



PRELIMINARY THOUGHTS ON EGYPT'S LAW CONCERNING TRAFFICKING IN HUMAN BEINGS

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CARIM Analytic and Synthetic Notes 2011/45

**Series on the Fight against Trafficking in Persons and the
Smuggling of Migrants in Legislation**

Legal Module



CARIM
Euro-Mediterranean Consortium
for Applied Research on International Migration

Analytic and Synthetic Notes – Legal Module
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CARIM-AS 2011/45

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Preliminary thoughts on Egypt’s Law
Concerning Trafficking in Human Beings

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[Full name of the author(s)], [title], CARIM AS [series number], Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, [year of publication].

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Abstract

This article analyses the most important provisions of Egypt's Law Concerning the Trafficking in Human Beings ('Law'). Human trafficking in Egypt takes several forms and targets Egyptians and foreign nationals alike. While the Law is progressive and is largely pro victim, the author expresses concerns respecting the interpretation of some sections of the Law. For example, the Law evokes the existing tensions between *shariah*, which constitutes the main sources of legislation in Egypt, and criminal law. Furthermore, the Law will be devoid of any power in absence of a sincere political will to try the perpetrators of human trafficking; lack of will can be caused by the existence of misconceptions about female victims of trafficking on the part of some members of the police and the prosecution. Accordingly, in order for this Law to be effective, extensive training in human trafficking issues and their social implications is needed. Having said that, the author believes that the benefits of this Law outweigh its pitfalls; and he is optimistic that any gaps will be filled by judicial activism.

Résumé

Cet article analyse les dispositions les plus importantes de la loi égyptienne contre la traite des personnes. La traite des personnes prend diverses formes en Egypte et concerne aussi bien les Egyptiens que les étrangers. Bien que la loi soit progressiste et pro-victime, l'auteur exprime son inquiétude quant à l'interprétation de certaines sections de la loi. A titre d'exemple, la loi évoque l'existence de tensions entre la Charia, qui constitue la source principale de droit en Egypte, et le droit pénal. En outre, la loi sera dénuée de tout pouvoir en l'absence de volonté politique sincère de juger les auteurs de traite des personnes, du fait de l'existence de conceptions tronquées des femmes victimes de la traite chez une partie du personnel de police et de justice. En conséquence et afin de rendre cette loi effective, des formations sur les problèmes de traite et leurs implications sociales sont nécessaires. L'auteur pense néanmoins que les bénéfices de la loi dépassent ses lacunes et pense que ces dernières pourront être comblées par l'activisme judiciaire.

Introduction

In June 2010, the United Nations Special Rapporteur on Trafficking, Joy Ngozi Ezeilo, visited Egypt on receipt of an invitation from the Egyptian government. The timing of the visit could not have been come at a better time given that Egypt had just passed its own national Law Concerning the Trafficking in Human Beings (“Law 64/2010” or “Law”). Furthermore, Egypt has been under scrutiny over reported shootings by Egyptian border guards of civilians, mostly smuggled individuals and victims of trafficking who had attempted to cross the border into Israel. Recently, the US Department of State placed Egypt in the Tier 2 group of states on the scale of countries where trafficking in human beings takes place (“US Report”).¹ This classification has angered the Egyptian authorities, who continue to describe the US Report as biased and politicized. Irrespective of the accuracy of the information provided in the US Report, there is a consensus among all those involved in human rights in Egypt that some forms of human trafficking take place in and through the country.

This article explains the most important provisions of Law 64/2010. While this short commentary criticizes some provisions of this Law, it would be wrong to downplay the significant step that the Egyptian government has taken to combat human trafficking. In fact, as I will discuss below, Egyptian law now goes further than the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Protocol”) and the Convention against Transnational Organized Crime (“Convention”) in its definition of trafficking and in extending Egypt’s jurisdiction to try those involved in human trafficking. The law also deviates from the rigid approach to criminal jurisdiction as reflected in Egypt’s Criminal Code by adopting the principle of *passive personality* whenever a victim of trafficking is Egyptian, irrespective of where the crime is committed. While this shift is primarily due to Egypt’s ratification of the Protocol, it also reflects a new national policy concern aimed at extending Egypt’s jurisdiction to all cases where Egyptians are subjected to criminal acts abroad.² This concern has yet to be codified in a law of general application; the introduction of the jurisdictional principle of *passive personality* to Egypt’s Law on trafficking is, therefore, a laudable move.

While Law 64/2010 was greeted with positive publicity in the Egyptian press, it is of course impossible to deem the Law a full success so soon after its coming into force. Already, a general concern has been voiced by commentators with respect to the Law’s limited capacity to fight child marriages, which are regrettably a common practice in Egypt. At the time of writing, it is impossible to predict the Law’s impact on such practices, particularly given that criminal penalties for child marriages are already found in other laws.

This article, therefore, aims to discuss the issues that Law 64/2010 raises in light of other domestic laws and Egypt’s international obligations. Given the Law’s recent enactment, reference to academic writings will be scarce. Much of the information I relied upon to write this article is found in other Egyptian laws, interviews with local specialists and general newspaper articles and human-rights reports.

Law 64/2010

On 20 April 2010, the Egyptian Parliament passed Law 64/2010. The Law came into force on 10 May 2010, one day after its publication in the Official Gazette (section 30). The enactment of the Law confirmed Egypt’s commitment to upholding the Protocol. This section analyses the provisions of Law 64/2010 in light of Egypt’s treaty obligations and other laws enacted by the Egyptian Parliament. In

¹ US Department of State, *Trafficking in Persons Report*, 2010, <http://www.state.gov/documents/organization/142982.pdf>

² The latest widely reported example is that of an Egyptian citizen accused of murder who was publicly lynched by a mob of Lebanese villagers; see Almasry Alyoum, <http://www.almasryalyoum.com/en/news/new-info-about-egyptian-lynched-lebanon>

case of ambiguity, I shall refer to the Egyptian Peoples' Assembly's *travaux préparatoires (al-madbata)* for clarification.³

Structure of Law 64/2010 and critical observations

Law 64/2010 consists of thirty operative sections, which are divided into six Chapters. The following is an examination of the most pertinent provisions of the Law.

Chapter 1 – Definitions (sections 1-3)

Chapter 1 of the Law provides the definitions of 'organized criminal groups', an offense that is 'transnational in nature' and 'trafficking' under Egyptian law. While these definitions are largely analogous to the ones found in the Convention and Protocol,⁴ the definitions still differ in several respects, with Egyptian law arguably providing wider protection to trafficking victims. For example, the definition of 'organized criminal group' under Egyptian law includes groups aiming to obtain a moral benefit as a result of their criminal activity. Furthermore, this Law replicates the Convention's definition of a crime that is 'transnational in nature' (section 1(2)); however, the Law waives the requirement that the effects of a crime in one state be *substantial* in another (article 3(2)(d) Convention), or that a *substantial* part of the preparation, control, direction or planning of the crime takes place in one state and that the crime is committed in another state (article 3(2)(a) Convention). Put differently, the *substantial* criterion is waived and a crime is deemed transnational under the Law if (i) it is committed in more than one state, (ii) it is committed in one state but part of its preparation, control, direction or planning takes place in another state, (iii) it is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state, or (iv) it is committed in one state but has effects in another state.

Furthermore, section 2 of this Law has a wider scope than the Protocol (articles 3-4) in that it includes the following additional factors in the definition of 'trafficking': (i) the crime of trafficking will be found to exist if it takes place exclusively in Egypt (as opposed to the exclusively transnational nature of the crime in the Protocol); and (ii) the crime of trafficking extends to situations where victims are used for the purpose of begging and the forced removal of human organs. The latter criteria are particular to the Egyptian context where begging and the phenomenon of street children constitute a major problem, and where cloning is strongly opposed by a significant portion of the Egyptian population.

In addition, while the Protocol vitiates the consent of those who have control over children who are victims of trafficking in all circumstances (article 3 Protocol), Egyptian Law goes one step further by vitiating the consent of those who have authority over people who lack legal capacity, irrespective of their age. Accordingly, in addition to protecting children, Egyptian law provides protection to adults who need additional protection (section 3).

³ On file with author.

⁴ Article 3 of the Protocol defines 'trafficking in persons' as 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'.

Article 2 of the Convention defines 'organized criminal group' as 'a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit'.

The changes introduced by Law 64/2010 have several implications for Egyptian law. First, applying the definition of human trafficking to actions that take place exclusively in Egypt will strengthen Egypt's existing criminal and civil laws of a punitive nature. For example, given that the punishment for trafficking under this Law is harsher than the penalty for pandering under the Law Against Prostitution,⁵ panderers will most likely be tried under the provisions of this Law and risk longer sentences if it can be established that they coerce prostitutes into providing sexual services to clients (section 4). Furthermore, this Law provides those defending women, men and children who are forced into prostitution with potential grounds to seek acquittal, since forced prostitution entails lack of (or vitiated) consent of the person providing the sexual service. Under section 21 of the Law, the absence of consent triggers automatic acquittal.

The Law will have the strongest impact on three other major problems that exist in Egypt, namely forced marriages, forced labor and the abuse of street children.⁶ I shall discuss each of these problems below.

i. Forced Marriage:

According to Egypt's personal status law, the minimum age for marriage is eighteen for both males and females (section 17 of Personal Status Law).⁷ However, it is still reported that '11% of urban children and 24% of rural children were involved in early marriage between 1986 and 2004'.⁸ Given that the age of consent in Egypt is twenty-one (Subsection 44(2) of Civil Code), parents can act as the agents of their children aged between eighteen and twenty-one and sign marriage contracts on their children's behalf without their approval. While the generous wording of Law 64/2010 would appear to cover all situations of forced marriage, one must wait for the Executive Regulation or some form of judicial or academic interpretation of the Law to know what forms of forced marriage will fall under the ambit of trafficking.⁹ The Special Rapporteur on Trafficking in Human Beings has confirmed that forced marriages constitute trafficking.¹⁰ However, given the structure of Egyptian law, it is unlikely that all forms of forced marriage will be deemed trafficking by Egyptian judges. At best, different standards may be applied to different categories of females forced into marriage. For example, considering that the law gives adult women (and men) the right to refuse to enter into a marriage, adults who allege they have been forced into marriage can expect to face a high evidentiary burden.¹¹ Those who claim that the crime of trafficking is committed will have to meet the criteria stipulated in section 2 of Law 64/2010. Furthermore, a lower evidentiary burden may be imposed on those who allege that a minor old enough to marry yet too young to have full legal capacity (age 21) is a victim of trafficking as a result of forced marriage. Judges in this case will have a wide margin of appreciation in deciding what is in the best interest of the minor. Finally, all marriages of minors who have yet to reach the minimum age for

⁵ Law 10/1961. The punishment for pandering under this law is imprisonment for a period that ranges between one and three years (Section 1(1)).

⁶ These are not all the forms of human trafficking in Egypt. For detail on the different forms of trafficking in Egypt, see USAID, *infra* note 15.. A National Study on Human Trafficking is being prepared by the National Center for Social and Criminological Report ("Report"). The Report will cover the major forms of human trafficking in Egypt and will assist the Egyptian government designing more efficient means to combat human trafficking.

⁷ Before this law was amended, the minimum marriage age for females was sixteen. It was increased to eighteen following pressures by organizations that advocate women's rights.

⁸ International Bureau for Children's Rights, *Making Children's Rights Work in North Africa*, 2007, 47 ("North Africa")

⁹ At the time of writing (December, 7, 2010), the Executive Regulation has yet to be issued.

¹⁰ Office of the United Nations High Commissioner for Human Rights, UN expert on trafficking in persons urges Egypt to intensify its efforts at combating human trafficking, April 2010, http://www2.ohchr.org/english/issues/trafficking/docs/statement_egypt_april2010.pdf

¹¹ Adults might be subjected to undue influence or social pressure to enter into a marriage contract. Admittedly, these are not issues to be dealt with in Law 64/2010 as they mostly pertain to the contract law.

marriage could automatically be deemed situations of trafficking. Admittedly, the aforementioned is mere conjecture; one must wait for this Law to be tested in court.

Perhaps the greatest challenge that this law will face is the proliferation of customary (*'urfi*) marriages in Egypt. Customary marriages are undocumented unions between a man and a woman that fulfill the basic requirements of a marriage contract in Islam, namely consent of the parties that is represented by a valid offer and acceptance, and the existence of two witnesses to the contract. This type of marriage contract is not notarized and, as such, deprives women and any resulting offspring of several rights. This form of marriage is popular among university students, those who cannot afford the expenses associated with an official marriage and tourists from the Gulf who want an Egyptian wife on a temporary basis (seasonal marriage) without having to bear the legal consequences associated with an official marriage. Unfortunately, neither politicians nor religious, educational nor legal institutions have succeeded in putting an end to this form of union. It is unclear how this law will affect this form of union.

ii. Forced Labor and Street Children:

Including forced labor in the definition of trafficking is another laudable step. Until the coming into force of this Law, Egyptian law did not have a detailed legal instrument banning forced labor. Prior to the enactment of this Law, rights defenders could generally rely on the provisions of the Unified Labor Code, the National Law on the Rights of the Child, the Criminal Code, or general international legal obligations. These tools were, nonetheless, insufficient. For example, the Unified Labor Code explicitly excludes domestic workers (section 4) from its ambit. It is also an inefficient deterrent as it imposes minor penalties on those who violate the rules relating to the employment of children¹² and non-Egyptians.¹³

Similarly, the Criminal Code does not contain detailed provisions on forced labor. At best, one can rely on sections 280 and 281 of the Criminal Code, which cover forced confinement by non-state representatives. However, the penalties are disproportionately lenient in relation to the gravity of the crime. Moreover, while the National Law on the Rights of the Child prohibits any form of employment that prevents children from pursuing their education (section 54 and section 125 of the law's Executive Regulation), or that exceeds six hours a day (section 66), that is unremunerated (section 69), or employs a child that is younger than fourteen years of age (section 64), it provides no penalty for breach of these provisions. What is more, the Executive Regulation of the National Law on the Rights of the Child details the conditions of employment of children (Sections 136-151), yet does not mention the penalties associated with violations of these conditions. Accordingly, one would have to rely on the lenient penalties that are found in the Unified Labor Code.

In the same vein, while international law forms part of Egyptian law to the extent of its incorporation following domestic constitutional requirements (section 151 Constitution), there are no codified penalties for forced labor in international law that could be applied in Egypt.

Forced labor is also prevalent among street children. Egypt has a high number of street children. According to a USAID Report, the number of street children in Egypt ranges between two hundred thousand and one million.¹⁴ Other reports conclude as follows:

¹² The penalty is a fine that ranges between 500 and 1000 Egyptian Pounds (section 248). The chapter dealing with the employment of children explicitly excludes children who work exclusively in the agricultural section from the protection of this chapter (section 103).

¹³ The penalty is a fine that ranges between 500 and 5000 Egyptian Pounds (section 245).

¹⁴ USAID, *Assessment on the Status of Trafficking in Persons in Egypt*, 2007, http://pdf.usaid.gov/pdf_docs/PNADK922.pdf, at 16 ("USAID").

25% of street children are under 12 years and 66% of them are between 13 and 16 years... A 2002 study found that 31% of children living on the streets in Cairo said that they had had sexual relations, 91.9% suffered from sexually transmitted infections and 54.2% of the girls interviewed said they had been pregnant at least once.¹⁵

Street children are subject to abuse at the hands of criminal gangs that use them for prostitution, begging and other crimes. Recently, an Egyptian court sentenced a person to death by hanging for coordinating a criminal network of street children in addition to kidnapping and raping several of them.¹⁶ This case made headlines and came to be known as the case of *El-Torbeeny* in reference to the person in charge of running the criminal network. The death sentence has yet to be carried out.

While Law 64/2010 tackles the phenomenon of street children, I would argue that the legislation's effectiveness is limited by the existence of other Egyptian laws that indirectly contribute to the problem. Street children roam the streets of Egypt because they either flee abuse at home¹⁷ or because they are abandoned after their mothers fail to obtain birth certificates for them following their birth out of wedlock.¹⁸ I explained this phenomenon in a 2007 Report to the Committee on the Rights of Migrants Workers, in which I stated, 'According to the Executive Regulation of Law No. 12 of 1996 on the rights of the child, children born out of wedlock cannot obtain a birth certificate immediately following their birth. Children must have a birth certificate to be eligible for vaccination. According to the Executive Regulation, in addition to the 1994 Law No. 143 on Civil Status, for a child to be issued with a birth certificate, the mother must show a marriage contract.'¹⁹ While a full discussion of these laws is outside the scope of this article, I would argue that they represent a misapplication of the principles of *sharia* law: *sharia* law is, of course, the main source of legislation in Egypt.²⁰

Chapter 2 – Crimes and Punishments (sections 4-15)

Section 4 is the *chapeau* of Chapter 2; it confirms that the punishments that are enshrined in sections 5-15 can be trumped by harsher punishments found in other Egyptian laws. Section 4, therefore, serves as an important interpretative tool, as it makes an exception to the principle of *lex posterior derogate legi priori* by providing continuity to older laws covering the same matters.

The standard penalty for human trafficking, according to the Law, is imprisonment for a minimum period of three years and a fine either set at the discretion of the presiding judge between a minimum of fifty thousand and maximum of two hundred thousand Egyptian Pounds, or a fine equal to the sum of the profit obtained by the convicted person through his or her involvement human trafficking and which is greater than the amount of two hundred thousand Egyptian Pounds (section 5). The following paragraphs will explain the exceptions to this standard penalty.

¹⁵ North Africa, *supra* note 9, at 47 and 60.

¹⁶ Kidnapping coupled with rape is punishable by death in Egypt; see footnote 22, *infra* and accompanying text.

¹⁷ "Street Children In Egypt: from the home, to the street, to inappropriate corrective institutions", Iman Bibars, Environment and Urbanization, Vol. 10, No. 1, April 1998, available online at <http://www.colorado.edu/journals/cye/interest/bibas.pdf>, at 2. The Egyptian movies *Hin Maysara*, and *El-'Afareet* provide an account of the lives of street children in Cairo.

¹⁸ After failing to produce a marriage contract, many women abandon their children born out of wedlock to avoid being shunned by their community; these children often grow up on the street. It is reported that "no government statistics are available about the number of abandoned children. Poverty, limited access to birth control, and social stigma against children born out of wedlock are all contributing factors to the number of abandoned children placed in institutions". North Africa, *supra* note 9 at 67.

¹⁹ Tarek Badawy, Comments on Egypt's Report to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, http://webcache.googleusercontent.com/search?q=cache:UJyyg0A6oBQJ:www2.ohchr.org/english/bodies/cmw/docs/tarek_badawy.doc+tarek+badawy&cd=1&hl=en&ct=clnk&gl=ca ("Badawy, OHCHR")

²⁰ The Constitution of the Arab Republic of Egypt, section 2.

According to section 6 of Law 64/2010, anyone who is found guilty of trafficking will be sentenced to life imprisonment and a fine that ranges between one hundred thousand and five hundred thousand Egyptian Pounds in the following cases:

1. The perpetrator organized, established, managed, or was a member or leader of a criminal organization for the purpose of trafficking.
2. If the crime of trafficking was of a transnational character.
3. The act of trafficking was committed by the means of a threat to kill or cause severe harm, physical or emotional torture, or if the crime was committed by a person carrying a weapon. This section overrides most of the provisions of the Criminal Code that deal with 'kidnapping and forced confinement' (sections 280-293). Having said that, those who resort to deceit or coercion to kidnap a female and rape her will receive the death penalty in accordance with section 290 of the Criminal Code. Section 290 of the Criminal Code will trump section 6 of this Law in light of the aforementioned stipulation of section 4 of this Law. Given the technical definition of rape in Egyptian law, section 290 cannot be applied to those who resort to coercion or deceit to kidnap and sexually assault their male victims.²¹
4. The perpetrator is the spouse, ascendant or descendant of the victim, or is in charge of supervising, educating or has authority over the victim. This section imposes harsher penalties on those who abuse the position of trust that they enjoy *vis-à-vis* the victim (it is analogous to the breach of the principle of fiduciary duty in legal systems based on common law).
5. The perpetrator is a public servant or a person entrusted with the performance of a public service and committed the crime by using his or her position.
6. The victim died as a result of the crime, or suffered permanent disability or contracted an incurable disease. The penalty for the perpetrator is significantly harsher than the one found in section 240 of the Criminal Code, which stipulates that those who cause similar injuries to victims shall be imprisoned for between three and ten years. However, there is one situation in which a trafficker (or an accomplice to a trafficker) may receive the death penalty in accordance with the provisions of section 233 of the Criminal Code, which states that the death penalty will be imposed on whoever deliberately kills a person by means of 'substances' that have the effect of poison. The word 'substances' is left unqualified to allow the judge to resort to a comparison between the substance used and poison. Accordingly, anything that has the effect of killing a person following a chemical or biological reaction with the body is deemed to be a poisonous substance. It follows that a kidnapper who knowingly and deliberately introduces the Human Immunodeficiency Virus ('HIV') into the body of a victim of trafficking directly - or through a person whom he or she knows to be HIV positive - may be sentenced to death. While this assertion has yet to be tested in an Egyptian court, this interpretation is supported by prominent criminal law specialists.²²
7. The victim is a child, a person who lacks capacity or a person suffering from a handicap. The definition of 'child' and persons 'lacking legal capacity' are provided in other laws. Section 4 of this Law explicitly provides for a reference mechanism to these other laws.
8. The crime was committed by an organized criminal organization.

While section 6 lists the aggravating circumstances that can trigger a penalty of life imprisonment, the following sections cover the offenses related to the primary crime of trafficking and the associated

²¹ Section 267 of the Egyptian Criminal Code indicates that rape refers to 'vaginal intercourse' without the approval of the female victim. Other forms of intercourse or sexual abuse constitute the crime of sexual assault (*hatk 'ird*) (sections 268-269), and call for a more lenient punishment. Accordingly, males can never be considered rape victims in Egyptian law.

²² Tarek Serour, *qanun al-'oqubat, al-qism al-khas* [Penal Law, Private Section], 1st ed, Al-nahda al-'arabiya publishers, Cairo, 2004, at 70-71; in agreement with Professor Fawzia Abdel Sattar.

punishments. For example, a person will be sentenced to more than three years imprisonment if found guilty of any of the following acts:

- a) The use of force or the threat or the granting of a benefit of any kind to a witness with the aim of having him or her commit perjury, give false testimony or hide information relating to any of the crimes listed in this Law at any stage of the judicial process (section 7).
- b) Hiding or harboring the perpetrator of a crime listed in this Law, or the objects used for the commission of such crime, or hiding or dealing in monies collected from any of the crimes listed in this Law, or concealing traces of the crime (section 8). For this section to be invoked, criminal intent (*mens rea*) must be established by the prosecuting authorities. While section 8 states that the spouses and linear ascendants or descendants ('relatives') of perpetrators of one of the crimes listed in this Law are absolved of any criminal responsibility if they hide and harbor them, given the caveat provided by section 4 of this Law, one can argue that these relatives can still be tried under section 44(bis) of the Criminal Code,²³ which criminalize the concealment of proceeds of crime. Revealing the identity of a witness to one of the crimes listed in this Law, divulging information about the witness in a way that could cause him or her any harm, or facilitating communication between the perpetrators of any of the crimes listed in this Law and any witness to these crimes (section 9). This section also applies to those who give false information to witnesses regarding their legal rights with the intent of harming their physical, emotional or mental well-being.
- c) Inciting people to commit any of the crimes listed in sections 5 to 9, even if none of these crimes are carried out as a result of such incitement (section 10).

Section 11 covers cases in which a member of a 'legal person' commits the crime of trafficking on behalf of the legal person. This section imposes vicarious responsibility on those who have effective authority over a legal person if they fail in their duty to supervise their employees or know of the commission of the crime of trafficking. The penalty shall be the same as the penalties imposed for the actual crime as stated in the Law. Furthermore, section 11 deems legal persons jointly liable for the monetary penalties and compensation if the crime of trafficking was committed by someone acting in the name or for the account of the legal person. Section 16 stipulates that the judgment must be published in two official daily newspapers of wide circulation at the expense of the legal person whose guilt is established. The court may also order the suspension of the activities of such legal persons for a period not exceeding one year.

The *travaux préparatoires* do not indicate which type of organizations Parliament had in mind when discussing the bill that led to the enactment of Law 64/2010. Given the context of the Law, I believe the drafters meant recruitment agencies that assist people to work abroad, and offices in charge of helping people find a spouse (*makatib zawag*). However, by declining to further define the term 'legal persons', the Egyptian Parliament left the door open for the prosecution of any legal person that is involved in human trafficking. Furthermore, section 11 explicitly pierces the corporate veil by holding people who have *de facto* authority over the legal person criminally responsible for the illegal acts of his subordinates. The *mens rea* imposed by this section is that of criminal negligence and the offence is one of strict liability, which can only be refuted if the person in charge of running the legal person proves that he or she acted diligently to prevent subordinates from committing the crime of human trafficking.

Section 12 imposes a lighter penalty of imprisonment for a period exceeding six months and/or a fine that ranges between ten thousand and twenty thousand Egyptian Pounds on all those who were informed of the commission of any of the crimes (or attempts to commit any of the crimes) listed in this Law and yet refrained from informing the authorities. Furthermore, if the person who abstains

²³ Those who breach this sentence are liable to imprisonment for up to two years irrespective of their relation to the perpetrators of crimes under the Criminal Code.

from informing the authorities of said crimes is a public servant and the crime occurred as a result of the public servant's misuse of his or her position, the penalty of incarceration may be extended to five years. This section gives courts discretion to exempt spouses of those involved in trafficking, as well as their ascendants or descendants and siblings.

This particular section (as well as section 8 above) caused an interesting debate in the Egyptian Parliament. A number of Members of Parliament argued that, based on the principles of *shariah*, all those assisting individuals involved in the crime of trafficking, including all relatives, should be tried and sentenced in accordance with section 12. They argued that *shariah* law emphasizes justice over family ties and, as such, no one should be exempted from responsibility. Others argued that absolving relatives of responsibility is rooted in the principles of Egyptian criminal law, citing section 144 of the Criminal Code as an example.²⁴ The Egyptian Parliament opted for a compromise and gave courts the discretion either to try relatives involved in shielding perpetrators of trafficking or to provide them with immunity.

Section 13 stipulates that monies, tools, means of transportation used or collected from any of the crimes listed in the Law shall always be confiscated, provided that they do not violate the rights of third parties in good faith.

Section 14 confirms that Egypt's Law against Money Laundering (Law 80/2002) and section 208 of Egypt's Code of Criminal Procedures apply to the monies obtained as a result of human trafficking. This means that such monies shall be confiscated by the state should the crime of trafficking be found to have been committed.

The aforementioned sections cover the penalties imposed on different categories of people involved in the commission of the crime of trafficking as defined in this Law. Section 15, however, stipulates that a person will be absolved of responsibility if he or she informs the authorities of the commission of the crimes and their perpetrators before the authorities had knowledge of them, provided the information given to the authorities leads to the arrest of the perpetrators and the monies resulting from their crimes. More specifically, the informant will only be absolved of the primary penalty if the information given to the authorities took place after the authorities' knowledge of the crime but prior to the arrest of the perpetrators.

Section 15 appears to be a detailed codification of article 26(3) of the Convention. This section is also analogous to section 107(bis) of the Criminal Code, which provides similar immunity to those who report the crime of bribery. The immunity that the Law grants to informants may cause some concern considering the gravity of the offense at issue. However, the Egyptian Parliament was of the view that the public interest would be better served by absolving one person from responsibility in exchange for putting an end to a criminal enterprise. However, section 15 provides two caveats that can serve as barriers to the full immunity of informants. First, the informant's timing is of primordial importance as it determines whether he or she is fully immune to prosecution, or only immune to the primary penalty. Second, section 15 explicitly states that the provisions dealing with immunity shall not be applied if the victim of trafficking dies, incurs a permanent injury or contracts an incurable illness. While it is obvious that section 15 will not protect informants if the victim contracts HIV or other incurable diseases, it is unclear whether psychiatric/psychological diseases caused by the traumatic experience are or can be defined as 'incurable'. The vagueness of the Law with respect to this question requires a degree of judicial activism. I believe this question will be eventually resolved by the Egyptian Court of Cassation.

In addition, while section 15 encourages members of a criminal group to report trafficking activities to the authorities, the said section may have no effect at all on the government's fight against

²⁴ Section 144 of the Criminal Code exempts those who harbour their criminal spouses, ascendants or descendants from prosecution. Others who harbour criminals can be sentenced to imprisonment for up to seven years.

trafficking given the Law's lack of any guarantee to protect informants. This is in contrast with the protection given to witnesses who testify against human traffickers (section 23(f)).

Chapter 3 – Physical scope of the Law/Jurisdiction (sections 16-17)

Section 16 of this Law stipulates that, subject to the rules pertaining to double jeopardy and the Public Prosecution's exclusive authority to commence a criminal inquiry in Egypt (section 4 of the Criminal Code), Egyptian courts will have jurisdiction over non-Egyptians who commit trafficking against Egyptians, acts described in sections 5 and 6 of the Law abroad. More specifically, section 16 of the Law will be invoked in the following situations:

1. The acts are committed aboard a maritime, aerial or any other means of transport and the means of transport is registered in Egypt or carries the Egyptian flag.
2. The perpetrator *or* the victim is Egyptian.
3. The direction, supervision, planning or financing of the criminal acts takes place in Egypt.
4. The crime is committed by an organized criminal group that operates in more than one country, including Egypt.
5. The aim of the crime is to harm an Egyptian citizen, a resident of Egypt, the security of Egypt or of any of Egypt's international or domestic interests.
6. The person who committed the crime abroad is found in Egypt and has not been handed over to the prosecuting authorities.

