that this legal framework will be effective in combatting the crime.³¹¹

As a result, the absence of comprehensive provisions for identifying the victims in the Trafficking Protocol does not protect them. A comprehensive approach would therefore aim at facilitating safe migration of labour, coupled with more labour protection laws that would counter any forms of exploitation.³¹²

B. Recommendations

As explained in chapters three and four, it is undoubted that the efforts already carried out by Egypt to combat human trafficking are commendable; however they are not all that can be done. This section discusses areas that require improvement for more effective address of the human trafficking of Eritreans in Egypt. These include: necessary amendments to the law, effective institutional efforts, robust law enforcement, economic empowerment of the Sinai tribes, more diplomatic outreach, and cooperation with international organizations working in this field.

1. Amendments to the Law

The Egyptian anti-trafficking law was commended by the UN Special Rapporteur on trafficking as an important step towards combatting the crime in Egypt;³¹³ however, the law still fails to make a difference. The Egyptian Initiative for Personal Rights (EIPR) commenting on Article 2 pointed out that many of the terms used in the definition had been previously mentioned in other Egyptian laws implying different interpretations. The result is that prosecutors are confused about which law to apply when they file their cases. Terms need to be equated with the existing definitions

³⁰⁹ *Id.* at 88.

³¹⁰ SHELLEY, *supra* note 10 at 12.

³¹¹ Even if we can raise the level of conviction of traffickers; as mentioned earlier, a focus on prosecution of traffickers only will not stop the crime as long as the demand for traffickers is high. Feingold, *supra* note 271 at 30.

³¹² Hathaway, *supra* note 260 at 74.

³¹³ JOY NGOZI EZEILO, *supra* note 157 at 3.

found in other laws and clearly defined;³¹⁴ this applies to defining “exploitation in acts of prostitution”, “forced labor and services”, “slavery or practices similar to slavery or servitude”, and “the removal of human organs or tissue parts thereof”. EIPR adds that this issue was neglected while drafting the Executive Regulations for the law, and continues to be neglected until today.³¹⁵ The absence of clear definitions for legal terms in the law was also highlighted by the National Center for Judicial Studies in one of its published papers.³¹⁶

Another problem in Egyptian legislation is that the definition of trafficking includes victims of “forced labor and services”.³¹⁷ “Forced labor and services” also includes domestic workers who have been “explicitly excluded”³¹⁸ from protection by the Egyptian Labor Code of 1994. This creates a conflict between two laws that requires reconciliation through the amendment of the Labor Code of 1994, especially that Egypt already has international obligations towards domestic labour as part of its commitment to the ICRMW.³¹⁹

In addition to the problem of clear definition of terms, article 1(3) defining the victim of trafficking does not indicate where the burden of proof lies.³²⁰ It is unclear whether the victim is the entity required to prove victimization or the authorities. This leaves a gap in the identification step of the process which leads to an absence of protection for victims. This is complicated by the fact that most surviving victims are not in an emotional or a psychological position to provide detailed information on the crime. Thus, victims are unable to prove their cases.

Concerning the crimes and punishments chapter of the Egyptian anti-trafficking law, although the law clearly stipulates a fine between 50,000 and 200,000 Egyptian

³¹⁴ There is no definition for the term “exploitation in acts of prostitution”; however, the 1961 Egyptian anti-prostitution law includes a definition to the term “exploitation of the prostitution or immorality of another”. It is recommended that both terms be equated to eliminate confusion. See Law Combating Trafficking in Persons, *supra* note 9 at 10–11.

³¹⁵ *Id.* at 11.

³¹⁶ Adel Maged, BASIC LEGAL TERMS AND ELEMENTS OF HUMAN TRAFFICKING CRIMES (2012).

³¹⁷ Article 2. AL-JARIDA AL-RASMIYYA, *supra* note 160.

³¹⁸ Law Combating Trafficking in Persons, *supra* note 9 at 15.

³¹⁹ *Id.* at 15.

³²⁰ *Id.* at 15.

pounds (EGP) for those who commit human trafficking,³²¹ this has failed to deter the commission of the crime. Evidence shows that one ransom paid to release an Eritrean victim stands higher than 200,000 EGP.³²² It would be better for the lawmakers to leave this fine open and without a ceiling allowing the prosecution and court to determine the fine depending on the severity of the crime. In this way, the fine mechanism would be more efficient as a deterrent to the commission of the crime.

Another instance of confusion is created by article 6 of the anti-trafficking law. This article stipulates harsher penalties for specific forms of human trafficking crimes;³²³ however, these forms are almost inclusive of all forms of human trafficking. This creates redundancy and confusion over its relevance and practical application. Prosecutors will be confused on which set of penalties they should apply, whether article 5 or article 6.

Unfortunately the chapter covering international judicial cooperation fails to include a clear obligation on Egyptian judicial and police authorities to cooperate with respective foreign authorities with regards to investigating trafficking crimes. Article 18 includes a paragraph that conditions international cooperation on the provision of available bilateral and multilateral agreements with other countries.³²⁴ With an absence of an obligation to cooperate, destination countries that benefit from the crime are relieved from any duties to do so. This reflects the absence of political will to address a serious crime like trafficking, especially given the fact that most forms of trafficking are transnational.

³²¹ Article 5. AL-JARIDA AL-RASMIYYA, *supra* note 160.

³²² REISEN ET AL., *supra* note 14 at 39.

³²³ Article 6 states that “Life imprisonment and a fine not less than 100,000 pounds and not to exceed 500,000 pounds shall be imposed on anyone who committed the crime of human trafficking in the following cases:

1) If the perpetrator established, organized, or managed an organized criminal group for the purposes of human trafficking, if he was a leader thereof, if he was one of its members or belonged thereto, or if the crime was of a transnational nature; 2) If the act was committed by way of threats of death, serious harm or physical or psychological torture; or if the act was committed by a person carrying a weapon; 3) If the perpetrator was the spouse, one of the ascendants or descendants, or custodian or guardian of the victim, or was responsible for the supervision or care or had authority over the victim; 4) If the perpetrator was a public official or was assigned to carry out a public service and committed the crime by exploiting the office or public service; 5) If the crime resulted in the death of the victim or caused him to suffer a permanent disability or an incurable disease; 6) If the victim was a child, was incapacitated or was a person with disabilities; 7) If the crime was committed by an organized criminal group.” AL-JARIDA AL-RASMIYYA, *supra* note 160.

