


RESEARCH ARTICLE		The Criminal Policy of the Algerian Legislator in Confronting the Crime of Human Trafficking	
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Abstract			
<p>Under Law No. 23-04 concerning the prevention and combating of human trafficking, the Algerian legislature has introduced several innovations and amendments to criminal policy. These include expanding the scope of criminalisation by adding ancillary offences and rendering the terminology more precise, as well as strengthening the protection of victims. In this context, the consent of an adult victim is not considered valid when trafficking means have been employed, whereas the consent of children is never recognised. Regarding penal policy, although the offense retains its classification as a misdemeanour, the penalties have been increased and made more severe to align with the international definition. Furthermore, the legislature has expanded the aggravating circumstances and, in some instances, reclassified the offense from a misdemeanour to a felony while amending the provisions concerning excuses to encourage reporting and contribute to reducing the risks associated with this crime.</p>			
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Introduction:

The Algerian legislature has adopted a legislative approach based on enacting a dedicated statute to combat the phenomenon of human trafficking. On 7 May 2023, Law No. 23–04 concerning the prevention and combating of human trafficking was promulgated in response to several considerations, foremost including Algeria's international and regional obligations, which require harmonising national legislation with international laws. This was also prompted by the increasing prevalence and spread of human trafficking, particularly given that Algeria is considered both a destination country for African states and a transit country towards European nations. Previously, the approach consisted of amending the Penal Code and adding a section to Book Three concerning felonies and misdemeanours and their penalties, which criminalised human trafficking in articles 303 bis 4 to 303 bis 15. Perhaps the Algerian legislature did not issue a specialised law immediately, preferring instead a gradual and measured process to ensure the development of a comprehensive statute regulating all matters related to the crime of human trafficking, including prevention, criminalisation, punishment, procedural rules, and international cooperation.

This law has introduced provisions that were not previously stipulated in the Penal Code, in addition to amending other specific provisions. Accordingly, we deemed it necessary to study Laws No. 23–04 concerning the prevention and combating of human trafficking, with a focus on the criminalisation and punitive policies adopted by the Algerian

legislature. What, then, constitutes the criminal policy of the Algerian legislature in confronting crimes of human trafficking?

To address this issue, we employed an analytical method by analysing the various legal texts dealing with the crime of human trafficking as set out in Law No. 23–04, as well as a descriptive method by outlining the elements of the crime of human trafficking and the penalties prescribed for it.

Therefore, we organised our study according to a plan consisting of two sections. The first section, entitled "The Policy of Criminalisation in Crimes of Human Trafficking," is divided into two subsections: the first addresses the crimes of human trafficking. In contrast, the second discusses both the general and specific criminal provisions applicable to crimes of human trafficking. The second section, entitled "The Punitive Policy in Combating the Crime of Human Trafficking," comprises a first subsection dealing with the penalties prescribed for the crime of human trafficking and a second subsection addressing the general penal provisions standard for crimes of human trafficking.

Section One

The Policy of Criminalisation in Crimes of Human Trafficking

Law No. 23–04¹ Regulates the crime of human trafficking and its ancillary offences in Articles 40–50 and sets forth both specific and general criminal provisions relating to these offences in Articles 51–63. On this basis, we have divided this section into two subsections: the first addresses crimes of human trafficking. In contrast, the second outlines the general and specific criminal provisions applicable to these offences.

Subsection One: Crimes of Human Trafficking

The Algerian legislature addressed crimes of human trafficking in the Penal Code under Law No. 09–01, in Articles 303 bis 4–303 bis 15.² However, these articles were repealed by Law No. 23–04, which also replaced the term "trafficking in persons" with "trafficking in human beings", a more precise term, as the former encompasses both natural and legal persons.³ The latter refers exclusively to natural persons, that is, human beings. Law No. 23–04 encompasses nine offences, the first of which is the core crime of human trafficking, which will be addressed in the first branch, followed by eight ancillary offenses that will be examined in the second branch.

Branch One: The Crime of Human Trafficking

The Algerian legislature criminalised human trafficking in Article 40 of Law No. 23–04 after it had previously been stipulated in the now-repealed Article 303 bis 4 of the Penal Code. Article 40 does not provide a definition of the crime of human trafficking, as this term had already been defined in Article 2 of Chapter One, relating to the general provisions of Law No. 23–04.⁴ In drafting Article 40, the legislator adopted the technique of beginning with the penalty "shall be punished by..." which is characterised by simplicity in legislative language, abandoning the previous approach of defining the crime at the outset, as was done in the now-repealed Article 303 bis 4.

¹ Law No. 23-04 of 7 May 2023 concerning the prevention and combating of human trafficking, Official Gazette No. 32.

² Law No. 09-01 of 25 February 2009 amending and supplementing the Penal Code, Official Gazette No. 15.

