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Combating Contemporary Forms of Slavery in Islamic Law

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Abstract

Trafficking in persons is recognized as a form of modern day slavery.¹ The purpose of this paper is to analyze how Islamic law combats trafficking in persons. Of course, this initially requires an answer to the broader question of whether trafficking in persons is addressed differently in the different members of the legal family. The question may arise whether the legal system is common law, civil law or Islamic law. In fact, one should first ask the question whether there is a common law, a civil law, or an Islamic law approach to combating to trafficking in persons.

Since the source of Islamic law is the religious text as opposed to legislation or court decision, issues of religion that may be relevant to trafficking in persons may arise, including:

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¹ 'Trafficking in Persons: An Annotated Legal Bibliography', Law Library Journal, Vol 96:4 (2004)

the Islamic "religious" position on the institution of slavery, since we are addressing trafficking in persons as a form of slavery, whether in its traditional sense or in contemporary interpretation and; the Islamic "religious" position on the institution of prostitution, since we are debating whether we define sex trafficking as trafficking for the purpose of prostitution or for the purpose of exploitation of prostitution of others. Additionally, trafficking for the purpose of marriage is problematic in many of the Moslem countries. The question that should be asked is whether Islam allows child marriage, arranged marriage in the absence of consent or temporary marriage and how does Islam guard against exploitation in these forms of marriage, so that they do not become forms of trafficking.

In addition, there are problems of human trafficking that may arise in Muslim countries under Islam, for example, the institution of domestic service. While it is not prohibited per se, it may constitute a form of trafficking for the purpose of labor if it entails exploitation under the sponsorship rule.² Similarly, migrant workers are entitled under Islamic tradition to the same rights as nationals, a principle that is not always followed in some Moslem countries.

It is also necessary that any checklist of issues on trafficking in persons under Islamic law cover the issues of prevention, education and public awareness. One has to ask the question of how a religious approach differs from a non-religious approach when one designs a public awareness campaign. One has also to ask how Islam addresses the concept of a vulnerable

² Mattar, Mohamed, "Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses", Vol. 26:3 (2003)

victim. Does Islam adequately address causes of vulnerability especially poverty, under-development and lack of equal opportunity?³

Finally, providing victims with protection and assistance should be covered under a religious approach to combating trafficking. How does Islam affect a victim-centered approach to the problem and how does it affect the duty of the ordinary citizen in providing victims with assistance? How does Islamic law provide for the principle of compensation for victims of a crime in accordance with the tradition of the Prophet "no injury and no inflicting of injury"? Questions which culminate in the ultimate issue of the role of an Islamic state in providing for the welfare of their people, including victims of crimes.

While contemporary forms of slavery may still be practiced in some Moslem countries, the question is whether these practices are customs and cultural practices or they are part of Islamic law. Whether Islamic law has allowed or abolished the institution of slavery and whether Islamic law principles are against all forms of contemporary slavery. These are two separate issues that should be answered.

³ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, states in Article 9, "1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity."