



Protection and assistance for human trafficking victims under Law 23-04

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Abstract:

Victims of human trafficking are frequently overlooked, with attention predominantly directed towards the crime and the criminal organizations responsible. Consequently, it is crucial to prioritize the victims, as they are the most in need of care. Their rights must be clearly defined at every stage of the proceedings, along with the mechanisms for providing them with appropriate assistance.

Algeria is considered one of the countries that places great emphasis on combating human trafficking and protecting its victims. Significant improvements have been made to its national legislation in this regard. Among these is Law No. 23/04.

This law aims to establish the requisite procedures and interventions to mitigate the occurrence of human trafficking and safeguard its victims. It mandates the state to provide protection and support services to those affected by this crime, facilitating their social reintegration. Additionally, the law emphasizes strengthening institutional and international collaboration in efforts to prevent human trafficking.

Keywords: Assistance, Human Trafficking, Law 23/04, Protection, Victim...

I. INTRODUCTION

The Universal Declaration of Human Rights prohibits the enslavement and servitude of individuals, as well as all forms of human trafficking. Disregard for this prohibition is considered one of the most serious violations of human rights. However, currently, no country is safe from this crime, even though it is criminalized in all states. Millions of men, women, and children are trafficked across international borders annually, and the issue of human trafficking continues to escalate.. (Kristine Plouffe-Malette, 2012) Therefore, attention to protecting and supporting trafficking victims is a fundamental pillar in combating this phenomenon and mitigating its various impacts. (Al-Harbi, 2013)

In order to successfully combat crime, there must be a strategy that balances strict law enforcement on one hand and the protection of victims' rights and human dignity on the other. (Georgy, 2007) Especially since scholars agree that merely by the occurrence of the crime, the victim's right arises, whether it is a procedural or substantive right. (Haidara, 2018) This means that we must not neglect the victims of this crime, especially concerning achieving justice and ensuring protection and care for them after the crime, including involving them in legal proceedings and providing assistance to them at all stages, informing them of their rights, and other forms of protection and care. (Mubarak, 2009)

This is what the legislature sought to achieve through Law 23/04 issued on May 7, 2023, concerning the prevention and combating of human trafficking, which supports national legislation with a law that aligns with Algeria's international obligations, and contains an entire chapter dedicated to the protection and support of victims of this crime. Hence, the issue at hand prompts the question: **What measures are in place to safeguard and aid victims of human trafficking?** This inquiry will be methodically answered as follows:

1. The Human trafficking Victims' Concept.
2. The importance and objectives of protecting and assisting victims of human trafficking.
3. The process of protecting and assisting victims of human trafficking.

1. Human trafficking Victims' Concept:

Human trafficking is a human rights violation that impacts people of all races, social classes, demographics, and genders. The danger posed by traffickers is widespread, leaving no group or community untouched.

1.1. Definition of Human Trafficking Victims

The term "victim" has become widely used among researchers and in legal contexts across various countries, as well as in conferences and seminars focused on "victims of crime" to address issues concerning the protection of their rights. This term is sometimes used to denote only the injured party, while at other times it encompasses both the injured party and others affected by the crime. (Bouhlit, Fatnassi, 2022)

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, recognizes trafficked individuals as victims. However, it does not provide a precise definition of this term.

In contrast, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides a definition of a victim as “an individual who has experienced harm, either alone or as part of a group. This harm can encompass physical, psychological, or financial damage, or the loss of rights resulting from a legal violation.” (Labidi, Ramach, 2024)

The same definition applies even if the state law does not punish it, but it is considered violations of international standards related to human rights.

An individual can be regarded as a victim irrespective of whether the criminal has been identified, captured, prosecuted, or convicted, or their relationship to the victim. The term “victim” also encompasses the immediate family members of the original victim and those who are affected by intervening to help the victim escape or avoid harm. (U.N Declaration, 1985)

According to Algerian law, particularly Article 2 of Law No. 04-23, “a victim is defined as any individual whose physical or mental well-being has been compromised due to an act that constitutes human trafficking. This definition applies regardless of the person's gender, color, race, lineage, religion, language, nationality, ethnic origin, or disability, and regardless of whether the perpetrator has been identified, captured, prosecuted, or convicted.”

1.2. Human Trafficking Victims' types:

Enter Victims of human trafficking can be classified into 5 categories:

- *The primary victim:* is the direct victim of the crime who suffers harm as a result. (UNODC, 2014)
- *The secondary victim:* includes immediate family members or those who assisted the primary victim.
- *The vulnerable victim:* Anyone who is exceptionally vulnerable due to age, physical or mental condition, or those with particular susceptibility to victimization by a perpetrator.
- *The potential victim:* Those who belong to a group at risk and are susceptible to trafficking, and the vulnerable victim can be considered a potential victim.
- *The assumed victim:* Someone who has been trafficked but has not yet been identified as a victim. (CNCDH, 2016)

2. Importance and objectives of protecting human trafficking victims:

Over time, Human Trafficking reports have highlighted the urgent need to safeguard victims throughout each stage of the law enforcement process. A fundamental aspect of a victim-centered approach is the principle that individuals trafficked for human

exploitation should not face criminal charges for unlawful activities that result directly from their exploitation.

2.1. Importance of protecting victims of human trafficking

Protecting victims of human trafficking is crucial due to the severe and far-reaching dangers this crime poses on every level, it is a crime against humanity. Additionally, it is complex and intertwined with other crimes, and it transcends borders. Therefore, protecting victims of human trafficking is among the key elements in the criminal policy adopted to combat this type of crime. (UNODC, 2010)

Protecting and assisting victims increases their willingness to cooperate with investigative authorities, as without evidence from the victims, it becomes challenging to establish the crime's components and track down those responsible. (CNC DH, 2016)

The United Nations emphasizes the importance of protecting victims because they are often considered criminals and accused of violating immigration laws. Therefore, commitment to protection may require a review of immigration laws, and for this reason, the Palermo Protocol considered the crime to be established even if it was committed with the victim's consent to exploitation. (Al-Harbi, 2011)

Algerian legislation has followed this, as stated in Article 14 of the Law No. 23/04, where the state ensures the help for all victims of human trafficking by providing them with support, healthcare, psychological, social, and legal care to facilitate their reintegration into their communities.

2.2. Protecting human trafficking Victims' objectives:

- Treating victims humanely, from their discovery until their integration into their communities and ensuring their safety there.
- Not assigning criminal responsibility for actions committed by victims when these actions are linked to the crime of human trafficking.
- Ensuring the availability of necessary protection for victims in line with their demographic characteristics.
- Collecting information to establish a database on this crime in all its aspects to contribute to combating the crime and developing future strategies to prevent it on various levels. (U.N Protocol, 2000)

3. Protection and Assistance Process for Victims:

Given the severity of human trafficking, it's essential to implement strong programs aimed at safeguarding its victims, in accordance with specific policies and strategies outlined and emphasized by the Algerian legislature. These measures are in alignment with international agreements and conventions. This all-encompassing protection includes recognizing, referring, safeguarding, supporting, and reintegrating victims of trafficking.

3.1. Stage of Discovery and Identification of Victims:

Victims' identification is an important step in distinguishing them from the perpetrators, thereby granting them access to the legal protection and assistance they are entitled to. Algerian legislation, Similar to the Palermo Protocol, it highlights the need for swiftly identifying victims at every stage of the process of the legal process, as articulated in Articles 28 and 30 of Law 23/04. Therefore, the timely and accurate identification of trafficking victims is paramount, not only to ensure they receive the necessary support but also to facilitate the effective legal prosecution of the crime. Establishing guiding principles for law enforcement agencies is recommended to aid in the identification of victims and their referral to appropriate support services. (Al-Harbi, 2013)

However, identifying victims of human trafficking is a complex process facing many challenges. The first challenge is that victims rarely turn to the competent authorities, either because they are unaware that they are victims of a crime, or because they often do not know their rights, or because they fear revenge or pressure from the perpetrators of the crime. Another difficulty is that identification processes often conflict with immigration policies and laws in countries where individuals are not considered victims but rather foreigners in an illegal situation. (CNC DH, 2016)

Victims are usually discovered and identified by law enforcement agencies, specialized anti-human trafficking institutions, or border police.

3.1.1. Human Trafficking Indicators:

To effectively perform their duties and attempt to identify victims of human trafficking, the personnel involved rely on a series of signs or indicators that aid in the identification process, focusing primarily on:

- Everything related to the initial interaction with the victim, including details about the person's external appearance, which is done through examination and investigation for signs of violence, malnutrition, or illness... and others related to the behavior of the victim, such as attempting to escape from security, lack of free communication, behaving unusually... Signs related to the person's mental state, such as noting fear and anxiety, and finally, anything related to travel documents and identity, such as possessing forged documents or having documents seized by others.

- Other indicators can also be relied upon, such as exposure to abduction or deception and false promises... or failure to pay travel fees to the destination country, with the victim undertaking to pay them later in exchange for work or other services, or traveling with non-family members.