³ Outhamania Koucer, "Legislative Shortcomings in the Crime of Trafficking in Persons under Law 09-01," *Journal of Legal Studies and Research* 7, no. 2 (2022): 316.

⁴ Article 2 of Law No. 23-04 provides: "The recruitment, transportation, transfer, or reception of one or more persons using threat or the use thereof, or by other forms of coercion or abduction, or by fraud or deception or abuse of power or position or exploitation of a state of vulnerability or by giving or receiving sums of money or advantages to obtain the consent of a person having authority over another, for exploitation. Exploitation includes, in particular, the exploitation of the prostitution of others or other forms of sexual exploitation, the exploitation of others in forced labour or services, slavery, practices similar to slavery, servitude, or the removal of organs.

Human trafficking shall also include the giving or receiving of sums of money or advantages for the purpose of selling, handing over, or obtaining a child, for any purpose and in any form.

The use of any of the means set forth in the first paragraph above is not required for the crime of human trafficking to be constituted with respect to a child; the mere intent to exploit suffices."

The Algerian legislature has classified this crime as a misdemeanour in both the repealed and current articles, despite the grave consequences it has for individuals and states alike, in addition to its violation of the most fundamental principles of human rights, namely, the rights to life and liberty.⁵

From the definition set forth by the legislature in Article 2, the constituent elements of the crime of human trafficking can be identified. These consist of the material element, which is based on two principal components, namely, the various forms of criminal conduct and the means of exploitation, and the moral element, which is fulfilled by the intent to exploit.

I. Material Elements

The material element of the crime of human trafficking rests upon two main components: the forms of criminal conduct and the means employed in the commission of the crime.

A) Forms of Criminal Conduct:

Paragraphs one and three of Article 2 state the following: "The recruitment, transportation, transfer, or reception of one or more persons.

Human trafficking also includes the giving or receiving of sums of money or advantages to sell, hand over, or obtain a child, for any purpose and in any form."

It may be observed from these two paragraphs that:

- The Algerian legislature has stipulated the same forms of criminal conduct as those provided for in the Protocol and previously set out in the now-repealed Article 303 bis 4 of the Penal Code, namely, recruitment, transportation, transfer, harbouring, or reception, beginning with recruitment and concluding with reception.
- These forms are enumerated disjunctively, as the legislator employed the term "or," indicating that the presence of any one of these acts suffices to constitute the crime of human trafficking.
- Since the definition does not need to correspond precisely to the wording of the Protocol but rather to be adapted by domestic legal systems,⁶ the legislature employed the term "one or more persons" instead of the term "persons" used in the Protocol. This serves to emphasise that the crime may be committed individually and not solely within the context of an organised criminal group, whether inside the territory of the Republic or abroad. Thus, the victim may be a single individual or several people. In contrast, given its international character, the Protocol in Article 4 stipulates that it applies only to crimes of trafficking in persons committed by an organised criminal group, which, by its very nature, would not typically traffic a single person across borders.⁷
- Article 2 of Law No. 23-04 does not define these five forms, nor does the Protocol; therefore, we clarify them as follows:
 - The recruitment of one or more persons: This is a material act manifested in gathering the victims to exploit them.⁸

⁵ Tourche Iman, "The Crime of Human Trafficking in Light of Algerian Legislation," *Journal of Generation for Human Rights*, no. 40, 89.

⁶ *Toolkit to Combat Trafficking in Persons*, United Nations Office on Drugs and Crime, Global Programme against Trafficking in Human Beings, United Nations Publications, 6.

⁷ Salem Ibrahim bin Ahmed Al-Naqbi, *Crimes of Human Trafficking and Strategies to Combat Them at the International and Regional Levels* (Al-Alamiya Publishing and Distribution, Egypt, 2012), 43.

⁸ Nizar Hamdi Qushta, "The Legislative Confrontation of the Crime of Human Trafficking in Omani Law (An Analytical Comparative Study)," *Journal of Legal and Political Sciences* 9, no. 3 (December 2018): 15.

- The transportation of one or more people refers to moving the victims of human trafficking from one place to another, whether by lawful or unlawful means.
- The transfer of one or more persons means transferring ownership to another person, regardless of the means employed or the nature of the trafficking, whether domestically or internationally, for exploitation. It is distinct from transportation, which involves moving persons from one location to another.⁹
- The harboring of one or more persons: This may be either temporary or permanent. Temporary harboring involves providing temporary accommodation immediately after recruitment or before and after transportation, whereas permanent harboring entails offering permanent residence to the victim until the point of exploitation.¹⁰ Harboring may also include offering seemingly legitimate employment opportunities to victims, which in reality serve as a front for their exploitation in unlawful activities.¹¹
- The reception of one or more persons: This consists of receiving victims who have been transported, whether within the national borders or across them. Reception may occur either before or after transportation and can be repeated multiple times.¹²
- Moreover, the third paragraph of the aforementioned Article 2 adds three further forms of human trafficking relating to child victims, namely, the sale, delivery, or acquisition of a child.

