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**The American University in Cairo**

**School of Global Affairs and Public Policy**

**USE OF CHILDREN IN POLITICAL CONFLICTS IN EGYPT:  
LEGAL CATEGORIZATION UNDER INTERNATIONAL AND  
NATIONAL LEGISLATION**

**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**

**Sandy Abadir**

**June 2016**

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

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in partial fulfillment of the requirements for the degree of Master of Arts in International  
Human Rights Law  
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USE OF CHILDREN IN POLITICAL CONFLICTS IN EGYPT:  
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LEGISLATION

Sandy Abadir

Supervised by Professor Hani Sayed

ABSTRACT

Children have been used during the so called Arab Spring in the Arab countries since 2011 as tools at the hands of different group of people to achieve certain benefits. In Egypt particularly during and after the 25<sup>th</sup> of January Revolution, this phenomenon became obvious where the Egyptian children have been used during demonstrations by revolutionaries, political factions, the state itself or even by their families. Each group uses children to achieve its own interests. Revolutionaries and security forces used them as human shields, whereas political faction especially Muslim brotherhood used them to wear the death shrouds during the sit-ins. Moreover, some families rented their children to participate in these sit-ins and receive money in return. In most of the cases, the children's abusers or exploiters achieve certain gain whether it is financial or political gain. The families who rented their children got money and those who used them as human shields during demonstrations protected themselves from the opposite side. In this thesis, the use of children in political conflicts will be analyzed in lights of international and national legislation. This thesis argues that the children who have been used as tools during political conflicts in Egypt is considered to be victims of trafficking thus a new form of trafficking is recommended to be added to the Egyptian law. It further argues that the international and national legislation represented by the United Nations Convention on the Rights of the Child (UNCRC) and the Egyptian Child Law fail to properly categorize using children in political conflicts as form of trafficking although they both contain articles related to trafficking in persons. On the other hand, this thesis argues that both legislation, the UNCRC and the Egyptian Child Law legally categorize using children in political conflicts as form of violence against those children.

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## I. Introduction

Since the start of the 25<sup>th</sup> of January Revolution, the Egyptian society has suffered from massive human rights violations which were obviously seen among protestors who opposed the government and wanted to throw out the ruler. The violations against demonstrators varied from being unable to demonstrate and to being detained and killed by the government's authorities or by their opponents. Unfortunately, there was a marginalized group among those demonstrators whose rights have been violated in a scene that is full of outrage, bloodshed and cruel killing. In addition, they faced other violations which are considered to be breaching of domestic laws and international conventions Egypt has signed and ratified. During the different scenes of demonstrations in the Arab countries (this thesis will focus on Egypt), children have been used in political conflicts as instruments in the so-called "Arab Spring". These children have faced a lot of complicated consequences either by getting detained by the police, being used as human shields or as a frontline in demonstrations or engaging in criminal acts. Their lives were at risk and they were sometimes killed by protestors or police. Some government entities and other non-governmental organizations have condemned using children in political conflicts.

The following scenarios manifest a social phenomenon that the children have been used in Egypt in demonstrations either by revolutionaries, political factions, the state itself or even by their families. Each group uses children to achieve its own interests. The protestors, political factions and the Ministry of Interior (MOI) use them as human shields to deter the opposite groups; for example, Muslim Brotherhood (MB) used children as human shields to deter the security forces and the military from dispersing their sit-ins.<sup>1</sup> The same scenario happened when the MOI used them against the protestors.<sup>2</sup> Even though, the Supreme Council of Armed Forces (SCAF), the ruler at that time during the

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<sup>1</sup> Samar Nabieh, «Politicians»: used children as «a bulwark» in the face of the security forces (in Arabic), ELWATAN NEWS (Aug. 1, 2013, 11:25 AM), <http://www.elwatannews.com/news/details/235842> (last visited Apr. 16, 2016).

<sup>2</sup> Luiz Sanchez, *ECCR: Children are being used as human shields by Egyptian security forces*, DAILY NEWS EGYPT, (Mar. 7, 2013), <http://www.dailynewsegypt.com/2013/03/07/eccr-children-are-being-used-as-human-shields-by-egyptian-security-forces/> (last visited May 9, 2016).



transitional period in Egypt, used children in its press conference to confess that they had committed the crimes of burning the Academic Institute and the Council of Ministers incidents,<sup>3</sup> all defendants (269) were acquitted from these charges.<sup>4</sup> The Egyptian Coalition on Children's Rights (ECCR) in one of its reports mentions that the SCAF accused those children to avoid its inability to prove the truth<sup>5</sup> and reach the actual perpetrators.<sup>6</sup> Additionally, one of the gains that the SCAF achieved through accusing those children was to calm down the anger of the Egyptian public opinion. Thus, abusing the vulnerability of childhood has become mean of exploitation of children to attain many gains by their exploiters.

This thesis is important as it will address the use of children as tools at the hands of their exploiters to achieve the latter's agenda. Since the children were the sacrificial lambs during and after the 25<sup>th</sup> of January Revolution and their lives were at risk at that time and their rights were extremely violated, it is important to address their exploitation during the political unrest in Egypt in lights of international and national legislation. This thesis is a tool to raise the alarm that using children in political conflicts especially those who do not find anyone to protect them is considered to be a breaching of the international and Egyptian legislation.

This thesis argues that using children in political conflicts can be legally categorized as a new form of human trafficking according to the international convention and the Egyptian law on the one hand. It further argues that using of them can be legally categorized as a form of violence according to the international and Egyptian legislation, on the other hand. This thesis argues that the trafficking in persons definition can be applied to those children who have been the tools to achieve certain gains at the hands of their abusers.

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<sup>3</sup> Egybase, *SCAF Conference about Council of Ministers events* (in Arabic), YouTube (Dec. 19, 2011), <https://www.youtube.com/watch?v=vOo--wv8ZQQ> (last visited May 8, 2016).

<sup>4</sup> Rasha Awny, *After 3 Years of Burning "Academic Institute" ... 269 Defendants were Acquitted* (in Arabic), VETOGATE (Dec. 16, 2014, 04:33 PM), <http://www.vetogate.com/1378973> (last visited May. 16, 2016).

<sup>5</sup> *Children between violence and political conflict since January 2011* (in Arabic), Egyptian Coalition on Children's Rights, at 4 (unpublished on file with the author).

<sup>6</sup> Awny, *supra note 4*.

Unambiguously, those children became the victims of trafficking because their exploiters whether the political faction, the state itself or even their families exploited them to achieve certain gains; and those children's lives were threatened with death<sup>7</sup> when they were used. On the other hand, their lives were at risk and this is considered to be violence against children.

Chapter two of this thesis provides an explanation of how the children have been used at the hands of their exploiters and the gains that the latter achieved through using of those vulnerable children. It further reviews the different literature which discusses the uses of children during demonstrations. Moreover, different concepts will be defined in this chapter which will help in understanding the aim of this thesis. Chapter three analyzes that using children in political conflicts can be legally categorized as a new form of human trafficking according to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime<sup>8</sup> and the Egyptian domestic law "Law No. (64) of 2010 regarding Combating Human Trafficking".<sup>9</sup> Chapter four of this thesis provides that the international legislation represented by the United Nations Convention on the Rights of the Child<sup>10</sup> and the Child Law in Egypt "Law No. 12 of 1996 Promulgating the Child Law Amended by Law No. 126 of 2008"<sup>11</sup> fail to

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<sup>7</sup> Children .. «Sacrifice» of Brotherhood for the «chair» (in Arabic), ELWATAN NEWS (Aug. 1, 2013, 11:25 AM), <http://www.elwatannews.com/news/details/235833> (last visited Apr. 16, 2016).

<sup>8</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003) [hereinafter UN Trafficking Protocol], [https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-united-nations/united-nations-protocol-prevent\\_en](https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-united-nations/united-nations-protocol-prevent_en) (last visited May 5, 2016), [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en) (last visited May 5, 2016).

<sup>9</sup> Law No. 64 of 2010 (Law on Combating Human Trafficking), *Al-Jarida Al-Rasmiyya*, 9 May 2010, No. 18 bis (Egypt) [hereinafter Law No. 64 of 2010], [http://www.protectionproject.org/wp-content/uploads/2010/09/Law\\_regarding\\_Combating\\_Human\\_Trafficking\\_FINAL.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Law_regarding_Combating_Human_Trafficking_FINAL.pdf) (last visited May 8, 2016).

<sup>10</sup> Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter UNCRC], <http://www.refworld.org/docid/3ae6b38f0.html> (last visited May 11, 2016), [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en) (last visited May 11, 2016).

<sup>11</sup> Law No. 12 of 1996 (Egypt Child Law promulgating the Child Law amended by Law no. 126 of 2008), *Al-Jarida al-Rasmiyya*, 25 March 1996 (Egypt) [hereinafter Law No. 126 of 2008],

properly explain that using children in political conflicts is a form of human trafficking although they have some articles on trafficking. However, both the UNCRC and the Child Law in Egypt can be used to legally categorize using children during political conflicts as form of violence.

## II. Children in Political Conflicts in Egypt

Children have been used in political conflicts in various ways. Different scenarios took place in Egypt exemplifying using children in political conflicts as tools to achieve certain gains. The National Council for Childhood and Motherhood (NCCM) reported that 38% of the Egyptian total population is children, of whom nearly seven million live under the poverty line.<sup>12</sup> Higher percentage of this vulnerable group was being used by others in political conflicts to achieve certain agenda. Since the start of the 25 of January Revolution, children have been used in many Egyptian streets commonly used as places for accumulation and demonstrations. This chapter describes different categories of children who have been used during political conflicts.

### A. Uses of Orphans

Orphans were among many children who have been used during political conflicts to attain certain gain by the group who used them. One of the orphanages used its children to carry posters glorifying Defence Minister Abdel Fattah Al-Sisi few years ago, in which the following sentence was written “Egypt is under our responsibility / Masr amana a'aleena”.<sup>13</sup> Children wore summer clothes particularly in winter in January when there was a conference called “Al-Sisi is the President by order of the Egyptian People” in the Conference Hall in Nasr City.<sup>14</sup> Earlier, the Muslim Brotherhood (MB) followed the same strategy in using children to achieve their personal political interests. The MB used orphans and homeless children coming from orphanages and rehabilitation centers under MB’s supervision.<sup>15</sup> Furthermore, the NCCM has issued a report that also clarifies the

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<sup>12</sup> *Media Observatory about the political exploitation of children throughout 2013* (in Arabic), National Council for Childhood and Motherhood, 2013, at 15 (unpublished on file with the author) [hereinafter NCCM Report].

<sup>13</sup> Muhammad Ghamrawy, *Exploiting orphans for political gain violates international charters: ECCR*, THE CAIRO POST, (Jan. 10, 2014, 01:18 AM), <http://thecairopost.youm7.com/news/70402/news/exploiting-orphans-for-political-gain-violates-international-charters-eccr> (last visited May 8, 2016).

<sup>14</sup> Ghamrawy, *supra* note 13. Talk Show, *Why Muslim Brotherhood, exploitation of orphans in a conference called "Al-Sisi is the president by order of the Egyptian people"* (in Arabic), YouTube (Jan. 9, 2014), <https://www.youtube.com/watch?v=6isqSI6HsX0> (last visited May 8, 2016).

<sup>15</sup> Karim Abdel Salam, *Brotherhood Scandal with Orphanages* (in Arabic). YOUM7, (Aug. 5, 2013), <https://www.youm7.com/story/2013/8/5/%D9%81%D8%B6%D9%8A%D8%AD%D8%A9->

use of children by pro-Morsi supporters where they transferred the innocent children from their orphanages to participate in the demonstrations in Raba'a.<sup>16</sup> They motivated them by giving them money, new clothes and sweets.<sup>17</sup> Additionally, around 200 children were told that they were going to buy the Eid's clothes, however, they gathered them to participate in these demonstrations.<sup>18</sup>

## **B. Uses of Homeless Children**

In addition to the use of orphans in demonstrations, homeless children were also used during political conflicts in Egypt. Almost less than a month after the starting of January Revolution, the Academic Institute was burned during the dispersing of the Council of Ministries sit-in. After this event, an 18 years old boy who was accused, among other children, of burning this Institute mentioning that he did not give much attention of the identity of the political group who paid him to commit some destroying actions, he only cared about the financial benefit.<sup>19</sup> He added that he did not care about the Egyptian society which threw him in the street or the Ministry of Interior (MOI) which captured him more than once without any charges.<sup>20</sup> This child did not deny his participation in the American and Israeli embassies events, Mohamed Mahmoud clashes and other events in which he gained money, but he confirmed that he did not participate in the burning of the Academic Institute with other street children in which the MOI accused them of.<sup>21</sup> Moreover, the ECCR reports that the MOI used street children as human shields, and they put them in the frontlines in which they used Molotov cocktails and stones in clashes

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[%D8%A7%D9%84%D8%A5%D8%AE%D9%88%D8%A7%D9%86-%D9%85%D8%B9-%D8%AF%D9%88%D8%B1-%D8%A7%D9%84%D8%A3%D9%8A%D8%AA%D8%A7%D9%85/1191703#.VjaJKZc5nIU](#) (last visited May 8, 2016).

<sup>16</sup> NCCM Report, *supra note* 12, at 10-11.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 25. Ryan Mauro, *Children Used as Props for Martyrdom at Pro-Morsi Protest*, CLARION PROJECT, (Aug. 1, 2013), <http://www.clarionproject.org/analysis/children-used-props-martyrdom-pro-morsi-protest> (last visited May 8, 2016).

<sup>19</sup> Marwa Yassin & Maha El-Bahnasawy, *Children reveal: We fuel the demonstrations, sit-ins and violence* (in Arabic), ELWATAN NEWS, (Dec. 1, 2013, 10:40 AM), <http://www.elwatannews.com/news/details/364395> (last visited May 8, 2016).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

between the security forces and the demonstrators in Corniche El-Nile events.<sup>22</sup> The children were as young as twelve years old.<sup>23</sup> Furthermore, the ECCR conducted a study which revealed that 481 children have been arrested during the post-revolution since Mohamed Mahmoud clashes that started in November 2011 until the latest El-Ethadia events.<sup>24</sup> Out of which 73 children were arrested in the Council of Ministers events, 61 children were arrested in the MOI events, 137 children were arrested at the US embassy events, and 173 children in the Mohamed Mahmoud events, 11 children were captures in Abbasia events, and 11 children were caught in El-Ethadia events.<sup>25</sup>

### **C. Uses of Children by their Parents**

Apart from using children as human shields to deter the demonstrators or the security forces, some children were used by their families to attain financial gain. One of the cases that was raised to the Prosecutor General is of a wife whose husband “a welder” accused her of exploiting their children through renting them to participate in Raba'a sit-in.<sup>26</sup> The welder's friends showed him one of his children in one of the videos on the social media wearing white clothes that signaled a desire to be a martyr “I am Hamza, I am ready to be a martyr” and he carried his burial shrouds.<sup>27</sup>

### **D. Other Uses of Children**

Children were not only used by the demonstrators, the MOI and their families but also by the ruler of the country at that time. In December 2011, the SCAF broadcasted its press conference through the Egyptian television about the Council of Ministers events; the SCAF had interviewed some children who confessed taking money to throw stones and

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<sup>22</sup> Huda Rashwan, *Human rights organization: «MOI» used children as human shields in confrontations of «Corniche El-Nile»* (in Arabic), ELWATAN NEWS, (Mar. 8, 2013, 07:07 AM), <http://www.elwatannews.com/news/details/143351> (last visited May 8, 2016).

<sup>23</sup> Sanchez, *supra* note 2.

<sup>24</sup> NCCM Report, *supra* note 12, at 53.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 9-10.

<sup>27</sup> *Id.*

Molotov cocktails.<sup>28</sup> Additionally, children have been used as tools in the hands of MB where the latter gathered children in their sit-ins wearing white burial shrouds and holding banners that read “Martyr Project”, that means that they are ready to be martyrs.<sup>29</sup>

Unfortunately, the children were considered as sacrificial lambs when they appeared on the television or on the front pages of international newspapers with their photos wearing the burial shrouds. The intention of the MB is to discredit the interim government at that time, to arouse the spectator's sympathy towards them and to let the world think that they were the victims of the interim government. On the other hand, the SCAF used children who confessed that they took money to burn the Academic Institute and other events to calm down the Egyptian public opinion toward them as the ruler of the interim government. The SCAF in the last scenario broke all the laws that protect children's rights and broadcasted the press conference in a way that humiliated those children regardless of being committed to what they confessed of.

Children have been intentionally used and they were put at risk. This was confirmed in the United Nations Children's Fund's statement (UNICEF) that was issued in July 2013 on the events of using children in demonstrations and sit-ins:

UNICEF is deeply concerned by reports that children have been killed or injured during the violent confrontations in Egypt over recent days. Disturbing images of children taken during street protests indicate that, on some occasions, children have been deliberately used and put at risk of witnessing or becoming actual victims of violence. Such actions can have a long-lasting and devastating physical and psychological impact on children. We call on all Egyptians and political factions not to exploit children for political ends, and to protect them from any potential harm.<sup>30</sup>

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<sup>28</sup> Egybase, *supra* note 3.

<sup>29</sup> Mauro, *supra* note 18.

<sup>30</sup> *Children Used on the Front-line of Islamist Demonstrations*, EGYPTIAN STREETS, (Jul. 30, 2013), <http://egyptianstreets.com/2013/07/30/children-used-on-the-front-line-of-islamist-demonstrations/> (last visited May 8, 2018). *Statement by Mr. Philippe Duamelle, UNICEF Representative in Egypt on protection of children*, UNICEF, (Jul. 30, 2013), [http://www.unicef.org/media/media\\_70049.html](http://www.unicef.org/media/media_70049.html) (last visited May 8, 2016).

