

ARTICLES

HUMAN RIGHTS

Protecting the rights of trafficked women: the case of United Arab Emirates

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Introduction

Trafficking in persons (TIP) also known as “modern day slavery”, has, over the past few decades, become one of the fastest growing criminal activities.¹ State policies in many countries address trafficking as an issue of border control and global organized crime, but not as a human rights violation of the trafficked persons. TIP is not just a transnational organised crime, it is also a serious breach of human rights, in particular of women and young girls who are trafficked into gender-specific situations of exploitation such as sex tourism, and forced labour in domestic and service industries. The majority of women and girls identified among victims continue to be trafficked for the purpose of sexual exploitation. Moreover, female victims are also trafficked in large numbers for forced labour, particularly for domestic work and for other types of exploitation; including forced marriages and forced criminality. After the Covid 19 pandemic there has been a sharp increase in the number of women and girl trafficking, rising by 25 per cent compared to 2019.² Migrant workers make up a significant share of the trafficked victims in most global regions, and sub-Saharan Africa, North America, and Eastern European countries saw significant increases in the detection of victims, while countries in South America, Eastern Europe and Central Asia, East Asia and the Pacific, North Africa and the Middle East recorded increasing detections as compared to 2020, but still fewer compared to the 2019 pre-pandemic period.³

The United Arab Emirates (UAE), is a tier 2 transit and destination country for women and young girls from Eastern Europe, Asia, and East Africa, trafficked for the purposes of labour and forced commercial sexual exploitation.⁴ UAE and, in particular the Emirate of Dubai, is an important

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¹ K.Bales and R Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today, With a New Preface* (California: University of California Press 2010) xiii; Justin Healey (ed), *Human Trafficking and Slavery* (Thirroul: Spinney Press 2012) 1; B. Mills, *Human Trafficking: Modern-Day Slavery* (Trafford Publishing 2011) 3; Alison BRYSK and Austin CHOI-FITZPATRICK (eds), *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (Pennsylvania: University of Pennsylvania Press 2012) 98; T. Obokata, “Trafficking of Human Beings as a Crime against Humanity: Some Implications” (2005) 54(2) *International and Comparative Law Quarterly* 445, 445.

² UNODC, *Global Report on Trafficking in Persons 2024* (United Nations publication), p 3

³ *Ibid.*, p 10

⁴ The United Arab Emirates (Al-Imārāt al-‘Arabiyyah al-Muttaḥidah) is a federal constitutional onarchy founded on 2 December 1971 as a federation of seven Emirates; Abu Dhabi, Dubai, Sharjah, Ajman, Fujairah, Umm Al Quwain, and Ras al Khaimah. UAE is the second largest economy in the Middle East and the world’s seventh richest country in terms of per capita GDP According to an estimate by the World Bank, the UAE’s population in 2020 stands at 9.89 million. Expatriates and immigrants account for 88.52 per cent while Emiratis make up the remaining 11.48 per cent. South Asians, which include people from India, Bangladesh, Pakistan and other South Asian nations compose 59.48% of the population. The rest of population comprises of Egyptians at 4.23 per cent and others at 17.94%. ([https://www.globalmediainsight.com/blog/uae-efdqwerty\[\]population-statistics/](https://www.globalmediainsight.com/blog/uae-efdqwerty[]population-statistics/)). The UAE has a federal court system. There are three main branches within the court structure: civil, criminal and Sharia law. The UAE’s judicial system is derived from the civil law system and Sharia law. The court system consists of civil courts and Sharia courts. UAE’s criminal and civil courts apply elements of Sharia law, codified into its criminal code and family law. The UAE is a member of the United Nations and several of its specialized agencies (ICAO, ILO, UPU, WHO, WIPO), as well as the World Bank, IMF, Arab League, Organisation of Islamic Cooperation (OIC), OPEC,

hub for international trade and has established a successful tourism industry. These developments attract thousands of wealthy investors and visitors. The tourism industry has also led to opening-up of night clubs, bars and brothels. This growth in tourism industry has unfortunately led to trafficking in women for commercial sexual exploitation and forced sex work in the UAE. The considerable increase in the country's wealth has been generated by the economic activities of the UAE's millions of migrant workers and this inward migration has continued to be the key means for rapid economic development, resulting in expatriates significantly outnumbering nationals. The construction boom of the 1990s led to incredible demographic changes in the composition and size of the UAE's population at an unprecedented speed, and in a span of 15-20 years the population of the country has almost doubled, primarily due to migrant workers. Today, non-citizens comprise 91.3 per cent of the employed labour force.

There is a close connection between migration flows and trafficking flows. In particular, certain TIPs flows resemble migration flows. A recent study confirms that in UAE cross-border trafficking flows follow the profile of the foreign workers officially registered as residing in the country.⁵ Migration takes place under the *kafala* system, a guest worker system found across the Gulf Cooperation Council (GCC) states.⁶ *Kafala* system organizes foreign labour into a sponsorship system in which the individual guest worker is sponsored by a local company or individual citizen who serves as a sponsor or *kafeel* during a contractually-fixed period of time. Although the majority of workers enter into UAE under the *Kafala* system, many migrant workers become victims of external and internal trafficking in UAE.

UAE has made some significant strides towards addressing the issue of human trafficking through the 4Ps framework of prevention, prosecution, protection and partnerships, the development of national anti-trafficking legislation, policy and National Referral Mechanisms (NRMs), and regional co-operation efforts to combat trafficking. However, despite these efforts UAE remains a tier two country and has been criticized in the US Trafficking in Persons Annual Reports (TIPR), and by other human rights organisations for allowing the exploitation of trafficked victims and migrant workers, the growth of the sex industry and forced prostitution.

The aim of this article is to examine the UAE's Federal Law No.24 of 2023, as this law is specifically designed to address trafficking on its territory. The article addresses the gaps in the existing legislation and suggests law reform by taking a human rights-based approach for protecting the rights of victims of trafficking and not merely criminalizing the perpetrators of trafficking crime. By using human rights-based approach and Islamic perspectives on slavery this socio-legal research addresses the question: "To what extent has the UAE's Federal Decree Law 24 of the 2023 been able to provide protection to women victims of sex trafficking in the UAE?" The human rights-based approach offers a conceptual and normative framework that can provide direction to the development of anti-trafficking policies. This framework enables the evaluation and monitoring of anti-trafficking actions and practices in terms of their real and potential impact on trafficked persons as well as allowing relevant human rights issues related to victims to be explored and identified.⁷

With regard to victim protection strategy this study further questions: whether systematic procedures are employed by law enforcement authorities in UAE to proactively identify trafficked victims; whether the law provides permanent residency status to victims in danger of being re-trafficked; and whether the law includes any provisions to protect victims in times of natural disasters, calamities and pandemics etc. The significance of using a human rights-based approach to trafficking is that trafficked victims can be seen as "subjects of human rights" instead

Organization of Arab Petroleum Exporting Countries, and the Non-Aligned Movement. Also, it is an observer in the Organisation Internationale de la Francophonie.

⁵ https://www.unodc.org/documents/data-and-analysis/glotip/Glotip16_Chapter_2.pdf p59

⁶ Q. Mustafa (2020) Dubai's Role in Facilitating Corruption and Global Illicit Financial Flows, Carnegie Endowment for International Peace. P79

⁷ M. Wijers, 'An Exploration of the Meaning of a Human Rights Based Approach to Trafficking' (2004) 22 Alliance News 1.

of criminals who violate national immigration laws and regulations. Criminalisation damages victims' self-respect and dignity, and isolates them from their families, societies, and the world around them. It is argued that the human rights-based approach can rectify this and empower victims by restoring their dignity and self-worth. This approach allows us to understand wider issues surrounding the TIP, including the causes and consequences of trafficking. In other words, it has the potential to promote a comprehensive and holistic strategy which seeks not only legal but also political, economic and social solutions. This approach is used to ensure that victims are genuinely protected and fully rehabilitated to re-enter society; as opposed to the crime control approach, which focuses on criminalization of trafficking and punishing perpetrators and clearly lack a focus on victims' human rights protection.⁸

As UAE follows Islamic law it is equally important for this research to explore Islamic principles on slavery and exploitation of labour that could also be applied to TIP. The Islamic perspective complements and supports the international UN legal framework in combating the problem of trafficking. Islamic perspectives on slavery demonstrate that the Qur'an does not approve of slavery and the Qur'anic teachings can combat this type of modern-day slavery in the form of human trafficking through its prohibition of other forms of exploitation, protection of victims' rights, as well as protection of vulnerable groups, such as women and children. By using Islamic perspectives, it is argued that Islamic law is in compliance with international law on the issue of human trafficking. The article concludes that a comprehensive and holistic human rights-based approach is needed to ensure that legal and social measures are effectively put in place to protect the rights of trafficked women in UAE.

The human rights-based approach to protect trafficked victims

To address the issue of trafficking, various approaches have been used by scholars and researchers which qualify trafficking as a crime as well as a labour and migration issue.⁹ It is widely acknowledged that violations of human rights are both a cause and a consequence of human trafficking.¹⁰ A human rights-based approach offers a conceptual and normative framework that can provide direction to the development of anti-trafficking policies. This framework enables the evaluation and monitoring of anti-trafficking actions and practices in terms of their real and potential impact on trafficked persons. Obokata argues that the human rights-based approach promotes a better understanding of the problems experienced by trafficked victims and allows exploration and identification of the relevant human rights issues pertaining to the trafficking of human beings. These include the major causes that make those people vulnerable to trafficking, the harms that victims suffer during the trafficking process, and the diverse forms of exploitation that they are subjected to once they reach their destinations.¹¹ Piotrowicz argues that conditions which promote or expose people to the risk of trafficking may in themselves be human rights violations.¹² Askola asserts that it is possible to argue that

⁸ The crime control approach has dominated at the international level for instance the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (hereinafter referred to as the 1949 Convention) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereinafter referred to as the Trafficking Protocol) primarily focus on crime control (investigation and prosecution).

⁹ M. Wijers, "Only Rights Can Stop Wrongs: A Critical Assessment of Anti-trafficking Strategies" Paper presented at EU/IOM STOP European Conference on Preventing and Combating Trafficking in Human Beings — A Global Challenge for the 21st Century, Brussels 18-20 September 2002

¹⁰ HRW, 'A Human Rights Approach to the Rehabilitation and Reintegration into Society of Trafficked Victims' (Paper Presented by Widney Brown of Human Rights Watch at the 21st Century Slavery: The Human Rights Dimension to Trafficking in Human Beings Conference, Rome, 15-16 May 2002); J.E Chuang, "Beyond a Snapshot: Preventing Human Trafficking in the Global Economy" (2006) 13 Indiana Journal of Global Legal Studies 137; VENLA Roth, *Defining Human Trafficking and Identifying Its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Martinus Nijhoff 2011) 136.

¹¹ T. Obokata, 'A Human Rights Framework to Address Trafficking of Human Beings' (2006) 24/3 Netherlands Quarterly of Human Rights 383.

¹² R. Piotrowicz, 'Legal Nature of Trafficking in Human Beings' (2009) 4 Intercultural Human Rights Law Review 184.

trafficking as a phenomenon stems from existing and prevalent human rights violations against women, especially regarding their social and economic rights.¹³ Poverty, lack of education, discrimination, unequal access to resources and work opportunities are significant factors in trafficking and in fact constitute human rights violations. This shows that not only do gross human rights violations occur during trafficking, they can also be understood as the cause of it.

A human rights-based approach focuses on core principles of non-discrimination and equality. These principles are crucial for international human rights law and for the status of marginalized or vulnerable groups, including victims of trafficking.¹⁴ Respecting the non-discrimination principle is critically important for international human rights law, and has significant importance for the status of marginalised or vulnerable groups, as well as illegal or irregular migrants.¹⁵ Victims of human trafficking should not face discrimination in law or practice. This means that measures to protect victims of human trafficking should not discriminate against them for being trafficked in the past, having previously worked in the sex industry, their immigration status, ethnicity, sex or gender.¹⁶

The non-discrimination principle therefore needs to be followed and respected in law and practice. This means that measures to protect TIP victims should not discriminate against those who have been formerly trafficked or had previous involvement in the sex industry. They should also not be discriminated on grounds of immigration status, ethnicity or gender. Using human rights-based approach can promote a better understanding of the problems experienced by those trafficked and allows us to explore and identify relevant human rights issues in relation to the trafficking of human beings; for example, the harms that victims suffer during the trafficking process, the various forms of exploitation they are subjected to once they reach their destination, and the major causes of vulnerability to trafficking.¹⁷

Askola believes that a key objective in centring trafficking as a human rights issue “is to make the victim of trafficking visible as a subject, emphasising her dignity and integrity, despite her *prima facie* irregular status as an illegal non-citizen”.¹⁸ She further emphasizes how the “formulation transforms the victim into a subject whose basic rights have been violated by exploiters and whose rights can also be violated in the process of implementing anti-trafficking measures”.¹⁹ This emphasis on victim as a subject encourages the State’s obligation to respect victim’s rights and to provide full protection to the victim. Widney Brown, the Human Rights Watch Advocacy Director, stated that: “Once we understand trafficking and the harm done, it is easy to understand what action states must take to rehabilitate victims and work toward their successful reintegration into society”.²⁰ Brown explains how a human rights-based approach to trafficking is different from treating trafficking solely as a criminal justice or migration issue. She is of the view that “any program must first and foremost return control to the victims. It is only when we have created the space for the trafficking victim to see her or himself again as a person, not an object, whose agency we respect and whose value is inherent, that she or he becomes a survivor”.²¹ This shows that the main challenge for States is not in providing the services that victims of trafficking need to survive, such as counselling, medical care, legal advice

¹³ H. Askola, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union* (Hart 2007) 135.

¹⁴ See, inter alia, UDHR Article 2 and Article 7, ICCPR Article 2 and Article 26, ICESCR Article 2, the Statute of the International Criminal Court, Article 21(3)

¹⁵ See, inter alia, Arts 2 and 7 UDHR, Arts 2 and 26 ICCPR and Arts 2 ICESCR, but also the Statute of the International Criminal Court, Art 21(3).

¹⁶ Wijers (n 116) 4.

¹⁷ T. Obokata, “A Human Rights Framework to Address Trafficking of Human Beings” (2006) 24 (3) *Netherlands Quarterly of Human Rights* 383

¹⁸ Askola, *supra* note 22, at 133

¹⁹ *Ibid.* at 134

²⁰ W. Brown, “A Human Rights Approach to the Rehabilitation and Reintegration into Society of Trafficked Victims” 21st Century Slavery – The Human Rights Dimension to Trafficking in Human Beings Conference, 15-16 May 2002. <<http://www.hrw.org/legacy/background/wrd/trafficked-victims.htm>>

²¹ *Ibid.*

etc, but to ensure that the state provides the conditions to respect and enforce human rights of women and to protect them against exploitation, discrimination and gender-based inequalities.

The UN Rapporteur on Trafficking, while advocating for a human rights-based approach, has identified a framework of implementation of national laws, policies and measures, based on the 5Ps (protection, prosecution, punishment, prevention, promotion of international cooperation and partnership), 3Rs (redress, rehabilitation/recovery and reintegration), and 3Cs (capacity, cooperation and coordination) as a strategy to provide protection to trafficked victims.²² States under international law have an obligation to promote and protect all individuals within their borders, including an obligation to punish, investigate and prevent violations of human rights. One can thus argue that the human rights-based approach offers the ability to hold States accountable for how they treat their nationals and other individuals within their territory. By examining the problem of trafficking through the lens of human rights- based approach States can be compelled to take action and the core human rights principles should be reflected in the State's obligations to protect and assist victims of trafficking. Such an approach may encourage other actors, such as non-governmental organisations (NGOs) at both domestic and international levels to work closely to address the human rights of trafficking victims.²³

In light of the above, it is argued that a human rights-based approach will be useful in imposing obligations upon the UAE to take actions to combat TIP and protect victim's rights. UAE is a party to the UN Trafficking Protocol and to a number of other UN human rights treaties; it has an obligation to provide protection and assistance to victims of TIP. Such obligations include voluntary and safe return to their country of origin; access to health; psychological and social care; access to temporary or permanent residence status; legal assistance; witness protection during court cases; and access to reparations. This will ensure that victims of TIP are not harmed when they return to their country of origin or face prosecution or arrest for leaving their country of origin by illegal routes, or face criminal charges for engaging in prostitution when abroad, which could be illegal in their country of origin.

Human trafficking from an Islamic perspective

As UAE is a Muslim country with *Sharia* principles as the basis of legislation, it was pertinent to examine the issue of human trafficking in the light of Islamic perspectives on slavery and slave trade.²⁴ The Qur'an which is considered to be the primary source of Islamic law, did not abolish slavery at the outset, since slavery was common practice in pre-Islamic societies.²⁵ The Qur'an accepted slavery as an established part of life, yet sought to regularize and humanize the practice and encouraged freedom for slaves.²⁶ It established the rights of slaves and considered that every human being should be treated with dignity and respect. There are a number of verses in the Qur'an that suggest that slaves be freed, for example, "...and to set slaves free" (Ch2:177), "or the liberation of a slave", (Ch5:89) as expiation of not fulfilling an oath.²⁷ Similarly the Qur'an states: "He who hath killed a believer by mistake must set free a believing slave"(Ch2:92). The Qur'an specifically encourages believers to assist vulnerable groups for, "if anyone saved a life, it would be as if he has saved the whole of humanity".²⁸ Besides several Qur'anic verses that deal with the relationship between employer and employee, the Prophet Muhammad also commanded

Ibid.

²³ *Ibid.*, at 384.

²⁴ The UAE legislative framework comprises of a mix of Islamic and Western concepts of civil law, but Islamic principles remain the main source of law.

²⁵ Islamic law is based on two primary textual sources, the Qur'an and the Sunnah of the Prophet, as interpreted through the process of *Ijtihad*.

²⁶ A.H. Zuraini and A.M. Khairil, "Human Trafficking: The International, Malaysian Legal Framework and Shariah Perspectives" (2013) 21(2) IIUM Law Journal 301

²⁷ "Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for [breaking] what you intended of oaths. So, its expiation is the feeding of ten needy people from the average of that which you feed your [own] families or clothing them or the freeing of a slave".

²⁸ The Qur'an 5:32.

that an employee must fulfil his contractual obligations: wages must be paid upon the completion of a contract; and compensation must be agreed and specified before entering into a contract to ensure that labour exploitation does not take place.²⁹ One can thus argue that the principles laid down in the Qur'an with regard to treatment of slaves are in consonance with the core human rights principles.

Whilst the Qur'an instructs Muslims to treat slaves with fairness, the traditions of the Prophet Mohammad also clearly indicate that he emphasized treating slaves humanely and discouraged the practice of slavery. Prophet Muhammed in his last sermon specifically asked his followers to treat their slaves humanely; As for your slaves, male or female feed them with what you eat yourself and clothe them with what you wear. If you cannot feed them or they commit any fault, discharge them. They are God's people like you and be kind to them.³⁰ There are a number of well-known traditions of Prophet Mohammad in which he discouraged slavery, for instance, "Whoever frees a Muslim slave, Allah will save all the parts of his body from the (Hell) Fire as he has freed the body-parts of the slave;³¹ There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgment; Of these three, one is he who enslaves a free man, then sells him and eats his money". In another tradition he stated, "Each one of you is a caretaker and is responsible for those under his care."³² This means that protecting certain vulnerable groups including women and children from victimisation is a duty imposed on those who are the care takers whether the family or State. Abu Bakr, a close companion of Prophet Mohammad and the first caliph of the Islamic state set the first example by emancipating Bilal, an African slave, by paying his owner, and then setting him free.

Also, there is a consensus of opinion among Muslim scholars of the 20th century that slavery is now obsolete and an anathema in modern Muslim society. Sayeed Ahmad Khan, the 19th century reformist condemned the institution of slavery and argued that acceptance of slavery in the early days of Islam was due to the socio-economic conditions and tribal and customary practices of the Arab society.³³ Ameer Ali another scholar of the 19th- 20th century argued that slavery was antithetical to the Qur'anic teachings on equality and fairness.³⁴ He argued that Islam did not invent slavery, as it was prevalent in the pre-Islamic societies and all previously revealed texts of the Abrahamic faiths accepted the institution of slavery as an established part of the lives of believers.³⁵ Moreover, sexual relations outside marriage are also strictly prohibited in Islam. Similarly, prostitution is considered to be a forbidden act and regarded as a form of sexual exploitation. Forced prostitution and earning money from prostitution are also forbidden. The Qur'an states: "And do not compel your slave-girls, your handmaidens, to prostitution, fornication, when they desire to be chaste, that you may seek, through such compulsion, the transient things of the life of this world." (Ch 24:33).

One can thus argue that the Islamic law recognizes the importance of the rights of victims of slavery and forced commercial sex, and prohibits sexual exploitation. The Qur'an prioritizes the safety and security of women and children, which is particularly relevant to TIP, where victims

²⁹ Prophet Muhammad stated "three people I shall not be on their side at the end of the world: A man who gives and then bites back, a man who sold on behalf and embezzled the money, and a man who took on a labourer who fulfilled the work, and then did not pay him". "Give the labourer his wages before his sweat dries".

³⁰ Sirah Ibn Ishaq by Muhammad Ibn Ishaq (d.761) and Kitab al-Bayan wa al-Tabi'in by al-Jahiz al-Basri (d.869) as cited in, M. O. Farooq, "The Farewell Sermon of Prophet Muhammad: An Analytical Review" (2018) 9(3) Islam and Civilisational Renewal 322-342 (2018). SSRN: <https://ssrn.com/abstract=3068417> or <http://dx.doi.org/10.2139/ssrn.3068417>

³¹ Abu Dawood Chapter No: 2, Prayer (Kitab Al-Salat), hadith no: 593 available at <http://ahadith.co.uk/searchresults.php?q=slavery> accessed 07March 2018

³² Ṣaḥīḥ al-Bukhārī 6719, Ṣaḥīḥ Muslim 1829

³³ S.A. Khan, "Ibtal-i Ghulamī [Abolition of slavery]" (1871), republished Agra: Mutba-Mufid-i-Amm 1893 as cited in S. Dorsett and John McLaren, *Legal Histories of the British Empire: Laws, Engagements and Legacies* (Abingdon: Routledge 2014)

³⁴ A. Ali, *The Spirit of Islam with the Life of the Prophet. Chapter VI Bondage in Islam*, (London: Forgotten Books 2016)22

³⁵ *Ibid.*, at 23

have often come from abusive environments and suffer physical and psychological harm. The Qur'an also emphasizes on a welfare state that provides financial support in the form of the system of zakat to poor and needy.³⁶ In the Qur'an, there are eight categories of people (*asnaf*) who qualify to receive zakat funds and this includes to free people from slavery and bondage.³⁷

The Qur'an further provides for principle of non-punishment of victims of crime, which is especially relevant to trafficking for the purpose of sexual exploitation.³⁸ Muslim states are obliged, both morally and legally, to prevent victimisation and provide protection from trafficking, which is in line with the human rights-based approach.³⁹ Although trafficking itself is not specifically mentioned as a crime in the Qur'an or Sunnah, it can be classified as a *ta'zir* crime, meaning the Muslim states have discretion to enact punishments that penalize and deter offenders as they see fit. UAE and many Muslim states have fixed a punishment of life in prison for human trafficking and penalties for those involved in the crime of human trafficking. Moreover the Qur'an urges its believers to comply with agreements and treaties, and teaches its followers to protect the rights of victims.⁴⁰ Muslim countries are under an obligation to comply with the international treaties including the UN Trafficking Protocol, which is designed to provide protection for trafficked victims and migrant workers under the principles set forth in *As-Siyar* (Islamic International law).⁴¹ As in the words of El Sawi, "If Muslim countries realize that TIP is not only condemned by the international community but also by the Qur'an and Islamic teachings, they may be ideologically compelled to become more proactive in the anti-trafficking movement".⁴²

To conclude one could argue that as Islamic teachings are in consonance with international law on the issue of TIP, applying and adopting Islamic principles can play a significant role in protecting trafficking victims.

Trafficking in women for forced commercial sexual exploitation in UAE: an overview

UAE remains to be a Tier 2 country as it has not yet met minimum standards of compliance with requirements to eliminate human trafficking.⁴³ In UAE women from Eastern Europe, Central Asia, South and Southeast Asia, East Africa, Iraq, Iran, and Morocco, are subjected to forced commercial sexual exploitation.⁴⁴ A recent report by La Strada, the University of Florence and

³⁶ Zakat is the third pillar of Islam that imposes an obligation upon Muslims to donate a certain proportion of their wealth each year for charitable causes. It is mandatory charity and a form of almsgiving.

³⁷ The eight categories are; 1. Those living in absolute poverty (*Al-Fuqarā*), 2. Those restrained because they cannot meet their basic needs (*Al-Masākīn*), 3. The zakat collectors themselves (*Al-Āmilīna 'Alaiḥā*), 4. Non-Muslims who are sympathetic to Islam or wish to convert to Islam (*Al-Mu'allafatu Qulūbuhum*), 5. People whom one is attempting to free from slavery or bondage. Also includes paying ransom or blood money, i.e. *diya* (*Fir-Riqāb*), 6. Those who have incurred overwhelming debts while attempting to satisfy their basic needs (*Al-Ghārimīn*), 7. Those fighting for a religious cause or a cause of God (*Fī Sabīlillāh*) or for the jihad in the way of Allah or those not a part of salaried soldiers, 8. Children of the street, or travellers (*Ibnus-Sabīl*). The Qur'an chapter 9:6

³⁸ The Qur'an 24:33

"But force not your maids to prostitution when they desire chastity ... But if anyone compels them, yet, after such compulsion, is Allah, Oft-Forgiving, Most Merciful (to them)."

³⁹ M.O. El-Sawi "Beyond the Tiers of Human Trafficking Victims: Islamic Laws Ability to Push the Muslim World to the Top of the United States trafficking tier placements and Into Compliance with International Law" (2011) 39 Georgia Journal of International and Comparative Law 402

⁴⁰ The Qur'an 5:1 "O you who have believed, fulfil all contracts".

⁴¹ **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children**, was adopted by the UN General Assembly resolution 55/25.

⁴² El-Sawi, *Supra* note 44, at 411.

⁴³ US State Department (2024) Trafficking in Persons Report June 2024". p. 480

⁴⁴ A brief note regarding terminology. As explained in Jo Bindman and Jo Doezeema, *Redefining Prostitution as Sex Work on the International Agenda* (Anti-Slavery International 1997) Introduction 2a, 'the word "prostitute" has been used as a social category to describe women who did not adhere to sexual norms, were pitied, despised and excluded from mainstream society. This lowly, marginal and outcast status rendered "prostitutes" vulnerable to exploitation, since they were denied the international, national or customary protections that have been

the International UN Watch (IUNW), has revealed that trafficking of girls between UAE and Europe is on the rise where Britain has been a transit station for traffickers.⁴⁵ On 8 March 2020, 56 Members of the British Parliament and the House of Lords signed a petition submitted by the IUNW calling on the British government and the European Union to take action to end trafficking of women from Eastern Europe to UAE.⁴⁶ Despite the reforms, the kafala system continues to give employers a high degree of control over workers, thereby increasing workers' vulnerability to trafficking, forced labor, and other exploitation.⁴⁷

The main motivation for trafficked victims is to seek gainful employment in UAE to support families at home, but women are misled by traffickers and trapped into forced commercial sexual exploitation.⁴⁸ Traffickers lure, manipulate, and control vulnerable individuals using a variety of coercive means. The trafficked victims are trapped and misled by traffickers who tell them that they will be given jobs in the service industry in UAE to work as hotel cleaners, receptionists, waitresses, housemaids, or beauticians in beauty salons, but they end up as sex workers.⁴⁹ Moreover, the COVID-19 pandemic has created new risks and challenges for victims of trafficking. Unfortunately, the pandemic has brought to the forefront the deeply entrenched economic and societal inequalities that are among the root causes of human trafficking and has exacerbated the feminization of poverty and gender discrimination. During the pandemic online grooming, recruitment and exploitation has increased, making women and children especially vulnerable to online sexual exploitation. Trafficked victims face an extra layer of vulnerability when they are not given the permission to stay or work in the country. The fear of being exposed as an irregular migrant can be a powerful tool for traffickers, who typically threaten to file reports with the authorities and can more easily keep victims under exploitative conditions.

In UAE, trafficking can be either internal (planned within the borders of UAE) or transnational (planned outside UAE), with victims from many countries transported directly or via other transit countries. TIP has been shown to be based on loose networks within organisations established on mutually beneficial, but temporary, relationships. There is insufficient evidence to link organized or well-known criminal groups or mafia structures with TIP, but research indicates that various people operate the processes of trafficking (selling, marketing, transport and recruitment), such as friends, family members and former employers, loosely, but not organically, connected.⁵⁰ Some cases of trafficking provide evidence of larger, organized criminal groups, but these cases are few.⁵¹ Women and girls become victims of trafficking due to poverty, poor socio-economic conditions, limited access to resources, lack of education, and gender-based violence stemming

readily available to other citizen-workers. As a result of this precarious situation, the terms "sex work" and "sex workers" were coined by sex workers to redefine and foreground commercial sex as an *income generating mode of employment* (for both women and men), and not as the social and psychological characteristic of a demographic of women. It is a critical redefinition which allows for sex work to enter mainstream debates on human, women's and worker's rights at the local, national and international level'. Concomitantly, although the words 'prostitute' and 'prostitution' were widely used in the past, they are now liable to cause offence in some circles. It is for these reasons that the researchers would like to clarify that we have endeavoured to only use the terms 'prostitute' and 'prostitution' in this paper when it is historically appropriate, or when referencing (directly and indirectly) a source where they are used. In all other instances we have sought to use the terms 'sex work', 'sex workers', 'sex trafficking', 'forced prostitution', 'sexual exploitation' and 'commercial sexual exploitation'. These terms are used in the paper to delineate and foreground the role of coercion for those working in the sex industry.

⁴⁵ https://www.intunwatch.com/files/shares/Final-Report_Trafficking-COPY-Final.pdf

⁴⁶ <https://www.intunwatch.com/news/details/94/on-international-women-day-uk-mps-call-for-ending-human-trafficking-from-europe-to-uae>

⁴⁷ Q. Mustafa(2020) 'The UAE's Kafala System: Harmless or Human Trafficking?'

in Matthew T. Page, Jodi Vittori *Dubai's Role in Facilitating Corruption and Global Illicit Financial Flows*, Carnegie Endowment for International Peace.p80

⁴⁸ Dubai Foundation for Women and Children, "Combatting Human Trafficking in the UAE" (May 2015) Annual Report 4, Online: DFWC < <http://www.nccht.gov.ae/download.aspx?FileID=94&download=0>>

⁴⁹ US State Department (2019) "Trafficking in Persons Report June 2019".p481. Available at <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>

⁵⁰ A. A Shouk, "Trio Accused of Human Trafficking in Dubai" *7Days News* (21 July 2015) online: 7Days News <<http://7days.ae/gang-in-dubai-caught-for-human-trafficking>>

⁵¹ S. A. Amir, "Gang Forced Maid into Prostitution" *The National* (16 August 2015) online: The National <<http://www.thenational.ae/uae/courts/gang-forced-maid-into-prostitution-dubai-court-hears>>

from patriarchal social norms. In recent years war and conflict situations have increased women's vulnerability and they become easy targets of trafficking.