B) Means Employed in the Crime of Human Trafficking:

Paragraph one of Article 40 provides the following:

"The recruitment, transportation, transfer, or reception of one or more persons by means of threat or the use of force, or by other forms of coercion or abduction, or by fraud, deception, abuse of power or position, or exploitation of a state of vulnerability, or by giving or receiving sums of money or advantages to obtain the consent of a person having authority over another, for the purpose of exploitation."

The following may be observed from this paragraph:

- There are two categories of means by which this crime is committed: coercive means, which include threats of force or the use thereof, or other forms of coercion or abduction; and fraudulent means, which include fraud, deception, abuse of power or position, exploitation of a state of vulnerability, or giving or receiving financial advantages to secure the consent of a person having authority over another.
- The Algerian legislature acted judiciously in enumerating both fraudulent and coercive means employed for exploitation. This is significant, as restricting the provision to coercive means alone would negate the existence of the crime in cases where the victim's consent is obtained through other methods.¹³
- The Algerian legislature adopted the open-ended model in drafting this paragraph; these means are not exhaustively enumerated, as the legislator listed several means and then used the phrase "or other forms of coercion," thus allowing a degree of flexibility in the application of this article.
- Furthermore, in the final paragraph of Article 2 of Law No. 23-04, the legislature provides that the crime of human trafficking is established even if none of these means are employed when the victim is a child. This aligns with

⁹ Salem Ibrahim bin Ahmed Al-Naqbi, *ibid.*, 63.

¹⁰ Jaafar Khadidja, *Crimes of Human Trafficking in International Law* (Faculty of Law and Political Sciences, Djilali Liabes University, Sidi Bel Abbes, Algeria, 2018-2019), 44.

¹¹ Salem Ibrahim bin Ahmed Al-Naqbi, *ibid.*, 65.

¹² Outhamania Koucer, *ibid.*, 318.

¹³ Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, provides: "The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used."

Article 3 of the Protocol, whereas the now-repealed Article 303 bis four did not distinguish between adult and child victims. The law thus considers children incapable of consenting to exploitation; indeed, their consent is essentially impossible, as they are among the most vulnerable.¹⁴

- In a similar legislative context, some statutes, when defining trafficking, have limited themselves to referencing acts alone, without mentioning the means employed. This criminalisation technique facilitates the prosecution of trafficking and has proven to be effective.¹⁵

II. The Moral Element

Paragraphs one and two state as follows: "...for exploitation.

Exploitation includes, in particular, 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."

It may be observed from these two paragraphs that:

- The crime of human trafficking is an intentional offense, based on both general and specific criminal intent, as expressly stated by the legislature in Article 2 of Law No. 23-04, using the phrase "for exploitation." It is sufficient to establish that the perpetrator acted to exploit the victim for the crime of human trafficking to be constituted; it is immaterial whether the victim was exploited, as long as exploitation was the perpetrator's objective.
- The Algerian legislature acted judiciously not by limiting the forms of exploitation in paragraph two of Article 2 but rather by enumerating them by way of example only, employing the term "in particular," which indicates that other forms of exploitation exist. Such forms may include trafficking in women for reproduction, conducting medical experiments, forced criminality, or forced recruitment and use. Moreover, new forms of exploitation may emerge in the future, as the phenomenon is continually evolving. This approach is consistent with Article 3(a) of the Protocol, which provides a nonexhaustive list of what is encompassed by the term "exploitation," as follows: "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." This is in contrast to the now-repealed Article 303 bis 4 of the Penal Code, which enumerated the forms of exploitation exhaustively, thereby diverging from the Protocol on Trafficking.
- The legislature also omitted begging as a form of exploitation in Article 2 of Law No. 23-04 after it had been included in the now-repealed Article 303 bis 4 of the Penal Code to avoid contravening Article 3 of the Protocol on Trafficking in Persons.
- The Algerian legislature defined sexual exploitation, forced labour or services, slavery, practices similar to slavery, and servitude in Article 2 of Law No. 23-04. Sexual exploitation is considered the most common form of trafficking worldwide, followed by labour exploitation, which is steadily increasing.

Branch Two: Ancillary Offences to the Crime of Human Trafficking

By Law No. 23-04, the Algerian legislature expanded the forms of human trafficking offences to combat this crime in all its manifestations, introducing new offences that were not previously provided for in the Penal Code. There are seven newly introduced offences, in addition to one previously stipulated in the Penal Code, namely, the offence of failure to report, formerly set out in the now-repealed Article 303 bis 10. Accordingly, the ancillary offences to the crime of human trafficking are as follows:

¹⁴ *Toolkit to Combat Trafficking in Persons, ibid.*, 9.

¹⁵ *Model Law against Trafficking in Persons*, United Nations Office on Drugs and Crime, 32.