In addition to the UNICEF's statement, the NCCM also issued a statement and submitted an official report against MB to the Prosecutor General urging him to take necessary steps to take away children from the sit-ins even before June 30 since millions of Egyptians would demonstrate in different streets demanding throwing out of Morsi.<sup>31</sup> The council mentioned in its statement that "children's participation in sit-ins threatens the children's rights system and increases the chances for children's injuries and their exposure to health, psychological and safety hazards."<sup>32</sup> The NCCM also added that participation of children in the MB's protests is "a series of children's exploitation from the MB in pro-Morsi protests,"<sup>33</sup> and it expressed its concerns about the violations of those children's rights through "their deployment in armed confrontations in order to achieve the personal interests...of a group that has been rejected by the majority of the population."<sup>34</sup>

#### **E. Children during the 25<sup>th</sup> of January Revolution and the Arab Spring**

Until recently many of human rights organizations and centers, whether national or international, have published reports about human rights violations since the start of 25<sup>th</sup> of January's Revolution in Egypt. The following five reports are credible reports published to date in order of publications: Ibn Khaldun Center's report,<sup>35</sup> the National Council for Human Rights' (NCHR) report,<sup>36</sup> the Egyptian Initiatives for Personal Rights' (EIPR) report,<sup>37</sup> the Human Rights Watch's (HRW) report,<sup>38</sup> and Amnesty International's

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<sup>31</sup> Nourhan Dakroury, *National Council for Childhood and Motherhood condemns children's participation in protests*, DAILY NEWS EGYPT, (Jul. 31, 2013), <http://www.dailynewsegypt.com/2013/07/31/national-council-for-childhood-and-motherhood-condemns-childrens-participation-in-protests/> (last visited May 8, 2016).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Mauro, *supra* note 18.

<sup>35</sup> *Report on Muslim Brotherhood violence, violations and terror attacks in Egypt from June 30, 2013 until December 12, 2013*, Ibn Khaldun Center for Development Studies, <http://heyegypt.com/report-on-muslim-brotherhood-crimes-30-june-until-25-december-2013/> (last visited Nov. 3, 2015).

<sup>36</sup> *Fact-Finding Mission about The Disperse of Raba'a Al-Adaweya Sit-in* (in Arabic), National Council for Human Rights, (Mar. 2014) [hereinafter NCHR Report], <http://www.sis.gov.eg/Newvr/final%20rab3a%20report%20march2014.pdf> (last visited May 8, 2016).

<sup>37</sup> *The Weeks of Killing: State Violence, Communal Fighting, and Sectarian Attacks in the Summer of 2013*, Egyptian Initiatives for Personal Rights, (Jun. 2014), [http://eipr.org/sites/default/files/reports/pdf/weeks\\_of\\_killing\\_en.pdf](http://eipr.org/sites/default/files/reports/pdf/weeks_of_killing_en.pdf) (last visited May 8, 2016).



report.<sup>39</sup> Whereas NCHR and Ibn Khaldun reports mention the violations that took place against the children during demonstrations and sit-ins, EIPR and HRW reports overlook these violence acts. NCHR<sup>40</sup> and Ibn Khaldun<sup>41</sup> reports reveal use of children by MB when they gathered children in marches wearing white clothes and holding their shrouds and signs to express their willingness to die and being martyrs, which is known as “Martyr Project”; both reports affirm that using children in political conflicts is against the domestic law “Child Law No. 126 / 2008 and the Anti-trafficking Law No. 64 / 2010”, on the one hand, and against the international conventions “the United Nations Convention on the Rights of the Child (UNCRC)”, on the other hand. The Amnesty International report focuses on the unfair trials, death penalty banning of freedom of peaceful assembly to children.<sup>42</sup> Although previous reports have addressed the problem of using children in political conflicts and the hazardous consequences that they face either through detention, death penalty or killing, they did not analyze how this can be considered as breaching of the international and domestic legislation. In other words, those reports do not legally categorize the use of children as per international and domestic laws.

There is a clear gap in the literature when it comes to addressing the issue of use of children during political conflicts. Few scholars have tackled this issue from different perspectives in the so-called Arab Spring; however, little has been published regarding the use of children in political conflicts in Egypt. In Syria, Saleh<sup>43</sup> and al-Natour<sup>44</sup> explain how the Syrian children are the victims of Bashar Al-Assad's brutality regime. Both scholars highlight the importance of the role of the children on social movement,

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<sup>38</sup> *All According to Plan: The Rab'a Massacre and Mass Killings of Protesters in Egypt*, Human Rights Watch, (Aug. 12, 2014), <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt> (last visited May 8, 2016).

<sup>39</sup> *Amnesty International Report 2014/15, The State of the World's Human Rights*, Amnesty International, (2015), [https://www.amnestyusa.org/pdfs/AIR15\\_English.PDF](https://www.amnestyusa.org/pdfs/AIR15_English.PDF) (last visited May 8, 2016).

<sup>40</sup> NCHR Report, *supra* note 36, at 25.

<sup>41</sup> Ibn Khaldun Center for Development Studies, *supra* note 35, at 1, 18.

<sup>42</sup> Amnesty International, *supra* note 39, at 138-141.

<sup>43</sup> Layla Saleh, “*We Thought We Were Playing*”: *Children's Participation in the Syrian Revolution*, 14 JOURNAL OF INTERNATIONAL WOMEN'S STUDIES 80–95 (2013), <http://vc.bridgew.edu/jiws/vol14/iss5/6> (last visited May 8, 2016).

<sup>44</sup> Manal al-Natour, *Nation, Gender, and Identity: Children in the Syrian Revolution 2011*, 14 JOURNAL OF INTERNATIONAL WOMEN'S STUDIES 28–49 (2013), <http://vc.bridgew.edu/jiws/vol14/iss5/3> (last visited May 8, 2016).

democratic transitions, and that the children were the first to protest against the regime by drawing anti-regime slogans and graffiti. Whereas Saleh focuses on victimization of the children during revolution by the regime only, al-Natour explains victimization of the children by both the regime and the rebel group. Children in both articles were the victims through the following actions: torture, killing, detention, destructions of their schools, mass slaughter, sexual violence and raping, child soldiers especially girls, using them as human shields in frontlines, using them as superstars singing for the regime or using their corpses on satellites to achieve their political gains, and using girls as instruments for sex-Jihad as one form of political exploitation. Despite the fact that Saleh's article is a step in theorizing incorporation of children in regime transition in Syria without finding a clue to deal with the issue of victimization, al-Natour finds out that the nonviolence activists' projects that include artwork, handcraft, group discussion and painting will help Syrian children to build their national identity through their imaging about the future Syria. However, both scholars do not address the issue under the rule of law. Whereas those scholars write on the victimization of Syrian children during the armed conflict in Syria, this thesis will concentrate on victimization of using children in political conflicts. Since Egypt did not reach to the stage of armed conflict as in the case of Syria.

On the other hand, there are two authors who explore the problem in two different countries of the so-called Arab Spring through two different standpoints. While Amusan<sup>45</sup> focuses on the effect of civil war as a result of the Arab Spring on the Libyan children, Jeong<sup>46</sup> analyzes the moral and ethical effects of political participation of Bahraini children in the uprising. Amusan examines the issues of child soldiers including boys and girls which are against the UNCRC, on the one hand, and the NATO military operations which had a lot of drawbacks on Libyan children such as panic, killing and displacement of children, on the other hand. He concludes that Al-Qaddafi government and the new government did not protect children rights as per the UNCRC; accordingly, the issues

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<sup>45</sup> Lere Amusan, *Libya's Implosion and its Impacts on Children*, 14 JOURNAL OF INTERNATIONAL WOMEN'S STUDIES 66–79 (2013), <http://vc.bridgew.edu/jiws/vol14/iss5/5> (last visited May 8, 2016).

<sup>46</sup> Hae Won Jeong, *Lessons Gleaned from the Political Participation of Children in Bahrain Uprising*, 14 JOURNAL OF INTERNATIONAL WOMEN'S STUDIES 50–65 (2013), <http://vc.bridgew.edu/jiws/vol14/iss5/4> (last visited May 8, 2016).

accompanied with Libyan children should be addressed in the national legislation and international conventions in which Libya is a State party. With regard to Jeong, she emphasizes the importance of raising awareness of political consciousness and recognizing the right of Bahraini children to participate in Bahrain uprising as this right is included in the UNCRC (known as the right to freedom of assembly and the right to freedom of expression). However, Bahraini children have been killed during uprising and minor protestors have been detained. Additionally, the writer displays the debate over Bahraini participation in uprising.

Based on the above references, there is a great consensus that there is massive human rights violation against those children who participated in the so-called Arab Spring, and they have been used as instruments to achieve certain political agenda. However, there is a clear gap in literature in framing this issue according to the international and domestic legislation. Chapters three and four of this thesis bridge this gap and focus on Egypt to legally categorize this social phenomenon of using children in political conflicts.

## **F. Basic Concepts Relevant to the Study**

In this section we will address some terms that will be useful in understanding of using children in political conflicts in the following chapters.

### **1. Child definition**

Since the scope of this thesis is about using children in political conflicts, it is very important to know what the definition of “child” is. There is a lot of controversy among scholars and policymakers about the exact definition of children.<sup>47</sup> The UNCRC defines it as per Article 1 as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”<sup>48</sup> Among those scholars who have debatable definition of children, two of them try to disaggregate this broad definition.

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<sup>47</sup> Saleh, *supra* note 43, at 81.

<sup>48</sup> UNCRC, *supra* note 10, art. 1.

Whereas Williams classifies child into two categories, which are “child” who is twelve years or under and “young person” who is from 13-18 years, Craig suggests different two categories, which are “children” and “youth” who aged from 6-15 and 16-30 respectively.<sup>49</sup> Besides the controversial definition of child among scholars, the child definition in Article 1 of the UNCRC took around ten years to reach to a final consensus by the international community and the states parties. The story began when the General Assembly approved that 1979 be the International Year of the Child (IYC),<sup>50</sup> a year before the IYC, Poland initiated a proposal for a child’s rights convention to the UN Commission on Human Rights.<sup>51</sup> The drafting of the convention took place under the care of the UN Commission on Human Rights, human rights organizations, different NGOs that work with children and many representatives from the UN members.<sup>52</sup> The drafting period started from 1978 when Poland started to draft the convention till its adoption in 1989.

Article 1 of the UNCRC was firstly drafted by Poland in 1978 as follows: “Every child, without any exception whatsoever, shall be entitled to the rights set forth in this Convention, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.”<sup>53</sup> However, most of the comments to the previous drafted article are that there is no particular definition of the child. Accordingly, the first reading took place from 1979 to 1988 and this stage started by a revised Polish draft of Article 1 as follows: “[a]ccording to the present Convention a child is every human being from the moment of his birth to the age of 18 years unless, under the law of his State, he has attained his age of majority earlier.”<sup>54</sup> Nevertheless, this text draft of Article 1 was opposed by some delegates because they wanted to extend the child

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<sup>49</sup> Saleh, *supra* note 43, at 81.

<sup>50</sup> ANTONELLA INVERNIZZI & JANE WILLIAMS, CHILDREN AND CITIZENSHIP 47 (2007).

<sup>51</sup> ANNE B. SMITH, CHILDREN’S RIGHTS: TOWARDS SOCIAL JUSTICE 5-6 (2015).

<sup>52</sup> *Id.*

<sup>53</sup> Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child*, 301 (Volume I, 2007) [hereinafter OHCHR Report (Volume I)], [http://resourcecentre.savethechildren.se/sites/default/files/documents/legislativhistorycrc1en\\_1.pdf](http://resourcecentre.savethechildren.se/sites/default/files/documents/legislativhistorycrc1en_1.pdf) (last visited May 8, 2016).

<sup>54</sup> *Id.* at 305.

definition to include the period from the moment of conception.<sup>55</sup> Moreover, some delegates were against having upper limit of eighteen to the child giving the fact that national legislations of some countries considered 18 is a quite late age for a child.<sup>56</sup> Consequently, and after negotiations, different proposals have been submitted to the Working Group, which is responsible for writing the convention. And the text that was adopted at first reading is: “According to the present Convention a child is every human being to the age of 18 years unless, under the law of his State, he has attained his age of majority earlier.”<sup>57</sup> Then the second reading took place from 1988 to 1989 where different proposals were submitted to the Working group;<sup>58</sup> and finally the convention was adopted by General Assembly resolution 44/25 of 20 November 1989 and entered into force in September 1990.<sup>59</sup> Article 1 of the UNCRC becomes: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”<sup>60</sup> Furthermore, there is no lower age-limit for a child in this article, however, it has been mentioned in the preamble of the Convention that the child needs legal protection since the moment of conception “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”<sup>61</sup> Although the preamble includes legal protection for child before birth, this protection will be left to the states parties to determine it as mentioned in the legislative history of the Convention.<sup>62</sup>

The child upper age in drafting the UNCRC was controversial because attaining the age of majority is different from one country to another.<sup>63</sup> Some delegates during the drafting of Article 1 of the UNCRC referred that the upper age of eighteen years of age is considered

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 308.

<sup>58</sup> *Id.* at 309.

<sup>59</sup> UNCRC, *supra* note 10.

<sup>60</sup> *Id.* art. 1.

<sup>61</sup> *Id.* preamble.

<sup>62</sup> OHCHR Report (Volume I), *supra* note 53, at xxxvii.

<sup>63</sup> *Id.* at 302.

to be a late age in accordance with some states.<sup>64</sup> Accordingly, there was a suggestion to lower this age to fifteen according to the point that was made by the General Assembly to set the age of fifteen as the age-limit.<sup>65</sup> However, the age of fourteen was suggested since it is the end of compulsory education in majority of states and the legal age for marriage of girls in many states.<sup>66</sup> Moreover, if fourteen years was placed as the age-limit, it would clearly differentiate minor from child, “since the former was protected under many national legislations while the latter was not.”<sup>67</sup> As a result of this negotiation on the upper age limit of the child, it was finally decided to place eighteen as the upper age-limit and respecting the age of majority of the child according to different national legislation.

In this thesis I will stick to the definition of Article 1 of the UNCRC when referring to a child, any person aged below eighteen. This child definition will be used in this thesis since it is also compatible with the Egyptian domestic law (Law No. 12 of 1996 Promulgating the Child Law Amended by Law No. 126 of 2008) in Article 2: “For the purpose of this Law, the term “child” within the context of care and welfare, shall mean all individuals who have not reached the age of eighteen (18) complete calendar years”.<sup>68</sup> The lower age of the child does not matter in this thesis so the moment of conception is not important, and the child definition will be from day one of birth till below eighteen years.

## **2. Children as Vulnerable Group and their Political Will**

Nowadays, Egyptian children unprecedentedly have been used in political conflicts in the Arab Spring by different entities to achieve different agenda as discussed above. Those entities have used children because of the latter vulnerability and inability to protect themselves. The term vulnerable people was defined by a judicial summit in Brazil:

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<sup>64</sup> *Id.* at 305.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Law No. 126 of 2008, *supra* note 11, art. 2.

[A]s those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights before the justice system as recognised to them by law.<sup>69</sup>

There are some conditions that contribute to the vulnerability of children such as being illiterate, homeless, poor or political instability, social exclusion and ongoing demands.<sup>70</sup> In this thesis we will find a lot of factors which add to increasing vulnerability of children, such as use of street children who are poor and illiterates as tools to achieve certain profits. Moreover, families use their children as mentioned in above case where the mother rent her children to participate in the sit-in; I believe that poverty play an important role in this scenario. In other words, families rent their children to be engaged in the sit-in, because they are in a desperate need for money, however, this does not justify that these are wrong acts. Another important factor which increases the vulnerability of children is political instability that happened after the revolution as the Ministry of Interior did not work with its full capacity to protect Egyptian people including those most vulnerable group, children; however, the MOI was one of the abusers who used those children. Also, Adam Lopatka (Chairman and Rapporteur of the Working Group on a draft UNCRC) emphasized the vulnerability of children when he mentioned that the UNCRC is an international instrument in the field of human rights that intends to “promote and protect the rights of people who are particularly vulnerable to having their rights abused.”<sup>71</sup> He also referred to the 1959 Declaration of the Rights of the child that indicates the vulnerability of the child and the following statement was included from the declaration into the UNCRC in its preamble: “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”<sup>72</sup>

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<sup>69</sup> United Nations Office on Drugs and Crime, *Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons*, 2013, at 14 [hereinafter 2013 UNODC Issue Paper], [https://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Issue\\_Paper\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability.pdf](https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf) (last visited May 8, 2016).

<sup>70</sup> ALISON SISKIN & LIANA SUN WYLER, CONG. RESEARCH SERV., RL 34317, *TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS*, ii (2013), <https://www.fas.org/sgp/crs/row/RL34317.pdf> (last visited May 8, 2016).

<sup>71</sup> OHCHR Report (Volume I), *supra* note 53, at xxxvii.

<sup>72</sup> *Id.*

Consequently, the abusers take advantage of the children's vulnerability; and they were strongly used as tools in their hands. Instead of allowing children to positively participate in demonstrations and express their political will through raising their awareness about the political situation in Egypt, they were compelled to hold posters and wear clothes and carry white shrouds to support certain political party or certain candidate. As a result, the winner is the children abusers who either get political benefits through affecting people's political opinion when they see children in the media or gain financial benefits as the case of the mother who rented her children to participate in Raba'a sit in.

Although children are a vulnerable group and because of their vulnerability, they have been used during political conflicts in Egypt to achieve certain gains; it is important to give chances to children to express their political will during demonstrations. The UNCRC includes a couple of rights that are related to the involvement of children in demonstrations and political life including the rights to freedom of expression in Article 13, the rights of freedom of peaceful assembly in Article 15 and the rights to express the views freely in Article 12.<sup>73</sup> Young children have the capacity to think in a logical way, and it is proved that around eleven years of age, children have the capacities to see “things from the perspective of others” and their awareness of social issues is increased.<sup>74</sup> Moreover, latest research recognizes the abilities of children from fourteen to seventeen years of age in reasoning particularly complex questions that are related to moral issues.<sup>75</sup> Further, children systematically express their concerns to participate and be of a greater part in political matters; as a result, Austria gives the rights to vote for young people who are sixteen years of age and older.<sup>76</sup> The UNCRC does not categorize children by age, however, it refers to the “evolving capacities of the child” in Articles 5 and 14, and the child's capacity increases as a result of his development which is relevant to his ability to

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<sup>73</sup> UNCRC, *supra* note 10, art. 13, 15, 12.

