*International Annals of Criminology* (2017), **55**, 4–25
doi:10.1017/cri.2017.5

ARTICLE

# Medical Liability for Trafficking in Persons for the Purpose of Human Experimentation: International Standards and Comparative Models from Arab Jurisdictions

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(Submitted 1 May 2017; revised 19 July 2017; accepted 17 August 2017)

**Abstract**
Conducting experiments on humans may subject them to abuse and exploitation. The international community has developed principles, rules and norms that provide for safeguards against exploitative human experimentation. Recruiting a person by illegal means for illicit purposes has been criminalized as human trafficking. This article attempts, for the first time, to address human experimentation as a form of human trafficking. The article advocates for an expansive definition of the concept of human trafficking to include not only sex or labor but also medical or scientific tests that are conducted in violation of the law, also arguing that the international medical ethical principles, rules and norms may be more appropriately analyzed by using the three basic elements of a case of human trafficking, namely: (a) absence of consent; (b) abuse of a position of vulnerability; and (c) exploitation.

**Keywords** human trafficking; human experimentation; medical liability; code of ethics; medical code of conduct; Arab anti-trafficking legislation; exploitation

On Wednesday, April 1, 2015, nearly 800 Guatemalan plaintiffs filed a $1 billion lawsuit against Johns Hopkins University for allegedly participating in a medical experiment in Guatemala where Hopkins scientists and physicians infected human beings with syphilis, gonorrhea and other sexually transmitted diseases (Laughland, 2015), in violation of the ethical standards governing human experimentation (Laughland, 2015). Similar reports have surfaced of human experimentation.[1]

[1]Human experimentation is defined as any type of experiment that uses human beings as its subjects. Its main objective is acquiring scientific knowledge rather than providing medical treatment, although, "human experimentation" and "research" are not interchangeable *per se*.

In addition,[2] the Egyptian Center for Right to Access Medicine reported that experimental tests on new drugs were being conducted in the Center for Cancer Treatment in Egypt where 100 files of sick patients were missing under the label of "Scientific Research." Those files included street children, prisoners and patients with cancer and mental deficiencies.[3] Also documented are at least 100 cooperative research projects that are worth $100 million a year. Those projects are collaborations between pharmaceutical companies and the Ministry of Health in Egypt and some involve human experiments.[4]

It has been observed that, "Many factors make the Middle East attractive for clinical research, including the diversity of its patients, good medical facilities, cost advantages, and favorable infrastructure—especially in the Persian Gulf countries." (Alahmad, Al-Jumah, and Dierickx 2012)

It has been noted that "with countries in the Middle East operating under considerably fewer strict ethical guidelines, than their European and North American counterparts, drugs companies are increasingly moving trials of new and untested drugs to Arab countries." (Alahmad et al. 2012)

The purpose of this paper is: (a) to inquire into the ethical rules, principles and norms that apply to human experimentation; and (b) to address the issue of when does human experimentation become a form of human trafficking, giving rise to criminal liability of medical doctors. A case of medical experimentation, in addition to being in violation of ethical standards, may also give rise to the crime of human trafficking. Richardson notes that "criminal punishment in appropriate instances would send a clear, expressive message that doctors are not privileged to treat human subjects in a manner inconsistent with their inherent value as human beings." (Richardson 2008) The three basic elements of a case of human trafficking are: (a) did the victim of human experimentation give informed consent; (b) did the medical doctor or the medical facility take advantage of the victim's vulnerability; and (c) did the human experimentation amount to exploitation? In attempting to answer those questions, the article will focus on the main ethical rules, principles and norms that may apply to human experiments. They may be more properly interpreted by using the three elements of consent, vulnerability and exploitation. Establishing the three elements, in a case of human experimentation, may amount to a crime of human trafficking, although establishing liability of a medical doctor for human trafficking may require proof of a direct link between his/her act and the act of trafficking itself.

The paper is divided into two parts. Part I addresses whether the concept of human trafficking may incorporate human experimentation, while part II will focus on the three elements of a human trafficking case: consent, vulnerability and exploitation.[5]

[2]See, generally, listverse.com/2008/03/14/top-10-evil-human-experiments/

[3]For *Right to Access Medicine Reveals the Veil of Crime of Conducting Medical Experimentations on Patient*, see http://www.masralrabia.com (in Arabic).

[4]Ibid.

[5]This paper is based on a speech the author delivered at a conference on "Law and Medicine" organized by Qatar University, College of Law and Weill Medical College of Cornell University, Doha, Qatar, February 28–29 (2016).

https://doi.org/10.1017/cri.2017.5 Published online by Cambridge University Press

## HUMAN EXPERIMENTATION AS A FORM OF HUMAN TRAFFICKING

### *Medical Liability for Failure to Comply with International and National Standards of Practice in the Medical Profession*

Medical liability may arise for illegal adoption,[6] trafficking in human organs,[7] forced pregnancy[8] or other illicit practices.

According to the Law of Qatar No. 2 of 1983, as amended by the Law of Qatar No. 16 of 1994, regarding practice of the medical profession, a medical doctor may be held liable, "if the cause for injuring the patient is conducting scientific experiments and research which are not authorized."[9] The rule of medical liability, expressed by Qatar courts, is that a doctor is under an obligation to exercise best efforts for curing his/her patient. In performing their duties, doctors must follow the established traditions and scientific norms. A "medical fault" may be established if the doctor fails to comply with these traditions and norms and this causes injury to his/her patient.[10]

According to settled international ethics, it is the duty of a doctor to protect the health of a patient, provide complete medical care with "respect for human dignity"[11]

[6]This example was, in fact, the first case of human trafficking to be tried in Egypt. The defendants were three doctors and three childless couples. One defendant was an American citizen seeking to purchase babies and others included a supervisor of a social welfare house and its treasurer. In this case, the doctors located babies born out of wedlock in order to sell them to childless couples. The couples would then receive fraudulent birth certificates from the Egyptian authorities and attempt to obtain U.S. passports for the babies from the U.S. Embassy in Cairo. The U.S. Embassy employees suspected the authenticity of the documents and reported the case to the Egyptian authorities. The defendants were tried for selling, buying or exposing a child for sale in accordance with article 291 of the Criminal Code of Egypt.

[7]See, generally, World Health Organization (2010). The WHO Guiding Principle 5 states the following: "Purchasing or offering to purchase, cells, tissues or organs for transplantation, or their sale by living persons or by the next of kin for deceased persons, should be banned." See also principle 6 of the Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008): "Organ trafficking and transplant tourism violate the principles of equity, justice and respect for human dignity and should be prohibited." See, generally, Allain (2011); Shimazono (2007); Nicolaides and Smith (2012); Budiani-Saberi and Delmonico (2008).

[8]See article 7(1) of the Rome Statute of the International Criminal Court, which prohibits forced pregnancy. Article 7 covers crimes against humanity, which are defined to include forced pregnancy. The definition of forced pregnancy is as follows: "The unlawful confinement of a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law … (article (7)(2)(f)). Forced pregnancy may become a form of crime against humanity "when committed as part of a widespread or systematic attack decided against any civilian population with knowledge of the attack" (article (7)(1)).

