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Journal of Science and Knowledge Horizons  
ISSN 2800-1273-EISSN 2830-8379**Human Trafficking Crime' Concept, Elements and Confrontation  
Methods according to the Algerian and International Laws****A Descriptive Analytical Study**

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EgyptEmail: [muhammad.gabr@mediu.my](mailto:muhammad.gabr@mediu.my)Email: [muhammadgameel141@gmail.com](mailto:muhammadgameel141@gmail.com) /<https://orcid.org/0009-0004-6219-2316>**Abstract**

The study aimed to shed light on human trafficking crime and analyse the legal aspects of this crime under the new Algerian law 23 – 04 issued on May 7th, 2023 on preventing and fighting human trafficking. The study also aimed to explore the most relevant penal policies and national and international legal mechanisms to reduce human trafficking. The study used the descriptive analytical methodology. A review of literature was administered. The study came to the conclusion that in spite that the Algerian law has paid a great attention to the crime of human trafficking, it ought to give more emphasis on the executive mechanism in order that the legal and administrative measures specified for fighting human trafficking bear fruit. The study made the recommendation that the national and international efforts should stand shoulder in shoulder in confrontation of this crime.

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## **Introduction**

Human trafficking crime is one of the crimes that violate human rights guaranteed by international treaties. It is also considered a flagrant aggression on the right of life and human safety confirmed by heavenly and secular legislations.

No doubt that the international interest in the phenomenon of human trafficking is regarded as a speech to the international conscience in order to make laws that criminalize different forms of human trafficking and monitoring and assessing the efforts, measures and steps taken by every country to fight this kind of crime.

The Arab world legislations have kept pace with the international interest in this direction. They have witnessed a great development in the field of fighting human trafficking. In addition, the Arab legislations have criminalized all forms related to this crime regarded as one of the organized crimes.

The Arab legislations can be classified, according to the way of overcoming the crimes of human trafficking in general and related crimes in particular into two categories: category A and category B. Category A includes most of these legislations. It has passed complete and inclusive legislation to fight human trafficking and related crimes. Category B includes the countries that have not made legislations regarding this crime but they depend on the text on human trafficking crimes and related crimes on the penal law.

The Algerian lawmaker has followed in the footsteps of category A countries. He has passed an independent law concerning human trafficking crimes. Furthermore, he has combated some of the acts and practices related to these crimes as independent crimes and imposed separate penalty for each crime.

Algeria has paid great attention in fighting human trafficking and has developed its legal and organizational structure. It has also interested in reinforcing legal prosecution through making laws that enable the public prosecution and probe offices to take all legal procedures of investigation concerning these crimes.

Criminalization of human trafficking enjoys national care through accelerating fighting efforts. In addition to the national legal laws, Algeria has joined into many international treaties and protocols. It has also signed off many cooperation memos with related international bodies and organizations in addition to local cooperation between

human rights organization, governmental bodies and civil community establishments so as to enhance the efforts of fighting human trafficking and take national procedures and steps to combat these crimes.

The importance of this crime lies in shedding the light on the phenomenon of human trafficking that has disturbed the national and international conscience altogether in the recent years. It is considered an aggression on human rights and main freedoms. It has widely spread in many countries in the recent years. This is will be through exploring the steps and measures that secure the protection from these crimes as well as investigation the legal methods that can help and protect the victims of human trafficking crimes and giving them due care from concerned authorities and enabling them to get their rights from the moment they are discovered until they are fully supported.

In view of this, the current study seeks to shed light on the phenomenon of human trafficking that has exceeded the capabilities of governments and international organizations in the recent years, formed a real threat to their safety and security and become an obstacle in the way of their development. In light of what has mentioned above, the current study raises the questions that have aroused the attention of comparative and international laws jurists and researchers. These questions are as follows:

- a. What is the definition, elements and confrontation methods of 'human trafficking' crime?
- b. What is the criminal and safety vision that can ensure preventive and deterrent measures to curb this crime?
- c. Has the international community as represented by the United Nations Organizations and its specialized bureaus in this field been able to take necessary measures that can cope with organized and new crimes?

In light of the above questions, the study's importance protecting from the crime of human trafficking and fighting it, participating in preparing educational programs on the dangers of human trafficking in collaboration with academic institutions as well as doing researches in the field of human trafficking, enabling mass media and the public to obtain information on human trafficking with observing the secrecy of investigations and protection of personal data, life and dignity, and public opinion considerations,

making programs and activities to raise the awareness of individuals and groups of the crime of human trafficking, its dangers and ways of confrontation, suggesting measures that instigate the civil community to help the victims of human trafficking as well as enriching the national experience in the field of human trafficking protection and fighting.

The study will tackle the topics of this subject in further detail in the following two sections.

### **1. The Theoretical Framework of Human Trafficking Crimes**

The stems of crime was dated back the past. It took the form of slavery or what is known as slave trafficking. It is considered as one of the oldest trades the old human societies have known. It has been a serious violation of the humanity right as a whole. Both sexes of the human being have been exploited and at different ages even if its forms has changed along history. In the past, there were international auctions for selling slaves as if they were just commodities sold and bought. Their prices differed according to their physical characteristics, their age and other standards of that time (1). It is noteworthy that women were the most well selling in these markets. They were often sold for prostitution or for housework.