³²⁴ Article 18. *Id.*

The chapter on protecting the victims has many gaps that render it incapable of assisting the victims. Article 21 covers the impunity of anyone who is a victim of trafficking; unfortunately it creates a legal limbo as the article fails to address the situation of victims who opt to collude with traffickers in exchange for not being tortured.³²⁵ The following Article 22 also includes general guidelines on the forms of protection that must be offered to the victims, with details to be provided in the Executive Regulations that followed the law.³²⁶ The official Executive Regulations fail to include specific information on how these forms of protection will be offered to the victims. Practice has shown that the Eritrean victims of trafficking that are identified in the Sinai are initially held in detention facilities in the Sinai prior to their being moved to other detention centers or to the shelter in Cairo.³²⁷

There is inadequate attention paid to the process of identifying victims of trafficking. The same article 22 mentions the “return [of the victim] to his homeland in an expeditious and safe manner, if he was a foreigner or a non-permanent resident in the State”.³²⁸ While it does assure that the authorities support those wishing to return swiftly back to their home countries, it fails to include any obligation on Egypt to offer legal assistance to those who opt to seek legal residence or asylum in Egypt.³²⁹ The following Article 23 guarantees protection for the victims conditioned on the duration of the legal proceedings for prosecution of the perpetrators. Once the proceedings end, there is no obligation on Egypt to extend further protection to the victims.³³⁰ The same article fails to insist that communication with the victim be carried out in a language that the victim can understand.³³¹

³²⁵ Article 21. *Id.*

³²⁶ Article 22. *Id.*

³²⁷ Law Combating Trafficking in Persons, *supra* note 9 at 18.

³²⁸ AL-JARIDA AL-RASMIYYA, *supra* note 160.

³²⁹ JOY NGOZI EZEILO, *supra* note 157 at 12. A similar phrase is also included in Article 25. Article 25 states that: [...] The Foreign Ministry shall also coordinate with the relevant authorities in other countries to facilitate the safe and expeditious return of foreign victims to their countries of origin. Article 25 AL-JARIDA AL-RASMIYYA, *supra* note 160.

³³⁰ IOM has indicated that the idea of issuing a “special visa for trafficked victims” was already introduced to the Egyptian government previously; however, it was rejected as the government indicated it would be a leeway for illegal immigrants to obtain residency in Egypt. This idea was derived from the US ‘T Nonimmigrant status’ visa, and the Australian ‘Human Trafficking Visa Framework’. Interview with IOM Egypt, *supra* note 235.

³³¹ Law Combating Trafficking in Persons, *supra* note 9 at 18.

Another problem emerges from article 26. This article offers reintegration and training activities, however, they are only offered to Egyptian victims ruling out foreigners.³³² As a result, Eritreans are not eligible for these activities. Article 27 creates a fund to assist the victims of trafficking. This crime-victim compensation fund continues to be inefficient in addressing the needs of the victims. The importance of the fund lies in the fact that previous experiences in other countries have proven that substantial financial compensation can lead to better results than the timely process of rehabilitation of victims.³³³ This fund depends on the collecting of the fines, confiscated sums, and property from the perpetrators of the crime.³³⁴ In the event of the lack of convictions, this fund remains empty. Hence, the management of this fund continues to be poor.³³⁵

Finally, although the Egyptian anti-trafficking law dedicates the fifth chapter to the protection of victims; it fails to include any provisions that prevent the crime from occurring in the first place. The law does not include any provision that obligates the Egyptian government to carry out activities that curtail the crime from actually taking place. This renders the law short of the prevention provisions of the Trafficking Protocol by creating another loophole.³³⁶ The end result is that the root causes of human trafficking in Egypt are not tackled at all.

³³² Article 26 states that “The competent authorities shall provide care, education, training, and rehabilitation programs to the Egyptian victims, whether through governmental or non-governmental institutions.” This mentions Egyptian victims exclusively. Article 26. AL-JARIDA AL-RASMIYYA, *supra* note 160.

³³³ Studies in the USA and Israel have shown that allowing victims a large financial compensation enough to open a small business would facilitate their reintegration in society whether they decide to return to their country of origin or remain in Egypt. Sarah Leevan, *Comparative Treatment of Human Trafficking in the United States & (and) Israel: Financial Tools to Encourage Victim Rehabilitation and Prevent Trafficking*, 6 CARDOZO PUB POL ETHICS J 773, 798 (2007).

³³⁴ Article 27. AL-JARIDA AL-RASMIYYA, *supra* note 160.

³³⁵ There is an absence of detailed information on the management of this fund. Interviews conducted with different stakeholders have revealed absence of concrete information on the administration of this fund.

³³⁶ Article 9 of the Trafficking Protocol covers the prevention mechanisms that states should set in place. PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN (15 NOVEMBER 2000), A/RES/55/25, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, G.A. RES. 25, ANNEX II, U.N. GAOR, 55TH SESS., SUPP. NO. 49, AT 60, U.N. DOC. A/45/49 (VOL. I) (2001), ENTERED INTO FORCE DEC.25, 2003., *supra* note 89.

The Executive Regulations formulated following the law were expected to bridge many gaps in the text of the law and clarify the issues mentioned here; however the regulations either reiterated the gaps in the law or included very general information that was not specific enough to clearly establish the roles and distribute the executive tasks.³³⁷ For example, Article 2(b) of the Executive Regulations included a vague statement on “upholding the human dignity of the victims” and “doing what is necessary to help them and respect all their generally accepted human rights.”³³⁸ Such general and vague statements are repeated throughout the Regulations and are difficult to translate into action that actually help the victims and prevent the crime from occurring.

Until today, the implementation continues to be inadequate. The numerous gaps in the law render it a failure in incriminating anyone who is or has been involved in trafficking in the Sinai.³³⁹ UNHCR reports knowledge of three cases that were submitted for prosecution and were subsequently dismissed by the prosecutor’s office before being sent to court.³⁴⁰ Another sad example is a situation reported by UNHCR whereby both the victim and the alleged perpetrator were put in the same hospital room for treatment after the prosecutor ordered them both to obtain forensic medical reports.³⁴¹ This shows the prosecutor’s office lack of expertise in dealing with such a sensitive issue and is unaware of how to address it more effectively.