[9]See article 18. Liability may also arise because of fault in diagnoses or description of the proper treatment or because of negligence or failure to exercise best efforts. See, generally, Belal (2007).

[10]See, e.g., Qatar Supreme Court, civil and commercial section, case no. 84 of 2008, case no. 3 of 2009, case no. 227 of 2011, case no. 15 of 2013, and case no. 93 of 2013. In the distinction between achieving a result and exercising best efforts, see article (5)(1)(4) of the UNIDROIT Principles of International Commercial Contracts (2010), which states that "to the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts as would be made by a reasonable person of the same kind in the same circumstances." The comment to the article states that "the distinction between a duty to achieve a specific result and a duty of best efforts corresponds to two frequent and typical degrees of severity in the assumption of a contractual obligation."

[11]The American Medical Association's Code of Medical Ethics (principle 1) (American Medical Association 2017).

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and "in full professional and moral independence."[12] It is also the duty of a doctor to report illegal or unethical acts.[13] In addition, a doctor should not "allow his/her judgment to be influenced by personal profit or unfair discrimination."[14] These ethical rules should be applicable when the doctor is a "researcher" as discussed below.

The hospital itself, that is, the medical facility or establishment, may be liable for illegal human experimentation. This liability, including criminal liability, may also be established regarding pharmaceutical companies (Mattar 2012).

Research proposals must obtain approval of a research ethics committee in Morocco, as a part of the Ministry of Health; in Saudi Arabia, the National Committee of Medical and Bioethics; in Kuwait, the Committee for Medical and Health Related Research Revenue; in Bahrain, the relevant authority in the Ministry of Health; and in Oman, the Research and Clinical Studies Committee.

### Principles, Norms and Guidelines on Ethics of Human Experimentation

In 1947, the Nuremberg Code was issued providing for basic guidelines on ethics of human experimentation. In 1964, the World Medical Association (WMA) adopted the Declaration of Helsinki, which has been adapted several times with the latest version appearing in 2013. Later, a number of the guiding principles were adopted – including the Guidelines for Biomedical Research Involving Human Subject of 1982 that was revised in 2002 – which were prepared by the Council for International Organizations of Medical Science (CIOMS) and the World Health Organization (WHO). Other ethical documents included the Guidelines for Good Clinical Practice that was drafted in 1995 and revised in 2004 by the International Conference of Harmonization. Whereas those rules, principles and guidelines are not binding, they may constitute norms of customary international law,[15] whether in the medical field

[12]The World Medical Association International Code of Medical Ethics (http://www.wma.net/en/30publications/10policies/c8/).

[13]The American Medical Association Code of Medical Ethics Principle II provides that "A physician shall uphold the standard of professionalism, be honest in all professional interactions and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities." The code's preamble clearly states that the principles "adopted by the American Medical Association are not laws, but standards of conduct that define the essentials of honorable behavior for the physician." (American Medical Association 2017).

[14]See the World Medical Association International Code of Medical Ethics (American Medical Association 2017).

[15]In Abdullahi v. Pfizer, Inc., 562 F.3d 163, 187 (2d Cir. 2009), the American court, to apply the Alien Tort Claim Act, had to find an international law norm that had been violated. The court cited the Nuremberg Code, the WMA in the Declaration of Helsinki, the Ethics Guidelines by the Council of International Organization of Medical Services, and article 7 of the International Government on Civil and Political Rights. Only the ICCPR constitutes an international authority since it was ratified by the U.S. government. Nonetheless, "declarations of international norms that are not in and of themselves binding may with time and in conjunction with state practice, provide evidence that a norm has developed the specificity, universality, and obligatory nature required for ATS jurisdiction." Ibid. at 176. In this case, 30 Nigerians sued Pfizer for the death of 11 children and for the permanent loss of sight or hearing. The medical experiments were conducted on 200 Nigerian children by U.S. doctors at the infection disease hospital. The experiments were done without the children's consent or knowledge and in the absence of a follow-up case. See Alman (2012) and Kelleher (2004).

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or other professions such as teaching,[16] engineering,[17] nursing,[18] communications,[19] sociology[20] or social work.[21]

### *Laws on Human Experimentation in the Arab World*

In the Arab world, there are a number of laws on the ethics of the medical profession, including the Law of Medical Ethics of 1994, as amended in 2012, in the Law of Lebanon. Article 30 of the Lebanese Law covers human experiments and clinical research. It prohibits any experiment on patients unless comprehensive scientific studies and research are properly conducted in a specialized university medical center under the supervision of the College of Medicine after obtaining the approval of the ethics committee.

In Morocco, article 15 of a draft code of conduct for medical doctors involved in biomedical research states that:

> Medical doctors can participate in biomedical research involving human subjects according to the national law.
> They have the duty to check and confirm the relevance of the research as well as the objectivity of its hypothesis and conclusions.
> The physician who takes part in biomedical research as an investigator must take all necessary caution to make sure that the proposed research will neither deteriorate the relationship of mutual trust which binds him/her to the patient, nor affect the continuity of the care due to the patient.

The medical test is registered in the Ministry of Health and that the minister provides his/her written consent, before conducting the test, and the test is conducted free without consideration.[22]

[16]For other ethical rules for the different professions, see the Code of Professional Conduct for Teachers (2012), published by the Teaching Council Act (2001), which provides that the council shall establish, publish, review, and maintain codes of profession conduct for teachers, which shall include standards of teaching, knowledge, skills and competence.

[17]The National Society of Professional Engineers Code of Ethics as revised in 2007 provides that engineers shall conduct themselves honestly, "responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession." (canon 6)

[18]The code of ethics issued by the International Council of Nurses, revised in 2012, states that "inherent in nursing is respect for human rights, including cultural rights, the right to life and choice, to dignity, and to be treated with respect." (preamble)

[19]The International Association of Professional Communication Code of Ethics calls its members to engage in communications that are not only legal but also ethical and sensitive to cultural values and beliefs and "in truthful, accurate and for communication that facilitates respect and natural understanding."

[20]The American Sociological Association Code of Ethics (ASACE) addresses social responsibility by saying that "Sociologists are aware of their professional and scientific responsibility to the communities and society in which they live and work. They apply and make public their knowledge in order to contribute; they strive to advance the scene of sociology and to serve the public good (principle (E))." The ASACE also provides for the principle of non-exploitation by saying "whether for personal, economic, or professional advantages sociologists do not exploit persons over whom they direct or indirectly supervise evaluation other authority such as students, supervisors, employees, or research participates."

[21]The Code of Ethics for social work, published by the British Association of Social Workers (2012), states that social work "is based on respect for the inherent work and dignity of all people as expressed in the United Nations Universal Declaration of Human Rights (1948) and other related UN Declaration on Rights and the conventions derived from the declaration."

[22]See, e.g., in Lebanon, the Law of Medical Ethics of 1994 as amended in 2012. See also (Saudi Arabia) System of Ethics of Research on Living Subject (2010), Clinical Trial Requirement Guidelines (2005),

https://doi.org/10.1017/cri.2017.5 Published online by Cambridge University Press

In Qatar, the ethical conduct of research involving human subjects, issued by the Supreme Council of Health in Qatar, is addressed by the Policies, Regulation and Guidelines for Research Involving Human Subjects (2009).