At present, especially with the appearance of the concepts of globalization and information and communication revolution, particularly the internet and what social networking sites produce, human trafficking crimes have taken new forms and developed so rapidly and upwardly. That's why, it has been difficult to define them. It has spread so widely. Some reports state that there is almost no country of the world of today is empty of this serious crime. A country can be an exporter, importer or transition to this traffic. Because human trafficking is a sinful activity that has spread widely until it has been a phenomenon, no country can pretend that it practices or has practices related to human trafficking phenomenon (2).

Heavenly and secular legislations have interested in protecting human rights, the safety of his body and his immunity against any aggression that can befall his personality or his honor. Too, international charters and conventions are headed by human's protection and safety. The most conclusive evidence for honoring the human being is evident in the Holy Qur'an. Allah, exalted be He, said, "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', The Chapter of the Night Journey, verse 70).

For this purpose, most penal legislations, including the Algerian one, have adopted the policy of criminalizing the aggression on the human body and human trafficking and defined the forms of this aggression, the severity of the crime as well as the prescribed penalties.

### **1.1. The Definition of Human Trafficking from the Perspective of Comparative Legislations**

Human trafficking crimes are considered some of the crimes that are very old. They have had negative economic and social repercussions that greatly affect many countries especially after they have spread widely and become a serious threat to the life and dignity of millions of victims and after they have grown as a well selling traffic in the market of international business that aims to dedicate slavery, serfdom, servitude and different sexual practices that degrade human dignity (3).

The international community has witnessed a great interest in fighting human trafficking crimes. This is through organizing international conferences and forums for the purpose of laying down the principles and standards necessary to reduce this phenomenon. This is through concluding multilateral international treaties relating human trafficking. The United Nations Treaty for Fighting Transnational Organized Crime and the three supplemented protocols are one of the most important treaties in this concern. This treaty and the protocol of preventing, repressing and punishing human trafficking, particularly women and children came into effect in September 2003.

Algeria has paid great attention in fighting human trafficking. It has joined the treaties, conventions and protocols that prohibit this crime such as the 1965 adjunctive treaties for abolishing slavery, human trafficking and similar practices, servitude treaty in 1930, the protocol of preventing and punishing human trafficking especially women and children in 2000 as well as other international treaties fighting this crime.

In application to international commitments, Algeria has emphasized these thoughts in its national laws. It brought into amendments to the penal law in 2009 by its virtue fifth section (bis) has been created under the title: 'human trafficking', the fifth

section (bis 1) under the title: 'human organs trafficking' , and the fifth section (bis 2) under the title: 'immigrants trafficking'. The initiative to make this amendments has come into being because of Algeria's perception of the hideousness of human trafficking crime since it is breaking the human values the heavenly religions call for.

Thus, human trafficking crime is a form of violation of human rights. It takes man as its subject. It is included in the general definition of the crime of slavery as it is considered a practice of ownership right on a person. Human trafficking crime was not born in the recent years when the term 'human trafficking' has appeared. It is a very old problem. The rule: 'the powerful possesses the weak' prevailed at the Common Era. Because of this the seeds of this problem have grown and thereby humans were classified into masters and slaves.

### **1.1.1. The Definition of 'Human Trafficking'**

Human trafficking crimes in its new form is the biggest third illicit well selling trade at international level, after weapon trafficking and drug trafficking. This classification was issued according to some countries official reports particularly the report issued by the bureau of monitoring and fighting human trafficking which is following the American ministry of foreign affairs and these statistics were published between 2004 and 2005 (4).

#### **1.1.1.1. The Definition of 'Human Trafficking' according to International Conventions and Treaties**

Human trafficking is a term that has no international definition agreed upon. This creates an obstacle before the efforts exerted nationally and internationally in the field of fighting human trafficking crime and arresting its perpetrators to inflict punishment upon them especially after it has occupied the third status in the list of profits after weapon and drug trafficking.

The international treaties relating slavery in 1926 defined the oldest form of human trafficking, i.e., slavery, as: "putting any person under full or partial possession of an authority". The supplementary treaty for abolishing slavery and slave trafficking and similar practices in 1956 defined slavery as: "All the acts that include putting a person in prison, detention or surrendering him to others to make him a slave as well as all the acts that include concession of a slave to sell or exchange him. That's, it includes any form of slaves trafficking or transferring them regardless of the means used".



Human trafficking has been defined in some international charters. For instance, the protocol of preventing, suppressing and punishing human trafficking that is supplementary to the United Nations treaty for fighting transnational organized crime (5) gave a broad definition to this crime. Article 3/A of this protocol describes this crime as: "recruiting, transferring, sheltering or receiving persons using force, threatening using it, using any form of coercion, abduction, deception, authority abuse, oppression or granting or taking money or privileges to get the consent of someone who has a control over another for the purpose of exploitation. Exploitation, at its minimum, includes using others for prostitution and other forms of sexual abuse, compulsive serfdom, enslavement, servitude and other similar practices as well as illegal organ removal".

The European Council treaty for fighting human trafficking in 2005 followed in the footsteps of the protocol of preventing, suppressing and punishing human trafficking particularly women and children in its definition of human trafficking. Paragraph A of Article 4 of this treaty states the same definition as it is mentioned in Article 8 of the above protocol.

Amnesty International Organization defines human trafficking as: "a violation of human rights including the rights of physical and mental safety, freedom, security, dignity, setting free from slavery and other forms of inhumane or insulting treatment, family life, movement, privacy highest level of health, residence and safety (6).