The ancillary offences to the crime of human trafficking include the following: the offense of facilitating human trafficking electronically (Article 43); the offense of benefiting from the victim (Article 45); the offense of disclosing the identity of a victim, witness, or informant (Article 46);¹⁶ the offense of retaliation or intimidation against victims, witnesses, experts, informants, their family members, or other closely related persons (Article 47); the offense of a carrier's failure to comply with legislation and regulations concerning entry into or exit from the national territory (Article 48);¹⁷ the offense of participation in an organised criminal group (Article 49); and the offense of concealment (Article 50).

Subsection Two: General and Specific Criminal Provisions for Crimes of Human Trafficking

The Algerian legislature has established a separate section for provisions standard to crimes of human trafficking. In certain respects, these provisions are characterised by their specificity and departure from the general rules set out in the penal code. They include:

Branch One: Non-Liability of Victims of Human Trafficking

Article 51 of Law No. 23-04 states, "Victims of human trafficking shall not be prosecuted for violations of procedures related to the entry, residence, or movement of foreigners in Algeria."

The following conclusions can be drawn from this study:

- The policy of the Algerian legislature is oriented towards enhancing the protection granted to victims of human trafficking, despite the absence of any explicit obligation to do so in the Convention against Transnational Organised Crime or the Protocol to Prevent, Suppress and Punish Trafficking in Persons, in addition to specific nonbinding guidelines that encourage states not to prosecute trafficked persons for their unlawful entry or presence.
- The adoption of a nonprosecution policy relieves victims of human trafficking from fears of judicial pursuit and punishment and encourages them to seek protection, assistance, and justice.

Article 52 of Law No. 23-04 further states, "A victim shall not be held criminally or civilly liable for any offense that may be committed, provided it is directly connected to the fact of being a victim of human trafficking."

The following conclusions can be drawn from this study:

- The principle of exemption from criminal and civil liability is among the recommended guidelines concerning human rights and human trafficking, as issued by the United Nations High Commissioner for Human Rights. Recommended Principle 7 states, "Trafficked persons shall not be detained, charged, or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons." Article 52 is also nearly identical to Article 27 of the Arab Model Law on Combating Human Trafficking.¹⁸
- The basis for exemption from criminal and civil liability lies in coercion, whether physical or moral, to which victims of trafficking are subjected; their consent to exploitation is not taken into account when it is established that prohibited means have been used.¹⁹ For nonliability to apply, the legislature requires a causal link between the two offences, meaning that the offence committed must be a direct result of the crime of human trafficking. Moreover, victims may not be prosecuted even if they do not cooperate with the judicial authorities.

¹⁶ Provided for in Article 6 of the Protocol and Article 24 of the Convention.

¹⁷ Provided for in Article 11 of the Protocol.

¹⁸ Article 27 of the Arab Model Law on Combating Human Trafficking provides: "A victim shall not be held criminally or civilly liable for any offence set forth in this law, whenever such offence arises from or is directly related to their status as a victim."

¹⁹ Hossam El-Din Mahmoud Hassan, "Compensating Victims of Human Trafficking between Traditional Rules and Modern Means," *Journal of Legal and Economic Research*, no. 57 (April 2015): 582.

- Among the offences that victims of human trafficking may commit are engaging in prostitution; violating procedures related to the entry, residence, or movement of foreigners in Algeria without documentation; working illegally in Algeria; and using forged documents.
- The question arises here as to whether the provisions of Article 52 of Law No. 23–04 apply in cases where the offense is serious, such as acts of terrorism.

Branch Two: The Issue of Victim Consent

Article 53 of Law No. 23–04 states, "The victim's consent shall not be taken into consideration in the commission of the crime of human trafficking."

The following conclusions can be drawn from this study:

- The wording of this article is imprecise and lends itself to several interpretations. This may mean that the victim's consent is not considered and that the crime of human trafficking is constituted even if the perpetrator has not employed any of the means outlined in Article 2 of the same law, whether the victim is an adult or a child. In contrast, the now-repealed Article 303 bis 12 was more precise, explicitly stating that the victim's consent is not taken into account where the perpetrator has used any of the means indicated in Article 303 bis 4 (paragraph one). The same approach is used in Article 3 of the Protocol, which clearly states: "The consent of a victim of trafficking in persons to the intended exploitation outlined in subparagraph (a) of this article shall be irrelevant where any of the means outlined in subparagraph (a) have been used." This is also the case in Article 2 of the Arab Model Law on Combating Human Trafficking.²⁰ That is, the victim's consent is not taken into consideration where any of the means have been used, as it is logically and legally impossible for genuine consent to exist in circumstances where any of the aforementioned means are employed. Genuine consent is neither possible nor recognised in law, except where all relevant facts are known and the individual concerned exercises free will in expressing such consent.²¹
- If the adult victim's consent is given voluntarily and with full knowledge, this negates the crime of human trafficking; however, the act of exploitation alone may still constitute other offences, such as violations of labour laws or prostitution.²²
- The victim's consent at one stage of the process cannot be considered consent for all stages; human trafficking exists if consent is absent at any stage of the process.²³
- The victim's consent is not taken into consideration in three cases: if the victim is offered work by fraudulent means and agrees to escape from one country to another unlawfully; if the victim is deceived about working conditions despite being aware of the type and location of the work in advance; or when the exploitation involves children.
- The consent of a child is not recognised, even if none of the means of human trafficking have been used.
- The irrelevance of the victim's consent when any of the means of human trafficking are employed does not negate the accused's right to defence or the presumption of innocence, nor does it shift the burden of proof; the burden