### The Expansive Concept of Human Trafficking: Does It Incorporate Human Experimentation?

The United Nations (UN) protocol to prevent, suppress and punish trafficking in persons – especially women and children – defines trafficking in persons as "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits, to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs."[23]

Most Arab anti-trafficking laws follow the UN Protocol in adopting "definition by category" as opposed to "conceptual definition." Few anti-trafficking laws define the crime by focusing on the essence of the act of trafficking that constitutes a "transaction in person" such as the Israeli Law[24] and the Egyptian Law.[25]

Sudan's Law, Combating of Human Trafficking of 2014, provides that "there shall be deemed to have committed the offence of human trafficking whoever kidnaps, transfers, abducts, transports, harbors, receivers, detains or equips a natural person with intent to exploit, or use the same in unlawful business or any acts as may by nature degrade his dignity or achieve unlawful aims."[26]

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Law of Practicing Healthcare Profession Enacted by the Royal Decree No. M/59 (2005), Law of Private Laboratories Enacted by Royal Decree No. M/3 (2002). In Egypt, the Professional Ethics of Research on Living Subject (2010); in Jordan, the Law of Clinical Studies (2001); in United Arab Emirates, Guidance for Conducting Clinical Trials Based on Drugs/Medical product and Good Clinical Practice (2006); in Kuwait, Ethical Guidelines for Biomedical Research (2009); and in Qatar, the Policies, Regulations, and Guidelines for Research Involving Human Subjects (2009).

[23]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.

[24]Israeli Law states in section 377A, Trafficking in Persons: "Anyone who carries on a transaction on a person for one of the following purposes or in so acting places the person in danger of one of the following, shall be liable to sixteen years imprisonment: [1] removing an organ from the person's body; [2] giving birth to a child and taking the child away; [3] subjecting the person to slavery; [4] subjecting the person to forced labor; [5] instigating the person to commit an act of prostitution; [6] instigating the person to take part in an obscene publication or obscene display; [7] committing a sexual offense against the person;" or [8] "giving birth to a child and taking the child away," or what may be termed "childbearing" or trafficking in women for the purpose of baby trafficking in what is known as "baby factories." See Huntley (2013). Section 377A also states "In this section, 'transaction on a person' means selling or buying a person, whether or not for consideration."

[25]The Egyptian Law No. 64 of 2010 regarding Combating Human Trafficking states in article 2 that "A person who commits the crime of human trafficking shall be considered as one who deals in any manner in a natural person …."

[26]Article 2 continues in consideration of the following:

(a) Material return, or promise therewith.

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Syria's Legislative Decree No. 3 of 2010, regarding the crimes of trafficking in persons, defines trafficking in persons as an act that "employs them in legal acts or objectives in consideration for a return ...."[27]

Only two anti-trafficking laws in the Arab legislation explicitly refer to medical experimentation as a form of human trafficking. Iraq's Law No. 28 of 2012 defines human trafficking to include "Trafficking in their human organs or for the purpose of medical experiments."[28] The Law of Saudi Arabia of 2008 defines human trafficking in article 2 to include "removal of organs or conducting medical experiments ...."[29]

### *Regional Definition of Human Experimentation as a Form of Trafficking*

International standards on medical or scientific experimentation are embodied in article 7 of the International Covenant on Civil and Political Rights (ICCPR). It states that "No one shall be subjected without his free consent to medical or scientific experimentation." (United Nations 1966:175)

In adopting those international standards, the Arab Charter on Human Rights sets the conditions for conducting such experimentation. Article 9 thereof provides that "No one shall be subjected to medical or scientific experimentation ... without his free consent and full awareness of the consequence and provided that ethical humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each state party ...." (Al-Midani, Cabinettes, and Akram 2006:152)

Article 10 of the Arab Charter on Human Rights prohibits all forms of human trafficking. The first paragraph of article 10 provides that "Slavery and slave trade in all their forms shall be prohibited and punishable by law. No one shall, under any circumstances, be held in slavery or in servitude." The second paragraph states that "forced labor, human trafficking for prostitution or sexual exploitation, the exploitation of others for prostitution and any other form of exploitation" are prohibited. Exploiting a victim in conducting a medical or scientific experiment shall be

(b) Moral gain, or promise therewith.

(c) Generating any type of advantages.

The Law considers the following as aggravated circumstances enhancing the penalty of the person who has subjected any one of the victims "to sexual abuses, removal of organs, or used in prostitution, or any act as may by nature degrade human dignity."

[27]Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons) (Syria).

[28]See http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94253&p_country=IRQ&p_count=232

[29]Other Arab legislation covers only removal of human organs as a form of trafficking. See, e.g., Law of Bahrain No. 1 of 2008 (article 1), Law of Jordan No. 9 of 2009 on prevention of human trafficking (article 3), and Law of Kuwait No. 91 of 2013 regarding combating human trafficking and smuggling migrants (article 1). Oman's Royal Decree No. 126 of 2008 (article 1), the Law of United Arab Emirates on combating human trafficking of 2006 (article 1). The Law of Algeria covers human organs in a separate article in the penal code (article 303), which states that "anyone who obtains from a person part of his body in consideration for financial benefit or any other benefit, regardless of its nature shall be punished by imprisonment from 3 to 10 years and a fine." Law of Egypt No. 64 of 2010 adds "removal of human organs, tissues or a part thereof" (article 2). Similarly, the Law of Lebanon, in article 58, defines exploitation to include removal of organ tissue from the body of the victim. The Law of Sudan is the only Arab law that considers trafficking in human organs an aggravated circumstance that enhances the penalty.

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considered a form of trafficking in human beings and thus be prohibited under article 10 (Al-Midani et al. 2006:153).

Article 5 of the Cooperation Council for the Arab States of the Gulf (GCC) Human Rights Declaration states that "No medical or scientific experiment may be conducted on any human being, nor may his organs be exploited without his consent and without being fully aware of the subsequent complications that may result." (Cooperation Council for the Arab States of the Gulf 2015:4)

Article 3 of the GCC Declaration provides that "human trafficking shall be prohibited in all [its] forms, particularly those involving women and children." (Cooperation Council for the Arab States of the Gulf 2015:4)[30]

When can a medical or scientific experiment become a form of human trafficking and thus prohibited by law? (Article 5: Cooperation Council for the Arab States of the Gulf 2015:4)

The UN trafficking protocol may be interpreted to include experimentation that involves human subjects as a form of human trafficking in two ways. As stated by the UN Office on Drugs and Crime (UNODC), "the list of exploitative purpose set out in the protocol is not exhaustive and may be expanded provided the integrity of the protocol is retained." One may also interpret the UN protocol to include human experimentation as a practice similar to slavery (UNODC 2015). In such a case, the physician treats the vulnerable person – whether a woman, a child, an elderly person, a person with disability, or foreign workers and so forth – as a property and exercises the right of ownership upon this person. This action treats the vulnerable person as a slave.

To consider human experimentation as a form of trafficking, three elements must exist: (a) absence of consent; (b) abuse of a position of vulnerability; and (c) exploitation.