#### **1.1.1.2. The Definition of 'Human Trafficking' according to Comparative Legislations**

In 2003, the Arab Republic of Egypt joined to the United Nations treaty for fighting transnational organized crime and Act no. 64 in 2010 relating fighting human trafficking was issued. In application to Article 29 of this Act, the internal statute of this Act was made. Article 2 of this Act defines human trafficking as: "The perpetrator of human trafficking crime is whosoever deals in any form in a natural person including selling, displaying for selling, buying, making a promise of both, using, transferring, delivering, sheltering, receiving or taking over whether in the country or at its national borders" (7).

The French legislator defined human trafficking crimes in paragraph 4 of Article 225 of the penal law in 1993 as: "the act that aims at recruiting, transferring,

sheltering or receiving someone in return for a reward, a privilege or a promise of a reward for the purpose of putting him under his control or others' even if they are unknown whether permitting doing against this person crimes of prostitution, violence acts, sexual aggression, using him for beggary, putting him in work or residence circumstances that counter with his honor or compelling him to commit a felony or an offence" (8).

The American lawmaker defined human trafficking in the first Article of the amended Act of protecting the victims of violence and human trafficking in 2000. It came identical in meaning and form to the definition mentioned in the protocol of preventing, suppressing and punishing human trafficking especially women and children that is supplementary to the United Nations treaty for fighting transnational organized crime in 2000 (9).

In spite that there are many different definitions that are overlapping, the Algerian legislator has adopted, in Article 2 of the new Act no. 23/04, the most common definition, that is mentioned in Article 3 of the protocol of preventing, suppressing and punishing human trafficking especially women and children that is supplementary to the United Nations treaty for fighting transnational organized crime in 2000 which classify human trafficking crime as: " recruiting, transferring, sheltering or receiving persons using force, threatening using it, using any form of coercion, abduction, deception, authority abuse, oppression or granting or taking money or privileges to get the consent of someone who has a control over another for the purpose of exploitation. Exploitation, at its minimum, includes using others for prostitution and other forms of sexual abuse, compulsive serfdom, enslavement, servitude and other similar practices as well as illegal organ removal. It is also considered human trafficking giving or taking money or privileges for the sake of selling, receiving or getting a child for any purpose and at any form" (10).

In view of the above definition, it is evident that the Algerian lawmaker has adopted a broad criminal policy according to the new Act no. 23/04 in order to confront these type of crimes. This is revealed in the numerous criminalizing acts that include recruiting, transferring, transporting, sheltering and receiving. He stipulates that they are evidenced using given means which are: using force or threatening using it, abduction, deception, power abuse, oppression, or giving or taking money or advantages. He obligates that it aims to achieve a certain purpose which is exploiting the victim. He gives examples of this exploitation without demonstrating them exclusively.



The jurists define this crime as: "all licit and illicit acts that regard man as a commodity or a victim that dealt in with professional brokers across the national borders to use him in low-paid jobs, sex business or similar activities whether this act is done voluntarily, using force or any other form of slavery" (11).

### **1.1.2. Distinguishing 'Human Trafficking Crime' from Other Similar Ones**

Human trafficking crime is a form of organized crime. The latter is a great danger that all countries at different levels whether developed or developing face. Although it was not as serious in the past as it is now since it targeted specified countries and its danger was rational but the many political, social and economic changes. Freedom of trade, borders fading and easy movement of people and goods have developed the organized crime and made it transnational and a threat to most countries.

#### **1.1.2.1. Distinguishing 'Human Trafficking Crime' from Immigrants Trafficking**

Immigrants trafficking is a crime against the state. It forms a threat to national safety. Immigrants trafficking means passing the international borders without abiding by the necessary requirements of legal entry to the receiving country and immigrants smuggling means facilitating the departure of people from their countries and arrival in other countries through illegal ways for the purpose of getting a material or non-material benefit (12).

Immigrants trafficking differs from human trafficking in the regional dimension. Immigrants trafficking is in its nature a transnational crime, but human trafficking could be transnational and this often occurs and could be internal, i.e., inside the country (13). In addition, immigrants smuggling is done with the consent and the freewill of the immigrants but driving them to pay sums of money in return for the entry to a foreign country illegally. But, as to human trafficking, the victim's will is absent. It is based on force, threat and fraud for committing practices contradicting with the human dignity.

Immigrants trafficking is generally viewed as bringing in people and moving them to another country illegally for money. But facilitating persons' entry or transiting illegally is not considered human trafficking in spite that its implementation often occurs in dangerous or disgraceful circumstances. Human smuggling sometimes necessitates the immigrants' consent to do this activity, but human trafficking does not demand victims' consent. In case victims consent is asked at first, the victims of human

trafficking do not often know that they will be forced to work in prostitution or exploited in different jobs. Thus, human smuggling can be included in the definition of human trafficking. The main feature that characterizes human trafficking from smuggling is the elements of deception and force (14). .

#### **1.1.2.2. Distinguishing 'Human Trafficking Crime' from Abduction**

Abduction is part of human trafficking crime. It is a means to committing the latter and it is a component of its material element though they are similar in the object of the crime which is the person. But the most significant difference between them is the mental element. Abduction demands the general intent only which occurs when the guilty transfers the victim from a place to another, but human trafficking requires the occurrence of both general and private intents. That's, human trafficking demands the occurrence of the intention of exploitation.