²⁰ Article 2 of the Arab Model Law on Combating Human Trafficking provides: "The victim's consent to exploitation in crimes of human trafficking shall not be taken into consideration whenever any of the means set forth in paragraph 1 of Article 1 of this law have been used . . ."

²¹ *Model Law*, *ibid.*, 34.

²² Educational Unit 6: The Concept of Trafficking in Persons, Education for Justice University Module Series on Trafficking in Persons, United Nations Office on Drugs and Crime, United Nations, Vienna, 2019, available at: <https://www.unodc.org/e4j/ar/tip-and-som/module-6/key-issues/the-issue-of-consent.html>

²³ *Toolkit to Combat Trafficking in Persons*, *ibid.*, 10.

remains with the public prosecution.²⁴ However, if it is proven that any unlawful means of trafficking have been used, consent becomes irrelevant, and no defences based on such consent may be invoked.²⁵

- The victim's consent is also significant in establishing the crime of human trafficking and in determining the penalty, as it is considered a mitigating circumstance if the victim agreed to exploitation; it may also negatively affect the amount of compensation awarded.

Branch Three: Attempt

Article 60 of Law No. 23–04 provides the following: “An attempt to commit any of the misdemeanours stipulated in this law shall be punishable by the same penalty prescribed for the completed offence.”

Branch Four: Criminal Participation

First—Complicity: Article 61 of Law No. 23–04 states, “An accomplice to the commission of crimes of human trafficking shall be subject to the same penalty prescribed for the felony or misdemeanour committed.”

- Punishing the accomplice in crimes of human trafficking is a mandatory provision that is not otherwise provided for in national criminal laws; see Protocol, Article 2, paragraph 2(b).

Second—Incitement: Article 62 of Law No. 23–04 states, “Anyone who incites the commission of any of the offenses stipulated in this law shall be punishable by the same penalty prescribed for the committed offense.”

- According to general principles in Algerian criminal law, the instigator is considered a principal perpetrator, not merely an accomplice, and is therefore subject to the same penalties as the material perpetrator, provided the conditions for incitement are met, namely, the use of one of the means set out in Article 41 of the Penal Code and that the incitement is both direct and personal.²⁶

Section Two

Punitive Policy in Combating the Crime of Human Trafficking

The punitive policy is no less important than the policy of criminalisation; accordingly, this section addresses the penalties prescribed for the crime of human trafficking, then moves on to the aggravated circumstances, and finally, exemption from and mitigation of punishment.

There are two types of penalties: principal and supplementary. Both are characterised by particularities in crimes of human trafficking. Additionally, the rules regarding exemption from and mitigation of punishment also differ in these offences from those generally applicable, as follows:

Subsection One: Penalties Prescribed for the Crime of Human Trafficking

This subsection addresses the penalties prescribed for the crime of human trafficking in the first branch, followed by the penalties prescribed for the ancillary offenses to human trafficking in the second branch.

Branch One: Penalty for the Crime of Human Trafficking

²⁴ *Model Law*, *ibid.*, 34.

²⁵ *Toolkit to Combat Trafficking in Persons*, *ibid.*, 10.

²⁶ Ahcene Bousakria, *The Essentials of General Criminal Law*, 19th ed. (Houma Publishing House, Algiers, 2021), 204–205.

We address the principal penalty and then move on to the penalty in the case of aggravating circumstances, leaving the discussion of supplementary penalties to the second branch on penal provisions standard to crimes of human trafficking, as set out in Laws 23–04.

I. Principal penalty

Article 40 of Law No. 23–04 states, "Human trafficking shall be punishable by imprisonment for a term of five (5) to fifteen (15) years and a fine of 500,000 DZD to 1,500,000 DZD."