<sup>74</sup> Aoife Daly, *Demonstrating Positive Obligations: Children's Rights and Peaceful Protest in International Law*, 45 GEO. WASH. INT'L L. REV. 763, 770 (2013), [http://heinonline.org.libproxy.aucegypt.edu:2048/HOL/Page?handle=hein.journals/gwlr45&div=32&start\\_page=763&collection=journals&set\\_as\\_cursor=0&men\\_tab=srchresults](http://heinonline.org.libproxy.aucegypt.edu:2048/HOL/Page?handle=hein.journals/gwlr45&div=32&start_page=763&collection=journals&set_as_cursor=0&men_tab=srchresults) (last visited Apr. 19, 2016).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*



exercise his own rights.<sup>77</sup> Suffice to say that children's maturity and capacities are varied from one culture to another, and they are not related to certain age.<sup>78</sup> So it is difficult to universally establish a minimum age under which children are not allowed to participate in political matters.<sup>79</sup> I suggest that each culture or state should determine the minimum age to which children can be part of political demonstrations to express their views, and this age can be the same age whereby the child is responsible for crimes which is twelve in Egypt.<sup>80</sup> In conclusion, children have the right to express their opinions and participate in demonstrations and all matters related to politics.

### 3. Political conflict in Egypt

Egypt faced a lot of violence and instability since stepping down of Mubarak after the 25<sup>th</sup> of January Revolution and exactly on February 11<sup>th</sup>, 2011,<sup>81</sup> passing through the transitional period where the SCAF was ruling the country<sup>82</sup> until Mohammed Morsi, the Muslim Brotherhood's candidate, was the winner and the ruler of Egypt.<sup>83</sup> Besides, on June 30, 2013, another revolution (others called it military coup) took place to overthrow MB's ruling which resulted in deposing of Morsi and MB on July 3.<sup>84</sup> Accordingly, Adly Mansour, the head of the Egyptian Supreme Constitutional Court, became the interim president of Egypt on July 4, 2013;<sup>85</sup> then the former Defence Minister, Abdel Fattah Al-

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<sup>77</sup> *Id.* at 771.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 772.

<sup>80</sup> *Universal Periodic Review – Human Rights Council, UNICEF Inputs – Egypt*, at 2 [hereinafter *Universal Periodic Review-Egypt*], [http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/EG/UNICEF\\_UPR\\_EGY\\_S07\\_2010\\_UnitedNationsChildrensFund.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/EG/UNICEF_UPR_EGY_S07_2010_UnitedNationsChildrensFund.pdf) (last visited May 11, 2016).

<sup>81</sup> Nathan J. Brown, *Egypt's Failed Transition*, 24 *JOURNAL OF DEMOCRACY* 45, 45-46 (2013), [http://muse.jhu.edu.libproxy.aucegypt.edu:2048/journals/journal\\_of\\_democracy/v024/24.4.brown.html](http://muse.jhu.edu.libproxy.aucegypt.edu:2048/journals/journal_of_democracy/v024/24.4.brown.html) (last visited Feb. 29, 2016).

<sup>82</sup> David J. Sarquis, *Democratization after the Arab Spring: The Case of Egypt's Political Transition*, 40 *POLITICS & POLICY* 871, 886 (2012), <http://onlinelibrary.wiley.com.libproxy.aucegypt.edu:2048/doi/10.1111/j.1747-1346.2012.00381.x/abstract> (last visited Feb. 29, 2016).

<sup>83</sup> *Id.* at 898.

<sup>84</sup> Brown, *supra* note 81, at 45-46.

<sup>85</sup> *Profile: Egypt's interim leader Adly Mansour*, *AL JAZEERA* (Jul. 21, 2013, 07:11 AM), <http://www.aljazeera.com/news/middleeast/2013/07/20137322150549685.html> (last visited Feb. 29, 2016).

Sisi, swore the oath on June 8, 2014 to be the eighth president of Egypt.<sup>86</sup> Since starting of the 25<sup>th</sup> of January Revolution, Egypt entered into an era of instability, political violence and political conflict; however the political conflict started many years ago in Egypt but it increased after the 25<sup>th</sup> of January Revolution. There was a history of political conflicts between Islamists and the state, where the state banned and marginalized Islamists and eliminated them from the political process.<sup>87</sup> Islamists then returned to political life after the 25<sup>th</sup> of January Revolution where they participated in it, and they are among other political forces that struggled to take the power of the country. The political conflicts in Egypt increased after January Revolution because there were contending forces trying to rule Egypt, these contending forces are Islamists and secular liberals, on the one hand, and the state itself, on the other hand. Some scenarios were mentioned above during this period of instability which illustrates the persistence of political conflicts in Egypt after the 25<sup>th</sup> of January Revolution.

The political conflicts and violence increased the vulnerability of children and make them an easy instrument at the hands of the contending forces to use them to achieve their goals. These goals varied from calming down the anger of the public opinion, discrediting the interim government at the transitional period, stimulating the spectator's sympathy towards certain faction or renting children to participate in the sit-in to get money. Accordingly, Egyptian children have been involved in political conflicts in Egypt, and they have been abused either by the state, political faction or their families to achieve those abusers' goals.

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<sup>86</sup> *El-Sisi sworn in as Egypt president*, AHRAM ONLINE (Jun. 8, 2014), <http://english.ahram.org.eg/NewsContent/1/64/103147/Egypt/Politics-/ElSisi-sworn-in-as-Egypt-president.aspx> (last visited Feb. 29, 2016).

<sup>87</sup> David Fielding & Anja Shortland, 'An eye for an eye, a tooth for a tooth': *Political violence and counter-insurgency in Egypt*, 47 JOURNAL OF PEACE RESEARCH 433, 433-434 (2010), [http://www.jstor.org.libproxy.aucegypt.edu:2048/stable/20752199?pg-origsite=summon&seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org.libproxy.aucegypt.edu:2048/stable/20752199?pg-origsite=summon&seq=1#page_scan_tab_contents) (last visited Mar. 1, 2016).

## **G. Conclusion**

Egyptian children have been used during and after the 25<sup>th</sup> of January Revolution by different groups such as revolutionaries, political factions, the state itself and their families to achieve those groups' personal interests. Those children who have been used are orphans, homeless children and some children who are rented by their families to participate in the sit-ins.

Although children have been used in Egypt since the start of the 25<sup>th</sup> of January Revolution where their lives were at risk due to their exposure to violence during the political conflicts, there is a clear gap in the literature when it comes to addressing the issue of using Egyptian children during political conflicts.

Additionally, there is a debatable conversation on child definition among scholars and during the process of UNCRC drafting, however, I will use the UNCRC definition in Article 1 which is compatible with Article 2 of the Egyptian domestic Law No. 126 of 2008. So child is any human being from day one of birth till below eighteen years.

Children have been used by different categories of people to achieve certain gain because of their vulnerability and inability to protect themselves. Although children are vulnerable group and can be easily susceptible to exploitation by different groups, it is very important to let them express their political will and participate in demonstrations in a way that is consistent with their ages. Since children have the capacity to think in a logical way, it is their rights to be an efficient group during demonstrations. Although it is difficult to establish a universal age for children to participate in political matters, I suggest that each state can determine this age. As for Egypt, I believe that the age of twelve is a reasonable age to let children participate in politics since it is the age in which child is responsible for crimes according to the Egyptian law.

The next chapter describes how using children in political conflicts can be legally categorized as a new form of human trafficking according to international and national legislation.

### **III. Slavery and its Relationship to Children in Political Conflicts**

This chapter describes how the use of Egyptian children in political conflicts amounts to human trafficking and is a crime; it analyzes the definition in the light of international and national law. The international legislation referred to is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime; and Egyptian national legislation is Law No. 64 of 2010 regarding Combating Human Trafficking.

#### **A. Exploiters versus Victims**

During and after the 25th of January Revolution, people took advantage of the vulnerability of children and inability to protect themselves. Those who exploited them range from the children's parents who rented their children to participate in the sit-ins<sup>88</sup> in order to obtain money to political factions who dressed them in white death shrouds to express their willingness to be martyrs for Islam.<sup>89</sup> The MB used those vulnerable children on the front-lines of demonstrations who also appeared on the front pages of newspapers to stimulate the spectators' sympathy toward them. They also wanted to let the world know that they were the victims of the interim government, on the one hand, and to agitate public opinion against the interim government, on the other hand. Accordingly, the MB, in one single action, accomplished two goals.

Another group of people who took advantage of children during the 2011 Revolution is the state itself, whether the MOI or SCAF. The former used them as human shields to deter the demonstrators by providing them with stones and Molotov cocktails,<sup>90</sup> the latter humiliated them by letting them appear at SCAF press conference broadcasted on Egyptian television confessing that they had taken money to throw Molotov cocktails.<sup>91</sup>

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<sup>88</sup> NCCM Report, *supra* note 12, at 9-10.

<sup>89</sup> EGYPTIAN STREETS, *supra* note 30.

<sup>90</sup> Sanchez, *supra* note 2.

<sup>91</sup> Egybase, *supra* note 3.

SCAF, who were ruling the country in the transitional period, wanted to calm down the public opinion which was very angry from the series of destructive events that took place immediately after the 25<sup>th</sup> of January Revolution. The NCCM describe the children who wore their white death shrouds in the MB's demonstrations as political tools at the hands of the MB; and it expressed its concern about this problem as "Human Trafficking".<sup>92</sup> Moreover, the ECCR referred to the use of children by the MOI as human shields as exploitation of those children and that "this is a crime punishable by the human trafficking law number 64 of 2010."<sup>93</sup> The important question in this context is why the NCCM and the ECCR described the use of children in these demonstrations and conflicts as form of human trafficking.

This chapter will begin with a detailed discussion of the definition of human trafficking as per the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (hereunder the UN Trafficking Protocol or Palermo Protocol) and Egyptian domestic law (Law No. 64 of 2010 regarding Combating Human Trafficking). I argue that the use of children in political conflicts to obtain certain gains is a new form of human trafficking in Egypt. Because the trafficking definition of the UN Trafficking Protocol is broad, the definition will then be explored according to the Model Law proposed by the United Nations Office on Drugs and Crime (UNODC),<sup>94</sup> other international instruments and other national legislations. Another important issue that will be discussed in this chapter is the criminal activities that the victim of trafficking engaged in and whether they are liable for these criminal activities or not.

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<sup>92</sup> EGYPTIAN STREETS, *supra* note 30.

<sup>93</sup> Sanchez, *supra* note 2.

<sup>94</sup> United Nations Office on Drugs and Crime, Human Trafficking, <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited May 9, 2016) (UNODC is "the guardian of the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto, assists States in their efforts to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking in Persons Protocol)").

## **B. Human Trafficking Definition**

In order to understand how those vulnerable children have been trafficked when they have been used as tools at the hands of different groups of exploiters, trafficking definition will be firstly defined in this chapter according to the international convention.

### **1. International Legislation: The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (hereinafter UN Trafficking Protocol or Palermo Protocol)**

Trafficking in persons firstly gained attention in the international sphere in the early 1990s; this is because of the following reasons: increase the migration of people in Europe after the Soviet Union's collapse, the armed conflicts in former Yugoslavia and the fall of the Iron Curtain.<sup>95</sup> Organized criminal groups took advantage of the increased migration of people to Western Europe who could not make it legally through facilitating their movement illegally.<sup>96</sup> In the 1990s, the illegal migration of people with the assistance of the organized criminal groups was referred to in the first research reports on human trafficking as "Migrant Trafficking"; and it was characterized as "a multi-billion dollar business for criminal organization", with relation to other organized crimes such as trafficking in drugs and firearms and prostitution.<sup>97</sup> Accordingly, many research reports published by governmental and non-governmental entities suggested that Western European states cooperate together at the international level to fight against illegal immigration and organized crime in order to decrease human trafficking in Europe and outside.<sup>98</sup> In view of that, the UN adopted the UN Trafficking Protocol in 2000 which is part of the UN Convention against Transnational Organized Crime that aims to "deny safe havens to those who engage in transnational organized crime by prosecuting their crimes

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<sup>95</sup> VENLA ROTH, *DEFINING HUMAN TRAFFICKING AND IDENTIFYING ITS VICTIMS : A STUDY ON THE IMPACT AND FUTURE CHALLENGES OF INTERNATIONAL, EUROPEAN AND FINNISH LEGAL RESPONSES TO PROSTITUTION-RELATED TRAFFICKING IN HUMAN BEINGS* 77 (2011), <http://site.ebrary.com/lib/alltitles/docDetail.action?docID=10518826> (last visited Mar. 9, 2016).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

wherever they occur and by cooperating at the international level” as mentioned in its preamble of the convention.<sup>99</sup>

On November 15, 2000, the UN Convention against Transnational Organized Crime was adopted by the UN General Assembly resolution 55/25; three additional protocols have followed focusing on certain areas of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.<sup>100</sup> The UN Convention and its three protocols were opened for signature by member states in Palermo, Italy and hence the first protocol is known as the Palermo Protocol<sup>101</sup> (the UN Trafficking Protocol). After decades of silence, the issue of modern day slavery or human trafficking was addressed by a common international definition that creates a legal framework to fight this crime; the result was the UN Trafficking Protocol.<sup>102</sup> Furthermore, the purpose of this Protocol is the “3P” approach which is prevention of the trafficking crime, protection and assistance of the victim of trafficking and promoting the international cooperation among states parties to combat this crime.<sup>103</sup> Although there are predecessor conventions which address the human trafficking crime such as Article 34 and 35 of the UNCRC and its Optional Protocols, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Article 3), Convention on the Elimination of All Forms of Discrimination Against Women (Article 6), and Supplementary Convention on the

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<sup>99</sup> *Id.* at 78.

<sup>100</sup> United Nations Office on Drugs and Crime, The United Nations Convention against Transnational Organized Crime and Its Protocols, <https://www.unodc.org/unodc/treaties/CTOC/> (last visited May 9, 2016).

<sup>101</sup> Jean Allain, *No Effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol*, 7 ALB. GOV'T. L. REV. 111, 114 (2014), [http://heinonline.org.libproxy.aucegypt.edu:2048/HOL/Page?handle=hein.journals/aglr7&div=11&start\\_page=111&collection=journals&set\\_as\\_cursor=0&men\\_tab=srchresults](http://heinonline.org.libproxy.aucegypt.edu:2048/HOL/Page?handle=hein.journals/aglr7&div=11&start_page=111&collection=journals&set_as_cursor=0&men_tab=srchresults) (last visited Mar. 10, 2016).

<sup>102</sup> ROTH, *supra* note 95, at 78.

<sup>103</sup> DOMINIKA BORG JANSSON, INTERNATIONAL STUDIES IN HUMAN RIGHTS, VOLUME 110 : MODERN SLAVERY : A COMPARATIVE STUDY OF THE DEFINITION OF TRAFFICKING IN PERSONS 90, (2014), <http://site.ebrary.com/lib/aucairo/detail.action?docID=10960931&p00=international+studies+in+human+rights%2C+volume+110%E2%80%AF%3A+modern+slavery%E2%80%AF%3A+a+comparative+study+of+the+definition+of+trafficking+in+persons> (last visited May 9, 2016).



Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the UN Trafficking Protocol was the first international instrument to address the crime from different sides and “was the first treaty to provide broad defining of trafficking.”<sup>104</sup>

As a result, the trafficking definition in the UN Trafficking Protocol serves as the basis for international and national legislation to deal with the trafficking in persons.<sup>105</sup> The Protocol was adopted by General Assembly Resolution 55/25, and entered into force on December 25, 2003.<sup>106</sup> As of September 2008, there are 117 signatory states; Egypt signed it in May 2002 and ratified this protocol in March 2004.<sup>107</sup> The protocol defines the trafficking in persons in Article 3(a):

For the purpose of this Protocol: “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>108</sup>

Before exploring the definition of trafficking in persons according to the UN Trafficking Protocol, it is important to note that the scope of application of the UN Trafficking Protocol as per Article 4 is limited to crimes that are transnational<sup>109</sup> and are committed

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<sup>104</sup> Laura L. Shoaps, *Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act*, 17 LEWIS & CLARK L. REV. 931, 933 (2013), <http://web.b.ebscohost.com.libproxy.aucegypt.edu:2048/ehost/detail/detail?sid=e8a77bd3-9c1b-476b-b9ea-c1e0ec017044%40sessionmgr105&vid=0&hid=106&bdata=JnNpdGU9ZWZwhvc3QtbG12ZQ%3d%3d#AN=90387532&db=a9h> (last visited May 9, 2016).

<sup>105</sup> *Id.* at 933-934.

<sup>106</sup> UN Trafficking Protocol, *supra* note 8.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* art. 3(a).

<sup>109</sup> United Nations Convention against Transnational Organized Crime, art. 3(2)(a), Nov. 15, 2000, 2225 U.N.T.S. 209, [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf) [hereinafter United Nations Convention] (“transnational offence” is defined by the United Nations Convention in the following terms: “is committed in more than one state.

by organized criminal group,<sup>110</sup> it can also apply to internal trafficking that takes place inside the borders of one state without the need to be transnational or committed by organized criminals. The UNODC in its legislative guides for the implementation of the UN Convention and its protocol clarified this point: “it must be strongly emphasized that, while offences must involve transnationality and organized criminal groups for the Convention and its international cooperation provisions to apply, neither of these must be made elements of the domestic offence” as per Article 34, paragraph 2 of the UN Convention of the Transnational Organized Crime.<sup>111</sup> In other words, the crime of trafficking that occurs inside the borders of one state amounts to a trafficking crime as per the UN Trafficking Protocol without the need for the presence of the two elements of transnationality and organized criminal groups.