Abduction is a compound crime. It is a means to committing acts of recruiting, transferring, sheltering or receiving. If any of these acts is accompanied by a means of threatening, abduction or deception for the purpose of exploiting the victim, it shall be one crime which is the compound human trafficking crime. The crime of abduction occurs only when the victim is moved to another place and kept away from the crime scene where he is fully controlled. 'Moving the victim' is an independent act and 'keeping away' is another independent act as well (15).

#### **1.1.2.3. Distinguishing 'Human Trafficking Crime' from Illegal Immigration**

Human trafficking forms in itself a kind of immigration. Immigration is illegal when a person enters a country for tourism or work without a visa. Human trafficking overlaps when the immigrants are exploited in the end.

The crime of illegal immigration is distinguished from human trafficking when the former occurs from one country to another. That is, illegal immigration is a transnational crime but human trafficking occurs inside the country as long as its elements are available (16).

In spite of adopting inclusive international legal framework, trafficking in millions of children, women and men yearly continues in all regions and in most world countries. Human trafficking can occur inside the country or across the borders for

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many purposes including compulsory and exploitative jobs in factories, farms, private families, sexual abuse, compulsory marriage and human organs removal.

It is difficult to determine the size of this phenomenon due to trafficking secret nature. According to the international estimates of 'Let's Live Free' Organization and International Labor Organization 25 million persons from different countries exposed to compulsory work and sexual abuse in 2016.

## **1.2. The Characteristics of Human Trafficking Crime**

The crime of human trafficking is characterized with the following features:

### **a. An organized crime:**

Transnational organized criminal gangs that professionalize criminality and make it the centerpiece of their activity and source of their income commit this crime. Therefore, they practice their criminal activities as a job and a profession. This is what the United Nations Organization has taken into consideration when defining human trafficking. This is on the ground that the organized crime is complex criminal practices and acts that include a broad activity implemented by persons who are organized and highly experienced that aim to get enormously rich at the expense of the society and its individuals and they are often done with full negligence to the law and include crimes that threaten persons' life and the safety of the society.

Organized crimes in more than one country is the offences that their acts, at the stage of planning, implementation and after that) in more than one country and under the shadow more than one national sovereignty so that these acts express transnational crimes. Perhaps one of the most distinct examples for organized crimes is human trafficking, weapon trafficking, drug trafficking, terrorism, children commercial sexual abuse, organized intellectual property theft as well as other crimes that occur in some country and have great influences on other countries (17). The United Nations Treaty for fighting transnational organized crime in 2000 referred to the cases at which a crime is considered transnational. These cases are as follows:

**First;** when the crime is committed in more than one country.

**Second;** when the crime is committed in a country but a great deal of the planning, direction or monitoring has been done in another country.

**Third;** when the crime is committed in a country but an organized criminal group practicing criminal activity in more than one country have taken part in the criminal activity.

**Fourth;** when the crime is committed in a country but it has got influences on others.

(Article 3 of The United Nations Treaty for fighting transnational organized crime - Palermo Treaty in 2000).

Related Studies and international reports confirm that most of the trafficked persons are women and children on the basis that they are the weakest link in the formula. Despite that trafficking is in fact an international crime, this does not mean that trafficking acts do not occur in the country. Some traffickers can move the victims (women or children) from place to another inside the country and then sell them to one of the international criminal organizations <sup>(18)</sup>.

#### **b. Organization and planning:**

This is revealed in that the crime is not committed but from an organized group in general and does a given planned act to commit a serious crime or more that are mentioned in the international treaties and supplemented protocols and national laws to make a profit or a financial benefit (19).

#### **c. A compound crime:**

The simple crime gains its legal description as soon as an act such as theft, killing or forgery is done. In view of the general rules, the compound crime is that its criminal activity that forms its material element includes more than one act or it is that occurs on different material acts that each can form a crime in itself such as abduction accompanied by rape. In the crime of human trafficking, threatening, abduction or deception is a means used to do other acts which are moving, recruiting, sheltering or reception.

#### **d. A continued crime:**

Human trafficking is committed across stages. Thus, the elements that form the criminal act for human trafficking take time to occur. The reason for that is that moving, sheltering, receiving or recruiting the victim for using him or her in prostitution,

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compulsory work or enslaving needs a period of time to complete its criminal acts. Thus, the element of time is basic in the crime of human trafficking (20).

**e. An intentional crime:**

Human trafficking is an intentional crime. It cannot be envisaged that it occurs by mistake or by way of negligence. All the criminal acts that form its material element, i. e., moving, recruiting, sheltering, receiving ...) occur on purpose and they cannot happen in error.

Human trafficking is one of the intentional crimes. The components of the mental element that are legally decided must be existing, i.e., the two types of the criminal intent. The acts of gathering, recruiting, moving, carrying, deporting, receiving, coercion, violence or abduction cannot be imagined but in an intentional form.

**f. A crime aiming to make profit:**

Human trafficking crime is the third profitable activity after weapon and drug trafficking. The criminals do serious criminal acts and make humans merchandize they trade in and offer illegal services for making enormous profits. Modern technology helps to move persons and goods rapidly and to open international markets. This in turn helps to enlarge criminal organizations members' activities from local organized crime to transnational one (21).

## **2. The Dimensions of the Criminal Policy for Protecting from Human Trafficking Crimes**

Algeria has paid great interest in the question of human trafficking fighting and endeavored to develop its legal and organizational structure. In addition, it has interested in the prosecution through legislating specific legal texts that make it permissible for law enforcing authorities, the judiciary and inquiry bureaus take all legal measures for the research and investigation concerning these crimes.

The criminal policy with its legal, judicial and security dimensions occupies a significant status in the field of human trafficking and its fighting since it is important in modernizing and reforming justice especially through getting knowledgeable about comparative laws and benefiting from optimal practices, successful experiences as well

Human Trafficking Crime' Concept, Elements and Confrontation Methods according to the Algerian and International Laws A Descriptive Analytical Study as different countries and organizations' experiences on the strength that they cope with recent demands resulting from the changes the national and international stages.

## **2. 1. The Nature of the Criminal behavior of Human Trafficking Crimes and Mechanisms of Confrontation**

### **2. 1.1. The Elements of Human Trafficking Crime**

The occurrence of human trafficking crime, as it is the case with other crimes, requires the existence of three legal elements. They form the legal structure of this crime. They are the legal element, the material element and the mental element. The aim is to reach the criminal methods that prevent from these crimes and fight them.

#### **a. The legal element:**

The Algerian legislator criminalizes human trafficking by virtue of Act 23/4 that includes 77 Articles that fully cover all acts and practices that form human trafficking crime.

#### **b. The material element:**

The general rule mandates the existence of the material element in order that a crime is considered. The material element is the criminal activity or the crime materials. In other words, it is the outward cover through which a crime comes into being to the external world. It is the material behavior that the criminal does to commit the crime. This is through using, moving, sheltering or receiving the victim mentioned in the above definition (22).

We think that the goal of the numeration of criminal activity forms according to the Algerian lawmaker's criminal policy is to broaden the domain of criminalization to include all the cases that fall under human trafficking and it is not conditioned that all mentioned activities are done but perpetrating only one case is sufficient.

The material element of human trafficking crime is formed from a criminal behavior whose subject is a human being that is dealt with using methods mentioned in the previous definitions revolving around exploiting this human being and benefiting from him to gain money. This is detailed as follows:



**- The criminal activity:**

This is shown in many forms that are: recruiting, moving, changing direction, deporting, sheltering or receiving persons.

**- The means used:**

This is demonstrated in using force, threatening to use it, using violence, persuasion,, exploiting ignorance, weakness, fraud, deception, abusing vocational status, aiding and abetting or giving help to those who have control over the victim.

**- The subject of the criminal activity:**

It is the interest. It is exemplified by getting material or immaterial benefit, or a promise to do so, or giving privileges, seeking to attain all this or so forth.

Exploiting weaknesses or persons' economic, social, health or psychological circumstances in order to recruit them and make them human trafficking victims is one of the methods used in these cases. For example, the criminal exploits the inability of the victim to resist or call for help due to a given illness as it the case with abusing partially or fully disable children to be a subject of human trafficking, giving or taking sums of money or privileges to get the consent of the person who has control over these persons and these persons exceed the determined limits of the moral authority granted to them and thereby breaking the society's laws as it the case with the husband who forces his wife to practice prostitution or when a criminal gives a sum of money to someone on condition that this person persuades another that has control over him to make him a subject of trafficking, exploiting him or when the criminal takes a sum of money from someone in order to get the victim's consent to be trafficked (23).

**c. The mental element:**

The mental element means the intent of the criminal is directed towards committing the criminal act in view of the system of fighting human trafficking crimes. The mental element has two forms:

**First;** the general criminal intent. It actualizes by the existence of two components:

**- Knowledge:**

Knowledge means that the guilty knows about the contravened right. It is essential that the criminal is aware of the crime's legal components. It is also fundamental that he is knowledgeable about the subject of the contravened right which is bent on a human being <sup>(24)</sup>.

**- Intention:**

It is a psychological desire that aims to achieve illegal purposes that are shown as follows:

- Indecency through sexual assault.
- Freedom abuse, beggary, enslaving and similar practices, enslavement through compulsory work or service.
- Killing or physical aggression through on the limbs through wounding removing organs or doing medical experiments.

In addition to the general criminal intent and its two components, i. e., knowledge and intention, different criminal legislations stipulate private criminal intent for human trafficking crimes which is demonstrated in exploiting victims through committing any of the forms mentioned in these legislations (25).

The protocol of Palermo restricts these forms in exploiting persons in servile or forced labor, enslaving, servitude, human organ removal, prostitution or any form of sexual abuse. Parallel to what has been mentioned in the protocol of Palermo, the national legislations related to human trafficking following in the footsteps of what is mentioned in the protocol assert that the private criminal intent must be existing in these crimes. We can imagine the private criminal intent of human trafficking crimes including two matters: the intention of sexual and physical abuse and the intention of medical exploitation (26).

## **2. 1.2. The Methods of Criminal Behavior of Human Trafficking**

The law specifies given methods to prevent from human trafficking crime. It makes a condition that the criminal uses these methods in order that the crime of human trafficking is considered. That's, if the activity is done without using these methods, the crime shall not be taken into account (27). It is also noteworthy that these methods are exclusive. They include coercive and non-coercive methods. They are as follows:

**First; coercive methods:**

The Algerian law and related international treaties point out that the coercive methods used to do the crime of human trafficking and practiced on the victim have two types: coercion and abduction. The two types are demonstrated in further detail as follows:

**a. Coercion:**

Coercion is the term used to express these methods. The victim's will is absent regardless that the coercion is material or non-material. Coercion is described as a compulsory act that the criminal commits in order to frustrate whoever resists him in objection to the crime's implementation. It is also defined as every threat to the victim during his/her resistance to the crime. This applies to the description the Algerian lawmaker emphasizes in the new law of human trafficking which is the threatening of using force.