Addressing those elements requires answers to three main questions: (a) Is consent relevant when illegal means are used, such as taking advantage of a vulnerable person? (b) Who is vulnerable? (c) What amounts to exploitation? The question must be asked of how consent, vulnerability and exploitation are defined in the context of medical experiments on humans and when can a medical doctor be held criminally liable for human trafficking for the purpose of medical experimentation?

## CONSENT, VULNERABILITY AND EXPLOITATION: THE THREE ELEMENTS OF THE CRIME OF TRAFFICKING FOR THE PURPOSE OF HUMAN EXPERIMENTATION

The rule, as stated by the ICCPR, is that "No one shall be subjected without his free consent to medical or scientific experimentation."[31]

### *Voluntary, Free and Informed Consent*

What do we mean by "free consent" and is a victim of human trafficking capable of giving free consent?

[30]Article 4 of the GCC Declaration provides that "Trafficking in human organs trade shall be prohibited. Any activity thereof shall be a violation of human rights and a crime." (Cooperation Council for the Arab States of the Gulf 2015:4)

[31]See article 7 of the International Covenant of Civil and Political Rights, which states in the first paragraph: "No one shall be subjected to torture or cruel, inhumane or degrading treatments or punishment." (United Nations 1966)

https://doi.org/10.1017/cri.2017.5 Published online by Cambridge University Press

Previously, the first principle of the Nuremberg Code of 1947 clearly stated, "The voluntary consent of the human subject is absolutely essential."[32] The code explains that this consent "means that the person involved should have legal capacity to give consent, should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, indecent duress, or other ulterior form of constraint or concern and should have sufficient knowledge and comprehension of the intent of the subject matter involved as to enable him to make an understanding and enlightened decision."

The principle of voluntary consent was again emphasized by the Declaration of Helsinki stating in principle 25 that "participation by individuals capable of giving informed consent as subjects in medical research must be voluntary."[33]

Applying the principle of "voluntary and free consent" in the case of medical or scientific experimentation on a human subject requires informing the participant of all aspects of the experimentation. That includes the aims, methods, sources of funding, any possible conflict of interest, institutional affiliation of the researcher, the anticipated benefits and potential risks of the study, the discomfort it may entail, post-study provision and any other relevant aspects of the study.[34]

As stated in guideline 4 of the International Ethical Guidelines for Biomedical Research Involving Human Subjects, the investigator must obtain the voluntary informed consent of the prospective subject for all biomedical research involving humans.[35]

If the prospective subject for research is not capable of providing such informed consent then the "physician must seek informed consent from the legal authorized representative."[36] This informed consent must be obtained in writing as described in the Declaration of Helsinki: "If the consent cannot be expressed in writing, the non-written consent must be formally documented and witnessed."[37] The subject of research must have "the right to refuse to participate in the study or to withdraw his consent at any stage of such study without reprisal."[38] The Qatar policies adopted the principle of voluntary and informed consent including the right to refusal and the right to withdraw without penalty or loss of benefits.[39]

[32]The Nuremberg Code of 1947, principle 1.

[33]See principle 25 of the Declaration of Helsinki: "Although it may be appropriate to consult family member or community leaders, no individual capable of giving informed consent may be enrolled in a research study unless he or she freely agrees." (World Medical Association 2013)

[34]See principle 26 of the Declaration of Helsinki (World Medical Association 2013).

[35]Guideline 4 of the International Ethical Guidelines for Biomedical Research Involving Human Subjects, prepared by the CIOMS in collaboration with the WHO (CIOMS 2002).

[36]See principle 28 of the Declaration of Helsinki. Principle 29 continues by saying that when a potential research subject who is deemed incapable of giving informed consent is able to give assent to decisions about participation in research the physician must seek that assent in addition to the consent of the legal authorized representative. The potential subject's dissent should be respected (World Medical Association 2013).

[37]See principle 26 of the Declaration of Helsinki (World Medical Association 2013).

[38]Ibid.

[39]The Qatar policies require a statement that participation is voluntary. Refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

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The Qatar policies also prohibit waiver of any of the subject's rights as stated: "No informed consent whether oral or written may include any exculpatory language through which the subject or the representative is made to waive or appear to release the investigator the sponsor, the institute or its agent from liability for negligence."[40]

The Qatar policies also require that the information given to the subject or the representative shall be in language untestable to the subject or the representative.[41]

Only in the absence of consent may a physician be liable in accordance with the rules of criminal law.[42] The Criminal Code of Qatar provides the following: "Nothing is an offence which is done in good faith, in exercising the right justified by the law or Islamic Shari'a and within the limits thereof including practicing medicine according to acknowledged scientific principles in the licensed medical professions with the consent of the patient or his representatives expressly or implicit or if the medical procedure is an emergency or the patient is not in a condition to express his will or it is difficult to obtain the consent of the representative in a timely manner."[43]

Thus, the question becomes, is the victim of trafficking for the purpose of medical or scientist experimentation capable of giving such voluntary and free consent?

The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, adopts the following rule, as stated in article 3(b) of the protocol. "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, these illegal means include the threat or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability."[44]

The argument may be made that a "vulnerable person" who has been recruited to participate in a medical or scientific experiment is incapable of giving voluntary and free consent."[45] So how can we define the vulnerable person?

## *Vulnerability: Should the Vulnerable Victim of Trafficking Be Involved in Human Experimentation?*

When a vulnerable person is involved in research, special justification is required and special protection must be guaranteed.[46]

[40]Qatar policies, general requirement for informed consent. The International Ethic Guideline for Biomedical Research Involving Human Subjects states that waivers of informed consent are to be regarded as uncommon and exceptional, and must in all cases be approved by an ethical review committee (guideline 4).

[41]Ibid.

[42]See, e.g., article 53 of the penal code of the United Arab Emirates, which states that there is no crime in cases of medical surgery and medical treatment performed in accordance with the scientific principle generally accepted and applied licensed medical practice whenever they are performed with consent.

[43]Criminal Code of Qatar, article 47.

[44]Article 3(a) also considers as illegal means "the giving or receiving of payments or benefits, to achieve the consent of a person having control over another person, for the purpose of exploitation."

[45]As observed by the U.S. Model Law against Trafficking in Persons, genuine consent is only possible and legally recognized when all the relevant facts are known and a person exercises free will for discussion of consent in the content of human trafficking. See UNODC (2015).

[46]See International Ethical Guidelines for Biomedical Research Involving Human Subjects (guideline 13) (CIOMS 2002).

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Whereas many ethics principles refer to the concepts of vulnerability, principles most often rely on what is called "definition by category." The commentary to guideline 13 of the International Ethics Guidelines for Biomedical Research Involving Human Subjects states that "vulnerable persons are those who are relatively or absolutely incapable of protecting their own interest."[47]

The Declaration of Helsinki adds that these vulnerable persons "may have an increased likelihood of being wronged or of incurring additional harm."[48]

The *traveaux preparatoire* to the UN Trafficking Protocol explains that the "person involved has no real and acceptable alternative but to submit to the abuse involved."[49] Commenting on this definition, the UNODC expands it by stating that vulnerable people are defined as those who, due to reason of age, gender, physical or mental state, or due to social, economic, ethics, or cultural circumstances find it especially difficult to fully exercise their rights before the justice system as recognized to them by law.[50]

The Arab model law on combating human trafficking combines all these elements in defining abuse of position of vulnerability to mean "exploitation of physical, mental or psychological disability or a given legal status, or any particular situation that may affect the will or behavior of the person when she/he has no real and acceptable alternative but to submit to the abuse involved."[51]

The Belmont Report defines vulnerable persons as "persons with diminished autonomy." (United States Department of Health and Human Services 1979) The report was drafted by the National Commission for the Protection of Human Subjects, and it embodied the ethical principles that govern research study in the United States and that must be followed by the Institutional Review Board system.