According to Article 3(a) of the UN Trafficking Protocol, the trafficking definition is divided into three important elements: the actions (recruitment, transportation, transfer, harbouring or receipt of persons), the means (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), and the purpose or intent of exploitation (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).<sup>112</sup> These three elements must be present in order to consider the crime as a trafficking in persons crime, however, the exception to this rule is that in the case of the

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<sup>110</sup> United Nations Convention, *supra* note 109, art. 2(a) (“organized criminal group” is defined by the convention in the following terms: “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit).

<sup>111</sup> United Nations Office on Drugs and Crime, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2004), at 10, para. 18 [hereinafter UNODC Legislative Guides to the UN Convention], [https://www.unodc.org/pdf/crime/legislative\\_guides/Legislative%20guides\\_Full%20version.pdf](https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf) (last visited May 9, 2016).

<sup>112</sup> United Nations Office on Drugs and Crime, *The Role Of ‘Consent’ In The Trafficking In Persons Protocol* (2014), at 5 [hereinafter 2014 UNODC Issue Paper], [https://www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf) (last visited May. 9, 2016).

trafficking of children, the means are not important as illustrated in Article 3(c) of the UN Trafficking Protocol.<sup>113</sup> Simply put by the UNODC in one of its issue papers: the three elements are composed of the following: “an action; a means by which that action occurs or is made possible; and a purpose to the action, which is specified as exploitation.”<sup>114</sup>

There are two elements which are considered to be the basics for any crime in criminal law, *actus reus* (material or physical element(s))<sup>115</sup> and *mens rea* (mental element).<sup>116</sup> This means that the person is guilty if he carries out an action (*actus reus*) and has intention to do this action (*mens rea*). Consequently, in the trafficking crime, the action part together with the means constitute the *actus reus* in the case of adults; whereas the purpose or intention of exploitation constitutes the second part of the offence which is the *mens rea*. The only exception is the case of children in which the action element constitutes the only part of the *actus reus*.<sup>117</sup> Another notable point regarding the definition of trafficking is that there is no need for exploitation to take place in order to say that this is a trafficking crime.<sup>118</sup> In other words, the third element of the trafficking definition under the UN Trafficking Protocol “for the purpose of exploitation” means that there is an intention of exploitation regardless of whether the exploitation happens or not. For instance, if the trafficker deceptively recruits the victim to be engaged in prostitution and the prostitution does not happen (i.e. the trafficker promised to recruit the victim who lives in country A to work as a housemaid, for example, in country B, and is promised to receive a certain salary on monthly basis, however, when the victim arrives to the final destination “country B”, the trafficker confiscates her passport and forces her to practice prostitution in order to get the money he paid for her for her ticket). If the victim luckily manages to escape from this exploitative situation and reaches her embassy to seek help, and she has not engaged in prostitution, this scenario does amount to trafficking although

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<sup>113</sup> UN Trafficking Protocol, *supra* note 8, art. 3(c).

<sup>114</sup> 2014 UNODC Issue Paper, *supra* note 112, at 24.

<sup>115</sup> United Nations Office on Drugs and Crime, *Anti-Human Trafficking Manual for Criminal Justice Practitioners* (2009), Module 1, at 4 [hereinafter 2009 UNODC Manual], [https://www.unodc.org/documents/human-trafficking/TIP\\_module1\\_Ebook.pdf](https://www.unodc.org/documents/human-trafficking/TIP_module1_Ebook.pdf) (last visited Mar. 17, 2016).

<sup>116</sup> *Id.*

<sup>117</sup> 2014 UNODC Issue Paper, *supra* note 112, at 24.

<sup>118</sup> UNODC Legislative Guides to the UN Convention, *supra* note 111, at 268–269, para. 33.

the victim has not engaged in prostitution. In this case, the three elements of the trafficking crime are present: the action (recruitment), by the means (fraud and deception, on the one hand, through false promises; and abuse of position of vulnerability, on the other hand, since the victim is in another country other than her country of origin, and she could not speak the language of country B, moreover, her passport was confiscated to restrict her movement and let her unable to travel), and the exploitation element (or the intent or purpose of exploitation) which is the exploitation of the prostitution of others or other forms of sexual exploitation.

The definition of trafficking offence as mentioned in the UN Trafficking Protocol is a broad definition. The protocol does not define the three elements, actions, means and purpose of exploitation of the trafficking definition. UNODC describes the action element as “undefined practices”;<sup>119</sup> moreover, it mentions that the means are also undefined as seen in “none of the stipulated “means” is defined and there appears to be significant overlap between some of them.”<sup>120</sup> The trafficking definition in the UN Trafficking Protocol is accepted by the states and international community, in spite of the fact that the definition is ambiguous, and the important terms that constitute the trafficking crime are not clearly defined in the protocol.<sup>121</sup> Therefore, the Open-ended Interim Working Group on the UN Trafficking Protocol (Working Group on Trafficking in Persons) in 2010 tasked UNODC with issuing papers regarding difficult concepts pertaining to the trafficking definition.<sup>122</sup> Consequently, the following part of this chapter aims to understand the meaning of the three main elements of the trafficking crime together with the sub-items under each element according to Article 3(a) of the UN Trafficking Protocol to see if we can legally categorize the use of children in political conflicts in Egypt as another new form of trafficking. To achieve this aim and in order to answer the above question, various elements and concepts of the trafficking definition will be analyzed using the UNODC issue papers, the 2009 UNODC Model Law against Trafficking in

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<sup>119</sup> 2014 UNODC Issue Paper, *supra* note 112, at 16.

<sup>120</sup> *Id.* at 17.

<sup>121</sup> *Id.* at 5.

<sup>122</sup> *Id.* at 5-6.

Persons (which was done on request by the General Assembly to the Secretary-General in order to encourage the Member States to become States parties, on the one hand, and to implement the UN Convention with its Protocols, on the other hand),<sup>123</sup> the domestic legislations and the case law of other countries and the joint study that were conducted by the Council of Europe (CoE) together with the UN on trafficking on organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs in 2008.<sup>124</sup> The joint study was done in response to General Assembly Resolution (A/RES/63/14).<sup>125</sup>

**a. Action Element**

The first element of trafficking definition as per Article 3(a) of the UN Trafficking Protocol is the action element constituting the first part of the *actus reus* in the case of an adult victim and the only part of *actus reus* when the victim is a child. The different undefined activities under the action element are neutral of themselves<sup>126</sup> but when one or more are accompanied with the means for the purpose of exploitation, this amounts to trafficking. As described by the UNODC Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocols thereto: “any conduct that combines any listed action and means and is carried out for any of the listed purposes must be criminalized as trafficking.”<sup>127</sup> These undefined practices under Article 3(a) of the UN Trafficking Protocol include the following activities: recruitment, transportation, transfer, harbouring or receipt of persons. Recruitment is defined by the joint study by the CoE and the UN as “any activity leading from the commitment or engagement of another individual to his or her exploitation” which can be done “through

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<sup>123</sup> United Nations Office on Drugs and Crime, *Model Law against Trafficking in Persons* (2009), at 1 [hereinafter 2009 Model Law], [http://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf) (last visited Mar. 15, 2016).

<sup>124</sup> Joint Council of Europe and United Nations Study, *Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs* (2009), at 7 [hereinafter CoE and UN Study], [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/council-un\\_study\\_on\\_trafficking\\_in\\_organs\\_2009\\_en\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/council-un_study_on_trafficking_in_organs_2009_en_1.pdf) (last visited May 16, 2016).

<sup>125</sup> *Id.*

<sup>126</sup> United Nations Office on Drugs and Crime, *The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol*, (2015), at 23-24 [hereinafter 2015 UNODC Issue Paper], [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/unodc\\_ip\\_exploitation\\_2015.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/unodc_ip_exploitation_2015.pdf) (last visited Mar. 16, 2016).

<sup>127</sup> UNODC Legislative Guides to the UN Convention, *supra* note 111, at 268–269, para. 33.

personal contact, third party, personal contact or contact through third persons, newspapers, advertisements or the Internet.”<sup>128</sup> Recruitment is always accompanied by forced labor, recruitment of children in armed conflict (which can also be considered as forced labor) and sexual exploitation.<sup>129</sup> The recruitment is either voluntary or coercive;<sup>130</sup> the former takes place when the victim does not have full information about the activities he or she is going to do or the victim is totally deceived by the trafficker when the latter hides the information about the activities in which the victim will be engaged. So the victim is voluntarily recruited based on partial or complete deception by the trafficker. On the other hand, the recruitment might be coercive. This takes place when the victim is obliged to carry out certain activities as indicated in the above scenario; the victim is forced to work in prostitution because her passport is confiscated and she is in debt for its cost.

In addition to recruitment, the second item under the action element is transportation which is defined by the CoE and the UN as “transportation of a person from one place to another”.<sup>131</sup> Transportation is a broad term which the protocol does not define and is usually accompanied by sexual and labour exploitation.<sup>132</sup> It includes both transportation of a person transnationally (crossing the borders) or within the territory of the state. In other words, transportation term is applied in international and internal trafficking.<sup>133</sup> The transportation term is clear in Australia’s legislation specifically Division 271 of the Commonwealth Criminal Code in which transportation is described as “organizing or facilitating the transportation of a victim into, out of or within Australia” using different means.<sup>134</sup>

Apart from recruitment and transportation of the victim, transfer of the victim is the third activity under the action element. It is similar to transportation, however it includes an

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<sup>128</sup> CoE and UN Study, *supra* note 124, at at 78.

<sup>129</sup> 2009 Model Law, *supra* note 123, at 14-15, 29. 2015 UNODC Issue Paper, *supra* note 126, at 45.

<sup>130</sup> 2009 Model Law, *supra* note 123, at 14-15.

<sup>131</sup> CoE and UN Study, *supra* note 124, at 78.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> 2015 UNODC Issue Paper, *supra* note 126, at 93.

additional person in the transfer process. The joint study of the CoE and the UN defined it as “any kind of handing over or transmission of a person to another person.”<sup>135</sup> This is quite obvious in certain cultures “where control over individuals (mostly family members) may be handed over to other people.”<sup>136</sup> This is particularly clear in Egypt in the cases of early marriages. The following scenario is very common: an Arab man comes from the Gulf area to Egypt for a couple of weeks, and during this period purchases a girl from her family for a certain amount of money and an expensive dowry. Accordingly, marriage takes place between the Arab man whose age may reach to 60 years old or higher and a girl from a poor family whose age is commonly around thirteen or fourteen years old<sup>137</sup> in an unregistered marriage known as Orfi. The man leaves her without any rights and in some cases pregnant. In this case the girl has been handed over from her parents who sold her to her husband who purchased her and exploited her sexually and leaves her after a couple of weeks without any rights to her or her fetus. In this case, transfer is done from her parents to her husband.

The fourth term under the action element is harbouring which is defined by the CoE and the UN in their joint study as “accommodating or housing persons in whatever way, whether during their journey to their final destination or at the place of the exploitation.”<sup>138</sup> It is accompanied by trafficking for sexual exploitation when the trafficker harbors the victims for the purpose of forcing them to be involved in sexual activities.<sup>139</sup> This term can be seen in some cultural environments whereby a crime is committed by a person and a young female from the family of the person who committed the crime “may be sent to live in servitude” with either the priest or the family of the victim as a matter of repaying the committed crime.<sup>140</sup> In this case the purpose of exploitation is either sexual, labour, servitude or slavery.<sup>141</sup> In Egypt, the harbouring of victims occurs when Bedouins in Sinai kidnap Eritreans, who fled their country of origin

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<sup>135</sup> CoE and UN Study, *supra* note 124, at 78.

<sup>136</sup> *Id.*

<sup>137</sup> The child’s age is below eighteen years, so it is called child marriage.

<sup>138</sup> CoE and UN Study, *supra* note 124, at 78.

<sup>139</sup> 2014 UNODC Issue Paper, *supra* note 112, at 65.

<sup>140</sup> 2009 UNODC Manual, *supra* note 115, at 6.

<sup>141</sup> *Id.* These forms of exploitation will be illustrated later in this chapter.

because of the indefinite military conscription for both adult females and males, and keeping them in shipping containers in the Sinai desert, restricting their movements, often raping them, and keeping them in captivity until they pay the requested ransom through their families or diaspora organizations.<sup>142</sup>

The last term of the action element that is used in the UN Trafficking Protocol is receipt of persons which is clarified in the joint study by the CoE and the UN: “the receipt of persons is not limited to receiving them at the place where the exploitation takes place either, but also means meeting victims at agreed places on their journey to give them further information on where to go or what to do.”<sup>143</sup> Some examples include the receiving of persons such as in the case of conscription of children in armed conflicts,<sup>144</sup> the case of receiving young woman to exploit her when she lives with the victim’s family to repay the crime<sup>145</sup> and also the cases of Eritreans in Sinai.<sup>146</sup>

In conclusion, the five terms recruitment, transportation, transfer, harbouring or receipt of persons constitute the action element which is the first part of the *actus reus* when the victim is an adult and the only part when the victim is a child.

## **b. Means Element**

The second element after the action element is the means. the trafficking crime is fulfilled when the action element is combined with certain means such as: threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability or giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. In the

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<sup>142</sup> Nourhan Abdel Aziz, Paola Monzini, Ferruccio Pastore, *The Changing Dynamics of Cross-border: Human Smuggling and Trafficking in the Mediterranean* (2015), at 55-56, [http://www.iai.it/sites/default/files/newmed\\_monzini.pdf](http://www.iai.it/sites/default/files/newmed_monzini.pdf) (last visited May 10, 2016).

<sup>143</sup> CoE and UN Study, *supra* note 124, at 78.

<sup>144</sup> 2009 UNODC Manual, *supra* note 115, at 7.

<sup>145</sup> *Id.* at 6.

<sup>146</sup> Mogos O. Brhane, *Trafficking in Persons for Ransom and the Need to Expand the Interpretation of Article 3 of the UN Trafficking Protocol*, *Anti-Trafficking Review* (2015), at 6, <http://www.antitraffickingreview.org/index.php/atrjournal/article/view/93> (last visited Mar. 17, 2016).



Interpretative Notes of the Trafficking Protocol, only some means are illustrated. The reason behind this is the possibility that the majority of the state parties which signed the Palermo Convention with its Protocol may have provisions or case law to define the means of the trafficking crime.<sup>147</sup> As the case with the action element, the means element is not defined in the UN Trafficking Protocol and some of the means create overlapping.<sup>148</sup> Moreover, “none of the means cited in the Protocol definition are themselves defined.”<sup>149</sup> The UN Trafficking Protocol mentions all of these overlapping means in order to make sure that all means to which the victim is subjected to are covered in the trafficking definition.<sup>150</sup> Another important point related to the means in the trafficking definition is that it is not important in the case of a child who is below eighteen years of age if the action element is used for the purpose of exploitation as per Article 3(c) of the Trafficking Protocol.<sup>151</sup> The reason for removing the means from the definition of trafficking in the case of child trafficking is “due to their age and immaturity”, and the ease with which they can be manipulated and entrapped in the trafficking process.<sup>152</sup> Accordingly, the use of improper means which is mentioned in the UN Trafficking Protocol is not important for the trafficking crime.<sup>153</sup> Additionally, Article 3(d) stipulates that the child is a person who is below eighteen years of age which sheds light on the age of the child and the purpose of the protocol which is protection of the victims of trafficking especially women and children.<sup>154</sup> Moreover, the preparatory work mentioned that the prosecution must prove only action was done to a child for the purpose of exploitation without using of any means in the case of a child.<sup>155</sup>

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<sup>147</sup> JANSSON, *supra* note 103, at 82.

<sup>148</sup> 2013 UNODC Issue Paper, *supra* note 69, at 17.

<sup>149</sup> *Id.* at 25.

<sup>150</sup> JANSSON, *supra* note 103, at 2.

<sup>151</sup> UN Trafficking Protocol, *supra* note 8, art. 3(c).

<sup>152</sup> JANSSON, *supra* note 103, at 91.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

### c. Purpose of Exploitation Element

In addition to the action and means elements of the UN Trafficking Protocol which constitute the *actus rea* or the material element, the last element which constitutes *mens rea* in the case of adults and children is the purpose of exploitation or the mental element. A person is found to be an offender of a trafficking in persons crime if he or she commits the *actus reus* and has an intention to exploit the victim<sup>156</sup> which is the *mens rea* or the mental element of the crime in criminal law. The definition of exploitation is left to states to define themselves in their national legislation. While the UN Trafficking Protocol does not define the purpose of exploitation element, UNODC describes it as a *dolus specialis* mental element which is specific or with special intention.<sup>157</sup> The UNODC defines *dolus specialis* in its Anti-Human Trafficking manual “as the purpose aimed at by the perpetrator when committing the material acts of the offence. It is the purpose that matters, not the practical result attained by the perpetrator. Thus, the fulfillment of the *dolus specialis* element does not require that the aim be actually achieved.”<sup>158</sup> The Protocol stipulates an open-ended list of forms of exploitation: “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.” The *travaux préparatoires* of the protocol uses the following wording “at a minimum” for two main purposes: to let the state criminalize other forms of trafficking which are not mentioned in the protocol and to allow the protocol to cover other forms of trafficking that may arise in the future.<sup>159</sup> UNODC states that five countries, Bulgaria, Colombia, Qatar, Egypt and Thailand follow the UN Trafficking Protocol definition, however, they have added some other forms of trafficking.<sup>160</sup> For example, Egypt has added to the protocol exploitation list: begging and exploitation of children in pornography, and Uganda has added the following forms of exploitation: forced marriage, child marriage, child military services, use of a person in illegal activities and debt

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<sup>156</sup> 2009 UNODC Manual, *supra* note 115, at 5.

<sup>157</sup> 2013 UNODC Issue Paper, *supra* note 69, at 16.

<sup>158</sup> 2009 UNODC Manual, *supra* note 115, at 5.

<sup>159</sup> 2015 UNODC Issue Paper, *supra* note 126, at 24, 26.

<sup>160</sup> *Id.* at 48.

bondage.<sup>161</sup> Although the open-ended non-exhaustive list of forms of trafficking in the UN Trafficking Protocol is not defined, some forms of these forms have been defined in other international instruments.<sup>162</sup> I will address the definition of some of these forms of trafficking under the Egyptian domestic law section (Law No. 64 of 2010 regarding Combating Human Trafficking).

To conclude, the UN Trafficking Protocol in Article 3(a) divides the trafficking crime into three main elements that constitute the *actus reus* and *rea mens* which are the foundations for any crime in criminal law. *Actus reus* or the material element includes the first part of the trafficking definition, the action element, in case of child and the first two parts of the definition, the action and means elements, in case of adult; the mens rea or the mental element include the purpose of exploitation part which is the third part in case of child and adult. Due to vulnerability of children, their ages (below eighteen years as per Article 3(d) of the protocol), immaturity and susceptibility to be trafficked more than adults, the means are not necessary to be included as per Article 3(c) when the victim is a child. The protocol does not define the terms under each element of the trafficking definition. The next part of this chapter will see the trafficking definition from the perspective of the Egyptian domestic law (Law No. 64 of 2010 regarding Combating Human Trafficking).

## **2. Egyptian Domestic Law (Law No. 64 of 2010 regarding Combating Human Trafficking)**

The second definition of trafficking in persons will be discussed according to Egyptian domestic law. Egypt signed the UN Trafficking Protocol in May 2002 and ratified it in March 2004.<sup>163</sup> In addition to being a State party to the protocol, Egypt enacted its own domestic anti-trafficking legislation (Law No. 64 of 2010 regarding Combating Human Trafficking). In July 2007, the Egyptian Prime Minister issued Decree 2353/2010) to establish the National Coordinating Committee on Preventing and Combating Human

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<sup>161</sup> *Id.* at 106.

<sup>162</sup> *Id.* at 24.

<sup>163</sup> UN Trafficking Protocol, *supra* note 8.

Trafficking (NCC).<sup>164</sup> It is composed of representatives of different ministries and authorities to work on the national level to combat this crime.<sup>165</sup> The approach they adopted is based on prevention, protection, prosecution, partnership and international cooperation among different stakeholders.<sup>166</sup> At the beginning of 2010, the NCC requested the National Center for Social and Criminological Studies (NCSCR) to conduct a national study on the most common forms of human trafficking in Egypt.<sup>167</sup> The key findings of this study reveal five prevailing forms of trafficking in Egypt; they are trafficking of girls for early marriage, trafficking of street children, trafficking of children in labor, trafficking of females for sexual exploitation and prostitution and trafficking in human organs.<sup>168</sup> As a result of this cooperation under the NCC, the national anti-trafficking legislation, Law No. 64 of 2010 was issued in May 2010, which “includes the most comprehensive definition of human trafficking”<sup>169</sup> among the Arab countries as seen in its Article 2:

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.<sup>170</sup>

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<sup>164</sup> Arab Republic of Egypt, Ministry of Foreign Affairs, *National Plan of Action against Human Trafficking (January 2011 till January 2013) (2010)*, at 1, <http://www.mfa.gov.eg/English/Ministry/TraffickinginPersons/naational/Pages/default.aspx> (last visited May 10, 2016).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> Mohamed Y. Mattar, *Human Rights Legislation in the Arab World: The Case of Human Trafficking*, 33 MICH. J. INT'L L. 101, 113 (2011-2012), [http://heinonline.org.libproxy.aucegypt.edu:2048/HOL/Page?handle=hein.journals/mjil33&div=16&start\\_page=101&collection=journals&set\\_as\\_cursor=0&men\\_tab=srchresults](http://heinonline.org.libproxy.aucegypt.edu:2048/HOL/Page?handle=hein.journals/mjil33&div=16&start_page=101&collection=journals&set_as_cursor=0&men_tab=srchresults) (last visited May 10, 2016).

<sup>170</sup> Law No. 64 of 2010, *supra* note 9, art. 2.

Article 2 of the Egyptian Anti-Trafficking Law follows the trafficking definition of the UN Trafficking Protocol with its three elements, however, it is much comprehensive than the protocol with the inclusion of additional terms to the three elements of the protocol. The action element of Article 2 which constitutes the first part of the *actus reus* contains the following activities: the sale, offer for sale, purchase, or promise thereof; or the use, transport, delivery, harboring, reception, or receipt of a person. Here we find the following activities were added to the action element of the UN Trafficking Protocol: sale, offer for sale, purchase or promise thereof, use, delivery and reception of persons. Furthermore, the means in Article 2 of the Egyptian Anti-Trafficking Law are expanded to include the following terms other than other means in the UN Trafficking Protocol: use of violence and exploitation of a position of vulnerability or need (the word need added in the Egyptian law). Additionally, the Egyptian law added exploitation of children for pornography and begging to its third element which represents the *mens rea*.

Comparably, Egyptian Law No. 64 of 2010 does not define different terms under the action, means and purpose elements as the UN Trafficking protocol does, however, it has added terms relevant to the different forms of trafficking found in Egypt. Although the purpose of exploitation has not been defined whether in the protocol or in Egyptian law, the executive regulation to the Egyptian law in Article 1 indicates that the perpetrator or person(s) who contribute to the trafficking crime obtains material or moral benefit through committing the trafficking crime.<sup>171</sup> The benefit whether material or moral is used in the executive regulation to clarify that there is an intention of exploitation by the trafficker; which means that if the *actus reus* and the *mens rea* are present, this amounts to trafficking crime regardless of the presence of the material or moral benefit. To date and successfully for the first time, Egypt has convicted five individuals in two different cases.<sup>172</sup> I believe that the reason behind the lower number of convicted cases is that the

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<sup>171</sup> Executive Regulation of Law No. 64 of 2010, art. 1 [hereinafter Executive Regulation of Law 64/2010].

<sup>172</sup> OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERS., U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT-EGYPT (2013) [hereinafter 2013 TIP Report-Egypt], <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215455.htm> (last visited May 11, 2016). OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERS., U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2015), at 148 [hereinafter 2015 TIP Report-Egypt],

lack of awareness regarding the implementation of law and understating each term under each element of the trafficking definition. Another reason is the political instability of the country after the 25<sup>th</sup> of January Revolution.

Although there is a gap in the literature regarding analysis of Egyptian anti-trafficking law, the International Organization for Migration together with the Ministry of Justice and the Ministry of Interior have published guidelines entitled *Investigation and Prosecution of Trafficking in Persons and Treatment of Victims During Law Enforcement Proceedings* to help officials in implementing this law.<sup>173</sup>

Although Law No.64 of 2010 does not define the terms under the three elements of the trafficking definition, the guidelines of the IOM define these terms in accordance with different international instruments, other Egyptian national legislations and the case law of the Court of Cassation.<sup>174</sup>

The first element of the trafficking definition as per Article 2 of Law No. 64 of 2010 is the action element which constitutes the first part of the *actus reus* in the case of adult victim and the only part of *actus reus* when the victim is a child. The additional terms that were added by the Egyptian law are: sale, offer for sale, purchase or promise thereof, use, delivery and reception of persons. The first terms are related to each other which are: sale, offer for sale or promise thereof. They represent forms of exercising the rights of ownership by one person over another which reflects the old form of trafficking criminalized by the international community in international instruments such as the Protocol amending the Slavery Convention signed in Geneva on 25 September 1926 and

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<http://www.state.gov/documents/organization/243559.pdf> (last visited May 11, 2016) (The first case is regarding exploitation of females for prostitution and the second case is selling and abduction of a child for exploitation, however, the details of the last case were not clear) under Law No. 64 of 2010. These took place in 2012).

<sup>173</sup> International Organization for Migration (IOM) Cairo, *Combating Human Trafficking in Egypt Fact Sheet*, (2012),

<http://www.egypt.iom.int/Doc/Counter%20Trafficking%20Fact%20Sheet%20Egypt%20%282012%29.pdf> (last visited May 10, 2016).

<sup>174</sup> *Guidelines on “Investigation and Prosecution of Trafficking in Persons and Treatment of Victims During Law Enforcement Proceedings”* (in Arabic), 2011, at 38 [hereinafter Trafficking Guidelines].

in Article 1(1) of the Slavery Convention: “The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>175</sup> Egypt ratified this protocol in September 1954 and also the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in April 1958.<sup>176</sup> It mentions that trafficking is the modern day slavery. We can see that slavery exists nowadays in its recent form through sale, offer for sale or promise thereof. The offer for sale and promise of sale are the preliminary steps before sale.<sup>177</sup> Further, the second additional elements that were added to the UN Trafficking Protocol in Law No. 64 of 2010 are “purchase or promise of purchase” which represents the end result of sale: ownership rights have been transferred from one person to another.<sup>178</sup> This means that the victim has been treated as a commodity or a piece of property in which the person who has authority over him or her to be handed over to another through a sale-purchase process. The Criminal Code of the Russian Federation which is supplemented with new Articles 127.1 and 127.2 defines trafficking in a similar way: “Trafficking in persons, i.e. the buying-selling of a person or other actions committed for the purpose of such person’s exploitation in the form of recruitment, transportation, transfer, harboring, or receipt of such person, shall be punishable by a term of imprisonment of up to 5 years.”<sup>179</sup> In Egypt, the action of selling-purchasing is clear in cases of early child marriage whereby parents sell their girls to older men from Gulf countries, who purchase the girls, for seasonal marriage for material benefit including high amount of money and expensive dowry to the girls’ families.

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<sup>175</sup> 1926 Slavery Convention art. 1(1), Sept. 25, 1926, 60 L.N.T.S. 253 [hereinafter Slavery Convention], <http://www.ohchr.org/Documents/ProfessionalInterest/slavery.pdf> (last visited May 10, 2016).

<sup>176</sup> Trafficking Guidelines, *supra* note 174, at 38.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 38-39.

<sup>179</sup> FEDERAL LAW No. 162-FZ, UGOLOVNYI KODEKS ROSSIISKOI FEDERATSII [UK RF] [Criminal Code] art. 127.1.1 (Russ.) (“Excerpts from Federal Law No. 162-FZ “On Introducing Changes and Amendments to the Criminal Code of the Russian Federation” Passed by the State Duma”, [https://www.unodc.org/doc/enl/2010/Russia\\_Introducing\\_Changes\\_Amendments\\_Criminal\\_Code\\_R10\\_7.pdf](https://www.unodc.org/doc/enl/2010/Russia_Introducing_Changes_Amendments_Criminal_Code_R10_7.pdf) (last visited May 10, 2016).

In addition to sale, purchase and other accompanied terms related to them, the Egyptian legislator also uses the term “use of persons” which means recruitment of persons.<sup>180</sup> This word is much comprehensive than the word “recruitment” and is compatible with different forms of exploitation in the third element of the trafficking definition in the Egyptian law. Whereas recruitment is usually accompanied by forced labour and children military services, the “use of persons” is a comprehensive term that includes the action element for the purpose of exploitation not only for forced labour and the use of children in armed conflicts but also in begging, prostitution, sexual activities and use of children in pornography as per the *mens rea* element of the Egyptian Anti-Trafficking Law.

The delivery of persons is one of the action elements in the trafficking definition in Egyptian law which is the opposite term of the receipt of persons; it means the delivery of the victim by a mediator to the final person who will exploit the victim or this mediator is the person who receives the victim to exploit them.<sup>181</sup> This mediator is guilty if he or she knows the purpose of the exploitation of the victim (regardless of whether he or she participates in the exploitation of the victim or not); if he or she does not know that the victim will be exploited, he or she will not be prosecuted for a trafficking crime because the third element of trafficking is missing:<sup>182</sup> *mens rea*.

In the case of a child victim the two elements that are needed to fulfill the trafficking crime are the *actus reus* (the action element which constitutes the material element) and *mens rea* (the purpose of exploitation element which constitutes the mental element). The following section includes the definition of some forms of exploitation according to different international instruments in addition to the 2009 UN Model Law and national legislation of other countries, so the undefined purpose of exploitation can be understood. Here we will focus on the forms of trafficking that are relevant to the use of children in political conflicts. Consequently, slavery, practices similar to slavery and servitude will be defined.

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<sup>180</sup> Trafficking Guidelines, *supra* note 174, at 39.

<sup>181</sup> *Id.* at 40.

<sup>182</sup> *Id.*



Firstly, slavery or enslavement is defined in the 2002 Rome Statute of the International Criminal Court in its Article 7(2)(c) as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”<sup>183</sup> Slavery is also defined in the 1926 Slavery Convention as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>184</sup> Whereas most of the states do not clearly understand what constitutes slavery,<sup>185</sup> the wording “powers attached to the right of ownership” is generally related to the following actions: purchase, sale, lending or bartering persons as indicated by the Report of the Preparatory Commission for the International Criminal Court.<sup>186</sup> Furthermore, in order to understand what constitutes slavery, the 2009 UN Model Law refers to slavery as “the person is treated like a property”<sup>187</sup> and the Italian Penal Code in Article 600 defines slavery as “placement or maintenance in a position of slavery occurs ... when anyone takes advantage of a situation of physical or mental inferiority and poverty.”<sup>188</sup> Accordingly, when parents sell their girls who are below eighteen years of age to be married to older men for money and expensive dowry as is the case in Egypt, slavery is practiced and child marriage in this case is considered to be a form of trafficking.

In addition to slavery, practices similar to slavery are another purpose of exploitation that is mentioned in both the UN Trafficking Protocol and Egyptian Anti-Trafficking Law. Similarly and as noted with slavery, practices similar to slavery are not clearly understood by the states and are not defined in the national legislation of states;<sup>189</sup> nor have these practices been clarified in the *Travaux Préparatoires* of the UN Trafficking Protocol.<sup>190</sup>

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<sup>183</sup> *Id.* at 51. Rome Statute of the International Criminal Court, art. 7(2)(c), July 17, 1998, 2187 U.N.T.S. 90, [https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf) (last visited May 11, 2016).

<sup>184</sup> Slavery Convention, *supra* note 175, art. 1.

<sup>185</sup> 2015 UNODC Issue Paper, *supra* note 126, at 10.

<sup>186</sup> *Id.* at 32-33.

<sup>187</sup> 2009 Model Law, *supra* note 123, at 19.

<sup>188</sup> *Id.* at 20.

<sup>189</sup> 2015 UNODC Issue Paper, *supra* note 126, at 10.

<sup>190</sup> *Id.* at 33.

Practices similar to slavery include the following four practices according to the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in Article 1: Debt bondage, serfdom, servile forms of marriage and sale of children.<sup>191</sup> Although this international instrument does not address the current form of slavery,<sup>192</sup> it includes these four acts in which servile forms of marriage is, to some extent, similar to nowadays modern day slavery. One of the forms of the servile forms of marriage has been defined in the Supplementary Slavery Convention in Article 1(c)(i) as “any institution or practice whereby: a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group”.<sup>193</sup> Child marriage to Arabs is similar to the definition above in which the parents sell their girls (under eighteen years old) and receive payment from this marriage which lasts for a few days as indicated by the NCSCR national study.<sup>194</sup> Because states do not know the exact definition or the difference between servile marriage, child marriage or forced marriage,<sup>195</sup> the states delineate these forms as separate forms of trafficking in addition to practices similar to slavery in their national legislation. Examples of these states are Uganda who has included child marriage and forced marriage in their national legislation, Colombia and Brazil who have included servile marriage and Australia who has added forced marriage.<sup>196</sup> Australia does not include in their legislation practices similar to slavery, it only includes slavery. As for Egypt, it places child marriage, which is one of the five prevailing forms of trafficking under sexual exploitation and slavery as well and it does not delineate it as a separate form of trafficking.

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<sup>191</sup> *Id.* at 33-34. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art. 1, Sept. 7, 1956, 226 U.N.T.S. 3 [hereinafter 1956 Supplementary Convention], <http://www.justice.bm/files/18/files/SuppConvSlavery1956.pdf> (last visited May 10, 2016).

<sup>192</sup> 2015 UNODC Issue Paper, *supra* note 126, at 33.

<sup>193</sup> 1956 Supplementary Convention, *supra* note 191, art. 1(c)(i).

<sup>194</sup> The National Center for Social and Criminological Research, *Human Trafficking in the Egyptian Society, Executive Summary*, 2011, at 7, (unpublished on file with the author) [hereinafter NCSCR Study].

<sup>195</sup> 2015 UNODC Issue Paper, *supra* note 126, at 34, 97 (“forced marriage is understood as a union of two persons at least one of whom has not given their full and free consent to the marriage”). (Forced marriage is also defined by Australia as “the use of coercion, threat or deception, causing one party to the marriage (the victim) [to enter] into the marriage without freely and fully consenting”).

<sup>196</sup> *Id.* at 106.

Apart from slavery and practices similar to slavery, servitude is considered to be one of the purposes of exploitation which is indicated in both the Trafficking Protocol and Law No. 64 of 2010. It has been suggested that servitude is a broader term and is “lesser form of slavery”<sup>197</sup> than slavery and the distinction between both terms is illustrated below:<sup>198</sup>

Slavery indicates that the person concerned is wholly in the legal ownership of another person, while servitude concerns less far-reaching forms of restraint and refers, for instance, to the total of the labour conditions and/or the obligations to work or to render services from which the person in question cannot escape and which he cannot change.

I believe that there is no need to add servitude to the Egyptian law since it is to a little extent similar to slavery and to a great extent similar to forced labour. If it is to be addressed in the Egyptian law, the legislator should define it either in the law itself or the executive regulation of the law.

As we have seen, slavery, practices similar to slavery and servitude have been defined according to different international instruments and other tools to understand their application to various forms of trafficking. The following section illustrates how the three elements of the crime of trafficking can be applied to the five forms of trafficking.

### **C. Forms of Human Trafficking in Egypt according to Law No. 64 of 2010**

As noted above, the NCSCR conducted a national study on the most common forms of trafficking in human being in Egypt upon a request by the NCC in the beginning of 2010. The study found that there are five prevailing forms of trafficking in Egypt which are: trafficking of girls for early marriage, trafficking of street children, trafficking of children in labor, trafficking of females for sexual exploitation and prostitution and trafficking in human organs. The following section focuses on the first three forms since they include exploitation of children.

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<sup>197</sup> *Id.* at 110.

<sup>198</sup> *Id.* at 35.