**b. Abduction:**

The international protocol mentions abduction as one of the methods by which the criminal behavior is done. The Algerian legislation has followed in the footsteps of this protocol and the comparative legislations. The Algerian lawmaker regards abduction in the penal law as an independent crime and defines it as taking a minor that has not completed eighteen away even willingly so as to strip him off the authority of his guardian or keeper.

**Second; non-coercive methods:**

A set of non-coercive methods forming the criminal behavior in human trafficking crimes are mentioned in the Algerian law and the international protocol. These methods are as follows:

**a. Trickery and deception:**

Using trickery and deception, the criminal exploits the victim's conditions whether they are psychological, social or economic to make him/her do a specified criminal behavior as a result of his deception for the purpose of making profits. Deception has two types: full and partial deception. Full deception occurs when there is temptation to human trafficking victims through false promises to get job opportunities

for them and make financial earnings contrary to truth. They are fully deceived as a result. This is called full deception which is known in the field of illegal immigration.

Partial deception occurs when the criminal persuades human trafficking victims to provide them with job opportunities in a given field and gets their consent but with hiding the real circumstances. In other words, the victims can be employed in a given job in the country of origin, then they can be exposed to prescribed pressures that can reach coercion to do an illegal work and the original job is just a cover for this illegal work (28).

#### **b. Abuse of authority:**

Authority abuse occurs when a person with power uses it in a way that breaks its legal requirements and conditions of practice.

#### **c. Exploitation of weakness and need:**

There are numerous forms for exploiting victims' weakness whether it is physical, mental, emotional, social or economic. The criminal exploits this weakness to make the victim accept a matter he/she will never do if he/she does not undergo this weakness.

#### **d. Offering or taking sums of money or privileges to get the consent of someone who has control over the victim:**

This means that the criminals exceed the determined limits concerning practicing a moral authority granted to them over another person, i.e., the victim. By doing this, he is considered a person breaking the society's laws, conventions, habits and traditions. The lawmaker specifies the acts through which the control over the victim is done exclusively irrespective that the sums of money mentioned above are material or non, and regardless that the source of control over the victim is legal or practical.

## **2.2. The Most Important Legislative Mechanisms Decided for Facing Human Trafficking Crimes**

### **2.2.1. The National Mechanisms for Fighting Human Trafficking Crimes**

The most important procedures and measures Algeria has taken to implement its strategy to fight this crime by virtue of the new Act no. 23/04 on 7<sup>th</sup> May 2023 are as follows:

**a. Criminalization:**

The joining countries are obligated to take necessary steps, legal and otherwise, to criminalize the acts that form the crime of human trafficking such as trafficking women, children and men as well as crime attempts.

It is evident that the Algerian legislator has adopted broad criminal policy, in conformity with the requirements of the new law, to face this kind of crimes which are exemplified by the acts of recruiting, moving, transporting, sheltering, using force or receiving. He demands that they are evidenced using certain methods which are threatening using force, using force, abduction, deception, abuse of authority, exploiting weaknesses, giving or taking sums of money or privileges. He mandates targeting a given purpose which is the exploitation of the victim. He has revealed forms of this exploitation without mentioning it exclusively.

Thus, it is obvious from the law texts that the subject of protection of the human being's right of the safety of his body is the right itself. The law criminalizes all that results in disabling any of the body's physical or mental functions. Therefore, all that leads to malfunctioning of the victim's physical or mental abilities is an aggression on the safety of his body. So, human trafficking for any purpose is an aggression on the safety of the human body. It is noteworthy that human trafficking is a compound crime that includes a set of acts that each of which forms a crime on its own.

**b. Taking measures to fight human trafficking:**

Creating strategies, policies, programs, doing studies, media campaigns are examples of the measures that are taken to prevent from human trafficking crime and to protect trafficking victims from the dangers of this crime. This is in collaboration with non-governmental organizations as well as related establishments that the civil community interests in.

**c. Helping and protecting the victims of human trafficking:**

Helping the victims of human trafficking is through taking steps for protecting them such as providing them with material and medical assistance. In addition, they should be given judiciary help such as how to deal with investigation procedures and how to get compensation for the harm that befall them.

**d. Returning the victims to their homes and this mentioned in Article 8 of the protocol.**

**e. Cooperating internationally in the field of information exchange and providing training.**

**f. Borders measures:**

This is to reveal and prevent human trafficking crimes without breaking the international commitments related to the freedom of persons movement. This is through taking legislative measures to stop this crime. In light of what has mentioned above, we conclude that the treaty and the protocol have exposed to a set of legal issues to define the legal framework of human trafficking crime especially what is related to the domain of criminalization and assistance exchange in the field of international cooperation to fight this crime.

**g. The cases of toughening the penalty mentioned in the text of Act 23/04 on 7<sup>th</sup> May 2023:**

These cases are as follows:

- If an organized criminal group commits the crime,
- If the crime committed against a women, a person with special needs or a child,
- If the crime's perpetrator carries a weapon or threaten using it.
- If the crime is committed by numerous persons.
- If the criminal uses drugs or other psychotropic substances to control the victim.