Traffickers use various recruitment techniques to attract victims including social media, newspaper and magazine adverts targeting the level of education of victims, their family expectations, and their financial circumstances.⁵² In this situation the plan to traffic is devised outside UAE. Another strategy used by traffickers is enticing women already working as maids in UAE to work for another employer, promising better working conditions and higher wages. This is a form of internal trafficking, planned within UAE. Maids are often promised better wages and working conditions if they run away from their sponsors, but end up in forced prostitution.⁵³ Many women working as maids are attracted by these offers and leave the homes of their sponsors; they are collected by trafficking gangs and forced to become involved in prostitution.⁵⁴

Trafficked victims are kept in isolated villas or apartments where they are sexually exploited: traffickers take away their passports.⁵⁵ They use a range of measures to control the victims including debt bondage, intimidation, imprisonment, deception, threats of violence, and violence.⁵⁶ It is important to remember that just because a victim has not been assaulted does not mean that they are not being controlled. Victims can live under conditions of fear of violence without specific threats being directed at them, such as traffickers telling victims what has happened to other victims who did not comply with their demands, or telling victims that they know where their families live.⁵⁷ If they go to the police and report their entrapment, they are arrested as prostitutes. Thus, begins a long legal process that requires lawyers and protective custody in a government institution that is more like a prison than a shelter.⁵⁸ In September 2019 two Asian men were sentenced by the Fujairah Criminal Court to three years imprisonment and a penalty of DHs5000. The third accused was handed six-month imprisonment for trying to force a woman into prostitution after luring her with a job.⁵⁹ According to another report five Bangladeshi men were charged with trafficking of four underage Bangladeshi girls, as they stood trial at the Dubai Court of First Instance for allegedly forcing four underage girls to prostitution.⁶⁰

Although in the past few years the capacity to detect and identify victims of trafficking and convict traffickers has increased in the UAE, prosecution remain limited and impunity persists. During the Covid 19 pandemic migrants and trafficked victims became more vulnerable due to inadequate health care, worse economic conditions, and overcrowded living conditions, which

⁵² A human trafficker lured a woman to the country by pretending to be a former classmate on a social network site called "School Friends". When she arrived, he took her passport and tried to sell her for 10,000 AED. S. AL AMIR, "Human Trafficker Lured Victim by Pretending to be Former Classmate, Dubai Court Hears" (31 October 2013) online: The National <<http://www.thenational.ae/uae/courts/human-trafficker-lured-victim-by-pretending-to-be-former-classmate-dubai-court-hears>>

⁵³ The Shelters for Women and Children (EWA'A), "Dubai Police Launched a Campaign to Crack Down on Gangs Forcing Domestic Workers into Prostitution" (25 October 2015) online: SHWC <<http://www.shwc.ae/news/rec.offices.aspx>>

⁵⁴ A. Agarib, "Gangs that Force Maids into Prostitution Under Scanner" *Al Khaleej Times* (25 October 2015) online: Al Khaleej Times <<http://www.khaleejtimes.com/nation/crime/gangs-that-force-maids-into-prostitution-under-scanner>>

⁵⁵ J. BREMNER, "Human Trafficking in the UAE" *Time Out Abu Dhabi* (2011) online: Time Out Abu Dhabi <<http://www.timeoutabudhabi.com/community/features/23001-human-trafficking-in-the-uae>>

⁵⁶ L. L. Lim "Trafficking as a Human Rights Issue; Thoughts on How to Address it in Commonwealth" in Commonwealth Secretariat, *Gender and Human Rights in the Commonwealth: Some Critical Issues for Action in the Decade 2005-2015* (Commonwealth Secretariat, 2004) 181.

⁵⁷ "Human Trafficking Victim Tried to Kill Herself, Dubai Court Told" *7days news* (23 January 2015) online: 7days News <<http://7days.ae/human-trafficking-victim-tried-kill-dubai-court-told>>

⁵⁸ International UN Watch and La Strada (2020) *Trafficking from the Fringes of Europe to the Middle East*, p 48

⁵⁹ "Three expats force a woman into prostitution jailed in UAE" *Al Khaleej Times* (September 2019) online: Al Khaleej Times <<https://www.khaleejtimes.com/news/crime-and-courts/3-expats-force-woman-into-prostitution-in-uae>>

⁶⁰ M. Nammour, "5 Dubai expats force underage girls into prostitution" (May 2019) online: Al Khaleej Times <<https://www.khaleejtimes.com/nation/dubai/5-dubai-expats-force-underage-girls-into-prostitution>>

put them at greater risk of infection.⁶¹ Unfortunately trafficking has not been prevented despite the countries closing borders and locking themselves off in the current situation of the pandemic across the globe. Traffickers are not using the most traditional air routes, but they are using smaller boats to attempt to cross dangerous waters, and putting migrants into trucks, freight vehicles and cargo trains to cross borders. According to The World Bank report COVID-19 outbreak will be pushing about 40-60 million people into extreme poverty, “with our best estimate being 49 million”.⁶² The COVID-19 outbreak has generated a catastrophic income loss and layoffs, which will have a particularly severe impact on the two billion people who work in the informal sector (mostly in emerging and developing economies thus leading to exploitation and falling prey into the hands of traffickers). Current projections indicate that the COVID-19 Pandemic Recession will involve a 6.2 per cent decline in global per capita Gross Domestic Product (GDP per capita), making it the most severe recession since the end of World War II.⁶³

While both advanced economies and developing countries are experiencing a recession, experts warn that there is a risk that the Pandemic Recession may increase inequality both at global levels and within countries.⁶⁴ The majority of COVID-19 cases in the Gulf are among foreign migrants. The double economic blow of the Covid-19 outbreak and oil price crash has led to hundreds of thousands of job losses in UAE. Many migrants were left stranded in the country, due to travel bans and very expensive air tickets. This means massive unemployment, unpaid wages through failing businesses or wage theft, arbitrary detentions and deportations. According to the International Monetary Fund economies in the Middle East and North Africa (MENA) are down by 5.7 per cent, with the GCC shrinking by 7.6 per cent. This means massive unemployment, unpaid wages through failing businesses or wage theft, arbitrary detentions and deportations. New analysis from the United Nations Office on Drugs and Crime (UNODC), showed how lockdowns, travel restrictions, work limitations and cuts in resources are having a negative and often dangerous impact on the lives of these already vulnerable people – before, during and even after their ordeal. With COVID-19 restricting movement, diverting law enforcement resources, and reducing social and public services, human trafficking victims had even less chance of escape and finding help.

According to data provided by the National Committee to Combat Human Trafficking (NCCHT) and the US trafficking in Persons Annual Report 2024, in 2023 the government prosecuted 141 alleged traffickers in 44 cases, including 107 alleged sex traffickers and seven individuals for “selling” victims; the government also prosecuted four alleged labour traffickers and 23 alleged sex traffickers from cases initiated in previous reporting periods. This was compared with the prosecution of 50 alleged traffickers in 16 cases in 2022. Courts convicted 54 traffickers – 49 for sex trafficking, two for labour trafficking, and three for “selling” victims; courts convicted 45 traffickers in 2022. For the first time, the government reported the conviction of Emirati nationals for the labour trafficking of migrant workers. Courts sentenced the traffickers to between six months and life imprisonment, with the majority of perpetrators receiving imprisonment of one year or more with additional fines. The vast majority of convicted traffickers were foreign nationals subject to deportation at the conclusion of their sentences. These statistics show that in UAE the number of labour trafficking prosecutions and overall trafficking convictions has increased compared to the previous reporting periods. However, the reported cases are just the

⁶¹ “vulnerability” is used to refer both to the pre-existing individual and structural factors that may increase the susceptibility of an individual or group to trafficking in persons (further referred to as “susceptibility” to trafficking) and to those elements that may be generated by the trafficker in order to maximize control over the victim in the context in which the exploitation takes place (such as isolation, dependency and irregular legal status).

⁶² World Bank, “The impact of COVID-19 (Coronavirus) on global poverty: Why Sub-Saharan Africa might be the region hardest hit”, 20 Apr 2020 <https://blogs.worldbank.org/opendata/impact-covid-19-coronavirus-globalpoverty-why-sub-saharan-africa-might-be-region-hardest>

⁶³ World Bank (2020). Global Economic Prospects, June 2020. The World Bank. <https://doi.org/10.1596/978-1-4648-1553-9>

⁶⁴ IMF Blog (2020), How Pandemics Leave the Poor Even Farther Behind, 11 May 2020 as cited in ⁶⁴ UNODC, Global Report on Trafficking in Persons 2020 (United Nations publication, Sales No. E.20.IV.3) p. 69

tip of the iceberg. This raises questions about the reporting and/or prosecution of trafficking crimes as the actual number of cases are expected to be many times more than those reported and addressed.

This is a belief also held by the former UN Special Rapporteur Joy Ngozi Ezeilo, who in her report of her visit to the UAE, remarked that official figures of trafficked people appear to be only ‘a small fraction of the total number’.⁶⁵ This is not an unreasonable conclusion considering that there are over 8 million migrants in the UAE⁶⁶ who are not afforded the same protections in law as UAE citizens and so are vulnerable to exploitation by traffickers. Furthermore, there are other factors that could be at play here. Trafficked victims often do not report their experiences to law enforcement agencies, and usually meet police indirectly due to their cases being referred by foreign embassies and NGOs. Additional considerations are concerning the fears that victims may have that their traffickers are in collusion with the police, that they will be deported, that they will be arrested and imprisoned for crimes of ‘prostitution’ and that they (or their families) may face reprisals from their traffickers.⁶⁷ Trafficked victims may also be unaware that they are in fact victims and instead worry about being subjected to the many discriminatory social and political pressures experienced by illegal migrant workers who report abuses in countries that are not their own.⁶⁸ Moreover, the UAE government has yet to meet minimum standards in several key areas. Officials have not strengthened the UAE’s enforcement of a prohibition on withholding workers’ passports by employers, which remains a problem throughout the country.⁶⁹ Despite the enactment of the Federal Law No.10 of 2017, which provides additional protections for domestic workers and specifies new regulations for recruitment agencies and employers of such workers, the legal and regulatory protection for domestic workers remains weak. The trafficking prosecutions focus predominantly on sex trafficking victims rather than labour trafficking. Fines for trafficking in lieu of imprisonment are inadequate to deter the crime. Most importantly UAE needs to develop and build capacity for systematic data collection, disaggregated by age and gender, in collaboration with independent research institutions and civil society organisations.

In order to identify victims, the government continues to rely predominantly on third-party referrals from foreign embassies, religious institutions, reactive police investigations, tips received through hotlines, smartphone applications and the internet and, to a lesser degree, proactive screening mechanisms employed by officials, such as at border entry points. It is argued that the number of cases and victims in the UAE are greater than the UAE authorities report, because trafficking victims do not often report their experience to law enforcement agencies, often meeting police indirectly, being referred by foreign embassies or NGOs. Many victims of trafficking fail to report their experiences to the police due to the fear that traffickers are colluding with the police; fear of deportation; the belief that they could be arrested and imprisoned as they have committed crimes of prostitution; lack of awareness that they are victims of trafficking; and social and political pressures which often discriminate against illegal migrant workers who report abuses. Trafficked victims are reluctant to participate in police investigations or discuss their experiences with strangers as they fear reprisals from traffickers, and some are unable to remember the details of their abuse because of memory loss. Victims fear their families in their countries of origin cannot be protected from threats by traffickers. In many cases, victims of

⁶⁵ UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum : Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1 (p. 12).

⁶⁶ ‘World Migration’, International Organisation for Migration, The UN Migration Agency <https://www.iom.int/world-migration> [accessed 23 March 2018]

⁶⁷ V. Roth, *Defining Human Trafficking and Identifying its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Martinus Nijhoff 2011) 7.

