



Adopted report titled:

Position paper
Human trafficking in OIC countries
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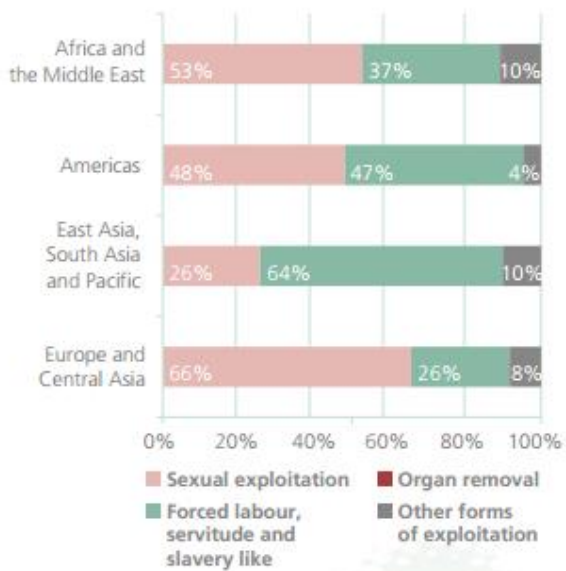
Introduction

Human trafficking is a global problem, involving about 30 million people, of which a significant number involves women and children. Exploitation is at the core of human trafficking. It involves the movement of vulnerable people from their place of origin to elsewhere where they are exploited against their will. While this is not the same as the age-old evil of slavery, which has been banned around the world, and hence diminished, human trafficking is seen as modern-day slavery. Worse, it operates as a 'business' model involving several billion dollars annually, next only to drugs and arms smuggling. As a result, the number of people involved – both victims and perpetrators – are increasing with each passing year.

According to the 2014 report released by the United Nations Office against Drugs and Crime (UNODC), more than 90% of countries have legislation criminalizing human trafficking since the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, under the United Nations Convention against Transnational Organized Crime, came into force in 2000. Nevertheless, this legislation does not always comply with the Protocol, or does not cover all forms of trafficking. Between 2010 and 2012, some 40 per cent of countries reported less than 10 convictions per year. Some 15 per cent of the 128 countries covered in the 2014 report did not record a single conviction. Most detected trafficking victims, according to the report, are subjected to sexual exploitation, but there is evidence of increased numbers being trafficked for forced labor.

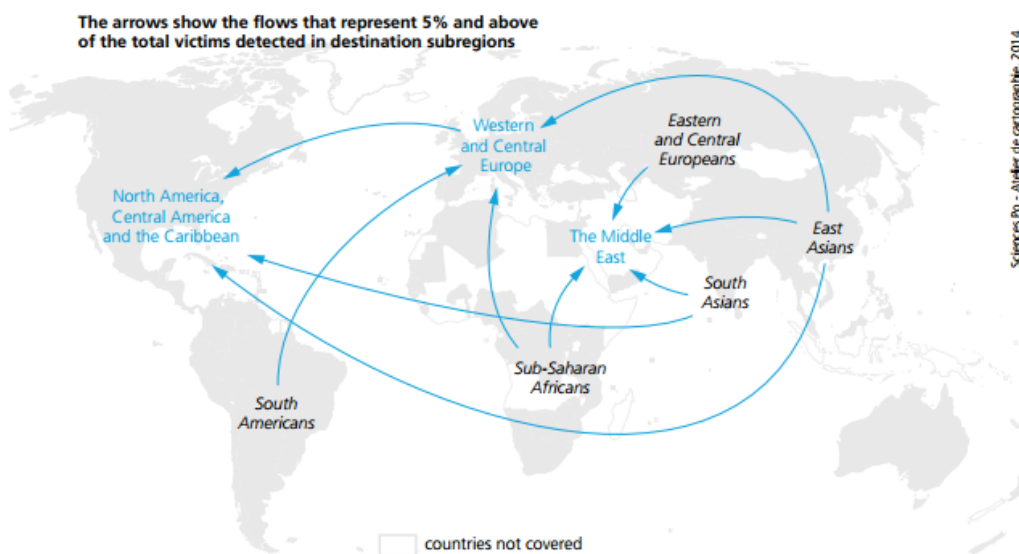
This shows that without robust criminal justice responses, human trafficking will remain a low-risk, high-profit activity for criminals. Trafficking happens all over, but the report shows that most victims are trafficked close to their homes, within the region or even in their country of origin, and their exploiters are often fellow citizens. Solutions, therefore, need to be fashioned to national and regional specifics if they are to be effective.

Forms of exploitation among detected trafficking victims, by region of detection, 2010-2012 (or more recent)



Source: UNODC elaboration on national data.

Main destination areas of transregional trafficking flows (in blue) and their significant origins, 2010-2012



Source: UNODC.

OIC countries

While it is a global phenomenon, this paper focuses on human trafficking in the Organization of the Islamic Conference (OIC) countries. It seeks to highlight in brief:

- the various manifestations of human trafficking;
- Islam's position on this crime;
- the extent of the crime in Muslim countries/ Different kinds of human trafficking in the (OIC) countries;
- which is more relevant – religion or economic/social status or human rights;
- the policy options that OIC could implement to stem this crime.