Since these forms of trafficking deal with child victims, the only two elements that constitute the trafficking crime is the action element which constitutes the *actus reus*, material or physical element, and the purpose of exploitation element which constitutes the *mens rea*, mental element. Consequently, in order to consider a crime a human trafficking crime involving children, one or more activities in the action element must be used for the purpose or purposes of exploitation of a child.

Firstly, the trafficking of girls for early marriage includes the following activities: sale, offer for sale, purchase, or promise thereof and transfer. This form of trafficking may include more than one perpetrator who has been engaged in this trafficking process. Whereas the parents and the husband are seller and purchaser of the girl, the mediator who introduced the husband to the girl is the one who offers for sale or promises of sale or purchase. Moreover, the girl is transferred from her parents to the husband. The purpose of exploitation is either slavery in which the parents exercise all rights of ownership over the girl, practices similar to slavery which is a bit similar to servile marriage where the father receive money and dowry of this marriage or the purpose is for sexual exploitation in which the older man exploits the girl to achieve sexual gratification for the period of the marriage. According to the NCSCR study, the girl may be bought and sold multiple times that may reach to six times.<sup>199</sup>

In addition to the trafficking of girls in early marriage, the second form of child trafficking in Egypt is the trafficking of street children. Homeless children can be trafficked in one or more of the following ways: begging in streets, committing thefts and drug crimes, sexual exploitation in prostitution or organs' sale.<sup>200</sup> The action element in the trafficking of children in begging and in committing drug and theft crimes include use of, harbouring and reception of children for the purpose of begging or slavery in which the begging master, drug crime master, theft master, street bully or one of the child's

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<sup>199</sup> NCSCR Study, *supra* note 194, at 8.

<sup>200</sup> *Id.* at 13-14.

family members is the one who exploits the child<sup>201</sup> and practices the rights of ownership over the child.

Apart from the trafficking of girls in early marriage and the trafficking of street children, children have been trafficked in labour. The type and work conditions are very hard for a child to perform. It was found in the NCSCR national study that most of the samples in which the study based its work on includes children who work in quarries and foundries “classified among the worst forms of child labor”.<sup>202</sup> The work conditions in the quarries expose the children to injuries and toxic powder produced from crushing of the stones; moreover the children work from eleven to sixteen hours a day with little income ranging from 50 to 100 L.E. a week.<sup>203</sup> Almost half of the sample was deprived of their wage.<sup>204</sup> The trafficking elements are present in this form of trafficking. Whereas the action element includes use of children, the purpose of exploitation can be represented either through forced labour or servitude.

#### **D. A New Form of Trafficking in Egypt**

We can clearly see the foundation elements *actus reus* and *mens rea* of the trafficking crime in the previous three forms of exploitation where the action element is committed for the purpose of exploitation. In this section we will apply the trafficking definition to the use of children in political conflicts in Egypt which I argue constitutes a new form of child trafficking.

When the welder’s wife rents her children for the purpose of participating in a sit-in wearing a white death shrouds for money, she exercises the rights of ownership over her children. The action element here is the use and transfer of children to participate in the sit-in; and the purpose of exploitation is exploitation in slavery in which she practices the rights of ownership as their mother. In this case the mother, who is the trafficker

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<sup>201</sup> *Id.* at 14-15.

<sup>202</sup> *Id.* at 9.

<sup>203</sup> *Id.* at 10-11.

<sup>204</sup> *Id.* at 12.

according to the law, obtains material benefit<sup>205</sup> the receipt of money by allowing her children to participate in a sit-in where their lives are at risk. For example, the public prosecutor could accuse this mother of trafficking should the investigations prove that she exploited her children in participating in a sit-in in Raba'a.<sup>206</sup>

On the one hand this mother trafficked her children; on the other hand, the MB uses those same children wearing white death shrouds,<sup>207</sup> for publicity purposes through using those vulnerable children on the front-line demonstrations to appear on the front pages of different newspapers. The action element here is the use or receipt of these children at the place where the exploitation takes place, for example, at the Raba'a sit-in, and the purpose of the exploitation is slavery whereby they pay money or purchase those children temporarily to participate in the demonstrations. Here the gain is different than the financial gain of the mother who trafficked her children; it is a moral gain rather than a material one. The use of children wearing their shrouds would stimulate the spectators' sympathy toward the MB and would let the world know that they are the victims of the interim government; and at the same time, they would agitate the public opinion against the interim government at that time. Accordingly, the financial or the moral gain can be used to determine that there is an intention of exploitation.

The MB are not the only political group to use children in their demonstrations, similarly, Al-Sisi partisans used children from one of the orphanages to carry posters glorifying Al-Sisi (Defence Minister at that time) few years ago, in which the following sentence was written "Egypt is under our responsibility".<sup>208</sup> Those orphaned children wore summer clothes in winter particularly in January during a conference called "Al-Sisi is the President by order of the Egyptian People" in the Conference Hall in Nasr City.<sup>209</sup> Just as

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<sup>205</sup> Executive Regulation of Law 64/2010, *supra* note 171 (according to art. 1).

<sup>206</sup> *Welder accused his wife of exploiting his children and involving them in a march wearing shrouds* (in Arabic), YOUM7 (Aug. 12, 2013, 03:00 PM), <http://www.youm7.com/story/0000/0/0/-/1200556#.VvGRi-J97IU> (last visited May 10, 2016).

<sup>207</sup> EGYPTIAN STREETS, *supra* note 30.

<sup>208</sup> Ghamrawy, *supra* note 13 (The signs were written as "Masr amana a'aleena" which means that Egypt is under our responsibilities). Talk Show, *supra* note 14.

<sup>209</sup> Ghamrawy, *supra* note 13. Talk Show, *supra* note 14.

the MB had used orphans and homeless children from orphanages and rehabilitation centers under their supervision as human shields against security forces,<sup>210</sup> the Egyptian security forces had used children as human shields to deter the demonstrators by providing them with stones and Molotov cocktails.<sup>211</sup> As a result, orphaned children were killed<sup>212</sup> without any mercy. Orphans are much more vulnerable than other children because they do not have any person to go to except those who run these institutions who themselves sometimes exploit these children instead of protecting them. The action part of the trafficking crime contains more than one action such as harbouring, delivery, receipt and use of children to exploit them in slavery in which they exercise the rights of ownership since they are responsible for them. Furthermore, the gain here is political and material gain. On the one hand, Al-Sisi partisans want to show to Al-Sisi that they are supporting him or they may have their own political agenda entailing a political or moral gain. On the other hand the MB obtained material gain through using those children as human shields to deter the security forces and to protect them from their gunfire. Those exploiters do not care about those vulnerable children who do not have any kind of support or protection; the children do not have the right to object to or to refuse to be part of these conflicts.

So when children are used either by their families, political factions, or the Egyptian security forces to participate in the demonstrations or to act as human shields on the front lines, they have been trafficked by persons who obtain material or moral gain in the form of a political gain.

So children can be trafficked in different ways to obtain certain gain. Also, it is important to note that UNODC mentions child trafficking during political conflicts in one of its reports regarding trafficking especially the exploitation element in 2015 after conducting an expert group meeting in Vienna in 2014. Three judges from Egypt represented the

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<sup>210</sup> Abdel Salam, *supra* note 15.

<sup>211</sup> Sanchez, *supra* note 2.

<sup>212</sup> Abdel Salam, *supra* note 15.

Egyptian delegation.<sup>213</sup> The exploitation of children for political purposes was raised in a discussion “as being a possible purpose of trafficking that has arisen during clashes for political purposes in 2013.”<sup>214</sup> It was also mentioned that children in these clashes were recruited to be part of these clashes.<sup>215</sup>

Apart from the above scenarios, some of these children were recruited to commit damage after receiving money<sup>216</sup> through throwing stones and Molotov cocktails<sup>217</sup> that could have resulted in the killing of protestors or security forces or the destroying of government buildings and property such as the Academic Institute. The following section will answer the question of whether these children are victims or criminals.

#### **E. Victims or Criminals?**

We saw in the previous section that families who rent their children to participate in sit-ins trafficked them to obtain material gain; whereas the political faction who used them wearing death shrouds or raising signs as the case with Al-Sisi partisans also trafficked them for obtaining political or moral gains. The two main elements of trafficking which are the *actus reus* and the *mens rea* can be applied in both cases.

Apart from these scenarios, children have been used to commit other criminal activities such as the burning of government buildings or actions that could result in the killing of demonstrators or security forces. Although children have committed some criminal activities in these cases, the trafficking definition still applies. The two elements of trafficking are present: the action element is the use of children to commit these illegal activities after receiving money from a broker in the street who hired them<sup>218</sup> and the purpose of exploitation is slavery (since the traffickers take advantage of their poverty to exploit them to attain certain gain) or forced labor in which the lives of those children are

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<sup>213</sup> 2015 UNODC Issue Paper, *supra* note 126, at 59.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> Yassin & El-Bahnasawy, *supra* note 19.

<sup>217</sup> Sanchez, *supra* note 2.

<sup>218</sup> Yassin & El-Bahnasawy, *supra* note 19.



threatened by committing these acts. However, it is useful to add another purpose of exploitation to the list of the third element in Egyptian law to describe this act such as “involvement in criminal activities” which has been defined in international instrument “EU Directive 2011/36EU” as “pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain.”<sup>219</sup> Exploitation in criminal activities or other illegal activities has been added by Uganda and Malaysia respectively to their national legislation.<sup>220</sup>

Although those children committed crimes which are against Egyptian law, they are not criminally or civilly liable for these crimes since these crimes are associated with being victims of trafficking. This is as per Article 21 of Law No. 64 of 2010: “The victim shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was directly related to being a victim.”<sup>221</sup> Moreover, executive regulation in Article 8 recognizes any other crime rather than the human trafficking crime;<sup>222</sup> in other words, the victim cannot be considered a criminal if he has committed any crime which is related to the status of him being a victim.

Accordingly, children who have been exploited to commit illegal activities are not criminals, instead they are victims who have been trafficked by traffickers.

## **F. Conclusion**

Different categories of people take advantage of the vulnerability of children and their inability to protect themselves through exploiting them especially orphaned and homeless children who are the most vulnerable. Those people traffic children through involving them in political conflicts either in the demonstrations or the sit-ins to achieve certain gains whether material or moral gain. The definition of trafficking applies to these scenarios according to international legislation and national legislation (the UN

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<sup>219</sup> 2015 UNODC Issue Paper, *supra* note 126, at 112.

<sup>220</sup> *Id.*

<sup>221</sup> Law No. 64 of 2010, *supra* note 9, art. 21.

<sup>222</sup> Executive Regulation of Law 64/2010, *supra* note 171, art. 8.

Trafficking Protocol and Law No. 64 of 2010 regarding combating Human Trafficking). The elements of child trafficking include the action and the purpose of exploitation which constitute *actus reus* and *mens rea* respectively in criminal law. Using children in political conflict in Egypt is considered a new form of trafficking.

Because the three following elements under the purpose of exploitation element are to some extent similar “slavery, practices similar to slavery and servitude”; and “in most states these purposes of trafficking appear to be of limited importance, remain inadequately understood, and are rarely prosecuted,”<sup>223</sup> I strongly suggest adding the following purpose of exploitation to the list of the purpose element in the Egyptian Anti-Trafficking Law “exploitation of children in political conflicts”. Accordingly, this will help the law enforcement officials and the public prosecutors to better understand the law and apply it, because there are only two cases which have been found to be trafficking crimes as per Law No. 64 of 2010<sup>224</sup> and the 2015 Trafficking in Persons Report for Egypt which referred to the lack of understanding of the law and the techniques used throughout the investigation process.<sup>225</sup>

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<sup>223</sup> 2015 UNODC Issue Paper, *supra* note 126, at 10.

<sup>224</sup> 2013 TIP Report-Egypt, *supra* note 172. 2015 TIP Report-Egypt, *supra* note 172, at 148.

<sup>225</sup> 2015 TIP Report-Egypt, *supra* note 172, at 148.

#### **IV. Children during Political Conflicts under the UNCRC and Egyptian Child Law**

The previous chapter sheds light on a new form of child trafficking in Egypt: the use of children in political conflicts that took place during and after the 25<sup>th</sup> of January Revolution. It can be legally categorized as a new form of trafficking in addition to the currently existing five forms. This form of trafficking has been defined in both international legislation and domestic law. Whereas Article 3(a) and 3(c) of the UN trafficking Protocol defines the trafficking of children, Egypt incorporates the trafficking definition in its domestic law in Article 2 of Law No. 64 of 2010 regarding combating Human Trafficking. This chapter will address the phenomenon of using children during demonstrations under the UNCRC and Egyptian Child Law.

##### **A. Violence against Children and not Defined as Child Trafficking**

Egyptian children have been used as political tools at the hands of certain political factions and the State itself to achieve political or moral gains, on the one hand, and to achieve material gain, on the other hand, when they have been rented by their mother to participate in sit-ins. In this section, I argue that the use of children in political conflicts is not legally categorized well as form of human trafficking whether in the United Nations Convention on the Rights of the Child (hereinafter UNCRC or CRC) or in the Egyptian Domestic Law “Law No. 12 of 1996 Promulgating the Child Law Amended by Law No. 126 of 2008 (hereinafter Child Law (2008)) compared to the UN Trafficking Protocol and the Egyptian Anti-Trafficking Law No. 64 of 2010 as discussed in the previous chapter. However, using them in different settings during political conflicts can be broadly categorized as a form of violence against those children in accordance with the UNCRC and the Child Law (2008).

This chapter will begin with an overview on the UNCRC and the articles that can be used to describe using children during political conflicts; moreover, the UNCRC is considered to be a poor instrument to legally categorize child trafficking. Additionally, Egypt is a

state party to the UNCRC;<sup>226</sup> it was obliged to include the UNCRC articles in its national legislation to fulfill its obligations. Accordingly, different articles of the Child law (2008) will be indicated which are relevant to children who have been used in political conflicts. Finally, the new article which has been added in accordance with the Child Law (2008) to the Penal Code issued by Law no. 58 of 1937 will be discussed.

## **B. United Nations Convention on the Rights of the Child (hereinafter UNCRC or CRC)**

The UNCRC is the result of a very long process that began decades before its formal proposal. The first international text that mentions “the rights of the child” was in 1924 when the Assembly of the League of Nations issued a resolution endorsing the Declaration of the Rights of the Child that was promulgated by the Save the Children International Union.<sup>227</sup> The League of Nations was “invited to be guided by the principles” of this declaration which was then recognized as the 1924 Declaration of Geneva.<sup>228</sup> In 1948, it acted as a basis for another declaration that was adopted by the General Assembly of the UN (UN replaced the League of Nations), known as the 1948 Declaration of the Rights of the Child.<sup>229</sup> In 1959, the UN General Assembly promulgated this declaration and it became the 1959 UN Declaration of the Rights of the Child, and served as basis for drafting the UNCRC.<sup>230</sup>

The UNCRC was adopted by the UN General Assembly in 1989 and entered into force in 1990.<sup>231</sup> There are 140 signatory states; Egypt signed it in February 1990 and ratified it in July 1990.<sup>232</sup> The four main guiding principles of the UNCRC that are required in execution of the convention are: the Non-discrimination principle (Article 2), the best interests of the child (Article 3), the right to life (Article 6) and the right to be heard

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<sup>226</sup> UNCRC, *supra* note 10.

<sup>227</sup> SHARON DETRICK ET AL., THE UNITED NATIONS CONVENTIONS ON THE RIGHTS OF THE CHILD: A GUIDE TO THE "TRAVAUX PREPARATOIRES" 19 (Sharon Detrick et.al. eds., 1992).

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> UNCRC, *supra* note 10.

<sup>232</sup> *Id.*

(Article 12).<sup>233</sup> The UNCRC is the most widely agreed upon convention among the states; all states have ratified it except two states which are Somalia (which has no government) and the United States.<sup>234</sup> This convention is a legally binding instrument for almost all states for identifying the rights of young people and children.<sup>235</sup> By ratifying the UNCRC, states are obliged to implement it in their national law, policy and practice; moreover, governments should submit reports to the UN Committee on the Rights of the Child on a regular basis on their achievements to implement the UNCRC as per Article 44(1) of the convention.<sup>236</sup> In return they receive reports from the Committee<sup>237</sup> (concluding observations) that include recommendations on how to achieve compliance with the UNCRC as per Article 44(5).<sup>238</sup>

Additionally, three Optional Protocols have been adopted by the UN GA to the UNCRC which broaden the UNCRC's coverage over children's lives and rights.<sup>239</sup> These protocols are optional because the states which ratified the UNCRC have the right to sign them or not.<sup>240</sup> The first two protocols were adopted on May 25, 2002 and entered into force on February 12, 2002 and January 18, 2002 respectively.<sup>241</sup> These two protocols are

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<sup>233</sup> Nigel Thomas, *Children's rights: policy into practice*, Centre for Children and Young People, Southern Cross University, 2011, at 8, [http://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1030&context=ccyp\\_pubs](http://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1030&context=ccyp_pubs) (last visited May 11, 2016). ADEL AZER, SOHAIR MEHANNA & MULKI AL-SHARMANI, CAIRO PAPERS, VOLUME 30, NO. 1: CHILD PROTECTION POLICIES IN EGYPT : A RIGHTS-BASED APPROACH 5-6 (2010), <http://site.ebrary.com/lib/aucairo/detail.action?docID=10413311&p00=cairo+papers%2C+volume+30%2C+no.+1%3A+child+protection+policies+in+egypt%E2%80%AF%3A> (last visited May 11, 2016).

<sup>234</sup> CLAYTON A. HARTJEN & S. PRIYADARSINI, THE GLOBAL VICTIMIZATION OF CHILDREN: PROBLEMS AND SOLUTIONS 14 (2012), <http://link.springer.com.libproxy.aucegypt.edu:2048/book/10.1007%2F978-1-4614-2179-5> (last visited May 11, 2016).

<sup>235</sup> *Id.* at vii.

<sup>236</sup> *Id.* at 14. UNCRC, *supra* note 10, art. 44(1).

<sup>237</sup> HARTJEN & PRIYADARSINI, *supra* note 234, at 14.