⁶⁸ *ibid.*

⁶⁹ *ibid.*,

trafficking withdraw their testimony, which poses significant problems for judicial and police authorities.⁷⁰

The UAE government should pay attention to local sponsors who issue working visas and sell them to traffickers, and they should be questioned by the authorities. This would make sponsors think twice before selling visas for money. The immigration authority should not allow Emirati sponsors to issue large numbers of visas, and they should be questioned about previous housemaids who have been reported to have run away. Additionally, Emirati sponsors should be obligated to receive only their own housemaids at the airports.

In 2007, the UAE set up a National Committee to Combat Human Trafficking to coordinate government efforts to combat trafficking. Departments in the Ministry of Labor and the Ministry of Interior also deal with protection against trafficking. Other measures include the establishment of special units to prevent human trafficking in the police departments of Ajman, Umm Al Quwain, Sharjah, Ras Al Khaimah, and Fujairah. These units cooperate with Interpol, especially in cases related to sexual exploitation, using iris and fingerprint recognition technologies to identify wanted traffickers, and other modern equipment to detect visa or passport fraud at entry points.⁷¹

The Ministry of Human Resources and Emiratization (MOHRE) addresses labour violations, including those involving labour trafficking, through administrative dispute resolution processes and labour courts. In 2023 MOHRE identified two potential labour trafficking victims after receiving labour complaints from workers alleging employer abuse. MOHRE referred the cases to law enforcement for investigation. Police reportedly investigated both cases; both employers were charged with physical abuse and detained and fined 200,000 AED (\$54,450). Despite both potential victims exhibiting indicators of labour trafficking including physical abuse and wage theft, authorities did not pursue trafficking charges.⁷² Following both potential victims' request for financial compensation through settlement in exchange for waiving criminal proceedings, both cases ended in financial settlement. This shows that Emirati institutions continue to have a limited understanding of how to differentiate between labour trafficking crimes and labour violations and the government do not routinely investigate as possible trafficking crimes labour law violations that exhibit trafficking indicators, such as passport confiscation, delayed or nonpayment of wages, fraud, contract switching, restriction of movement, and related abuses.⁷³ Besides unnecessary delays in dealing with human trafficking cases should be avoided as they put victims in difficult emotional and psychological situations. The UAE government's National Strategy to Combat Human Trafficking is based on a four-pillar action plan: legislation, enforcement, victim support, bilateral agreements and international cooperation. However, this national strategy must comply with the international "5 Ps" approach to combating human trafficking, which requires all the "Ps" to be given equal attention i.e., prevention, prosecution, punishment, protection, and the promotion of international cooperation.

Trafficking in persons and UAE's international and regional commitments

International instruments on human trafficking

TIP has been recognized as a transnational organized crime under the United Nations Convention against Transnational Organized Crime, (UNTOC) also known as the 'Palermo Protocol', and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially

⁷⁰ *ibid.*

⁷¹ National Committee to Combat Human Trafficking Crimes, "Combating Human Trafficking in the UAE: Annual Report" (2015) 15

⁷² US State Department 2024 Trafficking in persons Report: United Arab Emirates available at <https://www.state.gov/reports/2024-trafficking-in-persons-report/united-arab-emirates/>

⁷³ *Ibid.*,

Women and Children, (UN Trafficking Protocol).⁷⁴ The Rome Statute of the International Criminal Court (RSICC) refers to TIP as a ‘crime against humanity’.⁷⁵ The RSICC has indicated TIP in its definition of enslavement in the statute.⁷⁶ The UN Trafficking Protocol provides the first international definition of trafficking, and comes as part of an explicit law enforcement regime, rather than a human rights or labor rights regime, even though human rights activists were involved in the negotiation process.⁷⁷ It puts cooperation at the center of the anti-trafficking response, by stating in article 2 that the purposes of the Protocol are to prevent and combat trafficking in persons, to protect and assist the victims, and to promote cooperation in order to meet these goals. While there is no express reference in the Trafficking in Persons Protocol to the non-punishment principle, other binding international and regional instruments contain non-punishment provisions. The principle was included in the Council of Europe Convention on Action against Trafficking in Human Beings and in the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29) of the International Labour Organization.

UAE is party to the UN Convention on transnational Organised Crime and UN Protocol on Trafficking. Article 2 of the UN Protocol imposes duties upon the state parties to “protect and assist the victims of ... trafficking, with full respect for their human rights”. Article 14 asserts that “nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law”, However in practice, when UAE translated the Protocol into national laws, policies and practice, attention has not been paid to those provisions. While ratifying the Transnational Organised Crime Convention the UAE made a declaration that the provisions of that Convention shall not be binding on the United Arab Emirates in its dealings with States that have not ratified thereof in connection with matters decreed therein, and that such ratification shall in no case imply the establishment of relations of any kind with the said States. Similarly, while ratifying the UN Trafficking Protocol UAE entered a reservation stating that ‘... the Government of the United Arab Emirates ... formally accedes thereto, with a reservation to article 15, paragraph 2, concerning arbitration. It does not therefore consider itself bound by article 15, paragraph 2.’ By entering a reservation to Article 15(2) the UAE does not accept the jurisdiction of the International Court of Justice. Besides UAE is also a party to a number of other UN international conventions that directly or indirectly deal with TIP.⁷⁸ However, UAE has still

⁷⁴ United Nations Convention against Transnational Organized Crime (entered into force 29 September 2003) G.A. Res. 25, annex I, U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/45/49. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (entered into force 25 December 2003) G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/49

⁷⁵ Rome Statute of the International Criminal Court (last amended 2010) adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998 (entered into force 1 July 2002)

⁷⁶ Article 7(1)(c)

⁷⁷ E. Bruch, “Models Wanted: The Search for an Effective Response to Human Trafficking” (2004) 40(1) Stanford Journal of International Law 14

⁷⁸ International Convention on the Elimination of All Forms of Racial Discrimination (signed 7 March 1966, entered into force 4 January 1969). The UAE ratified this Convention on 20 June 1974. Forced Labour Convention, 1930 (No 29) (adopted 28 June 1930, entered into force 1 May 1932). The UAE ratified this Convention on 27 May 1982; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990). The UAE ratified this Convention on 3 January 1997. Abolition of Forced Labour Convention, 1957 (No 105) (adopted 25 June 1957, entered into force 17 Jan 1959). The UAE ratified this Convention on 24 February 1997; Equal Remuneration Convention, 1951 (No 100) (adopted 29 June 1951, entered into force 23 May 1953). The UAE ratified this Convention on 24 February 1997; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (adopted 17 June 1999, entered into force 19 November 2000). The UAE ratified this Convention on 28 June 2001; Convention on the Elimination of All Forms of Discrimination Against Women (signed 18 December 1979, entered into force 3 September 1981). The UAE ratified this Convention on 6 October 2004. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987). The UAE ratified this Convention on 19 July 2012. In 2016, the country ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Source: University of Minnesota, Human Rights Library, “Ratification of International Human Rights Treaties – United Arab Emirates” online: HR Library <<http://hrlibrary.umn.edu/research/ratification-uae.html>>

not ratified the International Convention on Civil and Political Rights 1966, the International Covenant on Social Economic and Cultural Rights 1966, the Optional Protocol to the Women's Convention 2001, the UN Migrant Workers Convention 1981, the ILO Convention on Domestic Workers 2011, or the ILO fundamental Conventions Nos. 87 and 98 on workers' right to organize. The United Arab Emirates is also not party to the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness nor the 1951 Slavery Convention.

UAE has also failed to establish a national human rights institution in accordance with the Paris Principles 1993, despite the commitments made during the first cycle of the universal periodic review. The Committee on the Elimination of Discrimination against Women (CEDAW Committee), in its Concluding Observations on the fourth periodic report submitted by the UAE has reminded the UAE to narrow down the reservations to Articles 2(f), 9, 15(2), 16 and 29(1) of the Women's Convention in particular to withdraw reservations to Article 2 and 16 as these are incompatible with the object and purpose of the Convention.⁷⁹ The CEDAW Committee in its concluding observations to the UAE's 2022 Country Report raised concerns about the lack of data on the number of prosecutions and convictions in cases of trafficking in women and girls and the lack of information on a national action plan to combat trafficking in human beings.⁸⁰

The UN Committee on the Elimination of Racial Discrimination has also expressed its concern that Article 25 of the UAE Constitution does not include all the grounds of discrimination specified in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, including colour, descent and ethnic origin. The Committee is concerned that the Article stipulates that the prohibition of discrimination applies to "Citizens of the Union", and, therefore might not apply equally to non-citizens.⁸¹

To demonstrate its commitment at the international level to combat trafficking, it is pertinent for the UAE to ratify the ICCPR and ICESCR and the UN Migrants Workers Convention and withdraw the reservations entered to the UN CEDAW Convention, 1979. Concerted effort is needed to integrate international conventions into the UAE legal system. As there is no provision within the country's Constitution to incorporate international conventions into national legislation, the self-executing mechanism could be used to integrate international conventions into the national legislation of UAE.⁸² Article 47 of the UAE Constitution gives the Supreme Council of the Union responsibility for the ratification of treaties and international agreements, and such ratification is accomplished by a decree.⁸³ Article 123 of the Constitution states that member Emirates of the Union may conclude limited agreements of a local and administrative nature with the neighbouring State or regions, provided that such agreements are not inconsistent with the interests of the Union or with Union laws and provided that the Supreme Council of the Union is informed in advance. However, Article 124 of the UAE Constitution states that "before the conclusion of any treaty or international agreement which may affect the special position of any one of the Emirates, the competent Union authorities shall consult that Emirate in advance".⁸⁴

Along with the international conventions, UAE is also under an obligation to take account of the commitments made under other soft law instruments such as the UN Global Plan of Action to Combat Trafficking in Persons and the United Nations Trust Fund for Victims of Trafficking, the UN Recommended Principles and Guidelines on Human Trafficking, and the 2030 UN Agenda for Sustainable Development. These instruments emphasize upon promoting a gender and human rights-based approach to address factors that make people vulnerable to trafficking in persons.⁸⁵

⁷⁹ Committee on the Elimination of Discrimination against Women Concluding observations on the fourth periodic report of the United Arab Emirates (CEDAW/C/ARE/4) para11.

⁸⁰ Ibid., para36

⁸¹ See CERD/C/ARE/CO/18-21, para. 9.

⁸² A self-executing treaty that operates automatically without the need for any municipal implementing legislation.

⁸³ United Arab Emirates Constitution of 1971 with Amendments through 2004, Article 47.4.

⁸⁴ United Arab Emirates Constitution of 1971 Article 124.

⁸⁵ United Nations Global Plan of Action to Combat Trafficking in Persons A/RES/64/293

In the United Nations Global Plan of Action to Combat Trafficking in Persons and in resolution 55/67, Governments were invited to consider preventing, within the legal framework and in accordance with national policies, victims of trafficking, in particular women and girls, from being prosecuted for their illegal entry or residence, involvement in sex work/prostitution, illegally crossing of borders, use of fraudulent documents and so on, taking into account that they are victims of exploitation. Furthermore, the Working Group on Trafficking in Persons of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime viewed in 2010 the non-punishment of victims of trafficking as an extension of the principle to protect and assist such victims, with full respect for their human rights, as set out in article 2 (b) of the Trafficking in Persons Protocol.

The UN Global Plan of Action requires State Parties to address the social, economic, cultural, political and other factors that make people vulnerable to trafficking in persons, such as poverty, unemployment, inequality, humanitarian emergencies including armed conflicts and natural disasters, sexual violence, gender discrimination, social exclusion and marginalisation, as well as a culture of tolerance towards violence against women, youths and children. It reaffirms that the promotion and protection of human rights for all and effective measures to respond to trafficking in persons are complementary and mutually reinforcing.

The 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (OHCHR) recognize that trafficking in persons could be aimed at the exploitation of the victims' involvement in unlawful activities and that victims might incidentally commit unlawful acts in the context of their status as trafficking victims. The Recommended Principles and Guidelines firmly advised, therefore, that such victims must be provided with protection, not punishment, for their unlawful acts arising as a direct consequence of their trafficking.⁸⁶ Correspondingly, and of great importance in respecting the non-punishment principle, the Recommended Principles and guidelines firmly advised that the actions of law enforcement involved in trafficking investigations must never take place at the expense of victim's rights.⁸⁷ The Recommended principles also require that 'the Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would poses a serious risk to their safety and/or to the safety of their families.'⁸⁸

OHCHR in its UN Recommended Principles and Guidelines on Human Rights and Trafficking has also addressed the importance of the non-refoulement principle in protecting victims of trafficking. The principle of non-refoulement is enshrined in Article 33 of the UN 1951 Refugee Convention, and is well established in international law and regarded the cornerstone of international refugee protection.⁸⁹ Its significance in the context of measures to deal with trafficking is widely accepted in ensuring that procedures and processes are in place for the consideration of asylum claims from trafficked persons, and that the principle of non-refoulement is respected and upheld at all times.⁹⁰

The UN Recommended Principles and Guidelines on Human Rights and Human Trafficking are more specific, detailed and effective than the provisions in the Trafficking Protocol that are seen

⁸⁶ Recommended Principle 7

⁸⁷ Recommended Guideline 5.5

⁸⁸ Recommended Principle 11

⁸⁹ The 1951 Convention relating to the Status of Refugees, 189 U.N.T.S. 137, entered into force 22 April 1954. Article 33(1) of the 1951 Convention provides: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion".

⁹⁰ Office of the High Commissioner for Human Rights (OHCHR) "Recommended Principles and Guidelines on Human Rights and Human Trafficking" presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights, E/2002/68/Add. 1, 20 May 2002, Guideline 2.7, www.ohchr.org/english/about/publications/docs/trafficking.doc.

as discretionary and weak.⁹¹ These guidelines clearly state that measures to prevent trafficking should not harm the dignity or human rights of people, especially asylum seekers, refugees, internally displaced persons, migrants and victims of trafficking.⁹² These guidelines are built around four pillars: 1) The primacy of human rights, 2) the prevention of trafficking by addressing root causes, 3) the extension of protection and assistance to all victims (instead of criminalisation), and 4) the punishment of perpetrators and redress of victims.⁹³ These principles can, help to identify or confirm a particular legal trend or even by contributing to the development of customary international law in relation to victim protection.⁹⁴

Likewise, the Agenda for Protection, adopted by the Executive Committee of UNHCR in 2003, calls upon States to ensure that their asylum systems are open to receiving claims from individual victims of trafficking.⁹⁵ Some victims or potential victims of trafficking may fall within the definition of a refugee contained in Article 1A(2) of the 1951 Convention or within the wider definition of persons eligible for subsidiary protection as per Article 15 of the EU Qualification Directive, and may therefore be entitled to international protection.⁹⁶ UNHCR's Guidelines on victims of trafficking and persons at risk of being trafficked provide guidance on the adjudication of asylum applications presented by victims or potential victims of trafficking.⁹⁷ The Guidelines also cover issues concerning victims of trafficking arising in the context of the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. In 2019, the Special Rapporteur devoted a report to the need for long-term social inclusion policies (A/HRC/41/46). As she noted then, protection is not accomplished through identification and referral and cannot be limited to short-term assistance. Protection, as concluded in previous reports, means that States must take measures that allow trafficked persons to be free from fear and exploitation and to rebuild their lives beyond the recovery and rehabilitation phase.

The 2030 UN Agenda for Sustainable Development sets targets to eliminate all forms of violence against all women and girls in both public and private spheres, including trafficking and sexual and other types of exploitation; take immediate and effective measures to eradicate forced labour; end modern slavery and TIP. As a member state of the United Nations, UAE has a responsibility to take appropriate measures to achieve the sustainable development goals, including measures to combat TIP and protect trafficked victims. UAE has, to a certain extent, fulfilled its obligation to prosecute and punish traffickers by enacting anti-trafficking legislation. However, UAE needs to increase its efforts to allow trafficking victims access to services at shelters and increase access to published data and other information pertaining to trafficking crimes and anti-trafficking efforts. UAE needs to change its policy of deporting victims of trafficking to their own countries and to third countries. It also needs to remove the ban on re-entering UAE, which punishes victims and increases the coercive power of traffickers who deter victims from contacting the

⁹¹ Office of the High Commissioner for Human Rights (OHCHR) "Recommended Principles and Guidelines on Human Rights and Human Trafficking" presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights, E/2002/68/Add. 1, 20 May 2002, Guideline 2.7, www.ohchr.org/english/about/publications/docs/trafficking.doc.

⁹² Office of the High Commissioner on Human Rights, "Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary" (2010)

⁹³ N. Pillay, "Speech at the launching ceremony of the Commentary on the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking" *OHCHR* (29 November 2011) Online: OHCHR <<https://www.ohchr.org/EN/NewsEvents/Pages/HumanRightsbasedapproachtotrafficking.aspx>>

⁹⁴ OHCHR, "Human Rights and Human Trafficking Factsheet 36" *OHCHR* (2014) online: OHCHR <https://www.ohchr.org/Documents/Publications/FS36_en.pdf>

⁹⁵ UNHCR Agenda for Protection, October 2003, A/AC.96/965/Add.1, 2002, Goal 2, Objective 2, <http://www.unhcr.org/refworld/docid/4714a1bf2.html>.

⁹⁶ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who need international protection and the content of the protection granted (hereinafter the "EU Qualification Directive").

⁹⁷ UNHCR Guidelines on International Protection No.7: "The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked", 7 April 2006. <http://www.unhcr.org/443b626b2.html>.

authorities and mislead victims by saying that they will be treated as criminals and risk imprisonment.

A recent development that is worth mentioning is the Expert Group meeting with regional gender experts from the MENA region, organised by the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) to inform CEDAW General Recommendation on Trafficking in Women and Girls in the Context of Global Migration.⁹⁸ In this meeting the Expert group highlighted that unprecedented migration flows have increased the risk of women and girls to new forms of exploitation and trafficking, and underline that ensuring gender equality and eliminating discrimination against women is the undisputed key to effectively combating the gender-based crime.⁹⁹ Migration patterns in MENA region are highly-gendered, women and girls tend to be identified more frequently as victims of trafficking for sexual exploitation and forced labour. The Expert group recommended that a human rights-based and gender-responsive approach as a way forward towards limiting and preventing trafficking in persons. The capacity of countries in the MENA region to detect and identify victims of trafficking and convict traffickers has increased in the past few years. Despite this progress, prosecution remain limited and impunity persists.

Regional instruments on human trafficking

The League of Arab States has adopted two trafficking related conventions; 1) The Arab Convention to Combat Information Technology Crimes of 2010. Article 16 criminalizes trafficking in human beings as well as human organs, as crimes committed by the use of technology, 2) The Arab Convention on Combating Transnational Organized Crime of 2012. Article 11 and 12 calls upon States to take the necessary measures in their domestic laws to criminalize any act committed by an organized criminal group including the act of human trafficking and trafficking in human organs. Besides the Arab Charter on Human Rights 2004 also prohibits human trafficking. In 2008, UAE ratified the Arab Charter on Human Rights (ACHR).¹⁰⁰ Under Article 10, the ACHR prohibits slavery, slave trade, and human trafficking for forced prostitution and sexual exploitation.¹⁰¹ The Charter states that the rights of women are equal to those of men within the framework of positive discrimination in favour of women as established by Islamic *Shariah*.¹⁰² In addition, ‘each State Party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter’.¹⁰³ Article 34(2) states that every worker shall have the right to the enjoyment of just and favourable conditions of work which provide for: a fair wage allowing workers to sustain a decent living for themselves and their families, limitation of working hours, rest and periodic holidays with pay, safe and healthy working conditions, the

⁹⁸ The UN Women, the International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC) has partnered with the Committee on the Elimination of Discrimination Against Women and the Office of the High Commissioner of Human Rights (OHCHR) to include views of the regional experts

⁹⁹ UNODC (2019) Joint Press Release (UN Women, IOM and UNODC): Experts from the MENA Region Meet to Contribute to the CEDAW General Recommendation on Trafficking in Women and Girls in the Context of Global Migration. <https://www.unodc.org/middleeastandnorthafrica/en/web-stories/joint-press-release-un-women--iom-and-unodc-experts-from-the-mena-region-meet-to-contribute-to-the-cedaw-general-recommendation-on-trafficking-in-women-and-girls-in-the-context-of-global-migration.html>

¹⁰⁰ The Arab Charter was adopted by the League of Arab States at the Summit of Heads of Member States of the League Council, Tunis on 22 May 2004. The members of the Arab League are Algeria, Bahrain, the Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen.

¹⁰¹ Article 10(1) Slavery and slave trade in all their forms shall be prohibited and punishable by law. No one shall, under any circumstances, be held in slavery or in servitude. Article 10(2) Forced labor, human trafficking for prostitution or sexual exploitation, the exploitation of others for prostitution and any other form of exploitation, as well as exploiting children during armed conflicts, are prohibited.

¹⁰² United Arab Emirates Constitution of 1971 Article 3(3) ‘Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic *Shariah*, other divine laws and by applicable laws and legal instruments’.

¹⁰³ *ibid*.

protection of women, children and handicapped persons in the workplace. While the protection or assistance of victims of trafficking are not specifically referred to in the ACHR, these obligations may be inferred from Article 43 of the ACHR that refers to international conventions and states.¹⁰⁴ The provisions of the ACHR could be used by the victims of human trafficking. Under Article 5 of the ACHR Charter, the right to life, liberty and security is granted to every individual, and protected by law. Article 8 provides protection against inhuman and degrading treatment¹⁰⁵. Article 13 clearly states that everyone has the right to a fair trial and Article 12 states that everyone has the right to seek legal remedy. The right to compensation is provided in Articles 8(2), 14(7) and 19(2), with Article 13 guaranteeing legal aid to those without the requisite financial resources to defend their rights. Article 23 commits each State Party to ensure that anyone whose rights or freedoms are violated is provided with an effective remedy.

Although the ACHR addresses trafficking and provides certain protections, violations of the ACHR are very frequent and prevention depends on how the term ‘trafficking’ is defined in the territories of the relevant State Parties. There is no regional human rights court established by the ACHR. The ACHR has created a reporting mechanism whereby Arab countries report on the status of human rights in their countries, including the status of trafficking in persons (in accordance with Article 10) and in human organs (in accordance with Article 9). However, the Member States have failed to submit country reports on a regular basis. UAE as a party to this Charter has not yet complied by this obligation and has not submitted reports to the Arab Human Rights Committee. As compared to this, other regional systems human rights courts have been established and these courts have imposed a wide range of State obligations in the field of prevention and protection of victims’ rights. In particular, the European Court of Human Rights, in its landmark judgment in *Rantsev v. Cyprus and Russia*, established extensive State obligations in the field of prevention. The Inter-American Court of Human Rights, in *Hacienda Brasil Verde*, stated that, to act with due diligence, States must have a legal framework for protection and a comprehensive prevention strategy. The absence of a regional human rights court to deal with violations of the principles of the ACHR and the limited powers and lack of political will of the Arab Human Rights Committee to investigate serious violations of human rights within Arab signatory States, have weakened the process of combating trafficking.

Bilateral and multilateral cooperation

A major problem faced by the UAE government is that most human trafficking cases are planned outside UAE, making it difficult for the authorities to discover these crimes. This challenge is tackled through bilateral and multilateral cooperation agreements signed with over 30 countries.¹⁰⁶ To promote international cooperation and promote human rights issues, Memorandum of Understanding (MoU) have been signed with many countries including India in 2016, Indonesia in 2015, Armenia in 2009, Azerbaijan in 2011, Thailand, 2018 to name a few.¹⁰⁷ The UAE government also shares experiences in combating human trafficking with

¹⁰⁴ Article 43 “Nothing in the present Charter shall be interpreted as impairing the rights and freedoms protected by the State Parties’ own laws, or as set out in international or regional instruments of human rights that the State Parties have signed or ratified, including women’s rights, children’s rights and minorities’ rights”.¹⁰⁴ In this regard, the International Human Rights law has supremacy over the ACHR under Article 14 (the Savings Clause) of the UN Trafficking Protocol.

¹⁰⁵ Article 8(1) No one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment. Article 8(2) states that The State Parties shall protect every person in their territory from being subjected to such practices and take effective measures to prevent such acts. The practice thereof, or participation therein, shall be regarded as a punishable offense. Each victim of an act of torture is entitled to a right to compensation and rehabilitation.

¹⁰⁶ National Committee to Combat Human Trafficking Crimes, “Annual Report of the National Committee to Combat Human Trafficking” (2016) 31

¹⁰⁷ *ibid.*, at. 31

international organisations such as the UNODC, IOM, Interpol and ILO through training programmes and workshops.¹⁰⁸

Some Asian States with which UAE has signed MoUs are also signatories to the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, 2015 (ACTIP)¹⁰⁹ and the South Asian Association for Regional Cooperation's Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (SAARC Trafficking Convention)¹¹⁰. The UN Trafficking Protocol and the ACTIP and SAARC Trafficking Convention share the purposes of preventing and combating trafficking, paying particular attention to women and children; protecting and assisting victims; and promoting and facilitating cooperation among States.

UAE, in cooperation with other States, could refer to the ASEAN and SAARC Trafficking Conventions and achieve bilateral cooperation with the Member States in order to provide protection to victims. The signing of these MOUs could lead to a reduction in the vulnerability of trafficked victims, however these MoUs are not legally binding, and the Emirati government has neither drafted nor passed any legislation that would reinforce the agreements it has signed.

Constitutional and legislative provisions for protecting trafficked victims in UAE

The basis of the legal system in the UAE is *Sharia* or Quranic Law. In the constitution, Islam is identified as the state religion as well as the principal source of law. Although the core principles of law in the UAE are drawn from Sharia, most legislation is comprised of a mix of Islamic and European concepts of civil law, which have a common root in the Egyptian legal code established in the late 19th to 20th centuries.¹¹¹ Article 7 of the UAE Constitution states that "Islam is the official religion of the Federation and *Sharia* is a main source of its legislation".¹¹²

TIP and slavery are prohibited under the 1971 UAE Constitution.¹¹³ The same Article prohibits forced labour and the exploitation of workers.¹¹⁴ A number of UAE laws address some aspects of TIP and human smuggling.¹¹⁵ However, until 2006, there was no specific comprehensive legislation to address TIP that was in line with the UN Trafficking Protocol. The existing legislation in the country, such as the Penal Code and Labour Law, was outdated and unwieldy, and enabled TIP to take place in the country. Similarly Federal Law No. 8 of 1980 on Regulation

¹⁰⁸ An example of this was a workshop held in Dubai in cooperation with the ILO on how to identify, investigate and assist forced labour victims by using new e-learning tools. Furthermore, officers of the Ministry of Interior received training by Interpol officials on the international dimension of human trafficking. Moreover, in cooperation with the UNHCHR, the Dubai Foundation for Women and Children held regional discussion sessions on international cooperation and victims' rights. The NCCHT also participated in a discussion in Cairo on issues related to human trafficking cases, and there was another workshop in Manila on the return and reintegration of trafficked victims. In addition, the country has joined a group of 20 countries that fight against human trafficking. This group is called the 'Group of Friends United against Human Trafficking'; the government attended a meeting of this group in New York in 2015 Source: NCCHT. Combating Human Trafficking in the UAE. Annual Report 2016.13

¹⁰⁹ Member States ACTIP, namely, Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, The Republic of Singapore, The Kingdom of Thailand, and the Socialist Republic of Vietnam. OECD. OECD Public Governance Reviews Trafficking in Persons and Corruption Breaking the Chain: Breaking the Chain. OECD Publishing, 2016. p. 20

¹¹⁰ The SAARC is an intergovernmental organization bringing together the hugely divergent States of South Asia: India, Pakistan, Bangladesh, Sri Lanka, Nepal, the Maldives, Bhutan and, most recently, Afghanistan.

¹¹¹ For a detailed analysis of UAE's legal system read Butti Sultan Butti Ali Al-Muhairi(1976) The Development of the UAE Legal System and Unification With the Judicial System, *Arab Law Quarterly* Volume II Issue II.

¹¹² United Arab Emirates Constitution of 1971.

¹¹³ The United Arab Emirates Constitution (by Law of the Federal National Council, 2011) 3 article 34(c).

¹¹⁴ *Ibid.*

¹¹⁵ The Federal Penal Code 1987, the Federal Law No 6 of 1973 on Entry and Residence of Foreigners, the Federal Law No 9 of 1976 concerning Delinquent and Vagrant Juveniles, the Federal Law No 8 of 1980 on Regulation of Labor Relations, the Federal Law No 15 of 2005 on Regulation of Participations in Camel Races, the Federal Law No 5 of 2012 on Combating Cybercrimes, Law No 15 of 1993 on Regulating Human Organ Transplantation, and the Federal Law No 39 of 2006 on international judicial cooperation.

of Labour Relations did not protect domestic workers who often become victims of trafficking.¹¹⁶ The need to enact a new law and mechanisms to combat TIP and protect victims' rights was therefore apparent. In 2006 the UAE government enacted Law 51 of 2006, the first piece of legislation to directly criminalize TIP in the country. This law however had certain weaknesses; the definition of trafficking was not at par with the UN trafficking protocol and the punishment imposed was also not severe enough to have a deterrent effect. For instance, the action element, the means element and the purpose element contained in the Trafficking Protocol definition are not covered by the UAE trafficking legislation 2006.¹¹⁷ The punishment prescribed for traffickers was also not sufficient, and the law failed to impose the necessary measures to prevent crime.¹¹⁸ The 2006 Act also did not include any provision related to assistance or protection of victims of trafficking.

The UAE government in 2015 amended this law which certainly was an improvement as compared to the 2006 legislation. The Federal Law 51 (as amended in 2015) made some general references to human rights and included some obligations that may be understood as intended to protect victims. However, on its own, it made a little headway in establishing the precise nature of the entitlements of victims and how these should be met. Article 1 bis (2) of the Federal Law 51 gave a number of rights, for instance, providing victims and witnesses with information, in particular about their legal rights, in a language they can understand and enable them to express their social and legal needs; a medical examination to receive physical or psychological treatment as well as to be admitted to a rehabilitation centre if needed; providing shelters; ensuring appropriate victim/witness security protection; allowing victims and witnesses to remain in the country during the course of an investigation and prosecution when needed, and allowing victims to hire a lawyer.¹¹⁹ Nevertheless, victims cannot remain in the country when their trial ends. The UAE government does not provide permanent or formal residency status to victims, even if they have cooperated during the investigation with the authorities. It only permits their stay in shelters to recover and participate in court proceedings, and to resettle victims in third countries if victims cannot return to their countries of origin.¹²⁰

In October 2023, the government enacted Federal Decree-Law No. 24 on Combating Human Trafficking, repealing Federal Law No. 51 of 2006 and its 2015 amendments. Federal Law No. 24 of 2023 criminalizes sex trafficking and labour trafficking and prescribes penalties ranging from five years to life imprisonment and fines of no less than one million Emirati dirhams (AED) (\$272,260) and deportation for non-citizens. These penalties are sufficiently stringent and, with respect to sex trafficking, commensurate with those prescribed for other grave crimes, such as rape. The new law does not substantially amend the existing provisions criminalizing trafficking offenses, yet it has increased financial penalties for convicted traffickers, clarified the irrelevance of victim consent when establishing a trafficking crime occurred, and expanded protections for victims and witnesses during criminal proceedings.

Suggesting a way forward

The findings of this article suggest that UAE should pay attention to 'non-refoulement' principle, which is a significant protection that is potentially applicable to refugees and asylum seekers but can be extended to victims of trafficking under the UN Recommended Principles and Guidance as discussed in the previous section. UAE should recognize the 'non-refoulment' principles under the 2002 UN Trafficking Guidelines and the 1951 Refugee Convention as a measure for the trafficked victims' protection. Any repatriation scheme should be voluntary and there should be a transition from deportation to naturalization regime. Short-term assistance and support are not

¹¹⁶ Federal Law No 8 of 1980, Article 3

¹¹⁷ For example, Article 364 only contains the use of force or threatening to detain or entice women into debauchery or prostitution and does not cover other means such as the exploitation of their vulnerability or an abuse of power.

¹¹⁸ See for example Article 356, 358, 363 and 363 of the Federal Penal Code.

¹¹⁹ Law 51 as amended in 2015, art 1 bis (2).