Vulnerable persons may be defined by "categories." The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems of 2013 states: "Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons."[52]

[47]Ibid. Guideline 13 further explains that they may have insufficient power, intelligence, education, resources, strength or other needed attributes to protect their own interest (CIOMS 2002).

[48]Principle 19 of the Declaration of Helsinki (World Medical Association 2013).

[49]*Traveaux preparatoire*.

[50]See the UNODC issue paper on abuse of a position of vulnerability and other means within the definition of trafficking persons, citing 100 Brasília regulations regarding access to justice for vulnerable people.

[51]See the Arab model law on combating human trafficking.

[52]Principle 10, equity in access to legal aid, adds: "persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups." Two other references are made to the vulnerable group in the UN principles and guidelines (guideline 11). Under "Nationwide Legal Aid System," the document states, "In the design of their nationwide legal aid schemes, states should take into account the needs of specific groups, including, but not limited to, the elderly, minorities, persons with disabilities, the mentally ill, persons living with HIV and other severe contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, refugees, and internally displaced persons." The other reference to the vulnerable appears in guideline 2 covering the right to be informed of legal aid, which states that such

Arab constitutions address the vulnerable populations and provide them with special protections. Article 21 of the constitution of Qatar states that "the Law shall organize means of protecting the family, supporting its principles, bolstering its ties, preserving ideals of matrimony, childhood and the elderly." In article 22, the constitution also provides that the "state shall extend care to the young generation and protect them from influences of corruption, from exploitation, from physical, mental and spiritual negligence, and provide adequate circumstances for developing its creativity in different fields with improved education."

Islamic law divides the vulnerable into different groups depending on whether such vulnerability is due to natural or non-natural causes. In the first category, it lists the child, the juvenile, the orphan, women and the elderly. The second category involves the poor, the hostage, the patient, minorities of non-Muslims in Islamic territories, domestic workers, migrants and migrant workers.[53]

information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children. Guideline 2 also requires that information "is made available to isolated groups and marginalized groups."

[53]The Quranic legislation makes several references to the vulnerable. See, e.g.,

- Al-Nisa': Women, 97–9: "Except those who are [really] weak and oppressed—men, women, and children—who have no means in their power nor [a guidepost] to their way."
- Ar-Rum: Romans, 54: "It is Allah Who created you in a state of [helpless] weakness, then gave [you] strength after weakness, then, after strength, gave [you] weakness and a hoary head: He creates as He wills, and it is He Who has all knowledge and power."
- Al-Nisa': Women, 75–6: And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated [and oppressed]? Men, women, and children, whose cry is: "Our Lord! Rescue us from this town, whose people are oppressors; and raise for us from the one who will protect; and raise for us from the one who will help!"
- Al-Baqara: Cow, 230–31: "When ye divorce women, and they fulfill the term of their ['Iddat], either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, [or] to take undue advantage; if any one does that; He wrongs his own soul. Do not treat Allah's Signs as a jest, but solemnly rehearse Allah's favors on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well acquainted with all things."
- Al-Israa: Night Journey, 23–4: "Thy Lord hath decreed that ye worship none but Him, and that ye be kind to parents. Whether one or both of them attain old age in thy life, say not to them a word of contempt, nor repel them, but address them in terms of honor. And, out of kindness, lower to them the wing of humility, and say: "My Lord! Bestow on them thy Mercy even as they cherished me in childhood."
- Al-Baqarah: Cow, 271: "If ye disclose [acts of] charity, even so it is well, but if ye conceal them, and make them reach those [really] in need, that is best for you: It will remove from you some of your [stains of] evil. And Allah is well acquainted with what ye do."
- Al-Insan: Man, 8: "And they feed, for the love of Allah, the indigent, the orphan, and the captive."
- Al-Fath: Victory, 17: "No blame is there on the blind, nor is there blame on the lame, nor on one ill [if he joins not the war]. But he that obeys Allah and His Messenger, [Allah] will admit him to Gardens beneath which rivers flow; and he who turns back, [Allah] will punish him with a grievous Penalty."
- Al-Tawba: Repentance, 91: "There is no blame on those who are infirm, or ill, or who find no resources to spend [on the cause], if they are sincere [in duty] to Allah and His Messenger: no ground [of complaint] can there be against such as do right: and Allah is oft-forgiving, Most Merciful."
- Al-Hashr: Exile, 8–9: "[Some part is due] to the indigent Muhajirs, those who were expelled from their homes and their property, while seeking Grace from Allah and [His] Good Pleasure, and aiding Allah and His Messenger: such are indeed the sincere ones."

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An expanded list is being produced in the context of ethical principles in medical research. The International Ethics Guidelines for Biomedical Research Involving Human Subjects adds to the elderly, children, women, and other groups or classes that may also be considered vulnerable.

They include: (a) residents of nursing homes; (b) people receiving welfare benefits or social assistance and other poor people and the unemployed patients in emergency rooms; (c) some ethnic and racial minority groups; (d) homeless persons; (e) nomads; (f) refugees or displaced persons; (g) prisoners; (h) patients with incurable diseases; (i) individuals who are politically powerless; and (j) members of communities unfamiliar with modern medical concepts.[54]

Should any of these vulnerable persons be subject to medical or scientific tests or clinical trials?

The Qatar policies provide us with the principle of "equitable selection of human subjects," stating that, in selecting the subject of research, one should take into consideration the "purpose of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons."[55] The Belmont Report, in adopting the equitable selection of subjects of research, explains that it can be considered a matter of social justice that there is an order of preference in the selection of classes of subjects (e.g., adults before children) and that some classes of potential subjects (e.g., the institutionalized mentally infirm or prisoners) may be involved as research subjects, if at all, only under certain conditions (United States Department of Health and Human Services 1979). In addition, they should be protected against the danger of being involved in research solely for administrative convenience, or because they are easy to manipulate because of their illness or social economic condition (United States Department of Health and Human Services 1979). This equitable selection also requires that the inclusion of any subject in research experimentation should not be made without regard to race, ethnicity, economic status or gender.[56] Neither should such population be categorically excluded or discouraged from research protocols.[57]

This selection must therefore be justified. "Special justification requires a showing that the research is responsive to the health needs or priorities of these groups,"[58] that the research cannot be covered but in non-vulnerable groups[59] and that this group should stand to benefit from the knowledge, practices or interventions that result from the research.[60] It must be proven that the research is intended to obtain knowledge that will lead to improved diagnosis, prevention or

[54]See International Ethical Guidelines for Biomedical Research Involving Human Subjects, guideline 13 (research involving vulnerable persons) (CIOMS 2002).

[55]See Qatar policies where it is noted that Arab laws and policies do not pay attention to the involvement of vulnerable groups in research. See also Alahmad et al. (2012).

