

Human Trafficking and Its Combat in Algerian Legislation According to Algerian Law 23-04 and Kuwaiti Law No. 90 for the Year 2013

جريمة الإتجار بالبشر ومكافحتها في التشريع الجزائري وفق القانون الجزائري 04-23 والقانون الكويتي
قانون 90 لسنة 2013

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Abstract:

Human trafficking represents a modern form of slavery or bondage. This crime, which commodifies humans, handled by professional brokers across national borders, aims at exploiting them for low-wage jobs, sexual activities, or the trade of their organs, exposing them to various forms of deprivation and violations that affect human rights principles. This has prompted the international community to take immediate and concrete steps to curb this criminal phenomenon, which leaves thousands of victims annually, in addition to causing psychological and social harm. Consequently, countries and international organizations, like the United Nations, have rushed to sign numerous international treaties that criminalize and prevent all forms of human trafficking and encouraged providing assistance to the victims in any form. Given the heinous nature and universality of this crime, several countries, including Algeria and Kuwait, have issued legal texts to combat it and penalize anyone involved in human trafficking. This is due to Algeria and Kuwait ratifying and joining many related international agreements and implementing a range of criminal measures aimed at combating organized crime across national borders. However, it is still essential for more interventions and mechanisms related to this criminal phenomenon to protect individuals specifically and to protect the state and its economy in general.

Keywords: Crime; Human Trafficking, Slavery; Sexual Exploitation; Organ Trafficking.

ملخص:

تعد جريمة الاتجار بالبشر من الصور الحديثة لظاهرة الرق أو العبودية، هذه الجريمة التي تجعل من الإنسان سلعة مادية يتم التصرف فيها بواسطة وسطاء محترفين عبر الحدود الوطنية، بقصد استغلاله في أعمال ذات أجر متدن أو أعمال جنسية أو استغلال أعضائه البشرية من خلال المتاجرة بها، وتعرضهم لشتى أنواع الحرمان والانتهاكات التي تمس بمبادئ حقوق الإنسان، مما دفع المجتمع الدولي لاتخاذ خطوات ملموسة وسريعة قصد وضع حد لتفاقم هذه الظاهرة الإجرامية التي تخلف آلاف الضحايا سنويا، إضافة الى ماتخلفه من أضرار نفسية و إجتماعية، لذا سارعت الدول والمنظمات الدولية على غرار الأمم المتحدة لإبرام العديد من الاتفاقيات الدولية التي جرمت ومنعت كل شكل من أشكال الاتجار بالأشخاص، كما حثت على تقديم المساعدات للضحايا أيا كان نوعها. ونظرا لبشاعة هذه الجريمة وعالميتها فقد أصدرت العديد من الدول من بينها الجزائر و الكويت نصوص قانونية خاصة بمكافحتها، ومعاقبة كل من يرتكب أي فعل من قبيل الاتجار بالأشخاص وهذا راجع لمصادقة الجزائر و الكويت وانضمامها للعديد من الإتفاقيات الدولية ذات الصلة، واتخاذها لجملة من الإجراءات الجزائية بهدف محاربة الجريمة المنظمة عبر الحدود الوطنية، إلا أنه لا يزال من الضروري أن تتدخل بالمزيد من الإجراءات والآليات المتعلقة بهذه الظاهرة الإجرامية، وهذا بهدف حماية الأشخاص خصوصا وحماية الدولة واقتصادها عموما.

الكلمات المفتاحية: جريمة، الاتجار بالبشر، الرق، الاستغلال الجنسي، الاتجار بالأعضاء البشرية.

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Introduction:

A safe society is the aspiration of all communities and nations. From birth, a human's nature is inherently good, and they are unaware of what crime is. However, crime is a social phenomenon inherent in society, stemming from within it and occurring within its confines. No society is free from crime, which entails harming others, infringing upon them, and disrespecting the laws that ensure everyone's rights. Some individuals commit crimes for various reasons that affect them and lead them towards criminal activities. Over the ages, crime has evolved, diversified, and the methods of committing it have changed. Therefore, our study will focus on the crime of human trafficking according to Algerian Law 23-04. This crime is considered the third largest illegal trade in the world after arms trafficking and drug trafficking, making it one of the most significant issues addressed.

Human trafficking is an old-new criminal phenomenon, originating through the ages in forms of enslavement, bondage, and brutal exploitation of humans. It has continued to our current era, becoming a sinful activity of organized crime gangs and some entities that lack the elements of organized crime. It differs from other crimes in its subject, which is the human being, considered the most crucial part of the deal, as a commodity exchanged by criminal gangs, generating enormous profits estimated in billions of dollars. Many factors have contributed to the spread and evolution of this criminal phenomenon, primarily globalization and technological advancement, in addition to social, economic, and political factors, leading to an increase in its victims.