Another serious challenge regarding the Egyptian anti-trafficking law is the absence of legal precedents, and therefore, obliging almost all prosecutors to improvise when handling human trafficking cases.³⁴² In fact, prosecutors tend to frame cases under the laws that they are more comfortable with.³⁴³ This means that cases can be tried under

³³⁷ Rabee Hashim, *Al-Ahram Exclusively publishes the Executive Regulations for the Anti-Trafficking Law*, AL-AHRAM NEWSPAPER ONLINE PORTAL, December 22, 2010, <http://gate.ahram.org.eg/News/24459.aspx> (last visited Jan 30, 2015).

³³⁸ *Id.*

³³⁹ The only cases that have been prosecuted in Egypt are of Egyptian child trafficking and women trafficking. JOY NGOZI EZEILO, *supra* note 157 at 13.

³⁴⁰ UNHCR CAIRO, *supra* note 14 at 12–13.

³⁴¹ *Id.* at 14.

³⁴² Interview with the Egyptian Ministry of Justice, *supra* note 156; Interview with UNHCR Cairo, Egypt, *supra* note 229.

³⁴³ A study on prosecuting cases under this law – carried out by a senior judge - was fully drafted under the understanding and assumption that the law covers only forced child marriages, excluding all other

the anti-prostitution law, the child law, or even the penal code. What complicates the prosecution process further is the fact that establishing the facts of a trafficking case is very complicated owing to the nature of the crime; therefore, the process becomes very tiring and seldom easy for prosecutors given their already heavy workload.³⁴⁴

2. Effective Institutional Efforts

Having an effective institutional framework in place is very important in combatting human trafficking in light of the complexity and severity of the crime. The UN Special Rapporteur on trafficking in persons noted in her report on trafficking in Egypt that coordination between government institutions continued to be weak with overlapping tasks and minimum resources allocated.³⁴⁵ Interviews held with IOM officials have also reiterated how ineffective the coordination between the 13 Egyptian ministries and 15 specialized agencies that are members of the anti-trafficking committee has been.³⁴⁶ Meetings held on a monthly basis often discuss general topics and lack proper follow-up on the action plan in place.³⁴⁷ The government's establishment of a separate anti-trafficking body with a specific mandate and allocated resources to address this crime is required. This separate body should be given the power to carry out any defined action plan in a more efficient manner.

The foremost institutional defect that Egypt needs to address is the lack of a systematic approach to collecting and storing data on trafficking in Egypt.³⁴⁸ An interview conducted with the National Council for Childhood and Motherhood

forms of trafficking taking place in Egypt. The same study only mentions that should there be any foreign victim identified, the Ministry of Foreign Affairs should be directly informed in order to coordinate the repatriation of the victim as soon as possible. Ahmed Al Raqeeb, PRESENTATION ON PROSECUTION AND ACCUSATION IN THE CRIMES OF HUMAN TRAFFICKING 1 & 6, <http://www.child-trafficking.org/sites/default/files/elrakeb.pdf>.

³⁴⁴ *Id.* at 2.; Prosecutors explain that they handle daily cases involving mainly armed robberies, homicide, and drug dealing. They are far from being experts in handling trafficking cases. Interview with the Egyptian Ministry of Justice, (2015).

³⁴⁵ JOY NGOZI EZEILO, *supra* note 157 at 8.

³⁴⁶ Interview with IOM Egypt, *supra* note 239; this view is not shared by an Egyptian official in the Ministry of Justice who claim that coordination activities are effective, and that the anti-trafficking committee meets every month. Interview with the Egyptian Ministry of Justice, *supra* note 341.

³⁴⁷ Interview with IOM Egypt, (2015); Interview with an Egyptian NGO, *supra* note 220.

³⁴⁸ Law Combating Trafficking in Persons, *supra* note 9 at 8; JOY NGOZI EZEILO, *supra* note 157 at 3.

(NCCM) revealed a good first step: creating a library for researchers on human trafficking in Egypt. However, this library is composed of only one book cabinet located inside the general library of the NCCM.³⁴⁹ One official stated that a process of creating a legal database on human trafficking is already envisioned but is pending the establishment of a permanent headquarters for the anti-trafficking committee.³⁵⁰ NCCM has also launched a website called *child-trafficking.org* which reflects the Egyptian understanding that the crime is confined to child victims only. Egypt needs to establish a data collection unit attached to a specialized anti-trafficking body supervised by the Ministry of Interior that is comprehensive in its address. This specialized anti-trafficking body could spearhead the efforts for combatting trafficking in Egypt.

Another area requiring improvement is the identification of victims. Although a national referral mechanism was developed in 2012 for referring identified victims of trafficking to the required assistance provision locations, the government has continuously failed to implement this mechanism efficiently.³⁵¹ An IOM staff member explained that even if it is considered effective, the referral mechanism requires identifying a victim. If the authorities fail in identifying any victims, the referral mechanism remains useless.³⁵² Additionally, the NCCM Hotline was reported to be focused entirely on Egyptian family related problems and provided services in the Arabic language alone, thereby, adding a language barrier for foreign African victims who may not speak Arabic.³⁵³ The hotline needs to be better prepared to receive calls from non-Egyptians.

Another problem lies with the shelter for the victims. Although the establishment of a shelter for female victims of trafficking by the NCCM in 2010 was a positive step by the government, the shelter capacity is 12 victims only.³⁵⁴ This number is too low to seriously address the needs of the victims. Furthermore, the operation of the shelter continues to rely mainly on the financial support of the IOM; this is something that

³⁴⁹ Interview with the Egyptian National Council for Childhood and Motherhood, *supra* note 11.

³⁵⁰ Interview with the Egyptian Ministry of Justice, *supra* note 156.

³⁵¹ UNHCR CAIRO, *supra* note 14 at 13; United States Department of State, *supra* note 135 at 163.

³⁵² Interview with IOM Egypt, *supra* note 347.

³⁵³ JOY NGOZI EZEILO, *supra* note 157 at 9.