The following conclusions can be drawn from this study:

- The penalty for the crime of human trafficking is particularly severe, representing a departure from the general rules set out in the Penal Code. The corresponding penalties greatly exceed those prescribed for misdemeanours and approach the level of those for felonies without altering the legal classification of the offense. The purpose of this severity is to protect the rights, freedoms, and dignity of individuals. In most cases, the monetary fine is also increased to deter and suppress offenders, as the majority of these offences are committed to obtaining personal, i.e., illicit, gains.
- Although the crime of human trafficking retains its classification as a misdemeanour, Article 40 of Law No. 23–04 has increased the penalty for this offense compared with that provided for in the now-repealed Article 303 bis 4, raising the term of imprisonment from three (3) to ten (10) years to five (5) to fifteen (15) years. This amendment was made to align with the definition set out in the Convention against Transnational Organised Crime, which classifies human trafficking as a serious crime, requiring the custodial sentence to be no less than four years.²⁷

II. Aggravating Circumstances Prescribed for the Crime of Human Trafficking

Article 41 of Law No. 23–04 states, "Human trafficking shall be punishable by temporary imprisonment for a term of ten (10) to twenty (20) years and a fine of 1,000,000 DZD to 2,000,000 DZD if the offense is committed in the presence of at least one of the following circumstances:

- Where the perpetrator is the victim's spouse, ascendant, descendant, or guardian relative to affinity or has authority over the victim;
- The perpetrator is a public official whose position facilitates the commission of the offense;
- Where the victim is a child, an incapacitated person, a person with disabilities, or in a state of vulnerability;
- Where the offense is committed against more than one victim;
- Where more than one person commits the offense;
- Where the offense is committed against any person or group of persons because of their racial or ethnic affiliation;
- Where the offense is committed while bearing or threatening to use a weapon;
- The perpetrator uses narcotic drugs or other psychoactive substances to subjugate the victim;
- Where the perpetrator seizes, destroys, or forges the victim's passport or identity document;
- Where the offense is committed by threatening the victim with death or torture;

²⁷ *Model Law, ibid.*, 34.

- Where the offense is committed during a health crisis or a natural, biological, or technological disaster;
- Where the offense is committed via information and communication technologies;
- When the offense is committed within the framework of an organised criminal group, it is transnational or committed during an armed conflict.

In such cases, the penalty shall be imprisonment for a term of twenty (20) to thirty (30) years and a fine of 10,000,000 DZD to 20,000,000 DZD.”

Article 42 of Law No. 23-04 states the following: “Human trafficking shall be punishable by life imprisonment if the victim is subjected to torture or sexual violence, if the crime results in a permanent disability, or if the act leads to the death of the victim.”

These two studies revealed the following:

- The Algerian legislature has rendered these circumstances sufficient to change the classification of the offence from a misdemeanour to a felony, given the dangerousness of the offender on the one hand and the gravity of the offense and the circumstances under which it is committed on the other.
- In Article 41, the legislature expanded the list of aggravating circumstances related to the crime of human trafficking, adding eight circumstances not previously provided for in the now-repealed Article 303 bis 5 of the Penal Code.
- The legislature acted judiciously in distinguishing, using a separate paragraph, the circumstances in which the crime of human trafficking is committed within the framework of an organised criminal group, is transnational, or is committed during an armed conflict, owing to its great gravity. The penalty in such cases is increased to imprison for twenty (20) to thirty (30) years and a fine of 10,000,000 DZD to 20,000,000 DZD.²⁸ Unlike the now-repealed Article 303 bis 5 of the Penal Code, which treated this circumstance as equivalent to that of plurality in terms of penalty, the legislature now recognises their substantive difference.
- The legislator has increased the penalty for life imprisonment, the most severe penalty imposed for this offense, where the crime is accompanied by torture or sexual violence, results in permanent disability, or leads to the victim’s death.

Branch Two: Penalty for Ancillary Offences to the Crime of Human Trafficking

The remaining ancillary offences to the crime of human trafficking carry principal penalties that vary according to the gravity and severity of each offense. Accordingly, these penalties are set in descending order of severity, followed by a discussion of the aggravating circumstances particular to each offense, as follows:

I. Principal penalties

These offences may be categorised into aggravated misdemeanours and simple misdemeanours.

- **Aggravated Misdemeanours**

These are misdemeanours for which the penalty exceeds five years’ imprisonment. The penalty may be imprisonment from five (5) to ten (10) years for the offence of facilitating human trafficking electronically (Article 43); for the offence of retaliation or intimidation against victims, witnesses, experts, informants, their family members, or other closely

²⁸ Law No. 08-11 of 25 June 2008 concerning the conditions of entry, residence, and movement of foreigners in Algeria, Official Gazette No. 36.

related persons (Article 47); or imprisonment from three (3) to ten (10) years for the offence of participation in an organised criminal group (Article 49).

1. Simple Misdemeanours

- Misdemeanour punishable by imprisonment from two (2) to five (5) years: the offence of concealment (Article 50).
- Misdemeanours are punishable by imprisonment from one (1) to five (5) years: the offence of failure to report (Article 44), the offence of benefiting from the victim (Article 45), and the offence of disclosing the identity of a victim, witness, or informant (Article 46).
- Misdemeanour punishable solely by a fine of 200,000 DZD to 500,000 DZD: the offence of a carrier's failure to comply with legislation and regulations relating to entry into or exit from the national territory (Article 48).