Section 16 merits a few observations. First, this section deviates from Egypt's traditional criminal law; subject to a few exceptions listed in the Criminal Code (sections 2 and 3), Egypt normally only has jurisdiction over crimes committed on Egyptian territory. It follows that according to traditional Egyptian criminal law, Egypt cannot have jurisdiction over crimes committed abroad against Egyptian citizens. Section 16, however, not only increases the protection offered to Egyptians if they are found to be victims of trafficking, but it also extends such protection to residents of Egypt. The words 'residents of Egypt' are not qualified by the word 'permanent' as in section 22 (see discussion below). One can, therefore, argue that section 16 protects all residents of Egypt, including refugees. The last point is particularly important for refugees who are victims of (or vulnerable to) acts of trafficking. It follows that as soon as these refugees become legal residents of Egypt in accordance with Article 6 of the Memorandum of Understanding between Egypt and UNHCR,²⁵ Egypt should have jurisdiction to try the persecutors of these refugees. Interestingly, this provision creates a type of universal jurisdiction that is not found in the Protocol and that is alien to traditional Egyptian criminal law.

Second, the use of the words 'security of Egypt' and 'Egyptian interests' as preconditions to Egypt's jurisdiction in the context of this law offers the prosecuting authorities in Egypt a great margin of appreciation in their fight against trafficking. While this is a laudable goal, the failure to define the words 'security' and 'interests' may lead to abuse of the accused's rights, given the prosecuting authorities' wide discretion. Such a danger is compounded by the fact that, the doctrine of precedent is not recognized in Egypt. Thus, the only avenue for an assessment of said terms would be a constitutional challenge before the Constitutional Court.²⁶

²⁵ For an analysis of the MOU and a text of the agreement see Tarek Badawy, "The Memorandum of Understanding between Egypt and the Office of the United Nations High Commissioner for Refugees: Problems and Recommendations" CARIM Analytic and Synthetic Notes 2010/07, Legal Module, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, (2010) ONLINE on http://cadmus.eui.eu/dspace/bitstream/1814/13442/3/CARIM_ASN_2010_07.pdf ("Badawy, MOU").

²⁶ Explain how the constitutional challenge works and explain why a Court Of Cassation decision will not be relevant.

Third, section 16(6) reflects Egypt's commitment to fighting trafficking and upholding the purpose of the Protocol, as it provides a form of universal jurisdiction over individuals accused of trafficking in Egypt if they committed the crime in another state and fled to Egypt. This approach is generally alien to Egyptian law and its implementation will depend largely on the prosecuting authority's interest in fighting international human trafficking that has little or no impact on Egyptian society.

Chapter 4 – International Judicial Cooperation (Sections 18-20)

Sections 18 to 20 confirm Egypt's obligation to cooperate legally and judicially with other states under the Protocol and the Convention, including police and judicial cooperation and information sharing under the bilateral and multilateral treaties to which Egypt is a party. Egypt currently has an Agreement of Cooperation with Greece aimed at fighting human trafficking.²⁷ Furthermore, in the absence of specific extradition treaties, the Convention (Article 16) may serve as one. It follows that additional extradition treaties by Egypt may not be necessary to ensure compliance with the Convention, Protocol or the Law.

Chapter 5- Protection of Victims (Sections 21-27)

Section 21 of this law explicitly states that victims of trafficking shall in no way be criminally responsible or civilly liable for the crime of trafficking. According to His Excellency, Ambassador Wael Abou El Magd, the Egyptian Law Against Human Trafficking is more sophisticated than anti-trafficking laws in some Western States because it provides unconditional protection to victims of trafficking. Ambassador Abou El Magd has conceded, however, that the law will remain toothless if it is not implemented correctly.²⁸ The law also protects victims of trafficking by affording the necessary environment for rehabilitation and safe and swift return to their states of origin should they be non-Egyptian or should they not enjoy permanent residence in Egypt in accordance with the rules and procedures issued by the Council of Minister (section 22). While section 21 should provide some comfort to victims of trafficking, section 22 raises certain questions, whose resolution will have to be determined by the Executive Regulation or judicial activism. For example, section 22 stipulates that victims of trafficking who do not hold 'permanent residence permits' in Egypt shall be returned to their country safely and swiftly. It is unclear what is meant by 'permanent residence permits', for there is no such thing as permanent residence in Egypt.²⁹ Moreover, refugees in Egypt hold residence permits which must be renewed so long as Egypt remains a party to the Convention Relating to the Status of Refugees and its Protocol ('Refugee Convention') and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa ('OAU Convention'). It follows that unless the victims were trafficked into the country (subject to an exception that I will discuss below), the return of victims of trafficking to their country of origin should only occur upon their request, or after the expiry of their residence permit, without it being renewed.

Moreover, section 22 stipulates that the return of victims of trafficking must be 'safe'; this should provide comfort to refugees and other non-Egyptians trafficked into Egypt who risk harm upon return. While refugees will enjoy the protection of the Refugee and OAU Conventions, other victims of trafficking may have a claim for leave to remain in Egypt under the Convention against Torture

²⁷ The Agreement was published in the Official Gazette on August 24, 2000.

²⁸ Interview with His Excellency, Ambassador Wael Abou El Magd, Egyptian Ministry of Foreign Affairs, Cairo, July 2010.

²⁹ Law 88/2005 amending the Law Concerning the Entry and Residence of Foreigners in Egypt (89/1960), section 18 onwards.

(‘CAT’) or other human rights instruments.³⁰ Unfortunately, Egypt has yet to institute detailed mechanisms relating to deportation that are in tune with modern human rights standards.³¹ While those who face deportation can solicit administrative courts to freeze their deportation orders, it is unclear whether they will succeed in securing legal representation given their vulnerability and lack of resources. The involvement of non-governmental organizations is therefore recommended.

Another option would be to extend the role of the deportation committee under Egypt’s Residence Law. Section 29 of Egypt’s Residence Law establishes a committee that issues deportation orders. The committee only looks into the cases of those who hold a ten-year residence permit (known as a Special residence permit). Holders of other permits can be deported following an order of the Interior Minister, or the Head of the Department of Passport, Immigration and Citizenship.³² Previously, I have argued that in light of Egypt’s current obligations under international human rights treaties, the role of the deportation committee must be extended to cover all deportation orders.³³ The Council of Ministers should consider this option before issuing the necessary rules and procedures relating to the deportation of victims of trafficking in accordance with section 22 of Law 64/2010.

Law 64/2010 also provides the necessary tools for guaranteeing the physical, mental and emotional protection of victims, their isolation from the perpetrators of the crime of trafficking, as well legal aid to the victims (section 23). The Law also calls for the establishment of designated places (shelters) where victims can stay (section 24) and receive family members, lawyers and representatives of the ‘specialized authorities’. It is unclear what is meant by specialized authorities, as this is not explained in the Law. Neither is it clear whether victims of trafficking will be allowed to stay somewhere other than these shelters. However, by enacting this section, the Egyptian government has reversed its informal policy of refusing to establish shelters for victims of violence out of fear that these shelters will encourage prostitution.³⁴

Sections 25 and 26 guarantee the fast and safe repatriation of Egyptians who are victims of trafficking and the provision of care, education, training and rehabilitation to them through governmental and non-governmental institutions. The Egyptian Ministry of Foreign Affairs has often been criticized in the Egyptian media for failing to protect the interests of Egyptian citizens abroad. Fortunately, in conjunction with the International Organization for Migration (‘IOM’), the Egyptian Ministry of Foreign Affairs has been conducting training sessions for diplomats on how to detect and combat cases of trafficking. While this is a commendable step, one still needs to observe how the Ministry will assist Egyptian victims of trafficking and whether or not such victims will be separated from other irregular migrants of Egyptian origin and treated accordingly. The last section (section 27) of this Chapter creates a fund whose role is to provide financial assistance to victims of trafficking as defined in the Law. The fund shall be under the authority of the Prime Minister; its jurisdiction and sources of finding shall be decided by the President of the Republic. This section states that the fines imposed on those found guilty of one of the crimes listed in this Law, as well as the confiscated monies, tools and means of transportation, shall be deposited in the fund. The fund shall also accept donations and gifts from national and international sources.

³⁰In July, 2010 the Egyptian Administrative Court ruled that deportation to a country where a person risks persecution is prohibited in Egyptian law; see *Zahra Suleiman Ahmed v. the President of the Republic, the Interior Minister and the Minister of Foreign Affairs*, 5 July, 2010, the Council of State, Administrative Court, Cairo, Egypt.

³¹Deportation is currently an executive decision and is not subject to automatic court supervision. Potential deportees must submit a claim for review with the administrative courts.

³²Sections 27 and 30 of Laws 89/1960 and 88/2005 respectively; *supra* note 31.

³³Badawy, OHCHR, *supra* note 20..

³⁴The Egyptian government has consistently refused to set up shelters for female victims of sexual and gender based violence, arguing that these shelters may be wrongly perceived as brothels. The government never provided an explanation of how shelters can be turned into brothels, especially since the shelters are managed by the government.

Chapter 6- Final Provisions (Sections 28-30)

This Chapter stipulates that a ‘National Committee on the Trafficking of Human Beings’ will be established by order of the Prime Minister (section 28). The Committee will be managed by the Prime Minister’s Office and will coordinate the policies, plans, and programmes aimed at fighting human trafficking and protecting victims of trafficking as well as witnesses. The Prime Minister is also entrusted with issuing an Executive Regulation for Law 64/2010, in which the implementation tools of this Law will be provided (section 29). Finally, section 30 stipulates that this Law should come into force on 10 May 2010. While this Law has already come into force, the Executive Regulation is already more than six months overdue. The enactment of the Executive Regulation will reflect Egypt’s level of commitment to tackling human trafficking. It would be a shame if Law 64/2010 cannot be properly interpreted because of an administrative delay in enacting the Executive Regulation.

Conclusion

Law 64/2010 is a sophisticated piece of legislation that aims to combat organized crime and provide assistance to victims of trafficking. It goes beyond the Protocol and the Criminal Code by extending Egypt’s jurisdiction to try human traffickers irrespective of where the crime is committed and by providing unconditional assistance and protection to victims of trafficking. The law, however, faces tough challenges, chief among which is the willingness of the state to invest sufficient resources to prosecute human traffickers and the ability of the Law to fight some cultural practices such as child and seasonal marriages and some forms of child labor. Whether the Law will succeed in this endeavor will largely depend on the Egypt’s political will. However, to demonstrate that it is determined, Egypt must first enact the Executive Regulation to show how the Law can be properly interpreted.

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