- If the crime is committed using threats of killing or torturing.
- If the crime results in serious harm or permanent infirmity that befalls the victim.
- If the crime is transnational.
- If the crime is committed by an official working for the executive, legislative or judicial authority, or any public or private servant.
- If the crime is committed by the victim's husband, direct lineal relationship or his-her guardian.
- If the crime is committed using information and communication technology.

**h. The cases of exemption and reduction of punishment by virtue of Act 23/04 on 7<sup>th</sup> May 2023:**

Whosoever commits or takes part in a crime or more that mentioned in this Act and reports it/them to the administrative or judicial authorities before they get informed of it/them and helps to save the victim and/or reveals the identity of the criminals and/or arrests them shall benefit from the excuses exempting from the punishment mentioned in the penal law. And the determined punishment is reduced to half concerning every person commits or takes part in any of the crimes mentioned in this Act and helps, after the start of following procedures, with the arrest of a person or more from those who have committed the crime and/or reveal their identity.

**2.2.2.The International Mechanisms for Fighting Human Trafficking Crimes**

The idea of international cooperation is related to the phenomenon of organized crime or what is known by transnational crime. Thus, international cooperation has become a nagging need for fighting human trafficking crimes since the organized crime necessitated international cooperation. It is difficult to face this kind of crimes without effective international cooperation (29). This is often due to a set of reasons. The most important reason is the diversity of the elements of this type of crimes owing to the rapid scientific advancement. Its methods of evidence weaken and vanish from country to another. Its criminals can easily move from country to another. Thus, it is difficult for the national criminal laws with their traditional principles (the territorial principle) to prosecute such criminal activities (30).

The idea of international cooperation in its legal aspect is an accurate idea. It does not mean domination over the countries' sovereignty. It means cooperation among countries' sovereignty. In addition, the organized crime or the transnational one is not definitely regarded as a crime outside a country's borders, but it is a crime that its elements can exceed the regions of several countries (31).

International cooperation is a main pre-requisite for the success of any purpose of human trafficking. There are different forms of trafficking including trafficking in children and women that exist transnationally and cannot be faced without exerting concerned international efforts and without emphasizing the bases of joined international cooperation. Thus, countries ought to help each other in fighting different forms of these transnational crimes. Since organized crime gangs work transnationally, judicial systems ought to do so.

The General Assembly of the United Nations considers human trafficking as one of the most challenges that must be faced. It has ratified the additional protocol supplementing to the United Nations Treaty for fighting transnational organized crime. Human trafficking and immigrants smuggling are regarded as contemporary forms of slavery. The new forms of slavery have been classified at the level of the United Nations' human rights commission. Women trafficking is considered as a form of slavery (32).

Due to the fact that international cooperation is the effective mechanism for fighting human trafficking, this cooperation requires reducing the extreme differences among the internal penal systems since the disagreement and divergence among these systems makes the criminal look for the most tolerant systems. That's why many international treaties have been concluded in the field of international cooperation so as to fight these crimes. The convergence features among these systems appear in accepting the cases of delegation of powers in taking investigation measures, clues gathering and criminal rulings recognition. The international law does not affect the countries' sovereignty. Conversely, non-cooperation increases the gap among the penal systems and thereby contributing to the aggravation of this kind of crimes.

The international law emphasizes the prevention system because it is the main component of human trafficking fighting, sex trafficking and commercial sex abuse. Despite that prevention and protection rely first and in a great deal on a methodological treatment of issues such as racism, sexism, poverty and so on, the main

factors of trafficking contribute to creating the circumstances that enable sex trafficking networks to make profits through exploiting poor and marginalized sectors in the society (33).

In addition, the human rights international conventions that tackle the different rights of trafficking victims are numerous. These conventions impose obligations on the states to make sure that violations exist or not. If there is a violation of this kind, it becomes a duty that the states take urgent measures to protect the victims and to present the criminals for trial in the framework of the system of criminal justice. It is possible for these countries to report any questions related to trafficking as soon as these acts occur within their borders, i.e., inside the country. On the other hand, any other form of transnational trafficking needs effective exchange of information. Exchange of information and the international cooperation rulings that are included in the rulings of the treaty of transnational organized crime are some of the most necessary tools for fighting human trafficking (34).

The United Nations has sought, through its different bodies, to fight all forms of crimes in general and organized crimes in particular. It has also endeavored to fight the phenomenon of trafficking in human organs. It has created a set of subordinate bodies to fight this crime. The top of these bodies is the United Nations program for fighting crime and the criminal justice.

In this context, the United Nations' eleventh conference for fighting crimes and criminal justice was held in Bangkok on 18<sup>th</sup> to 25<sup>th</sup> April 2005. This conference made suggestions and recommendations concerning curbing trafficking in persons and children, immigrants smuggling and trafficking in human organs. The conference's final report by which the General Assembly urged the member states to adopt an total treatment for fighting human trafficking in its decision no. 58/137 included endeavors to enforce the law, confiscate the crime's earnings, protect human trafficking victims and take preventive measures.