Since the OIC countries are distributed across several regions and continents, each with its own characteristics and ground realities, human trafficking manifests itself in different forms too.

- (i) sexual exploitation
- (ii) labour exploitation
- (iii) exploitation of children – for labour and sexual abuse, as well as for army recruitment
- (iv) trafficking for the purpose of marriage
- (v) trade in human organs
- (vi) trafficking for the purpose of adoption.

Religious interpretation

Given this scale of human trafficking violations in Muslim countries, critics suggest that there is a link between Islam and human trafficking. They argue that because of the "unequal" or "low" or "discriminatory" status accorded to women in Islamic practices, the religion condones exploitative acts against women, including sex trafficking.

There is also the issue of human trafficking often being justified in the name of tradition and culture, which is closely linked to religion, especially in the case of child marriage.

Crime, however, has no religion and no religion professes crime. It also needs to be underlined that the argument that human trafficking is more rampant in the OIC countries is only as true as dictatorships being the forte of the Muslim countries or democracy being antithetical to Islam.

The following references, however, counters the argument that Islam encourages this crime. They demonstrate that Islam and the Quran are antithetical to slavery, human trafficking, and exploitation of human beings. It also suggests that Islam and Islamic law can combat human trafficking through its prohibition of other forms of exploitation, protection of victims' rights, and protection of vulnerable groups, such as women and children.

Many aspects of 'human trafficking' are clearly forbidden in Islam. For example, a central Islamic tenet is that any form of exploitation is forbidden. There are repeated warnings against oppressing other human beings. There are also warnings against those who abuse the vulnerable in society. In this backdrop, the fact that trafficking is built on oppression of human beings, makes it contradictory to Islamic principles.

Islam is also very respectful about the rights of workers. It emphasizes that contracts between employer and employee must be clearly articulated. Since human beings are commanded by God to give each other their dues and not to withhold each others' rights, breaching the contract in any way is construed as a serious offence.

Lastly, of the 30 million human trafficking victims, about two million are reportedly sexually exploited against their will. On this too, Islam strictly prohibits any sexual relation outside of marriage. Furthermore, prostitution is forbidden

- Verse 33 in Chapter 24 forbids forcing slavegirls into prostitution

وَلَا تُكْرَهُوا فَتَيَاتِكُمْ عَلَى الْبِغَاءِ إِنْ أَرَدْنَ تَحَصُّنًا لِّتَبْتَعُوا عَرَضَ الْحَيَاةِ الدُّنْيَا وَمَنْ يُكْرِهِنَّ فَإِنَّ اللَّهَ مِنْ بَعْدِ إِكْرَاهِهِنَّ غَفُورٌ رَحِيمٌ

- Verse 1 in Chapter 5 professes fulfilling all obligations

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

- Verse 85 in Chapter 7 warns against breaking contracts of workers

وَأَلَى مَدْيَنَ أَخَاهُمْ شُعَيْبًا قَالَ يَا قَوْمِ اعْبُدُوا اللَّهَ مَا لَكُمْ مِنْ إِلَهٍ غَيْرُهُ قَدْ جَاءَتْكُمْ بَيِّنَةٌ مِنْ رَبِّكُمْ فَأَوْفُوا الْكَيْلَ وَالْمِيزَانَ وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تُفْسِدُوا فِي الْأَرْضِ بَعْدَ إِصْلَاحِهَا ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ مُؤْمِنِينَ

Thus, Islam is categorically against human trafficking. Further, Islamic law is also in sync with international law on the issue of human trafficking. This means that Islam and Islamic law should serve as the basis for achieving compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which was adopted by the United Nations General Assembly in 2000 and came into force in December 2003.

Ta'zir crime

Since it is not defined specifically in the Quran, human trafficking may be classified as a Ta'zir crime, and the governments in Muslim countries have the discretion to enact penalties that are commensurate with the gravity of the crime. Human trafficking constitutes a clear violation of one's right to personal security, which is one of the five essentials of Islam. This specification emphasizes trafficking in persons as a threat against human security and not only as a crime against the State.

Factors encouraging trafficking

While looking beyond religion, there are several external factors that explain the severity of the problem of human trafficking in Muslim countries. In the Middle East, for example, where the majority of second tier "watch list" and third tier Muslim countries are located, the region serves as a place of "origin, transit, and destinations" for human trafficking. The most common form of exploitation in this region is sexual exploitation and forced labour,



particularly domestic servitude. Economic, social, and cultural factors explain the prevalence of this crime in the Middle East.

- *Economic*

Following the oil boom in 1970, the Middle East experienced increased inter-regional migration from South, Southeast Asia, parts of the Arab World and even Africa. Such migration was necessary because the oil-producing Gulf countries needed both low- and high-skilled workers, such as migrant health professionals, to establish banking systems, help with management and engineering, aid construction, and provide overall assistance with the increasing development of the region.

- *Social*

Socioeconomic changes not only altered the lifestyle of those living in this region, but also made the Middle East more vulnerable to human trafficking and exploitation. As men left to pursue work in oil-rich countries, the need for domestic workers in the region also increased. Thus, the poor economic conditions in the labour-sending countries became a factor for exploitation in the labour-receiving countries.