[56]American Medical Association Code of Medical Ethics 2.071.

[57]Ibid.

[58]Principle 20 of the Declaration of Helsinki (World Medical Association 2013).

[59]Ibid.

[60]Ibid.

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treatment of diseases or other health problems characteristics of or unique to the vulnerable classes.[61] Some of these vulnerable classes will be discussed further.

Are women considered part of a vulnerable group that deserves special protection?

Arab legislation on combating human trafficking disagrees as to whether a female victim of trafficking may give rise to an aggravated circumstance that enhances the penalty. It has been argued elsewhere that "one may consider enhancing the penalty in trafficking cases that involve a female as an example of positive discrimination that is allowed under the Arab Charter for Human Rights."[62] The UK *Guidelines in the Practice of Ethics Committees in Medical Research with Human Participants* acknowledge that "in some cultures women are vulnerable to neglect or harm in research because of their social conditioning to submit to authority to ask no question and to tolerate pain and suffering."[63]

Whereas the status of women may not necessarily place them in the category of a vulnerable class, certain conditions may contribute to their need of special protection. Article 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women states that, "with respect to the measures in this chapter the state parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subject to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom."[64]

If the research involved children, the International Ethics Guidelines for Biomedical Research Involving Human Subjects requires an investigator to ensure: (a) that the research might not equally well be carried out with adults[65]; (b) that the purpose of the research is to obtain knowledge relevant to the health needs of children[66]; (c) that the investigator has obtained the approval or permission of the parent or the legal representative of each child to conduct the research;[67] (d) that to the extent possible, the consent of each child is also obtained;[68] and (e) that he or she was given the option to refuse to participate or continue his or her participation.[69]

[61]See International Ethical Guidelines for Biomedical Research Involving Human Subjects, guideline 13, commentary (research involving persons) (CIOMS 2002).

[62]Mattar (2011). For a discussion of the Arab Charter on Human Rights, see Mattar (2013).

[63]See Royal College of Physicians (2007:section 8.44). Consequently, the answer to whether women are considered vulnerable differs from one culture to another. For instance, the Iraqi Law No. 11 of 2014 considers as vulnerable widows, divorcees, wives of the missing, or the abandoned females who reach maturity but are not married, and the single.

[64]Article 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

[65]See International Ethical Guidelines for Biomedical Research Involving Human Subjects, guideline 14 (CIOMS 2002).

[66]Ibid.

[67]Ibid.

[68]Ibid.

[69]Ibid. The commentary to guideline 14 that in justifying the involvement of children in biomedical research (the participation of children is indispensable for research into diseases of childhood and conditions to which children are particularly susceptible (e.g. vaccine trials), as well as for clinical trials of drugs that are designed for children as well as adults).

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The UN Convention on the Rights of Persons with Disabilities[70] allows conducting such experiments on persons with disabilities as long as their consent is obtained. Article 15 of the convention states that no one shall be subjected without his or her free consent to medical or scientific experimentation.

The convention does not state whether the experimentation may be concluded for the interest of the persons with disabilities or for the purpose of scientific advancement. The text of the convention is unclear and therefore requires illumination (Hammad 2014). On the basis of the general ethical principles meant to apply to the vulnerable groups, it must be proven, before involving a person with disability in medical or scientific research, that the purpose of the research is to benefit directly his or her health, or at least the medical or scientific research must have a reasonable chance of generally benefiting persons with disabilities.

The UN Committee on the Rights of Persons with Disabilities raised concerns "about the lack of information including whether or not persons with disabilities, particularly persons with intellectual and/or psychosocial disabilities can be subject to medical interventions ...." The committee recommended that "no medical treatment … is administered without the full and informed consent of the person concerned …." (paragraphs 33–34)[71]

More recently, the UN Commission on Crime Prevention and Criminal Justice passed a resolution on the UN Standard Minimum Rules for the treatment of prisoners – or what is called "The Mandela Rules."[72] This resolution adopts a balancing test in involving a human subject in research and in deciding his or her inclusion or exclusion. The Mandela Rules provide for an absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel inhuman or degrading treatment, punishment, including medical or scientific experimentation that may be detrimental to a person's health such as the removal of a person's cells, body tissues or organs.[73] The Mandela Rules also state that without

[70]The UN convention states: "Persons with disabilities include those who have long-term physical, mental intellectual or sensory impairments which in interaction with various banners may hinder their full and effective participation in society on an equal basis with others."

[71]In its concluding observations in relation to the report of the state of Qatar, the Committee on the Rights of Persons with Disabilities noted that article 127 of the civil code restricts the rights of persons with disabilities and does not recognize their independence or their ability to conduct legal acts on their own. Article 127 provides that "where a person is severely physically disabled ... and cannot understand the contents or surrounding circumstances of a contract, or cannot effectively communicate his will, the court may appoint a judicial assistant to assist such person as may be necessary in his best interests." The committee recommended that Qatar "carry out a review of its legislation with a view to repeal regimes of substituted decision making and replace them by supported decision making regimes which uphold the autonomy, will and preferences of persons with disabilities." It is to be observed, however, that article 127 provides for "assistance" and not "substitution," the later may only be necessary under article 129, which states that "where a person cannot, due to severe debilitating illness, conclude a disposal even with judicial assistance, or if the person abstains from doing so, the court may permit the judicial assistant to conclude the disposal unilaterally if failure to conclude it may endanger the concerned person's interest."

[72]The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) (2015) (paragraph 8) therefore "underscores the nonbinding nature of the Mandela Rules, acknowledges the variety of member states legal farm workers and in that regard recognizes that member states may adapt the application of the Mandela Rules in accordance with their domestic legal frameworks as appropriate, bearing in mind the spirit and purpose of the rules."

[73]UN Standard Minimum Rule 3–2(1)(d).

prejudice to …. this rule, "prisoners may be allowed upon their free and informed consent and in accordance with the applicable law, to participate in clinical trials and other health research accessible in the community if these are expected to produce a direct and significant benefit to their health."[74]

### Exploitation: What Constitutes Exploitation of a Victim of Trafficking in Human Experimentation?

The third element of a case of a medical or scientific experimentation that may amount to human trafficking is exploitation. The UN Trafficking Protocol does not define exploitation. One may rely on the general meaning of the term "taking unfair advantage of another person, their vulnerability or their situation."[75]

This "unfairness" may be interpreted by analogy to the concept of "gross disparity" of the International Institute for the Unification of Private Law (UNIDROIT) Principles of International Commercial Contracts that provides that a "party may avoid the contract or an individual term of it if at the time of the conclusion of the contract, the contract or term unjustifiably gave the other party an excessive advantage."[76]

A reading of the ethical principles developed in the context of human experimentation reveals a number of elements that help to define exploitation. The primary purpose of medical research involving human subjects is to understand the causes, development and effects of diseases and to improve preventive, diagnostic and therapeutic interventions (methods, procedures and treatments).[77]

Before performing a medical test or experiment, a risk assessment must be conducted that involves a careful assessment of predictable risks and burdens to the individuals and groups involved in the research in comparison with foreseeable benefits to them and to other individuals or groups affected by the condition under investigation.[78] The research may only be conducted if the importance of the objective outweighs the risk and burdens to the research subjects.[79] In other words, "the degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment."[80] The Qatar policies, adopting this balancing test, state: "Risks to subjects are reasonable in selection to anticipated benefits, if any, to subjects and the importance of the knowledge that may reasonably be expected to result."[81] In defining "reasonableness" of the risk, the Qatar policies require that the research "involves no more than minimal risks to the subject."[82]

[74]UN Standard Minimum Rule 3–2(2). See, generally, Reiter (2009) and Lines (2008).