Human trafficking crimes are among the worst, most horrific, and most heinous crimes that demean human dignity and humanity, turning humans into commodities bought and sold, in addition to exploiting their bodies and trading their organs. Therefore, combating this crime has become a necessity in the current era.

Thus, the international community has sought to combat this phenomenon and confront it with all its might, as a dangerous and shameful form of global slavery and a contemporary form of bondage. This has led to the signing of many agreements between the world's countries to eliminate this crime. Algeria has not remained isolated; it has worked to eliminate this crime by joining conventions, treaties, and protocols that prohibit this crime, such as the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in 1965, the Forced Labour Convention of 1930, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of 2000, and other international conventions against this crime. Recognizing the atrocity of this crime as contrary to human values, Algeria amended its Penal Code in 2009, which led to the creation of Section 5 repeated under the title of human trafficking, and Section 5 repeated 1 under the title of organ trafficking, until the issuance of the independent law 23-04 related to the prevention and combat of human trafficking, changing the term from "persons" to "humans." In Kuwait, Law No. 91 of 2013 was issued regarding combating human trafficking and smuggling of migrants.

The importance of this study emerges from the extensive impact of the human trafficking phenomenon, as its dangers are not limited to a single country but extend to several countries, giving it the character of an organized crime that crosses national borders. This topic also gains significance through the criminal act's infringement on the most crucial right of individuals, the

right to freedom and dignity, necessitating the intervention of states and international organizations to protect the rights of trafficking victims.

Our study aims to understand the concept of human trafficking, identify its characteristics and what distinguishes it from other similar crimes, recognize the elements of human trafficking crimes and the prescribed penalties, and then explore the mechanisms to combat this crime in Algerian legislation.

Thus, the problem that presents itself is:

How effective is the criminal policy adopted by the Algerian legislator in combating human trafficking under the new Law 23-04 and Kuwaiti Law No. 91 for the year 2013?

To answer this question, our study will employ a historical approach to illustrate the historical development of human trafficking through previous ages in various civilizations and the Middle Ages. We will also rely on a descriptive method to describe this phenomenon, a comparative method to compare this crime with other similar crimes, and an analytical method focusing on analyzing legal texts related to human trafficking.

Based on this, the study topic will be addressed according to a dual plan that includes:

- The first section: The conceptual framework of human trafficking.
- The second section: Combating human trafficking in Algerian legislation according to Law 23-04 and Kuwaiti Law No. 91 for the year 2013.

Section I: The Conceptual Framework for Human Trafficking

Human trafficking is considered a form of organized crime that crosses borders and is one of the most serious crimes that violates individual rights, contradicting the values and morals of peoples, where it degrades dignity and exploits individuals in the worst ways. In our Islamic law, humans are honored above all other creatures created by God, as stated: *"And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference"* (Surat Al-'Isra' [17:70]).

Human trafficking is not a phenomenon of the modern era but has been known since ancient times, where it appeared in forms of slavery and servitude. This crime, like others, has gone through several historical stages to its current form, becoming more dangerous. Its development and spread have been influenced by several factors, notably poor economic conditions and some countries going through transitional stages.

A) The Concept of Human Trafficking:

The phenomenon of human trafficking is one of the most widespread criminal phenomena in the world, and it is among the most dangerous crimes that threaten the entity and corrupt the values of society. It was necessary for us to define this crime by discussing its various definitions and then specifying its characteristics.

1- Definition of the Term Human Trafficking:

1-1 Linguistically:

"Trafficking" comes from the verb that implies selling and buying¹, while "human" linguistically means the creation, applicable to female, male, singular, and plural forms, representing both a single human and humanity collectively².

1-2 Terminologically:

The word "trafficking" derives from "trade," which is the practice of buying and selling. "Trafficking" means engaging in trade to offer goods to others through buying and selling. If the subject of trade is lawful, the trade is legitimate, such as trading in goods and merchandise. However, if the subject of trade is illicit, it is considered illegitimate, such as drug trafficking and human trafficking³.

Referring to legal articles, we find that they define a merchant and determine the acts considered commercial. The first article of the Commercial Law states:

"A merchant is any natural or legal person who engages in a commercial activity and takes it as their usual profession unless the law stipulates otherwise."

The second, third, and fourth articles specify the activities considered commercial according to their subject matter, form, and dependency, respectively⁴.

Meanwhile, humans are traded as commodities that can be exchanged and confiscated domestically or by relocating them from their original country to other countries in exchange for something, thereby making humans a subject of supply and demand⁵.

1-3 Jurisprudential Definition of Human Trafficking:

Jurisprudence defines human trafficking as "all lawful and unlawful acts that turn a human into merely a commodity or a victim to be dealt with by intermediaries and professionals across national borders, intending to exploit them in low-wage labor, sexual activities, or similar, whether this act is done with the victim's consent or forcibly or through any other form of enslavement⁶."