It also requested the member states to stand shoulder to shoulder for effective technical cooperation, media campaigns on the methods and ways organized crime gangs use, awareness programs and vocational training on social skills that help the victims who are likely to find themselves in confrontation with gangs that traffic in their bodies and honor to rehabilitate, using women in sex tourism and removing and

selling their organs for money. Generally speaking, international cooperation in the framework of the United Nations focuses on the following mechanisms:

**a. Exchanging legal help:**

The gangs of the organized crime use a very precise and effective approach that is based on penetration, centralization, permeation, pervasion, domination and control. This approach depends on penetration and breaking through any borders or restrictions and using the borders to impose their stipulations, force their will and raise their earnings and profits from criminal practices that break laws and legislations. Since human trafficking can be included under the name of organized crime, the criminals have committed their crimes passing by the borders of more than one country. This makes difficult the job of the concerned authorities to track and arrest them. So, the countries that have been stages for parts of this crime are obligated to give assistance because the criminals can move internationally easily using new technology. This necessitates cooperation to enforce the law and enhance the country that has tracked and punished the criminals for this purpose. We find many countries passing laws that allow them to give international assistance in addition to resorting to the conventions that support reciprocal legal assistance (35).

**b. Consolidating the jurisdiction:**

It is known that the territorial principle is applied by all countries. It means that any crime committed in some country whether by its citizens or by foreigners, its punishment has to be in conformity with the legal rulings of this country. This is a right of every country to fight crimes including human trafficking, but it should be noted that this principle alone is unable to fight human trafficking since it is a transnational crime (36).

That's why the United Nations treaty for fighting organized crime encourages confirming jurisdiction outside the country and it defines this kind of jurisdiction as the legal ability through which a state can practice its authority outside its territorial borders. Exercising jurisdiction outside the territorial borders includes all the legal cases in which a state's subject is a criminal or a victim.

**c. Extradition:**

The international law jurisprudence has firmly established that extradition is a form of international cooperation in fighting crime and criminals and protecting societies from those who disturb their safety and stability and in order that those criminals remain away from punishment. At it has mentioned above, criminal gangs do not confess of borders and far distances won't make them unable to do what they want. Moreover, crimes have become international and its stages are done in more than one country. This is what makes the authorities that track criminals stand still. This is for a simple reason. They have no authority to extend their jurisdiction to other countries. Thus, there must have been a measure that make the judiciary track and prosecute those who commit crimes out of its boundaries. This measure is extradition (37).

The aim of extradition is to prevent the criminal from escaping punishment in case he resorts to a country other than the one he has committed the crime in and he cannot be tried there. It is common that a person commits a crime in a given country and go to another to escape punishment.

#### **d. Enhancing borders' control and documents' safety:**

According the protocol of human trafficking, the countries have to take necessary measures to strengthen borders control and check means of transport in order that they are not used for illegal purposes.

Taking into account the international obligations relating freedom of movement, the member states have to promote borders restrictions to the extreme limit. This is of utmost importance to discovering and curbing human trafficking. The protocol confirms that every member state has to take legislative measures or any other appropriate steps to extremely prevent using the means of transport that are used by commercial transporters in committing criminal acts mentioned in Article 5 of the protocol that include the acts mentioned in the first Article which are: recruiting, moving, transporting, sheltering as well as attempting to do any of the criminal acts or taking part as an accomplice or organizing or directing other persons to commit any of the criminal acts.

### **Conclusion**

Human trafficking crime is an infringement of the main principles related to protecting human rights and preserving his dignity that related Algerian laws guarantee in conformity with international treaties and norms in this concern especially the

international charter for human rights. It is also a breach of the principles of heavenly religions since it degrades the human dignity Islam calls for preserving. Furthermore, it breaks the international standards of human rights emphasized by treaties and protocols including the protocol of stopping, repressing and punishing human trafficking especially women and children that supplements the United Nations' Treaty for fighting transnational organized crime and the optional protocol concerning children selling and exploiting them in prostitution, pornography that is supplemented to child rights treaty.

In light of this and owing to the dangerous effects of this crime on countries safety and stability and the threat it forms to persons particularly children and women, most countries have rushed to fight this crime and set mechanisms to reduce its expansion and to punish its perpetrators. The Algerian lawmaker has a positive role that is manifested in deciding punishment to stop this crime in view of Act 23/04.

The Algerian government makes continuous efforts to fight human trafficking crimes particularly trafficking in children and women on the basis of the principles of international legality to keep to its international commitments through criminalizing all forms of belittling human dignity and confirming respecting him and preserving his rights. Not only has Algeria passed legislations and laws to fight human trafficking crimes, but it has exerted necessary efforts to put into effect these systems, abiding by them and create the executive mechanisms that are demanded to activate them as well as what has been asserted by virtue of the new law.

In addition, Algeria treats with the case of fighting human trafficking seriously since it believes that human trafficking is a flagrant violation of human rights and indifference to human, religious and cultural values nationally and internationally.

In view of what has mentioned above, the current study makes the following recommendations:

- Enhancing the role of civil community to prevent and protect from human trafficking crimes.
- Raising people's awareness of the steps and measures the government take to fight immigrants trafficking across the national borders.
- Overcoming the social, economic and cultural causes as well as other factors that make persons subject to trafficking across the national borders.



- Making use of meaningful media programs to spread the concept of criminalization of illegal immigration and human trafficking.
- Programming awareness campaigns in the educational institutions, cultural and sports centers of the dangers of children and women abduction.
- Encouraging scientific studies and academic researches in the field of human trafficking and fighting mechanisms.
- Enhancing mechanisms of security, judiciary and legal international cooperation in the field of human trafficking.

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