[75]The UNODC's 2015 issue paper states "to be wrong, therefore exploitation must be linked in some way to injustice not just taking advantage of a person, their situation or their vulnerability but taking unfair advantage." See UNODC (2015).

[76]UNIDROIT Principles of International Commercial Contracts, article 3(2)(7), maintains that excessive advantages may be decided in accordance with the fact that the other party has taken unfair advantage of the first party's dependence, economic, distress or urgent needs, or of its improvidence, ignorance, inexperience or lack of bargaining skills.

[77]Principle 6 of the Declaration of Helsinki (World Medical Association 2013).

[78]Principle 17 of the Declaration of Helsinki (World Medical Association 2013).

[79]Principle 14 of the Declaration of Helsinki (World Medical Association 2013).

[80]Nuremberg Code, principle 6.

[81]The Qatar policies.

[82]Ibid.

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In performing the experiment, it must be noted that the experiment should be conducted only by scientifically qualified persons[83] using the highest degree of care. As explained by the Declaration of Helsinki, "Medical research involving human subjects must confirm to generally accepted scientific principles, be based on a thorough knowledge of the scientific literature, other relevant sources of information, and adequate laboratory and, as appropriate, animal experiment."[84] These standards of care include "Ethical standards that promote and ensure respect for all Human subjects and protect their health and rights."[85]

The experiment should not cause harm to the human subject and it should be so concluded as to "avoid all necessary physical and mental suffering and injury."[86]

Any harm caused to the victim, of improper research experimentation, requires appropriate medical treatment,[87] a principle that is clearly stated in anti-trafficking legislation. Article 5 of the Law of Qatar on Combating Human Trafficking provides that "the competent authorities shall guarantee the protection and physical and mental safely of the victims and shall provide them with health, educational and social care and shall ensure the appropriate circumstances for their rehabilitation and integration in society in a manner that takes into account their needs and human dignity."[88]

A victim of human trafficking is entitled to legal and medical aid. The UN Trafficking Protocol states, in article 6, that each state party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons and, in particular, the provision of medical, psychological and mutual assistance.[89]

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems link such medical aid with legal aid. Guideline 7 states that "mechanism and procedures are established to ensure close cooperation and appropriate referral systems between legal aid providers and other professionals (namely, health, social

[83]The Nuremberg Code, principle 8.

[84]Principle 21 of the Declaration of Helsinki. The principle also provides that "the welfare of animals used for research must be respected." (World Medical Association 2013)

[85]Principle 7 of the Declaration of Helsinki. Principle 9 explains that "it is the duty of physicians who are involved in medical research to protect the life, health dignity, integrity, right to self- determination, privacy and confidentiality of personal information of research subjects." The Declaration of Helsinki calls for considering national as well as international norms and standards for research involving human subjects, principle 10. However the Declaration of Helsinki makes it clear that "No national or international, ethical, legal or regulatory requirement should reduce or eliminate any of the protections for research subjects set forth in the declaration." (World Medical Association 2013)

[86]The Nuremberg Code, principle 4 states that "medical research should be conducted in a manner that minimizes possible harm to the environment."

[87]Principle 15 of the Declaration of Helsinki (World Medical Association 2013).

[88]Article 5 of Qatar Law No. 15 of 2011 on Combating Human Trafficking. See also article 11 of the Law of Iraq No. 28 of 2012 on Combating Human Trafficking; article 5 of the Law of Jordan No. 9 of 2009 on Combating Human Trafficking; article 12 of the Law of Kuwait No. 91 of 2013 on Combating Trafficking in Persons and Smuggling of Migrants; article 5 of the Law of Oman on Combating the Human Trafficking; article 11 of the Law of Saudi Arabia of 2009 on Combating the Human Trafficking; article 15 of the Law of Syria on Combating Human Trafficking; article 8 of the Law of Bahrain No. 1 of 2008 on Combating Trafficking in Persons; article 22 of the Law of Egypt No. 64 of 2010 on Combating Human Trafficking.

[89]UN Trafficking Protocol, article 6.

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and child welfare providers) to obtain a comprehensive understanding of the victim as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs."[90]

Such harm may constitute an aggravated circumstance that enhances the penalty in cases that involve (a) the death of the victim[91] or his/her permanent disability[92] or (b) if the victim suffers an incurable disease[93] or an illness that threatens his or her life.[94] It also may entitle the victim to the right to an "appropriate compensation"[95] that should include punitive damages in the legal systems that recognize this type of compensation.[96]

## CONCLUSION

Human experimentation, whether for medical or scientific purposes, is covered by well-established rules and principles of ethics including: (a) the Nuremberg Code of 1947 providing the 10 guiding principles in human experimentation; (b) the Declaration of Helsinki Ethical Principles of 1964 as amended in 2013; (c) the International Ethics Guidelines for Biomedical Research Involving Human Subjects that were prepared by the Council for International Organizations of Medical Sciences in collaboration with the WHO and the World Medical Organization; and (d) the World Medical Association International Code of Medical Ethics of 2006.

These ethical documents may be properly interpreted and fully understood in accordance with the three main elements of the crime of human trafficking, namely: (a) consent; (b) vulnerability; and (c) exploitation. If a person is recruited, to be the subject of a medical or scientific experiment and the medical doctor fails to obtain his/her free, voluntary and informed consent, thereby taking advantage of the person's vulnerability because of his/her status as a woman, a child, a person with disabilities, an elderly person or other status and exploiting him/her in conducting the experiment, then the medical doctor may be held liable, not only for breach of

[90]UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, guideline 7. See, e.g., Ditullio v. Boehm, 662 F.3d 1091 (2011). "In tort cases, punitive damages are awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future," citing the restatement (second) of torts 908 (1979). "Punitive damages are generally appropriate under the TVPA civil remedy provision because it creates a cause of action for tortuous conduct that is ordinarily intentional and outrageous." The court went on to say that "A plaintiff bringing a civil action under the TVPA must prove that the defendant has engaged in human trafficking, which congress described as "a contemporary manifestation of slavery." Such conduct obviously meets the common law standards for award of punitive damages because it is both "intentional and outrageous." See also Canal v. De La Rosa Dann, 2010 U.S. Dist. LEXIS 97856 (2010). "Here Dann acted with a conscious disregard for Peña Canal's right to be free from involuntary servitude and she intentionally misrepresented facts for the purpose of depriving her of this right. The court concludes that a punitive damages award in an amount equal to her compensatory damages is justified in light of Dann's disregard of Peña Canal's basic rights."

[91]See guideline 15 of the Law of Qatar No. 15 of 2011 on Combating Human Trafficking.

[92]See, e.g., article 2 of the Law of Kuwait and article 6 of the Law of Egypt.