³⁵⁴ Interview with the Egyptian National Council for Childhood and Motherhood, *supra* note 11.

threatens the sustainability of the support provided should the funding become unavailable.³⁵⁵ Another problem is the lack of efficient monitoring of the work of the shelter.³⁵⁶ IOM has reported that monitoring activities are very basic if not completely absent.³⁵⁷ Another problem is the inability of the shelter to provide services to male victims of trafficking. This is an issue that requires attention from the government.³⁵⁸ Currently, male victims are referred by the IOM to the Psychosocial Services and Training Institute in Cairo (PSTIC) which provides them with rental payments for three months along with psychological therapy. An IOM officer revealed that the idea of establishing a shelter for male victims was brought to the attention of the government in 2014; however, no concrete steps have been taken to date.³⁵⁹

Capacity building is another area that requires improving. Several training sessions have taken place for the capacity building of members of Egyptian law enforcement for the identification of victims of trafficking. However, in the absence of a specialized and trained victim identification unit, these efforts remain wasted and unable to effectively stop the crime in the long run. There also has not been a comprehensive guide published on the procedures of identification and how to further refer the victims to the available protection channels.³⁶⁰ This leads to an absence of a systematic law enforcement approach to identifying victims. Furthermore, the capacity building programs in place fail to include journalists who are in a good position to carry out investigations into trafficking and supporting the activities of the government.³⁶¹

The problem of providing proper capacity building activities also extends to the domain of awareness-raising campaigns. There is no doubt that these institutions need to carry out more effective awareness-raising campaigns targeting potential victims.³⁶²

³⁵⁵ During the interview, the IOM staff member explained that the government didn't not monitor the work of the shelter regularly which lead to the dissatisfaction of some victims. Interview with IOM Egypt, *supra* note 347.

³⁵⁶ Interview with IOM Egypt, *supra* note 235.

³⁵⁷ Interview with IOM Egypt, *supra* note 347.

³⁵⁸ JOY NGOZI EZEILO, *supra* note 157 at 16.

³⁵⁹ Interview with IOM Egypt, *supra* note 347.

³⁶⁰ United States Department of State, *supra* note 135 at 164.

³⁶¹ JOY NGOZI EZEILO, *supra* note 157 at 18.

³⁶² *Id.* at 14.

This involves coordinating with stakeholders such as the IOM and UNHCR who have access to different African communities living in Egypt to organize campaigns and training sessions on human trafficking and help in the identification of the victims.

Awareness raising activities for potential victims has long been considered as one of the most effective means of preventing human trafficking.³⁶³ In 2012, the anti-trafficking committee printed out and distributed brochures to different embassies warning them of the dangers of human trafficking.³⁶⁴ The activity assumed that these embassies – with specific regard to Eritrea – enjoy an active relationship with their communities in Egypt. This represents a gross misunderstanding. The fact that most Eritreans who have opted to escape from their home countries and seek asylum in Egypt, are unwilling to have any contact with their embassies as it threatens their security. For better dissemination of awareness raising brochures on human trafficking, Egypt should rely on the outreach efforts of agencies like the UNHCR, the IOM, and other community-based organizations that have direct contact with the Eritrean community in Egypt. The UNHCR and IOM, particularly, can take this awareness campaign further to the refugee camps in Sudan in an attempt to curb the crime at the source. The use of social media as a means for awareness-raising can also be better utilized.

Framing the problem as one of illegal migration is not the solution for it.

Unfortunately there is a general perception in Egyptian society towards refugees and asylum seekers as persons burdening the economy, especially after the 2011 Egyptian revolution. One of the negative aspects of any democratic transitional period is the revival of hardline nationalistic views that are invariably accompanied by xenophobic sentiments towards foreigners. Any newly-elected government would have to meet Egyptians' political and economic aspirations, whose lack of fulfillment indirectly feeds into xenophobia and creates a hostile environment for foreign migrants.

As a direct result of framing the problem as one of illegal immigration, in 2014, the Egyptian government established a National Coordination Committee for Combatting

³⁶³ MEKONNEN AND ESTEFANOS, *supra* note 1 at 24.

³⁶⁴ AMBASSADOR NAELA GABR, *supra* note 198 at 5.

and Preventing Illegal Migration.³⁶⁵ The first plan drafted by this committee does not acknowledge that human trafficking is closely related to the problem of illegal migration. In fact, the plan does not include any activity involving coordinating with the Egyptian anti trafficking committee.³⁶⁶ Ambassador Naela Gabr, who currently heads this committee, has in fact stated publicly that the committee targets two forms of illegal migration: one involves all Africans originating from the Nile Basin countries who infiltrate Egypt, and the other migrants attempting to illegally cross the Mediterranean Sea.³⁶⁷ Without admitting the existence of the problem in the Sinai, the entire institutional framework becomes useless in putting an end to this problem.

The failure of the government to engage NGOs in the entire process of prevention, protection and prosecution, also renders the institutional efforts in Egypt ineffective in solving the problem of human trafficking of Eritreans. When asked about NGO support in addressing trafficking in the Sinai, UNHCR was unaware of any,³⁶⁸ while the IOM mentioned the name of only one NGO.³⁶⁹

Egypt should adopt a stakeholder approach in addressing this problem. Experience shows that NGOs do not suffer from the bureaucratic problems that the government does and are able to work efficiently, especially in carrying out investigations³⁷⁰ and providing protection services for victims. NGOs also work on diversifying their sources of funding, which solves another problem that governmental institutions are unable to address.³⁷¹ NGOs in Egypt can be easily contracted to support government activities in identifying victims,³⁷² provide services that require expertise unavailable at the government facilities such as mental health evaluations, and group counseling for reintegration of victims.

³⁶⁵ The National Coordinating Committee on preventing and combatting illegal migration, *supra* note 187.

³⁶⁶ *Id.*

³⁶⁷ Ambassador Naela Gabr, INTERNATIONAL MECHANISMS FOR COMBATting AND PREVENTING HUMAN TRAFFICKING AND ILLEGAL MIGRATION (2014), http://www.mfa.gov.eg/Arabic/Ministry/illegal_migration/Pages/default.aspx?PageNumber=3 (last visited Feb 3, 2015).

³⁶⁸ Interview with UNHCR Cairo, Egypt, *supra* note 229.

³⁶⁹ Interview with IOM Egypt, *supra* note 347.

³⁷⁰ An Egyptian NGO managed to discover one of the locations that Eritreans were held captive at. EveryOne Group, *supra* note 14.

³⁷¹ Leevan, *supra* note 333 at 798.

³⁷² Law Combating Trafficking in Persons, *supra* note 9.