Internationally, human trafficking has been defined in several ways:

1-3-1 According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000

Article 3, paragraph (a), defines trafficking in persons as: "The recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force, or other forms of coercion, kidnapping, deception, abuse of power, or exploitation of vulnerability, or the giving or receiving of payments or benefits to obtain the consent of a person having control over another person, for the purpose of exploitation. This includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs⁷."

The definition provided in this article consists of three elements:

- **The Act:** It involves the acts of recruiting, transporting, transferring, harboring, or receiving persons.
- **The Means:** Through the threat or use of force, other forms of coercion, kidnapping, fraud, deception, abuse of power, or exploitation of vulnerability, or by giving or receiving payments or benefits to obtain the consent of a person who has control over another (the victim).
- **Forms of Trafficking:** For the purpose of exploitation, which includes, at a minimum, the exploitation of the prostitution of others, other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs⁸.

1-3-2 According to the Council of Europe Convention on Action against Trafficking in Human Beings 2005

Human trafficking is defined as the recruitment, transportation, transfer, harboring, or receipt of people through the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to obtain the consent of a person with control over another person for the purpose of exploitation, which includes, at a minimum, the exploitation of the

This convention agrees with the Protocol in its definition and also in not recognizing the consent of a trafficking victim as valid. However, there is a difference between the Protocol, which specifically focuses on women and children, and the Convention, which targets trafficking in persons more generally without distinguishing by gender⁹.

1-4 Definition of Human Trafficking in Algerian and Kuwaiti Law:

1-4-1 Definition of Human Trafficking in Algerian Law:

First, it's important to mention that the Algerian legislator issued a specific law on human trafficking, Law 23-04¹⁰, marking a significant step after facing criticism for the absence of an independent law on human trafficking in Algeria. Previously, it only included a section on the trafficking of persons within the Penal Code amendment in 2009.

The Algerian legislator provided a definition similar to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, defining it in Article 303 bis 4 as: "Trafficking of persons involves the recruitment, transportation, transfer, harboring, or receipt of one or more persons through the threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power, or exploitation of vulnerability, or 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 includes, but is not limited to, exploitation of the prostitution of others, forced labor, servitude, slavery or practices similar to slavery, or the removal of organs¹¹."

Upon review, it's observed that the Algerian legislator used the term "trafficking of persons" instead of "human trafficking." Despite aligning with the definition in the Protocol, there's a difference in the forms of exploitation listed in the Algerian Penal Code, which are provided exhaustively, unlike the Protocol, which includes them as minimum forms of exploitation.

However, through Law 23-04 related to the prevention and combating of human trafficking, the legislator chose the term "human trafficking" over "persons" and defined it in Article 2 as: "Human trafficking includes the recruitment, transportation, transfer, harboring, or receipt of persons through the use of force, coercion, kidnapping, fraud, deception, abuse of power or position, exploitation of vulnerability, or the giving or receiving of payments or benefits to obtain the consent of a person having control over another for the purpose of exploitation. This includes, especially, the exploitation of prostitution of others, sexual exploitation, forced labor, servitude, slavery, practices similar to slavery, or the removal of organs."

The law also considers human trafficking to include giving or receiving payments or benefits for the sale, delivery, or acquisition of a child for any purpose and in any form. It specifies that the use of the means mentioned is not required for the crime of human trafficking involving a child, as long as the intent for exploitation is established. The Algerian law distinguishes between two types of human trafficking crimes:

- **Exploitative purposes:** This involves exploiting trafficking victims for sexual exploitation, labor under unlawful conditions or harsh circumstances, or any other illegal activity harming their health, safety, or dignity.
- **Non-exploitative purposes:** This involves the sale or transfer of organs or tissues of trafficking victims, forced labor or military service, or any form of slavery.

1-4-2 Human Trafficking in Kuwaiti Law:

Article 1, paragraph 4, defines human trafficking as: "The recruitment, use, transportation, harboring, or receipt of persons by means of coercion, whether by using force or threats of force, or by other forms of kidnapping, fraud, deception, coercion, abuse of power or influence, exploitation of vulnerability, or the giving or receiving of payments or benefits, for the purpose of exploitation. This includes the exploitation of prostitution of others, any form of sexual exploitation, forced labor, servitude, slavery, practices similar to slavery, or the removal of body organs¹²."

B) Characteristics of Human Trafficking Crime:

Human trafficking is distinguished by a set of characteristics that differentiate it from other crimes, which include:

1- Human Trafficking is a Primary Activity of Organized Crime:

It is clear that discussing this important characteristic, which distinguishes human trafficking before addressing the definition of organized crime and its relation to human trafficking and the unique characteristics that set this crime apart from others, is essential.

1-1 Definition of Organized Crime:

According to the UN Convention Against Transnational Organized Crime, it is defined as: "A structured group of three or more people acting together over an extended period of time with the intent to commit one or more serious crimes or offenses defined by this Convention in order to directly or indirectly benefit financially or materially is referred to as an organized criminal group."¹³."