II. Aggravating Circumstances Relating to Ancillary Offences to Human Trafficking

In the case of ancillary offenses to human trafficking, the Algerian legislature has adopted a punitive technique distinct from that used in Article 41 to indicate aggravation of the penalty. This consists of beginning the criminal provision with the phrase "without prejudice to more severe penalties," which is found in Articles 46, 48, and 49. The legislature resorted to this approach because more severe penalties may be provided for these offences in other laws, as follows:

- Article 46 of Law No. 23-04 penalises the offence of disclosure of the identity of a victim of trafficking by a person acting in the course of their duties by imprisonment from one (1) to five (5) years and a fine of 100,000 to 500,000 DZD. This is a misdemeanor committed by a public official, and under Article 143 of the Penal Code, the status of public official constitutes an aggravating circumstance in felonies and misdemeanours.
- Article 48 of Law No. 23-04 punishes the offence of a carrier's failure to comply with legislation and regulations related to entry into or exit from the national territory by a fine of 200,000 to 500,000 DZD. However, Law No. 08-11 concerning the conditions of entry, residence, and movement of foreigners in Algeria stipulates, in Article 46, that a carrier who directly or indirectly facilitates or attempts to facilitate the illegal entry, movement, residence, or exit of a foreigner from Algeria is punishable by imprisonment from two (2) to five (5) years and a fine of 60,000 to 200,000 DZD. The penalty is increased to imprisonment from five (5) to ten (10) years and a fine of 300,000 to 600,000 DZD under certain circumstances. Consequently, this latter penalty should be applied if the offense results in any form of human trafficking, as it is more severe, combining both imprisonment and a fine. In contrast, the penalty stipulated in Article 48 of Law No. 23-04 is limited to a fine only.
- Similarly, Article 49 of Law No. 23-04 punishes the offense of participation or involvement in an organised criminal group or agreement by imprisonment from three (3) to ten (10) years and a fine of 300,000 to 1,000,000 DZD. According to the final paragraph of Article 41 of the same law, if an organised criminal group commits the crime of human trafficking or is transnational, the penalty is imprisonment from twenty (20) to thirty (30) years and a fine of 10,000,000 to 20,000,000 DZD. Therefore, this latter penalty should be applied where its elements, such as a transnational character, are present, as it is more severe.

Article 176 of the Penal Code punishes participation in a criminal association by temporary imprisonment of five (5) to ten (10) years and a fine of 500,000 to 2,000,000 DZD if the association is formed for the commission of a felony. Since the classification of the crime of human trafficking changes from a misdemeanor to a felony when an aggravating circumstance is present, anyone who participates or is involved in an organised group or agreement to prepare or plan this felony without actually committing it shall be subject to Article 176 of the Penal Code, as it is more severe. If the offense is committed, the aggravating circumstance provided shall apply.

Subsection Two: Penal Provisions Common to Crimes of Human Trafficking

The penal provisions standard for crimes of human trafficking are addressed in the order in which they appear in Section Two of Law No. 23--04, as follows:

Branch one: Mitigating circumstances

The Algerian legislature has changed its punitive policy regarding mitigating circumstances. Whereas the now-repealed Article 303 bis 6 of the Penal Code precluded the benefit of mitigating circumstances provided for in Article 53 of that law, Article 54 of Law No. 23--04 reverses this position, allowing a person convicted of the crime of human trafficking to benefit from the mitigating circumstances stipulated in the Penal Code, but only up to a limit of one third (1/3) of the legally prescribed penalty.

Branch Two: Supplementary Penalties

These are provided in Articles 55, 56, and 57 of Law No. 23--04 and include the following:

- One or more of the supplementary penalties may be imposed on a natural person, as set out in Article 9 of the Penal Code, in addition to the penalty of banning a foreigner from residing in the national territory either permanently or for a period not exceeding ten (10) years.
- In the second paragraph of Article 55, the Algerian legislature established further specific supplementary penalties for these offences, authorising the competent judicial authorities to place offenders, after their release, under medical and/or psychological supervision and/or electronic monitoring for a period not exceeding one year, by the applicable legislation.
- The legislature has also made confiscation a mandatory supplementary penalty in crimes of human trafficking, despite their classification as misdemeanours, and devoted a separate article to this matter, as confiscation is a practical measure preventing offenders from enjoying the proceeds of their crimes and benefiting from their illicit acts. Article 69 affirms the necessity of international cooperation in the field of confiscation, as offenders often seek to conceal the proceeds, instruments, and related evidence abroad to thwart the efforts of judicial authorities to identify and control them.²⁹ However, the legislature did not provide for confiscation without conviction, as is the case in corruption offences.