Last, any institutional efforts will fail to achieve good results in combatting human trafficking without proper funding. Efforts carried out in Egypt are seriously underfunded.³⁷³ Ambassador Naela Gabr reported in 2012 that the topic continues not to be a priority for the Egyptian government in the aftermath of the 2011 Revolution;³⁷⁴ furthermore, she reiterated the heavy reliance of all anti-trafficking activities in Egypt on international funding by UN agencies and the European Union.³⁷⁵ When asked about the Alexandria University legal clinic established to provide legal aid for victims of trafficking, UNHCR explained that it was shut down in 2013 owing to lack of funding.³⁷⁶ It is also uncontested that the funding directed towards publications and training sessions comes from UN agencies, and specifically the IOM.³⁷⁷ The Egyptian anti-trafficking committee has not established any contingency plan covering the situation when these funds cease to exist.³⁷⁸

These deficiencies in the institutional framework in place need to be addressed as soon as possible if there is serious intention to curb human trafficking of Eritreans in Egypt. Attention paid to buttressing law enforcement is also essential.

3. Robust Law Enforcement

Effective law enforcement is central to fighting human trafficking. Interviews conducted with the IOM and UNHCR have revealed the need for a robust police force that understands the nature of the crime and is qualified to identify victims.³⁷⁹ Working on law enforcement involves two initiatives. The first is a robust police force that is designed and mandated to curb the crime in North Sinai, and the second is having a comprehensive legal system that is capable of incriminating traffickers and protecting the victims.

³⁷³ Interview with the Egyptian Ministry of Justice, *supra* note 156.

³⁷⁴ AMBASSADOR NAELA GABR, *supra* note 198 at 12.

³⁷⁵ *Id.* at 13.

³⁷⁶ Interview with UNHCR Cairo, Egypt, *supra* note 229.

³⁷⁷ Interview with IOM Egypt, *supra* note 235; Interview with the Egyptian National Council for Childhood and Motherhood, *supra* note 11.

³⁷⁸ Interview with the Egyptian Ministry of Justice, *supra* note 156; Interview with UNHCR Cairo, Egypt, *supra* note 229.

³⁷⁹ Interview with IOM Egypt, *supra* note 235; Interview with IOM Egypt, *supra* note 347; Interview with UNHCR Cairo, Egypt, *supra* note 229; Interview with an Egyptian NGO, *supra* note 220.

The small number of successful prosecutions reflects inadequate understanding and application of the law. In 2012, the Egyptian government prosecuted two cases with a total of 15 persons charged under the Egyptian anti-trafficking law; all of them relate to trafficking in women for the purpose of prostitution in exchange for financial rewards.³⁸⁰ In 2013, there was not a single case conviction.³⁸¹ Only three cases have been recorded for trafficking of Eritreans in the Sinai to date in Egypt, and they all unfortunately have ended without any conviction.³⁸² In the meantime, a trafficker who has confessed his crimes committed in the Sinai has admitted that he himself had killed around 1,000 victims.³⁸³ Another trafficker admitted to receiving about 100 sub-Saharan Africans a week between 2009 and 2013, amounting to 15,000 to 20,000 victims.³⁸⁴ One Egyptian official stated that around 27 cases were in the legal pipeline for 2014; however, no conclusive sentences had taken place.³⁸⁵ He further stated that none of these cases were regarded victims from the Sinai. As sad as the reality is, the legal system has failed these victims.

One of the problems with law enforcement is that Egyptian authorities in the Sinai continue to give the matter low priority.³⁸⁶ The government assumes that the ongoing military operations in the Sinai would also automatically end any form of human trafficking taking place there too.³⁸⁷ However, this assumption is short-sighted given that the military is focusing on national threats considered to be of greater importance; these include eliminating terrorist groups in the Sinai, and curtailing the smuggling of subsidized Egyptian goods to Gaza. And even were it assumed that the Egyptian military operation could curtail the commission of human trafficking in the Sinai for

³⁸⁰ Egyptian Court of 1st Instance, No. 8595/2012, (2012), https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/egy/no._85952012.html?tmpl=old; Court of Cassation, Appeal No. 6772, (2012), https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/egy/2013/appeal_no._6772.html?tmpl=old.

³⁸¹ United States Department of State, *supra* note 135 at 163.

³⁸² Two of these cases were dismissed for lack of evidence, while the third one was dismissed as the prosecutor acknowledged that the accused person was forced to torture other people to avert being tortured himself. SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 50; Interview with UNHCR Cairo, Egypt, *supra* note 229.

³⁸³ van Reisen, Estefanos, and Rijken, *supra* note 20 at 63.

³⁸⁴ *Id.* at 64.

³⁸⁵ Interview with the Egyptian Ministry of Justice, *supra* note 156.

³⁸⁶ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 58; United States Department of State, *supra* note 135 at 163.

³⁸⁷ AMBASSADOR NAELA GABR, *supra* note 198.

good, this would likely result in the changing of the routes used by the traffickers but not the actual numbers of people trafficked. The UNHCR has already identified some cases trafficked from Sudan through Aswan to Marsa Matrouh on the Mediterranean coast of Egypt that would normally have chosen the Sinai route.³⁸⁸

Another inhibiting factor is that officials in Egypt continue to frame the problem as being one of illegal migration, or completely denying the existence of the problem at all with the excuse of lacking reliable information on the existence of trafficking.³⁸⁹ When confronted with photographs and video footage of Eritrean victims in the Sinai, an Egyptian official responded that the evidence was inconclusive and aimed at villifying Egypt.³⁹⁰ One interviewee insisted that traffickers are so assured of the complete lack of police attention to the crime that traffickers are known to prowl for victims in areas in Cairo where Eritreans reside.³⁹¹

Evidence also substantiates the claim that Egyptian authorities even force the arrested Eritreans to financially cover their own deportation.³⁹² Adding to the injustice is the Egyptian detention facilities in the Sinai's lack of any form of basic medical support for Eritreans identified whether victims of trafficking or smuggling.³⁹³

Another dormant problem is the anti-trafficking committee's failure to discuss any plan in the aftermath of the Sinai military operation to combat terrorists. There is nothing that guarantees that human trafficking in the Sinai would not resume upon announcing the end of these operations.³⁹⁴ Although the interviewee at the Ministry of Justice acknowledged the possibility that some of the Eritreans identified in the Sinai might indeed be trafficking victims, the interviewee continuously used the term *illegal infiltrator*.³⁹⁵ This shows how victims are perceived as being criminals by officials within the government.

³⁸⁸ Interview with UNHCR Cairo, Egypt, *supra* note 229.

³⁸⁹ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 59; United States Department of State, *supra* note 135 at 164.

³⁹⁰ Interview with the Egyptian Ministry of Justice, *supra* note 156.

³⁹¹ Interview with an Egyptian NGO, *supra* note 220.