1-2 Characteristics of Organized Crime:

The most important characteristic of organized crime worldwide is its ability to operate collaboratively and efficiently, with significant coordination and division of labor. Based on the above, the characteristics of organized crime can be summarized as follows:

- **Planning and organization:** The planners are usually highly experienced.
- **Professionalism:** Organized crime is professional crime that utilizes deceit based on available opportunities and resources¹⁴.
- **Continuity:** The organization's lifespan continues to achieve its goals regardless of the end of life or membership of any individual within it, with replacements for members who are killed, imprisoned, or leave the organization for any reason, without affecting the organization¹⁵.
- **Use of corruption and violence to achieve its purposes:** Through bribing officials and minimizing the risk of exposure to authorities, with various forms of violence including kidnapping, murder, and rape¹⁶.
- **Seeking profit through illegitimate means:** The ultimate goal of these groups is profit, resorting to money laundering to increase and protect their profits¹⁷.

2- Human Trafficking is a Composite Crime:

This crime consists of several elements: the victim is the person harmed by the act, and the trafficker is the intermediary in the process. There are source countries, transit countries, and destination countries, making this crime complex and compounded¹⁸.

3- Considered as Continuous Crimes:

This description is due to the time-consuming nature of its constitutive elements, meaning it does not occur instantly but over time, due to the actions carried out by the perpetrator in this crime. Time is an essential element for committing this crime, which is a result of exploiting increasing economic and social conditions suffered by many countries around the world¹⁹.

4- It is an Intentional Crime:

Regarding human trafficking, it falls under the first type of crimes since it is difficult to imagine committing this crime by accident or negligence, especially considering that acts of transportation, recruitment, harboring, or receipt are carried out by force, threat of use, deception, or kidnapping, and all these means involve criminal intent or deliberation²⁰. Human trafficking is considered the third most profitable activity in the world after arms and drug trafficking and is the fastest-growing and most profitable²¹.

Section II: Combating Human Trafficking in Algerian Legislation According to Law 23-04 and the Kuwaiti Law No. 91 for the year 2013

The phenomenon of human trafficking has notably spread recently, constituting a violation of human dignity and a threat to the freedom of individuals across different categories, affecting all their rights and safety. Given the severity of this crime on the security and stability of the state and its threat to individuals, especially women and children, the Algerian and Kuwaiti legislators have

adopted a national strategy to combat this phenomenon. This is done through the establishment of national mechanisms capable of fighting and suppressing this transnational organized crime, including legal mechanisms through international cooperation by joining international conventions. This involves integrating the texts of international conventions into their legislative systems in accordance with international standards.

The Algerian legislator introduced an institutional mechanism under the provisions of Presidential Decree 2016-249, which consists of the National Committee for the Prevention and Combating of Trafficking in Persons. This committee serves as a consultative reference for national authorities and bodies, formulating a national action plan to combat human trafficking and protect victims. The international reality has proven that the remarkable development in the field of international transport and communications has facilitated the commission of crimes and quick escape. Consequently, countries are convinced of the necessity to update their legislation and legal systems to combat the crime of human trafficking in line with criminal innovations²².

The Kuwaiti law established a shelter for migrant workers as a mechanism to combat human trafficking.

Hence, the question arises about the mechanisms that the Algerian and Kuwaiti legislators have put in place to combat the crime of human trafficking?

A) Mechanisms for Combating Human Trafficking in Algerian Legislation

By ratifying international conventions related to combating the crime of human trafficking specifically, or organized crime in general, Algeria has followed this approach to new legal mechanisms and the creation of institutional mechanisms aimed at gathering and exchanging information with similar bodies established by party states.

As for the punishment for the crime of human trafficking, Algerian law penalizes traffickers with imprisonment for a term not less than 5 years and not exceeding 20 years, and a fine not less than 500,000 DZD and not exceeding 2,000,000 DZD. The court may also impose one of the following measures on the convicted:

- Deportation from the country.
- Authorization for the public prosecution to sell the convict's property or some of it.
- Authorization for the public prosecution to publish the judgment in local newspapers.

1- Legal Mechanisms:

Most countries have made national efforts in partnership with others, as most domestic legislations contain provisions to address the crime of human trafficking. Algeria is among the countries that have sought to protect individuals from all violations resulting from trafficking crimes that threaten human dignity and undermine their fundamental rights and values through international cooperation.

Here, the focus will be on highlighting the most effective conventions in protecting human rights ratified by the Algerian state through international cooperation. Then, the extent to which the

Algerian legislator has criminalized trafficking in the constitutional amendments of 2016 and then 2020 will be emphasized.

1-1 International Cooperation:

Algeria has shown its willingness to join the international community in combating the crime of human trafficking and adopting the mechanisms used to fight this crime by ratifying several international conventions²³. These conventions aim to eliminate trafficking of women and children, slavery such as the sale of children, forced labor, or compulsory labor, including:

1-1-1 United Nations Convention against Transnational Organized Crime:

which, in Article 5, criminalizes participation in an organized criminal group, stating, "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses..."

Algeria ratified this convention in 2002, but unlike the Italian legislator, the Algerian legislator did not specifically and independently criminalize organized crime, nor did it provide a definition, only criminalizing "association of evildoers" in Article 176 of the Penal Code²⁴.

1-1-2 Presidential Decree No. 03-417:

It includes ratification with reservations of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime²⁵.

1-1-3 Presidential Decree No. 63-340:

It ratifying the Convention related to Slavery dated 1926, amended by the Protocol dated 7 December 1953, and accession or ratification on 07/07/1955, Official Gazette No. 66 dated 04/09/1963.

1-1-4 Presidential Decree 63-340:

It also ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery ratified or accessed by Decree 240/63 dated 11 September 1963, adopted in 1956, Official Gazette No. 66 dated 14/09/1963²⁶.

1-1-5 Decree No. 63-341:

It ratifying the convention on the prevention of trafficking in persons and the exploitation of the prostitution of others, dated 11 September 1963, adopted on 21/03/1950 in New York, Official Gazette 66 dated 14/09/1963²⁷.

1-1-6 Order No. 69-30 dated 22 May 1969:

It included ratification of the International Labour Organization Convention (No. 105) concerning the Abolition of Forced Labour, adopted by the International Labour Conference on 25 June 1957 during its fortieth session²⁸.

Algeria also ratified Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, supplemented by Recommendation 190, by Presidential Decree No. 2000/387 dated 18 November 2000.

Additionally, Algeria ratified conventions related to human rights and particularly women's rights, including the treaty on the political rights of women in 2004. Following its international commitments, Algeria presented its third national report on civil and political rights in 2008 and later submitted its third and fourth periodic reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in June 2009, highlighting the national conference's overview of women's achievements and challenges in promoting gender equality.

1-2 Criminalization of Human Trafficking in the Algerian Constitution:

The Algerian state has always been committed to ensuring individual rights and freedoms, particularly those related to human trafficking. The Algerian Constitution, like other world constitutions, provides protection for human rights and freedoms, incorporating in its amendment issued by Presidential Decree 20-442 dated 15 September 2020²⁹ in the first chapter under "Fundamental Rights and Public Freedoms," of the second title "Fundamental Rights, Public Freedoms, and Duties."

Article 35 states: "The state guarantees fundamental rights and freedoms..."³⁰

Article 39 guarantees: "The state ensures the inviolability of human dignity. Any physical or moral violence or any assault on dignity is prohibited. The law penalizes torture, cruel, inhuman or degrading treatment, and human trafficking."³¹

Article 40 states: "The state protects women from all forms of violence in all places and circumstances, in public spaces, and in the professional and private spheres. The law ensures that victims benefit from reception structures, care systems, and legal assistance."³²

Following these principles, the constitution has implicitly criminalized human trafficking as this criminal act is among the actions that degrade human dignity and expose individuals to various forms of violence, which the constitution has explicitly prohibited. Besides, trafficking in persons is considered a restriction of freedom and a deprivation of rights. Thus, the Algerian legislator intervened through the Penal Code and proceeded to criminalize this act, adhering to what is stipulated by the constitution. The constitution emphasizes the necessity of punishing anyone who commits an offense that could harm the rights and freedoms and physical and moral integrity of individuals.

2- Institutional Mechanisms

Given the widespread occurrence of human trafficking, its expanding activities, diverse forms, and varied methods of commission, the Algerian legislator has established institutional mechanisms to combat this serious crime, represented by the National Committee for Combating Trafficking in Persons and the National Human Rights Council.

2-1 The National Committee for Combating Trafficking in Persons

In 2016, Algeria was unfortunately classified by the U.S. State Department in its 16th report on human trafficking in Tier 3, and again in its 2017 report, indicating countries that do not fully meet the minimum standards for the elimination of trafficking³³. Therefore, Algeria attempted to translate its international commitments to combat this scourge decisively through the implementation of a national strategy in this field. This was done by upgrading the inter-ministerial committee tasked with coordinating efforts to prevent and combat human trafficking, established by Presidential Decree No. 16-249 dated September 26, 2016, placing it directly under the authority of the Prime Minister to enhance its capabilities and efficiency. Among the main tasks of this committee are monitoring and implementing the relevant international legal instruments ratified by Algeria and cooperating and exchanging information with national and international bodies to prepare training and awareness programs.

This establishment was somewhat late compared to some Arab countries like Jordan, which established its national committee in 2009, yet it was ahead of others like Qatar, which established its national committee in 2017³⁴.

2-1-1 Powers of the National Committee for Combating Trafficking in Persons

Presidential Decree No. 16-294 in Article 03 outlines the committee's tasks and powers primarily to develop a national policy and action plan in the area of prevention, combating trafficking in persons, and victim protection. In this capacity, the committee is responsible for:

- Ensuring the implementation and follow-up of the national policy and action plan in coordination with the relevant bodies.
- Monitoring the implementation of international obligations arising from ratified conventions.
- Proposing revisions to related legislation to ensure compliance with international obligations.
- Coordinating national efforts between government and non-governmental organizations and sectoral activities.
- Consulting, cooperating, and exchanging information with associations and national and international bodies active in this field.
- Supporting and promoting training.
- Organizing awareness and sensitization activities.
- Establishing a national database in coordination with security services by collecting information and data on human trafficking while ensuring victim privacy protection.
- Creating a website for the committee to publish related information, studies, research, and completed works.
- Preparing an annual report on the situation of human trafficking in Algeria to be submitted to the President³⁵.

The committee's powers and role seem more advisory than anything else. The committee's submission of its annual report on the human trafficking situation to the President is reminiscent of the criticism directed at the National Anti-Corruption Authority, where submitting its annual report to the President is seen as a limitation in decision-making³⁶.

Regarding protection, the committee focuses on monitoring the implementation of international obligations arising from ratified conventions, especially concerning trafficking victims, their care, and reintegration into society. This involves proposing revisions to legislation regulating human trafficking crimes and ensuring compliance with ratified international conventions. The committee also works on supporting and promoting the training of individuals directly and indirectly involved in human trafficking activities to enhance their capabilities in identifying trafficking victims.

2-1-2 Organizational Structure and Independence of the Committee:

Presidential Decree No. 16-249 specifies the members forming the National Committee for Combating Trafficking in Persons. The Prime Minister appoints the committee's chairperson from among its members. The committee can also call upon any individual or legal entity with the expertise that can contribute to and benefit its work³⁷.

Members of the committee are appointed by the Prime Minister based on nominations from the authorities they belong to for a three-year term, renewable. Their tenure ends in the same manner, and if a member's term ends, they are replaced following the same procedure until the end of the term³⁸.

The text shows that the appointment authority is monopolized by the Prime Minister. This monopoly of power by a single entity makes the body essentially a tool of the executive authority.

On the other hand, the concept of independence implies that the body is not subject to any guardianship or presidential authority, meaning the executive branch cannot direct or interfere in the decisions and powers of the body³⁹.

The committee meets in regular sessions once every three months, convened by its chairperson. It can also meet in extraordinary sessions upon the chairperson's call or at the request of a third of its members, where the chairperson presents a report to the Prime Minister after each session⁴⁰.

The chairperson prepares the agenda for the meetings and notifies each member 15 days before the date of the session, which can be reduced to 8 days for extraordinary sessions⁴¹.

This committee works in cooperation and exchange with related international bodies, with the Minister of Foreign Affairs' representative handling coordination and communication in this area⁴².

The committee can create technical committees to assist in its tasks⁴³ and is provided with a technical secretariat handled by the Ministry of Foreign Affairs' services⁴⁴, in addition to the necessary funds for its operation, which are recorded in the budget of the Prime Minister's office⁴⁵.

Among the most important tasks the committee is currently working on, as recently stated by its chairperson, is preparing legislation to combat the phenomenon of human trafficking amid

rising rates of illegal immigration and its connection to organized crime groups and human trafficking, which is the third most widespread and profitable crime globally. Recent statistics indicate that 60% of human trafficking crimes are related to migrants, and only 40% occur within national borders.

The committee's chairperson also clarified that the law in preparation would cover all crimes related to human trafficking, from sexual exploitation to forced labor, begging, and organ trafficking. It will include measures for victim protection and care, considering the constant complexity of the phenomenon and its association with terrorism crimes and financing. The committee is currently coordinating with security agencies and designated ministerial sectors to establish a national database and conduct studies on the phenomenon to identify victims and train personnel in victim identification techniques. The work also focuses on facilitating victims' access to reception centers regardless of their legal and administrative status⁴⁶.

2-2 Establishment of a National Human Rights Council to Combat Human Trafficking:

Human rights have recently gained significant importance in many constitutions, especially since the constitution has become the cornerstone of the structure of rights and freedoms, without which there are no substantiation or guarantees for them. Algeria is among the countries where human rights hold a prominent constitutional status, making it one of the most emphasized axes included in its constitution⁴⁷. Due to the economic, political, social, and cultural transformations experienced by the Algerian society, it was necessary to keep pace with the international community in finding new mechanisms for monitoring human rights and protecting them from violations. The establishment of the National Council for Human Rights is a move towards aligning with international institutional developments, as this law outlines the formation of this council and, secondly, its competencies.