Reality versus hype

Despite Islamic tenets against this practice, human trafficking is, in reality, a problem in all the OIC countries, as it is all over the world.

Within its definition of "trafficking in persons," the Protocol also defines the term '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." Importantly, forms of exploitation addressed in the Protocol are also specifically addressed in Islamic tenets.

Most Muslim countries have made efforts to join the international community in the fight against human trafficking. Some have responded by passing anti-trafficking legislation and establishing mechanisms, committees and shelters to fight the crime. However, according to the 2014 UNODC report on human trafficking, about a dozen countries are NOT states parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime.

If this first step is taken in earnest, it is bound to go a long way in checking human trafficking violations in OIC countries.

Lastly, Islamic law and the prohibition of human trafficking are in full accordance with one another. This harmony between international trafficking provisions and Islamic law is illustrated by Muslim countries' domestic legislation and constitutions that prohibit human trafficking and by the adoption of international human rights documents as national law. 59 Such international influence on Islamic countries' domestic legislation portrays Islamic law's agreement with international anti-trafficking measures and provisions on the subject of human trafficking.



Anti-human trafficking documents in Muslim world

Recent international human rights documents promulgated in the Muslim world have attempted to address the issue of trafficking more explicitly and based on Islamic doctrine. For example, Article 13 of the Cairo Declaration on Human Rights in Islam of 1990 states that an employee may neither be assigned work beyond his capacity nor be subjected to compulsion or harmed in any way.

Likewise, since prostitution is prohibited under Islamic law, not only trafficking for the purpose of exploitation of the prostitution of others, but trafficking for the purpose of prostitution is prohibited under the Arab Charter of Human Rights. Article 10 of the Charter makes this distinction, prohibiting – human trafficking for the purposes of prostitution and – the exploitation of the prostitution of others or any other form of exploitation.

More specifically, Article 10 of the Arab Charter on Human Rights provides that:

- a. All forms of slavery and human trafficking are prohibited and punishable by law, No one shall be held in slavery and servitude under any circumstances.
- b. Forced labour, human trafficking for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict are prohibited.

Additionally, the Arab Charter also prohibited organ trafficking, stating in Article 9 that – no one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each State party. Trafficking in human organs is prohibited in all circumstances. And, Arab countries that have ratified the Charter are required to report on the status of trafficking in their countries.

Further, a number of constitutions of Muslim countries have explicitly prohibited human trafficking. As a result, the argument that Islamic law is in harmony with international provisions against human trafficking has become progressively evident by virtue of the enactment of national legislation prohibiting trafficking in many Muslim countries.

As most of Muslim countries require that national legislation be in compliance with Islamic law, the fact that anti-trafficking legislation has been developed and enacted signifies that the two are in compliance with one another. These laws cover all the elements of combatting human trafficking.

Conclusion

Human trafficking is a developing subject of discussion in many Muslim countries. While some OIC countries are yet to pass specific legislation to counter the crime, many others are active and have taken significant steps to address the crime. Best practices, therefore, are available and can be built upon. A constructive dialogue has begun and an exploration of what Islamic law has to offer in this realm can be an important step towards making such a dialogue more meaningful. Equally, the discussion needs to encompass translation of ideas



into concrete policy steps, especially in the realms legislation; recognition, redress and assistance for victims; prevention and public awareness; and a rethinking of immigration laws, labor laws, health laws, child protection laws, and other relevant legislation.

International measures, such as the Protocol, are increasing in order to address the rapidly growing problem of human trafficking. Muslim countries have been touched by this issue and are experiencing severe compliance problems. Some blame the trafficking problem on the Islamic religion or the Islamic legal system. The ground realities for the prevalence of human trafficking in Muslim countries – economic and social factors – clearly explain that linking human trafficking to Islam is untrue and unjustified

While taking social, economic and legal avenues to fighting this crime are important, given the importance attached to religion in the OIC countries, it is equally important to use the inherent respect for religious tenets and human rights among Muslims as deterrents to fight human trafficking

Further, supported both internally by the compassionate teachings of Islam and externally by international anti-trafficking laws, Muslim countries have every reason – even a religious obligation – to prevent human trafficking, protect its victims, and prosecute its perpetrators.

Policy recommendations

- Commission a comprehensive research paper to establish that economic and social factors, not Islam, drives human trafficking
- Enact anti-human trafficking law, where they don't exist
- Train law enforcement and judicial officials to deal with such crimes and endorse strict punishment
- Raise public awareness – using human rights approach and adherence to Islamic tenets which prohibits exploitation
- Encourage establishing victim shelters
- Sharing best practices – Muslim countries with anti-trafficking laws could form a steering committee to guide others in this effort; and organize a workshop to highlight the importance of fighting this crime and propagate mechanisms to institutionalize the same
- Encourage coordination among source-transit-destination countries within the OIC
- Encourage coordination with international organizations like International Labor Organization, International Organization for Migration and United Nations Organization for Drugs and Crime
- Encourage the few countries that have not signed the Protocol in the OIC to sign.