- There are also signs related to living conditions such as the absence of official residence for the victim or their residence in remote places and the lack of minimum cleanliness conditions. Or related to work in general such as not knowing the workplace address or working in places known for exploitation and human trafficking, inability to

discuss work conditions, ultimately leading to threats of punishment for non-compliance with orders, and finally, working without pay or not being able to dispose of the money received.

3.1.2. Handling Victims at This Stage:

- Once the victims' identities are known, they are placed in specialized reception centers as victims to accommodate them in safe conditions, as affirmed by the provisions of Article 15 of Law 23/04.
- Treating victims in a humane manner and attempting to gain their trust from the very beginning.
- It is imperative to engage a certified interpreter when victims are not fluent in the local language, in accordance with the regulations outlined in Article 22 of Law 23/04.
- A structured scientific interview should be carried out by a specialist of the same gender and in the same language as the victim, during which preliminary information about the victim is gathered.
- It is essential for relevant authorities to participate in providing various services to the victims and to form initial teams to assess the victim's health, legal, and psychological status. (Yılmaz, 2021)
- The importance of this stage necessitates training for individuals involved in identifying and detecting victims. This training should take into account the necessity of upholding human rights and addressing sensitive matters concerning children and gender. (U.N Protocol, 2000)
- At the end of these procedures, a legal, medical, psychological, and social diagnosis is conducted, and an initial report on the victims' condition is prepared by experts in preparation for their referral to the second stage of work, which is the assistance and protection stage.

3.2. Stage of Protection and Assistance to Victims:

Although offering assistance and protection may not be entirely sufficient for victims, as it could discourage them from seeking help from authorities due to fears of mistreatment, deportation, or threats to their personal safety, it is essential to implement measures that ensure their physical and psychological well-being. These measures should include the provision of appropriate accommodation, counseling services, access to information, medical and psychological care, material support, employment opportunities, education, and training programs. (UNODC, 2010) Which means this stage should include:

3.2.1. Assistance to victims of human trafficking:

Material Assistance: Individuals should receive financial support to help them build a new life away from the exploitation they have suffered, including secure housing, food, clothing, and financial support to meet basic daily needs. Additionally, facilities should be available to accommodate their family members, lawyers, and authorities' representatives, with special attention given to women, children, and persons with

disabilities, as they are usually more susceptible to the negative psychological and physical effects of this crime. (CNCDH, 2016)

Legal Assistance: Offering straightforward and comprehensible advice and information to victims in a language they can easily understand is crucial to ensure they are aware of their rights and legal options. Additionally, translators should be provided when necessary. Institutions and organizations concerned with victim protection should also develop accessible resources explaining their rights and the steps to be followed, such as printed materials, regulations, and educational materials. Finally, victims' understanding of their legal rights can be improved through direct communication with specialized lawyers or professionals in the legal field. Moreover, the state should facilitate their access to justice by providing legal assistance at all stages of the trial. (Art 20-22, Law 23/04)

Medical and Psychological Assistance: It is the responsibility of the state to provide victims with comprehensive medical care, including full medical examinations, treatment for any physical injuries or chronic illnesses, and specialized care for women's health issues. Additionally, psychological support should be provided to help victims overcome the negative effects of trafficking, such as shock, depression, and anxiety. All of this is the responsibility of the state, meaning that victims should not bear any expenses. Healthcare for victims should be provided free of charge. (Art 17, Law 23/04)

Employment, Education, and Training: This can be achieved through education and vocational training programs to equip victims with the new skills required in the job market or by providing professional support and counseling to help them choose careers that match their skills and abilities. In addition to that, victims should be assisted in enrolling in schools or universities to obtain academic certificates that will aid them in the future. (Art 16, Law 23/04)

Article 18 of the aforementioned law stipulates that the state, in coordination with relevant foreign authorities, shall provide care for Algerian victims abroad in order to create all necessary conditions to assist them

3.2.2. Protection of Victims of Human Trafficking

Besides relocating victims to secure places for their protection, the Algerian legislature has decided on a series of measures to support this protection throughout all stages of the lawsuit. This is affirmed by Article 30 of Law 23/04. Among the measures introduced by the Algerian legislature in this regard are:

- Prohibiting suspects or perpetrators accused of committing the crime from contacting the victims to ensure they are not threatened or pressured by them. This restriction on contact may be direct, such as prohibiting personal approach or communication via phone or mail, or it may be indirect, such as using social media or relying on intermediaries to communicate with the victims on their behalf. This is stated in Article 28, Paragraph 2, of the law.