<sup>238</sup> UNCRC, *supra* note 10, art. 44(5). Children's Rights in Wales, *United Nations Conventions on the Rights of the Child*, <http://www.childrensrighswales.org.uk/concluding-observations.aspx> (last visited May 11, 2016).

<sup>239</sup> Karin Arts, *Twenty-Five Years of the United Nations Convention on the Rights of the Child: Achievements and Challenges*, 61 NETHERLANDS INTERNATIONAL LAW REVIEW (CAMBRIDGE UNIVERSITY PRESS) 267, 271–272 (2014), <http://web.a.ebscohost.com.libproxy.aucegypt.edu:2048/ehost/detail/detail?sid=5fb051a4-20c2-49af-93c7-47b252b9f163%40sessionmgr4003&vid=0&hid=4112&bdata=JnNpdGU9ZWwhvc3QtbGl2ZQ%3d%3d#A=N=100382613&db=a9h> (last visited May 11, 2016).

<sup>240</sup> United Nations Children's Emergency Fund (UNICEF), *Optional Protocols to the UNCRC*, <http://www.unicef.org.uk/UNICEFs-Work/UN-Convention/optional-protocols/> (last visited May 11, 2016).

<sup>241</sup> *Id.*

the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.<sup>242</sup> Furthermore, the third protocol is the Optional Protocol on a Communications Procedure which was adopted on December 19, 2011 and entered into force on April 14, 2014.<sup>243</sup> Whereas the first Optional Protocol raises the minimum age of a child who can join the armed forces from fifteen to eighteen years of age; the second Optional Protocol gives detailed obligations to the state parties on ending children sexual exploitation and child sales for non-sexual purposes such as child forced labour.<sup>244</sup> The most recent Optional Protocol provides a complaint mechanism in which children can directly submit their complaints to the UN when their states violate their rights mentioned in the UNCRC.<sup>245</sup> Egypt accessed the first two optional protocols on February 6, 2007 and July 12, 2002 respectively.<sup>246</sup>

The UNCRC is somewhat broad<sup>247</sup> and therefore ambiguous when it comes to the rights of children. For example, the UNCRC does not define child prostitution; however, it is defined in the Optional Protocol.<sup>248</sup> The UNCRC in its Article 34 places obligations on states to protect children from all forms of sexual exploitation and to prevent the “exploitative use of children in prostitution or other unlawful sexual practices”<sup>249</sup>; whereas the Optional Protocol on the sale of children, child prostitution and child

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<sup>242</sup> *Id.*

<sup>243</sup> United Nations Treaty Collection, The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-d&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en) (last visited May 11, 2016).

<sup>244</sup> Optional Protocols to the UNCRC, *supra* note 240.

<sup>245</sup> *Id.*

<sup>246</sup> United Nations Treaty Collection, The Optional Protocol to the Convention on the Rights of the Child on a communications procedure to the Convention on the Rights of the Child on the involvement of children in armed conflict, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en) (last visited May 11, 2016). United Nations Treaty Collection, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en) (last visited May 11, 2016).

<sup>247</sup> Rita Shackel, *The Commercial Sexual Exploitation of Children - A Review of International Legal Responses*, 1999 Austl. Int'l L.J. 91, 120 (1999), [http://heinonline.org.libproxy.aucegypt.edu:2048/HOL/Page?handle=hein.journals/austintl16&div=10&start\\_page=91&collection=journals&set\\_as\\_cursor=0&men\\_tab=srchresults#](http://heinonline.org.libproxy.aucegypt.edu:2048/HOL/Page?handle=hein.journals/austintl16&div=10&start_page=91&collection=journals&set_as_cursor=0&men_tab=srchresults#) (last visited May 11, 2016).

<sup>248</sup> Shackel, *supra* note 247, at 99.

<sup>249</sup> UNCRC, *supra* note 10, art. 34(b).

pornography elaborates the purpose of exploitation for sexual activities in Article 2(b) as “the use of a child in sexual activities for remuneration or any other form of consideration.”<sup>250</sup> Accordingly, the Optional Protocols were adopted to clarify and foreground the specific rights pertaining to children.

### C. Using Children during Demonstrations under the UNCRC (Articles 32-36)

The UNCRC with its 54 articles mentions the word “trafficking or traffic” in two different provisions which are Article 33 in which the state should “prevent the use of children in the illicit production and trafficking of such substances” and Article 35 which places obligations on states to “prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”<sup>251</sup> Moreover, the UNCRC refers to the exploitation of children in various articles where different forms of exploitation and trafficking have been mentioned in Articles 32, 33, 34, 35 and 36.<sup>252</sup> Further, these articles are interrelated according to the Committee on the Rights of the Child’s guidelines which group them under children in situations of exploitation, including physical and psychological recovery and social reintegration.<sup>253</sup>

Firstly, Article 32 of the UNCRC refers to economic exploitation of the child and child labour according to the legislative history of the UNCRC.<sup>254</sup> This article protects the child against “economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”<sup>255</sup> Article 32 is related to Articles 33, 34 and 35 which address particular forms of exploitation; moreover, it is

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<sup>250</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, G.A. Res. 54/263, art. 2(b), U.N. Doc. A/RES/54/263 (May 25, 2000) [hereinafter Optional Protocol II], <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx> (last visited May 11, 2016).

<sup>251</sup> UNCRC, *supra* note 10, art. 33, 35.

<sup>252</sup> *Id.*, art. 32-36.

<sup>253</sup> OHCHR Report (Volume I), *supra* note 53, at xlv.

<sup>254</sup> Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child*, 693 (Volume II, 2007) [hereinafter OHCHR Report (Volume II)], <http://www.ohchr.org/Documents/Publications/LegislativeHistoryc2en.pdf> (last visited May 11, 2016).

<sup>255</sup> UNCRC, *supra* note 10, art. 32.

related to Article 36 which protects the child from other forms of exploitation that affect his or her welfare.<sup>256</sup> Article 35 which refers to “abduction of, the sale of or traffic in children for any purpose or in any form” is especially related to Article 32, because the sale of children or traffic in children can be done for the purpose of economic exploitation of children.<sup>257</sup> Furthermore, Article 32 is closely linked to Article 39 “which deals with the right of the child victim of, *inter alia*, any form of exploitation to the promotion of his or her physical and psychological recovery and social reintegration”<sup>258</sup> Additionally, Article 32 refers to the trafficking of children involved in hazardous work (economic exploitation) through applying other provisions of international instruments as per Article 32(1) and 32 (2) of the UNCRC:<sup>259</sup>

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular...

It is important to note that Article 32 of the Convention is meant to be applied to child work as defined in other international conventions. Furthermore, the worst forms of child labour are defined in Article 3 of the Worst Forms of Child Labour Convention, 1999 (No. 182), hereinafter ILO Convention, that was entered into force on November 19, 2000 and Egypt ratified on May 6, 2002:<sup>260</sup>

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, ... (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international

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<sup>256</sup> SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 559 (1999).

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> UNCRC, *supra* note 10, art. 32(1), 32(2).

<sup>260</sup> International Labour Organization, Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No. 182).

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312327](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312327) (last visited May 11, 2016).



treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.<sup>261</sup>

Additionally, Article 2(a) of the Optional Protocol to the CRC on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography defines the sale of children as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”<sup>262</sup> Accordingly, the above two definitions, Article 3 of the ILO Convention and Article 2(a) of the Optional Protocol, apply to the use of children in political conflicts. So when children have been transferred from orphanages or rented by their families to participate in the demonstrations, they have been transferred (sold) by the leaders of the orphanages in the first case and by their families in the second case to other persons (who used them to participate in sit-ins); the gain is moral (other considerations) in the first case and financial (remuneration) in the second. Further, participation of children in sit-ins places their lives at risk and is harmful to their physical, mental, spiritual, moral or social development as per Article 32(1) of the CRC and Article 3(d) of the ILO Convention. Moreover, using children to be part of demonstrations is considered to be a form of slavery (Article 3(a) of the ILO Convention) in which they have been treated as property and their traffickers took advantage of their poverty and their need for money particularly homeless children.<sup>263</sup>

Furthermore, when children commit illegal activities during demonstrations either burning government buildings or throwing Molotov cocktails and receiving money in return, they have been trafficked according to Article 3(c) of the ILO Convention. Illicit activities have been defined by the ILO as “illegal activities or crimes” in which children are used to be involved in these crimes under pressure to get money to survive or to

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<sup>261</sup> Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, art. 3(a)(c)(d), June 17, 1999, 2133 U.N.T.S.161 [hereinafter the Worst Forms of Child Labour Convention], [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312327](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312327) (last visited May 11, 2016).

<sup>262</sup> Optional Protocol II, *supra* note 250, art. 2(a).

<sup>263</sup> On this point, refer to my argument in Chapter III at 42.

support their families.<sup>264</sup> Moreover, children who have been involved in committing illegal activities are subjected to violence in which their lives are threatened and this interferes with their health or physical, mental, spiritual, moral or social development.<sup>265</sup> Because Article 32 of the UNCRC is strongly connected to Article 3 of the ILO Convention and as a result of the drafting the former article, the Committee urges states to ratify the ILO Convention and to apply it in the event they ratify the UNCRC.<sup>266</sup>

Secondly, Article 33 of the UNCRC deals with the protection of children from drug abuse and prevention of using children in drug production and trafficking.<sup>267</sup> This article covers the use of children in production and farming of these drugs since the Committee on the Rights of the Child in one of its Concluding Observations raises the issue of the use of children in farming coca in Colombia.<sup>268</sup> This article is also closely related to Article 32 of the UNCRC which includes economic exploitation of children, because the use of children in production or trafficking of these drugs is using them as mules to obtain economic gain.<sup>269</sup>

Thirdly, Article 34 and 35 of the UNCRC deal with sexual abuse and sexual exploitation in Article 34 and the selling and trafficking of children in Article 35.<sup>270</sup> Although Article 34 addresses the sexual abuse and exploitation of children, the CRC during the process of drafting of this article meant to focus on sexual exploitation rather than sexual abuse

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<sup>264</sup> International Labour Organization, The Worst Forms of Child Labour, <http://www.ilo.org/ipec/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm> (last visited May 11, 2016).

<sup>265</sup> *Id.*

<sup>266</sup> LEE SWEPSTON, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 32: PROTECTION FROM ECONOMIC EXPLOITATION 28 (2012), <http://site.ebrary.com/lib/aucairo/detail.action?docID=10576311&p00=commentary+on+the+united+nation+s+convention+on+the+rights+of+the+child%2C+article+32%3A+protection+from+economic+exploitation+28> (last visited May 11, 2016).

<sup>267</sup> UNCRC, *supra* note 10, art. 33.

<sup>268</sup> DAMON BARRETT & PHILIP E. VEERMAN, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 33: PROTECTION FROM NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES 47 (2012), <http://site.ebrary.com/lib/aucairo/detail.action?docID=10648734&p00=commentary+on+the+united+nation+s+convention+on+the+rights+of+the+child%2C+volume+33%2E80%AF%3A+commentary+on+the+united+nations+convention+on+the+rights+of+the+child%2C+article+33%3A> (last visited May 11, 2016).

<sup>269</sup> *Id.* at 47-48.

<sup>270</sup> UNCRC, *supra* note 10, art. 34-35.

since the latter has been covered in Articles 19 and 39 of the convention.<sup>271</sup> Additionally, there was a suggestion to separate sexual exploitation from trafficking since the latter includes other forms of trafficking rather than sexual trafficking.<sup>272</sup> This is because some delegations from Mexico, Senegal, Venezuela, the ILO and the Informal NGO Ad Hoc Group during the drafting process were concerned about adding two separate articles, one article to protect children from sexual exploitation and another article to protect children from selling and trafficking.<sup>273</sup> This suggestion is based on the fact that the sale and traffic of children is broader than sexual exploitation in which the former includes “economic exploitation, sexual exploitation and sexual abuse, as well as for reasons of adoption or labour.”<sup>274</sup> Apart from this, the term exploitation is undefined in the UNCRC, although, it is mentioned in Articles 19 and 39, and it is the core of Article 32 (economic exploitation especially child labour).<sup>275</sup> Moreover, the term exploitation “became the backbone of Article 36 of the CRC: “States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.”<sup>276</sup>

All in all, in order to separate sexual exploitation from trafficking since the latter is a broader term and includes several forms of exploitation, Article 35 was the result dealing with the abduction, sale and traffic of children. Article 35 deals with the prevention of “the abduction of, the sale of or traffic in children for any purpose or in any form.”<sup>277</sup> Although the UNCRC does not define the terms used in this article: “abduction”, “sale” or “trafficking”, the first Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography mentions that the sale and trafficking of children are strongly related to each other and “[i]n most cases, elements of both are involved, but there is no

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<sup>271</sup> VITIT MUNTARBHORN ET AL, COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 34 : SEXUAL EXPLOITATION AND SEXUAL ABUSE OF CHILDREN 23 (2007), <http://site.ebrary.com/lib/aucairo/detail.action?docID=10355222&p00=commentary+on+the+united+nations+convention+on+the+rights+of+the+child%2C+article+34%E2%80%AF%3A+sexual+exploitation+sexual+abuse+of+children> (last visited May 11, 2016).

<sup>272</sup> *Id.* at 23-24.

<sup>273</sup> OHCHR Report (Volume II), *supra* note 254, at 717.

<sup>274</sup> *Id.*

<sup>275</sup> MUNTARBHORN, *supra* note 271, at 25.

<sup>276</sup> *Id.*

<sup>277</sup> UNCRC, *supra* note 10, art. 35.

line where one ends and the other begins.”<sup>278</sup> Moreover the Special Rapporteur provided the following working definition to the Commission of Human Rights on the “sale of children” in 1994: “the transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation.”<sup>279</sup> The adoption of this definition includes the following categories: sale of children for commercial adoption, child labour, organ transplantation, and other types of sale including abduction, disappearance and child soldiers.<sup>280</sup> Then the incumbent Special Rapporteur defined the sale of children in 1995 as “the transfer of parental authority over and/or physical custody of a child to another on a more or less permanent basis in exchange for financial or other reward or consideration.”<sup>281</sup> Finally, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography introduced the following definition of sale of children in Article 2(a) in 2000 (the year of adoption of the Optional Protocol): “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”<sup>282</sup> I believe that the second definition by the incumbent Special Rapporteur is exhaustive and strongly relates to using children in political conflicts as a form of trafficking, because it strengthens the definition of trafficking since it emphasizes the exercising of the rights of ownership over children (through using the wording “transfer of parental authority”) to obtain certain gains whether financial or moral. Moreover, the second definition emphasizes the concept of slavery wherein a child can be treated as a commodity or property through transferring the rights of ownership (which include purchase, sale, lending or bartering persons)<sup>283</sup> from one person to another. However the first and third definitions are weak to a slight extent compared to the second definition since they deal with only the physical transfer of children and not the transfer of authority over the children. Suffice it to note here that the

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<sup>278</sup> Mag.iur. Verena Tadler, *Child Trafficking for the Purpose of Inter-country Adoption With a Case Study on Guatemala*, 56 (2010), [http://othes.univie.ac.at/13850/1/2010-11-18\\_0009560.pdf](http://othes.univie.ac.at/13850/1/2010-11-18_0009560.pdf) (last visited May 11, 2016).

<sup>279</sup> DETRICK, *supra* note 256, at 604.

<sup>280</sup> *Id.* at 604-605.

<sup>281</sup> Verena Tadler, *supra* note 278, at 57.

<sup>282</sup> Optional Protocol II, *supra* note 250, art. 2(a).

<sup>283</sup> On this point, refer to my argument in Chapter III at 42.

three definitions fulfill the definition of trafficking; however, the second one is the strongest one to clarify trafficking in children especially the use of children in political conflicts as a tool to achieve certain gains whether financial or in-kind.

Because Article 34 and 35 of the UNCRC do not define the notions of child prostitution, child pornography and sale of children, some countries focused on the need to adopt a new treaty which later became the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography to define these concepts after the UNCRC entered into force in 1990.<sup>284</sup> However, the UNCRC Committee did not welcome the adoption of a new treaty justifying the reason in that the rights included in the UNCRC are adequate, and can be complemented by other international instruments such as CEDAW, the UN Trafficking Protocol and the ILO Forced Labour Convention.<sup>285</sup> The reason behind the Committee's reticence was its concerns to avoid any duplication or overlap with other instruments and to avoid any inconsistency or incompatibility that might take place by drafting this protocol.<sup>286</sup>

Fourthly, Article 36 of the UNCRC deals with protection of "the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."<sup>287</sup> This article denotes all other forms of exploitation other than forms that are mentioned in Article 32 (protecting children against economic exploitation), Article 33 (preventing the use of children in production and trafficking of drugs), Article 34 (protecting children from sexual exploitation) and Article 35 (preventing the sale and trafficking of children).<sup>288</sup> Comparably, Article 36 is similar to Article 32 in that they both are strongly connected to Article 39. Additionally, Article 36 is connected to Article 39 which "promote[s] physical and psychological recovery and social reintegration of a child victim of" any form of exploitation.<sup>289</sup> During the drafting of Article 36, there was a debate about the inclusion

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<sup>284</sup> MUNTARBHORN, *supra* note 271, at 26.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> UNCRC, *supra* note 10, art. 36.

<sup>288</sup> *Id.* art. 32-35.