¹²⁰ *ibid.*

sufficient for trafficking victims who fear persecution or other serious human rights violations and cannot return home. Women victims of trafficking need international protection as provided for in the UN Trafficking Protocol, the 1951 Refugee Convention, and other subsidiary forms of protection under regional and national law. This entails most notably durable protection against refoulement and in many instances the granting of asylum, subsidiary protection or another protection status. It is also essential to enable regular migration paths to combat trafficking effectively and to put in place long-term social inclusion policies that would enable trafficked persons to be free from fear and exploitation and to rebuild their lives beyond the recovery and rehabilitation phase. The law should be amended to include emergencies as pandemics and other natural disasters to provide support to trafficked victims in such emergencies. The law should also address the prosecution of trafficking for the purpose of sexual exploitation, both online and offline, taking into account the gender specific nature of sexual exploitation and the fact that two thirds of all profits from trafficking are derived from trafficking of women and girls for the purpose of sexual exploitation.

The UN Trafficking Protocol requires States to consider measures that allow victims to remain in the country temporarily or permanently.¹²¹ Various countries offer victims permanent residence when they cooperate with police authorities. For instance, in the UK victims can have a permit for residence for one year and then ask to remain in the country permanently. In Australia, those thought to be victims of trafficking are given a thirty-day visa before investigations begin. If victims agree to cooperate with police authorities, they are granted a criminal justice stay visa. Following this visa period, victims are offered a witness protection visa, which means they can apply for permanent or temporary residence. In Bahrain a trafficking committee is empowered to investigate the needs of victims before repatriating them and help them find employment if they need to stay in the country on a long-term basis.¹²² Such measures for rehabilitation can be taken by UAE to provide protection to victims. Offering victims of trafficking residence permits is in line with international standards¹²³ and would give better protection to female victims of trafficking in UAE. It would have a positive effect on victims, encouraging them to report crimes to the authorities and testify in court.

Article 19 of the Federal Decree Law No.24 of 2023, is in line with Article 26 of the UN Trafficking Convention with regard to the appropriate measures to encourage traffickers who participate or who have participated to cooperate with law enforcement authorities, and in so doing mitigate their punishment. An improvement upon the previous legislation is that under Article 22 of the 2023 Federal Decree Law No. 24 there can be no civil or criminal liability on victims of trafficking for any of the crimes stipulated that are directly connected to being a victim. Under the previous law civil and criminal liability could be imposed in three situations: firstly, when someone contributes in person without being subject to any coercion, moral or material, to the perpetration of a human trafficking crime; secondly, when someone fails to report a crime or the collusion thereof to the competent authorities when they could have done so;¹²⁴ and thirdly, when a foreigner who comes to the UAE for work violates their work contract or residence regulation. This means that many victims of trafficking in UAE, such as maids who run away from their sponsors could become victims of forced prostitution and charged under this Article.¹²⁵

The principle of non-criminalisation of victims has been confirmed by the Human Rights Council, the General Assembly and other human rights treaty bodies. The issue of prosecution of trafficking victims is not addressed in the Trafficking Protocol, but the matter is dealt with in the

¹²¹ Article 6-7.

¹²² Bahrain Trafficking Law No 1 of 2008, Article 7(2).

¹²³ 'Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim'. Article 13 of the Council of Europe Convention; Each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.' UN Trafficking Protocol art 7(1).

¹²⁴ Article (11) bis 1(a)(b)(c).

¹²⁵ It is illegal in the UAE to run away from an employer according to Article 11 of Ministerial Decree No (721).

European Trafficking Convention.¹²⁶ The UN Recommended Trafficking Principles and Guidelines also include the most explicit statement on this issue. Guideline 2 states that “trafficked persons should not be prosecuted for violations of immigration laws or for the activities they are involved in”.¹²⁷ Malloch is of the view that the aim of such protection (non-criminalisation) is safeguarding the human rights of victims, avoiding further victimisation and encouraging them to act as witnesses in criminal proceedings against the perpetrators.¹²⁸ One can thus argue that there is a need to create a balance between prevention, prosecution and protection and put the human rights of trafficked persons at the centre of any anti-trafficking measures and policies.

Federal Decree Law No.24 is now in line with several GCC countries that apply the principle of non-criminalisation of victims of trafficking in their legislations, for instance Article 25 of the Qatari Human Trafficking Law specifically exempts victims from all penalties stipulated by Law No. 4 of 2009 regarding violations of entry, residency and *kafala* laws by aliens.¹²⁹ In Jordan, victims of trafficking cannot be prosecuted or investigated for any crimes defined in the country’s anti-trafficking legislation, and this is also the case under Egyptian law.¹³⁰

They should not be deported to their country of origin or another country, and the repatriation of victims should be a voluntary process. Offering residence permits to victims of trafficking complies with international standards¹³¹ and provides better protection for female victims of trafficking, as well as having a positive effect on victims and encouraging them to report incidents to police authorities and be witnesses in court.

Under Article 6 of the Federal Decree Law No 24 whoever commits the human trafficking offence shall be punished with temporary imprisonment for a period of not less than (5) five years and a fine of not less than (1,000,000) million Dirhams and under Article (7) in cases of aggravating circumstances in human trafficking offence the penalty shall be life imprisonment and a fine of not less than (5,000,000) five million Dirhams. However, records show that convicted traffickers have been sentenced to between one and three years in prison.¹³² It is argued therefore that the punishment for committing TIP should be commensurate with the gravity of the crime, as both retribution and deterrence are important functions of punishment. Punishment for TIP must be effective and proportional. In other words, effective prosecution accompanied by harsh penalties can serve as a deterrent to future traffickers. It is therefore suggested that the UAE government ensure that penalties and sanctions are suitable and proportionate to the gravity of the crime and in strict accordance with the new law.

Although Article 18 allows for confiscation of the crime’s tools, monies and proceeds,¹³³ however victims of trafficking in the UAE are not supported or compensated from the confiscated assets.¹³⁴ The assets confiscated from traffickers could be used to finance State efforts to combat human trafficking and pay the cost of tools, monies and profits confiscated under this Article 18 to be used as a fund to compensate and support victims of trafficking.

¹²⁶ Article 26 states, ‘Each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

¹²⁷ Trafficking Principles and Guidelines, guideline 2, para 5.

¹²⁸ M. Malloch, *Human Trafficking* (Edinburgh: Edinburgh University Press 2016) 45

¹²⁹ The Qatari Human Trafficking Law Article 25

¹³⁰ Jordanian Anti-Trafficking in Persons Law (JATIPL) (No 9 of 2009) Article 12. Egyptian Law on Combating Human Trafficking (No 64 of 2010). Article 21 states, ‘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.

¹³¹ Article 13 of the European Trafficking Convention and Trafficking Protocol.

¹³² US Department of State(2024) ‘2024 Trafficking in Persons Report: United Arab Emirates’. available at <https://www.state.gov/reports/2024-trafficking-in-persons-report/united-arab-emirates/>

¹³³ Law 51 as amended in 2015, art 9.1.

¹³⁴ A.D. Ahmed, “Legislative Mechanisms to Protect Victims of Human Trafficking: A Comparative Study” Research Paper presented to a Symposium on Protection of the Victims of Human Trafficking, Human Rights Department, Ministry of Interior, Abu Dhabi 2009 73.

Article 9.3 of the Trafficking Protocol declares that State Parties are obligated to cooperate with NGOs, relevant organisations and civil society organisations to bring about policies and programmes that support victims of trafficking. Article 25 of the Federal Decree Law 24 identifies one of the main responsibilities of the NCCHT to coordinate with ‘Competent Authorities and Concerned Entities’ to prevent and support victims, but does not specify the level and type of cooperation nor does it make any reference to NGOs or civil society organisations. Cooperation with NGOs is also crucial. Civil society organisations can support the government through information gathering and research, conducting media campaigns, taking part in preparing national reports, sheltering victims, and by acting as a watch dog to ensure that the authorities implement the law.

The COVID-19 pandemic has created new risks and challenges for trafficked victims. The pandemic has added further strain on gender discrimination and exacerbating the pre-existing socio-economic and racial inequalities. To deal with this situation UAE need to develop rapid assessment tools to evaluate the impact of the pandemic on essential services for victims as well as on law enforcement and justice capacities. Measures are also needed to facilitate cross-border cooperation and to supporting anti-trafficking unit and rehabilitation centres to procure personal protective equipment to interact safely with victim. It is also extremely essential to keep shelters and hotlines open, ensure access to justice and prevent more vulnerable women from falling into the hands of traffickers who have become more active and prey on vulnerable women than before because they have lost their source of income due to measures to control the virus.

Last but not the least, there is also a strong need to develop a national protocol for protection of the human rights of victims of trafficking and survivors of trafficking during states of emergency, including pandemics. UAE also needs to ensure that anti-trafficking legislation should address trafficking in cyberspace, and that it reflects gender and age specificity of online crimes related to TIP.

Conclusion

The human rights-based approach allows us to understand TIP from victims’ perspective and to acknowledge those underlying socio-economic factors that make women vulnerable to it. Such an approach is useful in drawing attention to victim protection and rehabilitation. The human rights-based approach in the regulation of the phenomenon could reconceptualise the notion of legal responsibility towards victims. By using this approach destination countries could be pressurised to adopt laws and policies that are geared towards protecting victims and legally the focus must be on compensation to be added in victim support schemes, going beyond funds confiscated by traffickers.

It is important that anti-trafficking law and policies adopted by the UAE involving criminal prosecutions must not compromise human rights of the victims. Attention should be paid to the disproportionate targeting of women and girls trafficked for the purpose of sexual exploitation. Efforts should continue to ensure that all victims of trafficking are identified and provided with assistance and protection appropriate to their gender, age and the form of exploitation they are subjected to.

Islamic perspectives on slavery clearly suggest that TIP constitutes a modern form of slavery and demonstrates the importance of protecting the rights of trafficked victims. The Qur’an urges its believers to treat slaves with humility and protect the rights of victims. Following gradual reform process slavery has been abolished through the consensus of Islamic scholars. Qur’anic teachings also emphasize compliance with agreements and treaties therefore, UAE as a party to various international UN and regional treaties should fulfil its obligation to provide protection to trafficked victims. In addition, through a cooperative framework with other countries, UAE could effectively address the issue of trafficking.

The Federal Decree Law No 24 of 2023 is an improvement as compared to previous legislation as UAE has provided protection to the victims of trafficking under Article 21 against any civil and criminal liability. This confirms some change in the law and policies of the UAE which previously remain strongly rooted in the criminalization approach, with little attention paid to the human rights dimension.

There is also an urgent need to assess the impact of the pandemic on victims of human trafficking and the modus operandi of organized crime groups. This would help in further identifying at-risk groups for trafficking and needs of victims and survivors of TIP as well as exposing the vulnerabilities of women to trafficking in persons during the pandemic.

Finally, a crime control approach is not sufficient to combat human trafficking effectively and protect victims' rights, as it focuses only on punishment and prosecution of traffickers. A more holistic and comprehensive approach that addresses trafficking as a human rights and social justice issue can offer further protection to trafficked victims.