[93]See, e.g., article 9 of the Law of Jordan, article 6 of the Law of Iraq, and article 4 of the Law of Bahrain.

[94]See, e.g., article 586 of the criminal code of Lebanon.

[95]Principle 15 of the Declaration of Helsinki (World Medical Association 2013).

[96]For instance, in the United States, the Trafficking Victims Protection Act grants the victim of trafficking the right to ask for civil damages that was interpreted by the courts to include not only compensatory damages but also punitive damages.

https://doi.org/10.1017/cri.2017.5 Published online by Cambridge University Press

contract or tort, but also for the crime of human trafficking. Establishing liability in such a case requires proof of causation between the act of the medical doctor and the offense of human trafficking. This may be the case, if the medical doctor is the "actor" who recruited, transported, transferred, harbored or received a victim of trafficking for the purpose of exploitation in human experimentation or human subject research. This may also be the case if the medical doctor, although not committing the act of trafficking him/herself, knew or should have reasonably known that the subject of experimentation or research has been trafficked for the purpose of exploitation. In other words, the medical doctor should be either the principal actor in a trafficking scheme or complicit in participating in the act of trafficking.

The Council of Europe Convention on Action Against Trafficking in Human Beings states that, "each party, shall consider adopting such legislative and other measures as may be necessary to establish as criminal offenses under its internal law, the use of services which are the object of exploitation … with the knowledge that the person is a victim of trafficking in human beings."[97] With such knowledge, whether actual or constructive, a medical doctor may be held liable for human trafficking provided that its main elements are established; namely absence of consent, taking advantage of a position of vulnerability and proof of abuse and exploitation.

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[97]Article 19 of the Council of Europe Convention on Action Against Trafficking in Human Beings (2005).

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## TRANSLATED ABSTRACTS

**Résumé**

La réalisation d'expériences sur des êtres humains risque de soumettre ces derniers à des formes d'abus et d'exploitation. La communauté internationale a élaboré des principes, des règles et des normes prévoyant des mesures de protection contre les expériences

https://doi.org/10.1017/cri.2017.5 Published online by Cambridge University Press

abusives sur des êtres humains. L'embauche d'une personne par des moyens illégaux et à des fins illicites a été érigée en délit criminel au titre de la traite des êtres humains. Dans le présent article, on s'efforce, pour la première fois, de se pencher sur les expériences sur des êtres humains comme forme de traite des êtres humains. Le présent article préconise une définition expansive du concept de la traite des êtres humains, qui comprenne non seulement l'exploitation sexuelle et du travail, mais aussi des expériences médicales ou scientifiques menées en violation de la loi en vigueur, en soutenant en outre que les principes, règles et normes d'éthique médicale internationaux pourraient être analysés de façon mieux appropriée en appliquant les trois éléments de base d'un cas de traite des êtres humains, à savoir (a) l'absence de tout consentement, (b) l'abus d'une situation de vulnérabilité, et (c) l'exploitation.

**Mots clés:** traite des êtres humains; expériences sur des êtres humains; responsabilité médicale; responsabilité pénale; code d'éthique; déontologie médicale; législation arabe contre la traite des êtres humains; consentement; vulnérabilité; exploitation

**Sinopsis**

La práctica de experimentar con seres humanos puede someter a las personas a abusos y explotación. La comunidad internacional ha redactado principios, reglamentaciones y normativas que prevén medidas de protección contra la explotación en la experimentación con seres humanos. Captar a una persona por medios ilegales para finalidades ilícitas está tipificado como un delito de trata de seres humanos. Este artículo pretende abordar, por primera vez, la experimentación con seres humanos como una forma de trata de personas y aboga por una definición ampliada del concepto de trata de personas, que no solo incluya la explotación sexual o laboral, sino también los experimentos médicos y científicos que se llevan a cabo infringiendo la ley. El artículo plantea además que los principios, reglamentaciones y normativas internacionales de la ética médica se pueden analizar con más propiedad mediante el uso de los tres elementos básicos presentes en un caso de trata de personas, a saber: (a) ausencia de consentimiento, (b) abuso de una posición de vulnerabilidad y (c) explotación.

**Palabras clave:** trata de personas; tráfico de seres humanos; experimentación en seres humanos; responsabilidad médica; responsabilidad penal; código de ética; código deontológico de los profesionales de la medicina; legislación árabe en materia de lucha contra la trata de personas; consentimiento; vulnerabilidad; explotación.

**摘要**

开展人体试验可能会导致人类受到虐待和剥削。国际社区制定了相关原则、规则和规范来防止剥削性人体试验。出于非法目的以非法方式招募试验对象被定为人口贩卖犯罪行为。本文尝试首次将人体试验作为人口贩卖的一种形式进行研究。本文主张人口贩卖概念的扩展性定义，即不仅包含出于性交易或劳役目的的人口贩卖，还包含出于非法开展医疗或科学试验目的的人口贩卖；并同时主张可通过使用人口贩卖案例的三大基本要素对国际医疗伦理原则、规则和规范进行更恰当的分析，这三大基本要素为 (a) 缺少同意 (b) 滥用受害者弱势地位以及 (c) 剥削。

关键词: 人口贩卖; 人体试验; 医疗责任; 刑事责任; 道德规范; 医疗行为准则; 阿拉伯反人口贩卖立法; 同意; 弱势; 剥削。

https://doi.org/10.1017/cri.2017.5 Published online by Cambridge University Press

**ملخص**

إن إجراء التجارب على البشر قد يُعرّضهم للإيذاء والاستغلال. وقد وضع المجتمع الدولي مبادئ وقواعد ومعايير توفر ضمانات تحول دون استغلال البشر في التجارب. فجُرّمت الاستعانة بأي شخص على نحو غير قانوني لأغراض غير مشروعة واعتُبر ذلك اتجاراً بالبشر. ويحاول هذا المقال، للمرة الأولى، تناول إجراء التجارب على البشر بوصفه شكلا من أشكال الاتجار بالبشر. ويدعو المقال إلى وضع تعريف موسع لمفهوم الاتجار بالبشر كي لا يقتصر على الجنس أو العمل فحسب، بل ليشمل أيضا الاختبارات الطبية أو العلمية التي تُجرى بالمخالفة للقانون، ويحاول المقال أيضا إثبات أن المبادئ والقواعد والمعايير الأخلاقية الطبية الدولية يمكن إخضاعها للتحليل على نحو أنسب باستخدام العناصر الثلاثة الأساسية لحالة الاتجار بالبشر، ألا وهي: (أ) عدم الموافقة، (ب) وإساءة استعمال حالة الضعف؛ (ج) والاستغلال.

**الكلمات الأساسية**: الاتجار بالبشر، إجراء التجارب على البشر، المسؤولية الطبية، المسؤولية الجنائية، قواعد السلوك، آداب مهنة الطب، التشريعات العربية لمكافحة الاتجار، الموافقة، الاستضعاف، الاستغلال.

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Cite this article: Mattar, M. Y. 2017. Medical Liability for Trafficking in Persons for the Purpose of Human Experimentation: International Standards and Comparative Models from Arab Jurisdictions. *International Annals of Criminology* 55: 4–25, doi:10.1017/cri.2017.5