³⁹² SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 67.

³⁹³ van Reisen, Estefanos, and Rijken, *supra* note 20 at 92.

³⁹⁴ Interview with the Egyptian Ministry of Justice, *supra* note 156.

³⁹⁵ *Id.*

There is also more to be done by the Egyptian police. The police need to review their approach to addressing the problem. Instead of having a small administrative sub-unit addressing human trafficking created under the Assistant Minister of Interior for Human Rights,³⁹⁶ a more robust anti-trafficking body needs to be created inside the Ministry of Interior. It would involve officers receiving special training on combatting trafficking and identifying victims. This body could adopt other states' best practices in investigating and addressing trafficking as usual.³⁹⁷

It is also recommended that the officers enrolled in this specialized body hold more permanent positions. They would not be subject to frequent rotation to other police units, owing to the complexity of the trafficking crime and necessity for developing expertise.³⁹⁸ This would provide both commitment and consistency.

Directly related to building police expertise, more training of police officers is required on identification of victims of trafficking and handling traumatized victims.³⁹⁹ In 2012, the anti-trafficking committee reported that the Ministry of Interior had indeed included human trafficking in the periodic training sessions conducted for police officers.⁴⁰⁰ However, in these training sessions the topic was allotted only two to four hours.⁴⁰¹ This is not enough time to adequately train officers on such a complicated crime. The decrease in number of persons referred to the government protection services in 2013 was directly related to the continued lack of trafficking awareness among the law enforcement officials and the judiciary as well.⁴⁰²

In addition on working on training police on the nature of the crime, the Egyptian border patrol officers can chart the locations where victims have reported to have been held in order to create stronger police presence in these areas. More monitoring activities conducted on the work of the border patrol officers are also encouraged.⁴⁰³

³⁹⁶ *Id.*

³⁹⁷ Law Combating Trafficking in Persons, *supra* note 9 at 16.

³⁹⁸ Interview with the Egyptian National Council for Childhood and Motherhood, *supra* note 11.

³⁹⁹ Law Combating Trafficking in Persons, *supra* note 9 at 21.

⁴⁰⁰ AMBASSADOR NAELA GABR, *supra* note 198 at 6.

⁴⁰¹ *Id.* at 6.

⁴⁰² United States Department of State, *supra* note 135 at 164.

⁴⁰³ Law Combating Trafficking in Persons, *supra* note 9 at 16.

The same patrols must stop the “shoot-to-kill” approach that is adopted on the borders with Israel.⁴⁰⁴

There must be more attention paid to granting victims effective legal assistance. A law protecting the victims must ensure that they are offered adequate legal assistance and possibly granted residence permits in Egypt should they require so under Egyptian law. The Egyptian Ministry of Interior should maintain an open channel of communication with UNHCR and other local NGOs that are able to provide legal assistance to surviving victims to acquire legal residence should they request, and to pursue the prosecution of traffickers.⁴⁰⁵ At the moment, IOM refers victims to legal assistance provided by the Egyptian Foundation for Refugee Rights (EFRR).⁴⁰⁶ As explained in chapter two, most of the African victims of trafficking are Eritreans; many of them have fled Eritrea for reasons that would qualify them for refugee status in Egypt; they would be subjected to persecution were they forced to return to Eritrea.⁴⁰⁷ Furthermore, even if Eritrea did not treat them as criminals, there remains a complete absence of any form of rehabilitation or reintegration of the victims in Eritrea which pays attention to their special needs as victims of trafficking.⁴⁰⁸

4. Economic Empowerment of the Sinai Tribes

In addition to amending the law, reviewing the institutional framework, and working on better law enforcement, the Egyptian government must empower the Sinai tribes. Evidence suggests that most of the persons involved in human trafficking in Egypt belong to the Bedouin Sawarka tribes of North Sinai.⁴⁰⁹ The Sinai Sawarka tribes have historically suffered from ongoing negligence and marginalization by the

⁴⁰⁴ SIMPSON AND HUMAN RIGHTS WATCH (ORGANIZATION), *supra* note 12 at 69–70; van Reisen, Estefanos, and Rijken, *supra* note 20 at 96.

⁴⁰⁵ Leevan, *supra* note 333 at 799.

⁴⁰⁶ Interview with IOM Egypt, *supra* note 235.

⁴⁰⁷ The Eritrean Ambassador in Egypt stated in a response to the problem in 2011 that these victims are fugitives and have fled Eritrea illegally and therefore are not entitled to protection. MEKONNEN AND ESTEFANOS, *supra* note 1 at 26–27.

⁴⁰⁸ UNHCR explains that in light of the most recent information available on victims of trafficking from Eritrea, it advises that these victims would fall under its mandate as members of a particular social group who will be as such subjected to persecution upon forcible return back to Eritrea. UNHCR, *supra* note 142 at 33.

⁴⁰⁹ HUMPHRIS, *supra* note 19 at 2.

Egyptian government and, as a result, have sought other income sources. These include smuggling and trafficking. As long as the Sawarka tribes continue to be economically marginalized by the government, human trafficking will continue in the Sinai.⁴¹⁰

With the weak police presence in the Sinai, the Bedouins have always been powerful in mobilizing resources in the Sinai, and are knowledgeable of its topography. When the Sawarka tribal elders of the Sinai were approached by the authorities to stop this crime, they explained that the criminals are single renegades from the tribe who persist in continuing in these activities;⁴¹¹ and their options were limited as any harsh treatment carried out against these criminals would destabilize the peace among the many sub-tribes in the Sinai and would eventually lead to uncontrolled violence. This is something that the Egyptian government would prefer to avoid at all costs and partially explains its inactivity.⁴¹²

Depending solely on the Egyptian military operation launched in North Sinai to stop all of the criminal activities carried out there is a myth.⁴¹³ It is unreasonable that the Egyptian government would engage in a fight with Bedouins of the Sinai forever. The Egyptian media, unfortunately, systematically frames the Sawarka tribes as being terrorists, or turns a blind eye to the ongoing uprooting of this tribe.⁴¹⁴ The Egyptian government needs to understand that the military operation will not continue forever, and that a political settlement will eventually have to take place with the Sawarka tribes. Should this arrangement fail to involve the inclusion of these tribes in a comprehensive economic plan for developing North Sinai, they will continue doing

⁴¹⁰ The Sawarka Tribes were previously involved in trafficking Russian prostitutes to Israel and smuggling weapons and other goods to Gaza. Ahmed Atef, THE SAWARKA OF SINAI: THE FIRST EGYPTIAN TRIBE LABELED AS A TERRORIST ORGANIZATION BY ISRAEL AL-SABAH NEWS PORTAL (2013), <http://elsaba7.com/NewsDtl.aspx?Id=128725> (last visited Feb 9, 2015).