- According to the same article in its third paragraph, victims can remain within national territory until the conclusion of the investigation or trial to ensure they are not endangered when giving their testimony.
- Protecting Safeguarding the victims' identities and ensuring the confidentiality of the procedures, as outlined in Article 29 of the same law, always aiming to protect them from pressures and encourage their cooperation with the authorities. (Art 25, Law 23/04)

3.3. Reintegration Phase:

Article 19 of the previous law requires facilitating the voluntary and safe return of foreign victims to their country of origin or place of residence. Consequently, if the victim consents to return, Algerian authorities are required to undertake the necessary measures to ensure this, with a focus on their safety and in compliance in accordance with the international principle of non-refoulement and the prohibition of inhumane or degrading treatment. (U.N Protocol, 2000)

If the victims are Algerian, the relevant authorities should facilitate their return to Algeria as soon as possible.

II. CONCLUSION

The identification of human trafficking victims should not be viewed as an ultimate objective, but rather as a step toward clarifying their legal status within this multifaceted crime. Victims may be wrongfully prosecuted as perpetrators, which can lead to a transition from receiving protection and care to facing prosecution and punishment, ultimately depriving them of their rights. Additionally, this scenario might enable criminal organizations to exploit the situation to evade prosecution and punishment.

Thus, promptly identifying victims and assessing their situations to offer suitable protection and support is crucial for effectively combating human trafficking. Protection is essential for initiating investigations, as victims frequently hold critical information that can aid the relevant authorities. Consequently, it is vital to protect and support them to encourage the sharing of their knowledge, given their pivotal role in revealing the crime.

In this context, Law 23/04 serves as a critical legal framework designed to safeguard the rights and physical and psychological well-being of victims; while also ensuring they receive necessary support and care. The law outlines a comprehensive set of measures that must be implemented, beginning with identifying victims and providing essential protection to guard against coercion by the perpetrators. It further mandates the provision of psychological and social support, alongside medical and healthcare services. Additionally, the law requires authorities to offer legal advice and guidance, and to collaborate with victims throughout legal proceedings.

- **Referrals and references:**

• **Books:**

- Khalid bin Saleem Al-Harbi (2011), Children Victims of human Smuggling, Naif University Publishing House, Riyadh, Saudi Arabia
- Hisham Abdul Aziz Mubarak (2009), The nature of human trafficking, with an application to Bahraini Law No. 01 of 2008 on combating human trafficking, Security Media Center.

• **Journal article:**

- Saadi Haidara (2018) The specificity of the criminal victim's claim, Journal of Social and Human Sciences, Issue 15, pp. 11-25.
- Tuğba Yılmaz (2021), Victimology from clinical psychology perspective: psychological assessment of victims and professionals working with victims, Curr Psychol. 40(4): 1592–1600.
- Yamina Labidi, Sabrina Ramach (2024), Analysis of the behavior of victims of fraud and deception according to the theory of routine activities (A case study in the state of Tebessa), The journal of El-Ryssala for studies and research in humanities, Volume 9, Issue 1, 537-552.
- Yazid Bouhlit, Abdel Rahman Fatnassi (2022), Victimology, The journal of El-Ryssala for studies and research in humanities, Volume 7, Issue 4, 537-552.

• **Thesis:**

- Kristine Plouffe-Malette: The normative consideration of the victim in international and European instruments combating human trafficking - Thesis presented to the Faculty of Graduate and Postdoctoral Studies of Laval University as part of the Master of Laws program for the degree of Master of Laws (LL.M), 2012.

• **Seminar article:**

- Khalid bin Saleem Al-Harbi: A proposed model for protecting the rights of child victims of human trafficking in the Arab world, intervention at the Arab Child Rights Conference, Naif Arab University for Security Sciences, 2013.
- Hani Fathy Georgy, "The International Legal Framework for the Protection of Victims of Human Trafficking: The Cornerstone of a Consistent and Comprehensive Approach to Combat and Eradicate Human Trafficking," paper presented at the Regional Symposium organized by the United Nations Development Program on Organized and Transnational Crimes, Cairo, March 28-29, 2007

• **Internet websites:**

- National Authority for Combating Trafficking in Persons, General Indicators List Related to Monitoring Victims of Trafficking in Persons in Tunisia, <https://www.coe.int/ar/web/tunis/inltp>
- National Consultative Commission on Human Rights: The fight against trafficking and exploitation of human beings, Report for the year 2015, La Documentation Française, 2016, Paris. <https://www.cncdh.fr/publications/rapport-sur-la-lutte-contre-la-traite-et-l'exploitation-des-etres-humains>
- United Nations Office on Drugs and Crime (UNODC), Global Report on Trafficking in Persons 2014, United Nations, New York, 2014, www.unodc.org/unodc/en/data-and-analysis/glotip.html