<sup>289</sup> DETRICK, *supra* note 256, at 609-610.

of social exploitation.<sup>290</sup> The Canadian observer noted that the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 10(3) dealt with the protection of children and young persons from both economic and social exploitation.<sup>291</sup> She added that if the UNCRC explicitly protected children against economic exploitation (Article 32) and sexual exploitation (Article 34) but not explicitly has an article on social exploitation, “it would be a step backwards with regard to the Covenant.”<sup>292</sup> However, there was some hesitancy in the incorporation of social exploitation in the UNCRC’s *travaux préparatoires* because of the fear that the article might be too limiting; it was important that the UNCRC provide protection against all other possible forms of exploitation.<sup>293</sup> I believe that Article 36 is an open-ended article to encourage the state parties to incorporate other and new forms of exploitation that might arise in the future. Comparably, the UN Trafficking Protocol mentions the wording “at a minimum” before different purposes of exploitation to allow the protocol to cover other forms of trafficking that may arise after its adoption and entering into force.<sup>294</sup>

Although the previous Articles 32 to 36 of the UNCRC deal with exploitation and trafficking of children, this Covenant is considered to be a weak international instrument in addressing the problem of child trafficking compared to the UN Trafficking Protocol which drew a map to identify victims of trafficking including its three elements. On the other hand, the UNCRC successfully defined exploitation either through the gaining of financial or moral benefits despite the fact that the UN Trafficking Protocol does not define this part in its exploitation definition. On the other hand, the UNCRC can legally categorize using children in political conflicts with a broader term than that covering trafficking and exploitation which is “violence” which is mentioned in Article 19 of the UNCRC that will be clarified later in this chapter.

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<sup>290</sup> *Id.* at 610.

<sup>291</sup> OHCHR Report (Volume II), *supra* note 254, at 735-736. International Covenant on Economic, Social and Cultural Rights, art. 10(3), Dec. 19, 1966, 993 U.N.T.S. 3, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (last visited May 11, 2016).

<sup>292</sup> OHCHR Report (Volume II), *supra* note 254, at 735-736.

<sup>293</sup> DETRICK, *supra* note 256, at 610.

<sup>294</sup> On this point, refer to my argument in Chapter III at 35.

**D. Egyptian Domestic Law: (Law No. 12 of 1996 Promulgating the Child Law Amended by Law No. 126 of 2008), hereinafter Child Law (2008)**

In order for Egypt to achieve its obligations under the UNCRC, it passed the first Egyptian legislation which guarantees children's rights in 1996 by Decree 3452/1997; it translates the UNCRC provisions into Egyptian domestic law.<sup>295</sup> The enactment of the 1996 Child Law is considered to be a great achievement for the NCCM in transferring and translating the provisions of the UNCRC into Egyptian legislation.<sup>296</sup> In 2008, amendments to Child Law No. 12 of 1996 were made and new legislation was adopted (Law No. 126 of 2008). These amendments include the following: criminalization of female genital mutilation, raising the age of criminal responsibility of the child from seven to twelve, raising the age of marriage from sixteen to eighteen for girls and boys, elimination of discrimination against children who are born out of illegitimate marriage, creation of child nurseries inside prisons for children whose mothers are imprisoned, requirement of pre-marriage investigation, and increasing penalties for those who subject children to abuse.<sup>297</sup> Accordingly, the Egyptian parliament adopted these amendments in June 2008 which was a step toward issuing the new Child Law (2008).<sup>298</sup> Accordingly, the latest law includes an expansion of the legal protection for children especially with children at risk of being subjected to violence, abuse and exploitation.<sup>299</sup>

Moreover, Article 144 of the Child Law (2008) necessitates the establishment of the NCCM which "shall enjoy the status of a legal person and have its seat in the city of Cairo."<sup>300</sup> In 1998, the NCCM was established accordingly, and it was responsible for all issues related to children such as planning, coordinating and monitoring the national activities pertaining to children.<sup>301</sup> The NCCM Secretary General used to report directly to

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<sup>295</sup> Manara Network, *Country Profile of Egypt: A Review of the Implementation of the UN Convention on the Rights of the Child*, 24 (2011) [hereinafter Manara Network Report], <http://www.ibcr.org/editor/assets/Egypt%20Country%20Profile.pdf> (last visited Apr. 2, 2016).

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> Universal Periodic Review-Egypt, *supra* note 80, at 1.

<sup>300</sup> Law No. 126 of 2008, *supra* note 11, art. 114.

<sup>301</sup> Manara Network Report, *supra* note 295, at 26.

the First Lady; however, in 2009, the government created the Ministry of State of Family and Population under which the NCCM worked; since then, its minister reports directly to the Prime Minister.<sup>302</sup> Most recently particularly in March 2011 after the 25<sup>th</sup> of January Revolution, the NCCM works under the auspices of the Ministry of Health and Population as the Ministry of Family and Population was dissolved after the Revolution.<sup>303</sup> Further, in order to ensure child protection under the law, the Child Law mandates the application of the Child Protection Mechanism which is a national policy adopted in coordination with UNICEF, where in every governorate and its districts, several Childs Protection Committees are established to address children's issues.<sup>304</sup>

In the following section, we will see the applicability of the Child Law (2008) in dealing with children who have been used by several actors during the political conflicts in Egypt during and after the 25<sup>th</sup> of January Revolution.

#### **E. Using Children during Demonstrations under the Child Law (2008)**

The NCCM condemned the involvement of children in the political scene in a way that responded to their human dignity.<sup>305</sup> The General Secretary of the NCCM added that children had been used to collect stones to be thrown and as human shields, wearing death shrouds, throwing Molotov cocktails and having their pictures broadcast in the media in a way to incite violence; all these actions are considered to be violations of the Egyptian laws and the international conventions and charters which oblige the state to take legislative and social measures to promote and protect child's rights.<sup>306</sup> Additionally, the NCCM filed official reports to the Public Prosecutor gathering these actions against the children in order to protect children's rights according to the Child Law (2008), particularly, Articles 96, 114 and 116-bis (b).<sup>307</sup>

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<sup>302</sup> Universal Periodic Review-Egypt, *supra* note 80, at 1.

<sup>303</sup> Manara Network Report, *supra* note 295, at 25-26.

<sup>304</sup> Universal Periodic Review-Egypt, *supra* note 80, at 2.

<sup>305</sup> NCCM Report, *supra* note 12, at 12.

<sup>306</sup> *Id.* at 12-13.

<sup>307</sup> *Id.* at 13.



In addition to the articles that were mentioned by the NCCM, there are other articles that deal with this social phenomenon – the use of children in political conflicts – that are mentioned in the Egyptian Child Law (2008). These articles include Article 3(a), 65, 96(2) and (6), 114 and 116 / 116-bis (b).

The first article that will be discussed in this section is Article 3(a) which is a generalized article under the general provisions section of the Child Law (2008) which protects children from “all forms of violence, or injury, or physical, mental or sexual abuse, or negligence, or negligent treatment, or any other forms of maltreatment or exploitation.”<sup>308</sup> Neither the Child Law nor its executive regulation defines the meaning of violence or exploitation. Moreover, the executive regulation of the Child Law does not add any additional words of clarification, nevertheless, it added this article with the same wording in its Article 4(a) of its executive regulation.<sup>309</sup>

The second article is Article 65 which deals with child work “[t]he employment of children in any type of work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children shall be prohibited, in particular regarding the employment of a child in any type of work set forth in the ILO Convention No. 182 of 1999 on the Worst Forms of Child Labour”<sup>310</sup> This article is restrictive in its wording compared to Article 32 of the UNCRC. Whereas the UNCRC refers to the “work” of children in Article 32, Article 65 deals with the “employment” of children. The word “work” is much broader in its application than the word “employment” as it refers to all work that is done by children regardless of the confinement of the employment relationship between an employer and employee.<sup>311</sup> Accordingly, Article 32 of the UNCRC is more compatible with the worst forms of child labour which are mentioned in the ILO Convention No. 182 of 1999 (slavery including the sale and trafficking of children, sexual exploitation of children, involvement of

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<sup>308</sup> Law No. 126 of 2008, *supra* note 11, art. 3(a).

<sup>309</sup> Executive Regulation of Child Law No. 126 of 2008, art. 4(a) [hereinafter Executive Regulation of Child Law].

<sup>310</sup> Law No. 126 of 2008, *supra* note 11, art. 65.

<sup>311</sup> SWEPSTON, *supra* note 266, at 21.

children in illegal activities and hazardous work).<sup>312</sup> On the contrary, Article 65 of the Child Law (2008) is less compatible as it only concentrates on one form of the ILO Convention which is the last and hazardous form. Moreover, the executive regulations in part five, chapter one of the Child Law regulates child employment specifying which types of work are allowed to children according to their ages.<sup>313</sup> Suffice it to note here that worst forms of child labour such as sexual exploitation and involvement of children in illegal activities have been dealt with in other articles of the Child Law (2008). Moreover, Article 65 does not mention the economic exploitation of children compared to Article 32 of the UNCRC. As a result, Article 65 of the Child Law cannot be applied to different scenarios of using children in political conflicts compared to Article 32 of the UNCRC.

The third article is Article 96 that deals with the situations which put the child at risk and it is closely related to Article 3(a). The paragraphs of this article which are relevant to using children in political conflicts are Article 96(2) and (6):

The child shall be considered at risk if he is exposed to a situation threatening the sound upbringing that should be made available to him, or in any of the following cases:  
2- If the conditions surrounding the child's upbringing in the family, or at school, or in care institutions, or others, places him at risk, or if the child is exposed to neglect, abuse, violence, exploitation, or vagrancy.  
6- If the child is exposed in the family, school, care institutions, or other to violence ... or to commercial exploitation of children.<sup>314</sup>

Neither the Child Law (2008) nor its executive regulation define the words “neglect, abuse, violence, exploitation, [or] vagrancy”, however those concepts can be understood from the General Comment No. 13 on Article 19 of the UNCRC.<sup>315</sup> Violence according to the General Comment includes “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse;” moreover, all these terms “carry equal weight” as violence.<sup>316</sup> Even though, the concept of

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<sup>312</sup> The Worst Forms of Child Labour Convention, *supra* note 261, art. 3(a)(b)(c)(d).

<sup>313</sup> Executive Regulation of Child Law, *supra* note 309, Part five, Chapter one.

<sup>314</sup> Law No. 126 of 2008, *supra* note 11, art. 96(2), 96(6).

<sup>315</sup> Committee on the Rights of the Child, *General comment No. 13: The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, at 4, para. 4, [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf) (last visited May 11, 2016).

<sup>316</sup> *Id.*

violence refers to physical and intentional harm, the Committee on the Rights of the Child stresses the importance of not minimizing non-physical and unintentional harm including neglect and psychological maltreatment.<sup>317</sup>

Accordingly, when different actors used children to be part of the demonstrations either through participation or committing criminal activities; they put those children at risk and threatened their lives due to their exposure to violence. These children were exposed to injury and loss of life which is confirmed in UNICEF's 2013 annual report on Egypt in which "at least 25 children were killed and several injured during violent clashes."<sup>318</sup>

The fourth article of the Child Law (2008) is Article 114 which is closely related to Article 96 where it imposes sanctions on "any person to whom the child was delivered and, as a result of neglecting his duties, the child committed a crime or was at risk according to one of the cases set forth in this Law."<sup>319</sup> This article can be applied to the caring institutions that put the lives of orphaned children at risk when they participated in the sit-ins carrying their shrouds or lifting signs to glorify Al-Sisi.

Lastly, Article 116 imposes penalties on "any adult who induces a child to commit a misdemeanor, or trains him to do it, or helps him, or facilitates it in any way."<sup>320</sup> This article is relevant to children who have been paid to commit criminal activities such as burning government buildings and throwing Molotov cocktails or stones. Furthermore, Article 116-bis (b) imposes penalties on "anyone who publishes, or broadcasts in the media any information or data, pictures, or drawings related to the identity of a child at a time when his case is being examined by the authorities concerned with children at risk or are in conflict with the law."<sup>321</sup> Accordingly, this is clearly related to SCAF who

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<sup>317</sup> *Id.*

<sup>318</sup> United Nations Children's Emergency Fund (UNICEF), UNICEF Annual Report 2013 – Egypt, (2013), at 2,

[http://www.unicef.org/about/annualreport/files/Egypt\\_COAR\\_2013.pdf](http://www.unicef.org/about/annualreport/files/Egypt_COAR_2013.pdf) (last visited May 11, 2016).

<sup>319</sup> Law No. 126 of 2008, *supra* note 11, art. 114.

<sup>320</sup> *Id.* art. 116.

<sup>321</sup> *Id.* art. 116-bis (b).

interviewed children confessing to the committing of certain illegal activities including the burning of the Academic Institute.<sup>322</sup>

Different articles of the Child Law (2008) can be legally categorized using children in political conflicts as violence, exploitation, abuse, negligence and maltreatment which are interrelated terms and carry equal weight on the one hand, and other articles imposing penalties on the actors who use children. However, due to the fact that some of the children's rights might not be covered in the Child Law, the Child Law added new Article 291 to the Penal Code issued by Law No. 58 of 1973.

#### **F. Article 291 of the Penal Code issued by Law No. 58 of 1973**

Article 291 of the Penal Code has been added in accordance with Child Law (2008) to criminalize all forms of trafficking that children can be exposed to including commercial, economic and sexual exploitation.<sup>323</sup> The Egyptian Initiative for Personal Rights rephrased Article 291 of the Penal Code as “selling, buying or exposing for sale of a child; handing over, receiving or transporting a child as a slave; exploiting a child sexually or commercially; or using a child in forced labor or in any other illicit use, which is punished with a minimum of five years rigorous imprisonment.”<sup>324</sup>

#### **G. Conclusion**

The UNCRC covered trafficking in children in a broad manner without providing guidance in its provisions on how trafficking occurs in children. Moreover, it fails to define economic exploitation or child trafficking. Accordingly, in order to protect children's rights, the UNCRC must be read in accordance with other international conventions and its adopted protocols. Comparably, the Child Law and the UNCRC can be legally categorized the use of children in political conflicts as form of violence as

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<sup>322</sup> Awny, *supra* note 4.

<sup>323</sup> Law No. 126 of 2008, *supra* note 11, art. 291, at 51.

<sup>324</sup> Egyptian Initiatives for Personal Rights, *What is trafficking in persons?*, <http://eipr.org/en/report/2010/11/24/1003/1010> (last visited May 11, 2016).

described in Article 19 of the UNCRC with its General comment No. 13 and Articles 3(a), 96 (2) and 96(6) of the Child Law (2008).

## V. Conclusion

Egyptian children have been used during and after the 25<sup>th</sup> of January Revolution by different groups such as revolutionaries, political factions, the state itself or even by their families to achieve those groups' personal interests. Different categories of Egyptian children have been used during the political conflicts in Egypt. Orphans were among those children who have been used; they were tools at the hands of Al-Sisi partisans and the MB to glorify the former and participate in the latter's sit-ins. Moreover, homeless children have also been used by the MOI as human shields to deter the protestors. In addition to orphans and homeless children, some families rented their children to participate in the sit-ins and got money in return. Further, the SCAF used children in one of its press conference to confess that they burnt the Academic Institute and committed crimes related to the Council of Ministers incident. Those different group of people used children to achieve certain personal gain. On the one hand, MB, SCAF and MOI used them to achieve political gains either to stimulate the spectators' sympathy toward MB, to calm down the anger of the public opinion when children confessed of committing burning of government buildings or to achieve protection of the MOI who used them as human shields to deter the opposite group of demonstrators.

Using children in political conflicts is legally categorized as a new form of trafficking according to the UN Trafficking Protocol and Law No. 64 of 2010 regarding combating Human Trafficking. The basic two elements of child trafficking crime include the action and the purpose of exploitation which constitute *actus reus* and *mens rea* respectively under criminal law. Using children in political conflict is a new form of trafficking which has arisen in Egypt since the 25<sup>th</sup> of January Revolution. The action element includes the use, harbouring and receipt of children; whereas the purposes of exploitation element include slavery or forced labor of children. Whereas the UN Trafficking Protocol does not elaborate the intention of exploitation, the Egyptian law indicates that the person(s) who commit the crime will obtain either material or moral benefit as per Article 1 of the executive regulation. The material gain here is received by the family in the form of

money when they rent their children to others to participate in the demonstrations; whereas the moral benefit can be political gain. Accordingly, the material and moral gain can be used to determine the intention of exploitation. So, if the gain is not present and the action and purpose of exploitation are present in case of children, this case amounts to trafficking crime regardless of the presence of the gain. It is strongly recommended to add this new form of trafficking “exploitation of children in political conflicts” to the list of purpose of exploitation element in Law No. 64 of 2010 regarding combating Human Trafficking, because other purposes of exploitation are to some extent similar in their definitions such as slavery, practices similar to slavery and servitude.

On the other hand, the UNCRC and the Egyptian Child Law (2008) fail to legally categorize using children in political conflicts as a form of human trafficking compared to the UN Trafficking Protocol and Law No. 64 of 2010 regarding combating Human Trafficking, although they contain some articles on trafficking. The UNCRC articles that are related to trafficking are Articles 32-36, however, these articles give broad definition of trafficking without specifying the elements of child trafficking. Accordingly, those articles should be read in accordance with other international instruments such as the ILO Convention in order to legally categorize using of children in political conflicts as form of trafficking. Further, the following articles are related to using children in political conflicts in Egyptian Child Law (2008): Articles 3(a), 96, 114, 116 and 116-bis (b). These articles used interrelated and broad terms, such as violence, exploitation, abuse, negligence and maltreatment, however, some of these articles impose penalties on the actors who abuse children such as Articles 116 and 116-bis (b).

Even though, the UNCRC and the Child Law (2008) fail to properly categorize using children in political conflicts as a form of trafficking, they both legally categorizes using those children as form of violence as per Article 19 and General Comment No. 13 on Article 19 of the UNCRC and Articles 3(a), 96(2), 96(6) of the Child Law (2008). Because the definition of violence is very broad in the CRC, it needs to be strictly defined. Additionally, Child Law (2008) can complement the UNCRC through legally

categorizing the use of children in political conflicts as “children at risk” due to their exposure to violence.

Although the term violence is very broad and it is interrelated to other terms, the Child Law (2008) successfully achieved a step forward when it added Article 291 to the Penal Code which limits the trafficking definition compared to the Child Law and the UNCRC.

To conclude, the UN Trafficking Protocol and Law No. 64 of 2010 regarding combating Human Trafficking legally categorize using children in political conflicts in Egypt as a new form of trafficking, however, the UNCRC and the Child Law (2008) fail to do so. On the other hand, the UNCRC and the Child Law (2008) legally categorize using children during political conflicts as form of violence, however, this term was broadly used by these two instruments.