Branch Three: Exempting and Mitigating Excuses in Crimes of Human Trafficking

The Algerian legislature has revised its punitive policy regarding exempting and mitigating excuses. While Article 303 bis nine was previously exempt from punishment anyone who reported the crime of trafficking in persons to the administrative or judicial authorities before its execution or attempt, the current provision is more lenient and encourages reporting. It exempts from punishment any person who has committed or participated in one or more human trafficking offences and, prior to their discovery by the public authorities, has reported the crime to the administrative or judicial authorities and assisted in rescuing the victim and/or identifying and/or apprehending the perpetrators.

The mitigating excuse provided in the second paragraph of the now-repealed Article 303 bis 10 of the penal Code needed, for the benefit to apply, that the report be made after the completion or attempt of the offense but before the initiation of public proceedings or, if after proceedings had commenced, that it resulted in the apprehension of the principal perpetrator or accomplices in the same crime. In contrast, the mitigating excuse for informants in Article 59 of Law No. 23--04 benefits any person who has committed to or participated in a crime of human trafficking and, after the initiation of legal proceedings, assisted in the arrest of one or more persons involved in its commission and/or in identifying those who participated in its perpetration.

Conclusion:

²⁹ *Toolkit to Combat Trafficking in Persons, ibid.*, 182-183.

In this study, we examined the criminal policy of the Algerian legislature in confronting the crime of human trafficking, arriving at several key findings, principally the following:

About the policy of criminalisation in crimes of human trafficking:

- The orientation of the criminal policy of the Algerian legislature is to expand criminalisation by introducing new ancillary offences to the crime of human trafficking to combat this offense in all its forms.
- The legislature retains the classification of human trafficking as a misdemeanour, despite the grave consequences this crime has for individuals and states.
- The substitution by the legislature of the term “trafficking in persons” with “trafficking in human beings,” which is a more precise term, as the former includes both natural and legal persons, whereas the latter pertains exclusively to natural persons, i.e., human beings.
- The Algerian legislature was content to mention the forms of criminal conduct in the crime of human trafficking without elaborating upon them, in line with the Protocol.
- The legislature has established general criminal provisions applicable to crimes of human trafficking that, in certain respects, are characterised by specificity and depart from the general rules set out in the Penal Code.
- The criminal policy of the Algerian legislature is oriented towards strengthening the protection afforded to victims of human trafficking, despite the absence of any explicit obligation to do so in the Convention against Transnational Organised Crime or the Protocol to Prevent, Suppress and Punish Trafficking in Persons, in addition to specific nonbinding guidelines.
- The adoption of a policy of nonprosecution by the legislature relieves victims of human trafficking from fears of judicial pursuit and punishment. It encourages them to seek protection, assistance, and justice.
- The consent of an adult victim does not negate the crime of human trafficking if any of the means of human trafficking have been used to obtain it; only if such consent is given voluntarily and with full knowledge does it negate the crime of human trafficking. In contrast, the consent of a child is not taken into account, even if none of the means of human trafficking have been used.

Regarding the punitive policy in crimes of human trafficking:

- The Algerian legislature's departure from the general rules on penalties set out in the Penal Code, although the classification of human trafficking as a misdemeanour has been retained, the penalty has been increased and made more severe by the definition established by the Convention against Transnational Organised Crime for the crime of human trafficking.
- The legislature has rendered the aggravating circumstances prescribed for the crime of human trafficking sufficient to change the classification of the offense from a misdemeanour to a felony, given the dangerousness of the offender on the one hand and the gravity of the offense and the circumstances of its commission on the other hand.
- In Article 41, the legislature expanded the list of aggravating circumstances related to the crime of human trafficking, adding eight circumstances not previously provided for in the now-repealed Article 303 bis 5 of the Penal Code.
- The legislature acted judiciously in distinguishing, using a separate paragraph, the circumstances in which the crime of human trafficking is committed within the framework of an organised criminal group, is transnational, or is committed during an armed conflict, owing to its exceptional gravity.

➤ The Algerian legislature has revised its punitive policy concerning exempting and mitigating excuses, with Article 59 being more lenient and encouraging about reporting to contribute, even partially, to reducing the risks associated with this crime. It exempts from punishment any person who has committed or participated in one or more human trafficking offenses if they report prior to prosecution.

On the basis of these findings, the following recommendations can be made:

➤ Article 53 of Law No. 23-04 should be redrafted as follows: “The victim’s consent shall not be taken into consideration where the perpetrator has used any of the means set forth in Article 40 above.”

➤ The legislature should provide for confiscation without the need for a conviction, as is the case in corruption offences, by permitting the freezing and temporary seizure of assets under an order issued by a court or other competent authority, particularly given that human trafficking is classified as the third most profitable criminal activity after arms smuggling and drug trafficking.

In conclusion, combating the crime of human trafficking does not merely require expanding the scope of criminalisation, intensifying penalties, and strengthening victim protection; it also necessitates raising awareness and educating individuals about the gravity of this crime. In addition, international cooperation should be enhanced, and systems should be harmonised to identify those involved and effectively combat this offense.

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