2-2-1 Composition of the National Council for Human Rights:

The National Council replaced the National Commission for the Promotion and Protection of Human Rights, which used to perform the monitoring process. The council came as a response to institutional transformations at the international level following the establishment of the United Nations Human Rights Council. Article 02 of Law No. 16-13, dated November 3, 2016, states that the council is an independent body placed under the President of the Republic, who is the guarantor of the constitution, and works to promote and protect human rights with legal personality and financial and administrative independence. This was preceded by the issuance of Law 16-01, containing the constitutional amendment, which provided for the establishment of the council in Articles 198 and 199, specifying its general competencies and affiliations⁴⁸.

2-2-2 Competencies of the National Council for Human Rights:

The National Council for Human Rights undertakes a series of related tasks, which are varied and precise between the advisory domain, in which it provides opinions and consultations on certain matters, and the preventive work to avoid any violations or excesses. Articles 06-07 relate to cooperation at all international and national levels.

A- Advisory Competencies:

The council's advisory nature, endowed by the constitution, is evident in Law No. 13-16 dated November 3, 2016, which specifies the composition of the National Council for Human Rights, the appointment of its members, and the rules related to its organization and operation. According to Article 1/4 and 2, "The council works to provide opinions and recommendations to the government or parliament on any matter related to human rights at both national and international levels, either on its own initiative or upon their request. It also reviews legislative and regulatory draft texts, provides observations on them, and evaluates existing texts in light of fundamental human rights principles."

Article 8/1 states, "The council prepares its annual report, which is submitted to the President of the Republic, the parliament, and the Prime Minister, on the human rights situation including its suggestions and recommendations for enhancing and promoting human rights."⁴⁹

B- Preventive Competencies:

Law 16-13 in its Article 05, related to the establishment of the National Council for Human Rights, grants some preventive competencies that could contribute to avoiding potential violations or consequences, especially those unexpected ones affecting public order and individuals' rights and freedoms, without infringing upon the judicial authority's powers. The council's role in human rights protection includes early warning in cases of tension and crises that could lead to human rights violations, coordinating with the competent authorities to prevent them⁵⁰.

C- Cooperation between the Council, International and National Bodies, and Civil Society

To enhance and develop cooperation and coordination between the council and various entities, Article 06-07 of Law 16-13 allows for cooperation at several levels with national bodies, international bodies, and civil society.

- **Cooperation with National Bodies:** The council may request useful documents or information from any public or private body or institution as part of its duties.
- **Cooperation with International Bodies:** The council promotes cooperation in the human rights field with UN bodies, specialized regional institutions, national human rights institutions in other countries, and international non-governmental organizations.
- **Cooperation with Civil Society:** The council establishes cooperative relationships with national associations and bodies active in various human rights fields.

B) Mechanisms for Combating Human Trafficking in Kuwaiti Legislation:

1- Penalties for Human Trafficking Crimes in Kuwaiti Law

Kuwaiti law punishes perpetrators of human trafficking with imprisonment for a period of not less than 5 years and not more than 20 years, and a fine of not less than 5000 Kuwaiti Dinars and not exceeding 20000 Kuwaiti Dinars. The convicted may also be subjected to the following measures:

- Deportation from the country.
- Authorization for the public prosecution to sell the convicted's properties or some of them.
- Authorization for the public prosecution to publish the verdict in local newspapers

2- Mechanisms for Combating Human Trafficking in Kuwait

The State of Kuwait has adopted a number of mechanisms to combat human trafficking, including:

2-1 Legal Mechanisms:

- **Issuing a Specific Law to Combat Human Trafficking:** Law No. 91 of 2013 regarding combating human trafficking and smuggling of migrants was enacted, which is considered pioneering legislation in the field of combating human trafficking in the region. The Kuwaiti law criminalizes human trafficking and specifies severe penalties.
- **Incorporating Human Trafficking Crime into Other National Legislations:** The State of Kuwait has incorporated human trafficking crime into several other national legislations, such as the Penal Code, Labor Law, and Immigration Law.
- **Signing International Agreements to Combat Human Trafficking:** The State of Kuwait has signed several international agreements to combat human trafficking, such as the United Nations Convention against Transnational Organized Crime and its Protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

2-2 Institutional Mechanisms:

- **Establishment of the Permanent National Committee to Combat Human Trafficking:** The State of Kuwait established the Permanent National Committee to Combat Human Trafficking, which is the main governmental body responsible for coordinating efforts to combat human trafficking in Kuwait.
- **Establishment of the Human Trafficking Combat Unit at the Ministry of Interior:** The Kuwaiti Ministry of Interior established a Human Trafficking Combat Unit, which is the main governmental body responsible for investigating human trafficking crimes and protecting victims.
- **Establishment of the Kuwait Center for Migration and Refugee Affairs:** The Kuwaiti Ministry of Interior established the Kuwait Center for Migration and Refugee Affairs, which is the main governmental body responsible for providing protection and support to refugees and stateless persons.

3- Kuwait's Efforts in Combating Human Trafficking

The State of Kuwait is making significant efforts to combat human trafficking, having received a "Tier 2" rating from the U.S. Department of State in its 2023 Trafficking in Persons Report. These efforts include:

- **Increasing Awareness of Human Trafficking:** The State of Kuwait is working to raise awareness of human trafficking through awareness campaigns and educational programs.
- **Enhancing International Cooperation in Combating Human Trafficking:** The State of Kuwait cooperates with other countries in the field of combating human trafficking through information exchange and participation in joint operations.
- **Providing Protection and Assistance to Victims:** The State of Kuwait offers protection and assistance to victims by providing safe accommodation, psychological, social, and economic support.

Conclusion

Human trafficking is considered one of the most serious criminal phenomena of this era, sweeping across all countries. Despite international and national efforts to limit and eradicate this crime, it continues to grow, especially in poor and vulnerable countries, as they become easy targets for organized criminal groups.

In this study, we explored the nature of human trafficking, differentiating it from similar crimes, its forms, reasons for its proliferation, its consequences, and the mechanisms for combating it in Algerian legislation through legal and institutional mechanisms, as well as legislative tools by discussing the penalties and laws related to it and the extent to which awareness mechanisms contribute to its combat. However, the Algerian legislator has not organized this crime in a special law that allows for its prevention or the protection of its victims and the prosecution of its criminals but has amended the Penal Code in 2009, creating a new section titled "Human Trafficking."

It can also be said that the Algerian legislator has relatively succeeded in combating the phenomenon of human trafficking through criminal provisions within the Penal Code, after ratifying several related conventions, especially adopting the concept introduced by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000. However, it neglected some aspects, especially in criminal law, where the crime was not given the specificity of some serious crimes, with all measures taken by the Algerian legislator primarily aimed at combating organized crime across national borders.

Results:

- Slavery is an ancient phenomenon as old as humanity itself, present since ancient times, with Islam aiming for the liberation of slaves. However, it persisted over time and continues to this day.
- Studying the characteristics of human trafficking, we found it to be a crime against persons and the third most profitable activity in the world after arms and drug trafficking.
- Despite sharing similarities with crimes like migrant smuggling, kidnapping, and illegal immigration, human trafficking is distinguished from these crimes.
- Human trafficking manifests in various forms, including sexual exploitation, forced labor, slavery, practices similar to slavery, and organ trafficking.

- Several factors contribute to the spread of human trafficking, notably family breakdown, poverty, unemployment, globalization, in addition to other political factors. Its proliferation results in diverse psychological, physical, health, economic, and social effects.
- Algeria's accession to the international community by ratifying several international conventions related to this phenomenon aims to eliminate trafficking in women and children.
- Given the widespread prevalence and diverse forms of human trafficking, the Algerian legislator has introduced institutional mechanisms to address this crime due to its severity, including the National Committee to Combat Human Trafficking and the National Human Rights Council.
- The Algerian legislator based its amendments to the Penal Code related to human trafficking on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, which is particularly important as it contains positive points for protecting victims of trafficking.
- The Algerian legislator has intensified punishments for traffickers, denying them mitigating circumstances, to protect trafficking victims.
- Criminal procedures aim to prosecute and try criminals, primarily focused on combating organized crime across national borders.
- The national media's role in combating human trafficking is absent despite its effectiveness as a mechanism in combating this phenomenon.
- There is a lack of civil society organizations with centers for caring for and sheltering victims of human trafficking.

Suggestions:

Based on our study of this crime, we offer several recommendations to help reduce it:

- We urge the Algerian legislator to enact a specific law to combat human trafficking, utilizing media to raise awareness of the seriousness and heinousness of this type of crime. It is essential to launch awareness campaigns by state agencies, involving civil society, about the dangers of human trafficking and its consequences on society, or through organizing educational activities in schools, mosques, and TV programs.
- Legislate legal provisions that provide assistance to victims of human trafficking, their rehabilitation, and necessary protection.
- Introduce procedural provisions related to human trafficking to address procedural issues, as most procedures relate to organized crime.
- Upgrade the crime from a misdemeanor to a felony, with harsher penalties, to achieve sufficient deterrence and protect community and state security.
- Develop a comprehensive national strategic plan, coordinating with various institutions to combat this phenomenon.

- Prepare periodic statistics on the prevalence of this crime for comprehensive combat against this phenomenon.
- It's crucial for government entities directly responsible to collaborate with all supportive governmental and non-governmental entities in the fight.

Human trafficking is a severe crime that threatens human rights and requires international cooperation to combat it. The State of Kuwait has adopted a number of legal and institutional mechanisms to fight this crime and is working to enhance these mechanisms to ensure the protection of victims of human trafficking and provide support for them. Here are some recommendations to bolster Kuwait's efforts in combating human trafficking:

- Enhance cooperation between government agencies and civil society in the field of combating human trafficking.
- Increase the financial and human resources allocated to combat human trafficking.
- Improve the capabilities of government agencies in investigating human trafficking crimes and protecting victims.
- Raise awareness about the crime of human trafficking among the general public.

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