⁴¹¹ Ahmed Abu Deraa', DEATH OF THE SAWARKA TRIBE LEADER IN NORTH SINAI INSIDE A SHOP AT ARISH CITY AL-MASRY AL-YOUM NEWS PORTAL (2012), <http://www.almasryalyoum.com/news/details/179855> (last visited Feb 8, 2015).

⁴¹² MEKONNEN AND ESTEFANOS, *supra* note 1 at 18. It is noteworthy that Al-Sawarka tribe dominates north Sinai. It is composed of 15 sub-tribes and each sub-tribe is composed of several families.

⁴¹³ Experience shows that depending on holding a military tight grip in Sinai have led to many Eritreans unwilling to contract smugglers to take them to Israel. As a result, more kidnapping incidents have surfaced in Sudan in 2011. WELDEHAIMANOT, *supra* note 20 at 6.

⁴¹⁴ Ahmed Atef, *supra* note 410.

what they are used to relying on to survive, including smuggling activities, and human trafficking in the Sinai.⁴¹⁵

5. Diplomatic Efforts

Increasing diplomatic efforts is a constructive approach and profits from the experience of other countries in combatting this crime. Although Egypt has previously been engaged on the diplomatic level in addressing human trafficking in general,⁴¹⁶ these diplomatic efforts have not translated into action against trafficking.⁴¹⁷ More efforts should be exerted in this field to approach countries with a successful record in dealing with this crime, like the Netherlands, the USA, Finland and other countries.⁴¹⁸

Overpowering these strong and wealthy networks of traffickers requires effective collective action by source, transit, and destination states. Continuous negotiations among Eritrea, Ethiopia, Sudan, Egypt and also Israel to find a new approach to addressing migration problems must take place in order to reduce this burgeoning demand for illegal traveling.

One example of the importance of collective action is that as long as there is a supply of victims through the Rashaida tribes in Sudan and Eritrea, the crime will not be stopped in Egypt, as there are strong incentives for the Sinai traffickers owing to its lucrative nature.⁴¹⁹ And the Eritrean government willfully neglects the suffering of its people. It was not before October 2014 that Eritrea acceded to the Palermo Protocol,

⁴¹⁵ The same approach should be sought by the Sudanese government when addressing the problem by including the Rashaida tribe elders in a long term process of empowering the east of Sudan economically. WELDEHAIMANOT, *supra* note 20 at 17; HUMPHRIS, *supra* note 14 at 17.

⁴¹⁶ In 2005, Egypt adopted the ‘Arab guiding law on fighting trafficking’, and in May 2009, Egypt was actively engaged in ‘the thematic dialogue on human trafficking at the [UN] General Assembly’. In 2010, Egypt participated in the launch of the ‘Arab initiative for building national capacities for combating human trafficking’. JOY NGOZI EZEILO, *supra* note 157 at 15–16.

⁴¹⁷ The UN Special Rapporteur on human trafficking stated that “[these agreements] have not had substantial impact in the fight against trafficking, which points to the need to further strengthen bilateral cooperation, particularly in protecting migrants’ rights and preventing an exploitative form of migration which may lead to trafficking.” *Id.* at 16.

⁴¹⁸ See United States Department of State, *supra* note 135; Law Combating Trafficking in Persons, *supra* note 9 at 21.

⁴¹⁹ MEKONNEN AND ESTEFANOS, *supra* note 1 at 18.

as it had not considered trafficking as an issue that needs to be addressed.⁴²⁰

Therefore, the Egyptian government has no diplomatic pressure from Eritrea to prioritize the matter. This is also true of Sudan. The Sudanese authorities are well aware of the human trafficking crimes committed by the Rashaida tribes on its territory, but take no action.⁴²¹

Another example of effective collective action is negotiating with Israel to agree on allowing more Egyptian troops in the Sinai Peninsula. The Sinai is a militarily sensitive geographical area. Being at the border with Israel, Sinai has since the 1978 Camp David Accords been a demilitarized zone. The accord limits number of the police forces, and level of armament. It thus lacks the necessary personnel, the weapons to overpower the traffickers. As a result, traffickers continue to thrive in a relatively unmonitored territory.

Parallel negotiations for addressing political tensions among implicated states are also necessary; for example, the disputed region of Halaib and Shalatin between Egypt and Sudan falls directly in the zone where most traffickers route their victims. On the other hand, Eritrea and Ethiopia continue to disagree on their border demarcation line. In the absence of resolution to those border issues, it is unexpected that both countries would work together on addressing trafficking taking place at these border areas.

Further dialogue with destination states - mainly Europe and Israel - should be held in order to negotiate migration policies to curb the trafficking business. Most of the destination states, are primarily found in the first world, and are blamed for having drastically tightened their borders against the freedom of movement. This has led to many victims falling prey to these traffickers being desperate themselves to reach their destinations. States have even tightened their borders against asylum seekers and refugees, allowing them, as well, to fall victims to traffickers.

⁴²⁰ In 2007, allegations were made that some Eritrean government officials were involved in trafficking young Eritrean boys to work as camel jockeys in the gulf. In 2011 names of Eritrean traffickers were mentioned in the UN Eritrea-Somalia Monitoring Group Report without any reaction taken by Eritrea. *Id.* at 9, 12 & 20.; Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 1916 (2010) (S/2011/433), *supra* note 14 at 109–110.

⁴²¹ Names of traffickers were shared with the Sudanese authorities; however, nothing was done. MEKONNEN AND ESTEFANOS, *supra* note 1 at 19; The Rashaida Tribes are nomadic camel herders who have historically taken the route to Egypt crossing the desert as the only camel market in the region is located in Egypt. See HUMPHRIS, *supra* note 4 at 9.

To be successful, these diplomatic efforts must not be manifestly politically motivated, and the language used must not point to the shortcomings of the governments. Without a transnational approach to addressing this crime, it will be impossible to stop it. Involving local NGOs in the diplomatic efforts would further reflect the importance of the negotiations towards the protection of victims.⁴²²

One area that the Egyptian government needs to work more on is relaying its recent expertise in addressing human trafficking to Sudan. Egypt can offer Sudan best practices on tackling criminal networks based on its expertise acquired from the military campaign conducted in the Sinai. A similar crackdown on traffickers in east Sudan would directly lead to reducing the commission of this crime.⁴²³ This expertise can be relayed indirectly through international organizations like the UNODC, which is capable of providing policing advice to Sudan at no cost and without any hidden agendas. This is already happening as it was reported in 2012 that the IOM had been working with the Sudanese government to draft an anti-trafficking legal framework; however there is no current information on this matter.⁴²⁴

Diplomatic efforts with countries of destination are also taking place. In November 2014, the European Union and the African Union launched an initiative aimed at controlling illegal migration in the Horn of Africa commonly known as the Khartoum Process.⁴²⁵ This initiative involves funding migration-related projects in Egypt, Sudan, Eritrea, Ethiopia, Somalia, South Sudan, Djibouti, Kenya, and Tunisia. Through this initiative, the involved African countries are to establish reception centers and work more proactively in identifying criminal migration networks in order to curb the various forms of irregular migration to Europe. The Khartoum Process will hopefully provide a better forum for coordinating transnational efforts to curb human

⁴²² WELDEHAIMANOT, *supra* note 20 at 12.

⁴²³ Jacobsen, Robinson, and Lijnders, *supra* note 107 at 14; MEKONNEN AND ESTEFANOS, *supra* note 1 at 18.

⁴²⁴ HUMPHRIS, *supra* note 14 at 16.

⁴²⁵ European Council on Refugees and Exiles, KHARTOUM PROCESS: EU AND AFRICAN UNION LAUNCH INITIATIVE AGAINST SMUGGLING OF MIGRANTS (2014), <http://ecre.org/component/content/article/70-weekly-bulletin-articles/911-khartoum-process-eu-and-african-union-launch-initiative-against-smuggling-of-migrants.html> (last visited Mar 3, 2015).

trafficking in the Horn of Africa.⁴²⁶ The active engagement of Europe in this process derives from the high number of Eritrean asylum applications lodged in Europe in 2014.⁴²⁷ Although the Khartoum Process gives hope of more financial support to various programs addressing human trafficking, this process does not aim mainly at protecting victims or preventing human trafficking. Its ultimate goal is to reduce irregular migration and asylum applications in Europe.

6. Relentless Monitoring Activities by International Organizations

For effective execution of any government plan to stop this crime, international organizations are expected to continue monitoring carefully the situation and provide the necessary assistance and expertise to the Egyptian government. International agencies like the UN, the League of Arab States (LAS), and the European Union, represent ample resources for supporting the Egyptian efforts in addressing this crime.

The LAS provides a geographical network that would enable Egypt to coordinate transnational activities with Sudan to stop the supply of victims. Moreover, LAS is able to provide funding to necessary protection activities that currently rely completely on the support of the IOM.⁴²⁸ Diversifying funding resources would help in securing the continuity of activities and developing new ones as well. During the interviews conducted with the UNHCR and IOM there was no mention of any involvement of LAS in any anti-trafficking activities in Egypt, to the extent that one interviewee was surprised that LAS had the topic on its agenda at all.⁴²⁹ This feeds into the problem of lack of coordination of activities carried out. The Egyptian anti-trafficking committee should work more on inclusion of all stakeholders in combatting the crime.

⁴²⁶ Declaration of the Ministerial Conference of the Khartoum Process (EU-Horn of Africa Migration Route Initiative), (2014), <http://italia2014.eu/media/3785/declaration-of-the-ministerial-conference-of-the-khartoum-process.pdf> (last visited Mar 6, 2015).

⁴²⁷ In 2014, 11,185 Eritreans lodged asylum applications in different countries of the European Union, making them the second largest group after Syrians. European Council on Refugees and Exiles, *supra* note 425.

⁴²⁸ LEGAL AFFAIRS UNIT, TECHNICAL SECRETARIAT OF THE ARAB MINISTERS OF JUSTICE, *supra* note 249.

⁴²⁹ Interview with UNHCR Cairo, Egypt, *supra* note 229.

Access acquired by stakeholders to different facilities in the Sinai continues to be a major obstacle that needs to be tackled. UNHCR explains that it tirelessly requests to have access from the relevant Egyptian authorities to visit prisons in Al-Arish, Aswan, and other border points of Egypt; however, being granted access is rare owing to different political variables.⁴³⁰ UNHCR is expected to continue requesting access to North Sinai and to establish direct links with the police authorities there in order to facilitate the process of identifying the victims who fall under the protection of the Refugee Convention. UNHCR should continue to reiterate the importance of Egypt's adhering to its international legal obligations regarding victims of trafficking.

The same problem of granting access to persons who might be identified as victims of trafficking was also raised by the IOM. IOM had already established a presence in North Sinai tasked with arranging the repatriation of arrested illegal immigrants. The IOM staff members were able to identify victims of trafficking while detained in North Sinai, although they were not mandated to do so. Unfortunately, IOM staff members were evacuated from the Sinai upon the beginning of the military operation during the end of 2012.⁴³¹ It is recommended that IOM activities in North Sinai be resumed as soon as possible for facilitating the identification of human trafficking victims and relay protection activities accordingly.

⁴³⁰ *Id.*

⁴³¹ Interview with IOM Egypt, *supra* note 235.

Conclusion

This thesis has mapped out and evaluated the efforts of the Egyptian government in addressing the problem of the trafficking of Eritrean nationals in the Sinai. It analyzed the activities carried out in this regard and clarified the reasons behind the inability of the Egyptian government to solve the problem. It also provided recommendations for future development. The crime of human trafficking continues to be one of the most serious challenges facing the world. With its high profit margin and large numbers of vulnerable individuals it is unlikely that an end to this crime will come about without a more comprehensive approach.

In Egypt, human trafficking has existed for a long time and in different forms. The trafficking of Eritreans started becoming visible in 2006. Since that time, comprehensive attention to the trafficking of Eritreans continues to be absent. This is largely due to the Egyptian government's failure to give this particular form of trafficking adequate attention. The recent steps taken by Egypt in drafting and promulgating a law to combat and prevent human trafficking is a commendable move.

However, much remains to be done when it comes to trafficking of Eritreans in the Sinai. Failure to acknowledge this type of trafficking and framing it instead as a problem of illegal migration has resulted in injustice and suffering for many.