

Prostitution in the Arab World: A Legal Study of Arab Legislation

Nada Al-Riahi

These papers were written to inform the work of the Global Commission on HIV and the Law, which is convened by UNDP on behalf of UNAIDS. The content, analysis, opinions and recommendations in the papers do not necessarily reflect the views of the Commission, UNDP or UNAIDS. While the Commission's Technical Advisory group provided review and commentary, the authors accept responsibility for any errors and omissions.

Citation: Al-Riahi., N., (2011), *Prostitution in the Arab World: A Legal Study of Arab Legislation*. Working Paper prepared for the Middle East and North Africa Regional Consultation of the Global Commission on HIV and the Law, 27-29 July 2011.

ABBREVIATIONS

PBUH: Peace be unto him

SWT: Subhanahu Wa Ta'ala, / The most glorified, the most high

Contents

Introduction

- Section I: Criminalisation of Prostitution in Arab Countries

Chapter I: The concept of prostitution

A) Defining the concept of practising prostitution:

B) Defining the concept of intermediating and trading in prostitution

Chapter II: Differences in Arab legislation pertaining to interpreting the presumptions of prostitution

Chapter III: Prostitution or debauchery punishment between *Sharia* and Law

1) Islamic *Sharia*, *Hudud* and rulings about extra-marital sex

2) Variations in penalties among Arab States

Criminalisation, Causes and effects

- Section II: Public Prostitution in Tunisia

Chapter I: Texts Regulating Public Prostitution in Tunisia

A) The Legal Concept of Public Prosecution

B) Legal conditions for practising legal public prostitution

C) Conditions for Managing Brothels

Chapter II: Causes for Public Prostitution in Tunisia

- Conclusion

Introduction:

The legal study of prostitution cannot be separated from the social and historical backgrounds that surround this phenomenon. Even though the legal system tries to establish the rules and desired goals for society, it is closely linked to the surrounding social and ethical systems.

Prostitution is perhaps the most criminalised behaviour in society. This emphasis is based on a model previously determined by society expressing how an individual should behave.

Prostitution, as famous historian Herodotus mentioned, was a sacred practice in the ancient world as every girl was obliged, once in her life, to sit in front of the temple to practise sacred sex with a passer-by. This type of worship was established in all the ancient civilizations such as Babylon, Assyria, Athens, Rome and Egypt. However, King Augustine annulled this practice in 325 B.C. to combat the spread of disease.

Prostitution steadily lost its sanctity and it gradually became a source of stigma, especially in the light of successive monotheistic religions that criminalised it, and positivist laws that consolidated its punishment.

Perhaps the importance of this study stems from the attempt made to identify the role of legislation in combating this phenomenon and the alternatives that Arab countries may use to limit such behaviour.

In the first section, we will examine prostitution in the legislation of Arab states in general, and in the second section we will study public prostitution in Tunisia: the only Arab country that possesses a special legislation organising public prostitution.

Section I: Criminalisation of Prostitution in Arab Countries

Chapter I: The concept of prostitution

Determining the concept of prostitution enables us to differentiate between (A) practising prostitution and (B) prostitution mediation and the sex trade.

A. Defining the concept of practising prostitution:

The linguistic root of the verb "Bagha" –from which the word 'Beghaa' (prostitution) derives - means to commit injustice, wrong someone or treat someone unjustly, and "Baghi" means a suppressor. The plural form is "Bughah" (suppressors) – people who transgress

each other and commit injustice towards others. "Baghi" means injustice. If a person is "Bagha" then it means he/she committed adultery. To use the verb "Bagha" to describe a wound means that the wound was contaminated and swelled.

Idiomatically, it is every sexual relationship condemned by legislation or the Sharia.

The first thing that springs to mind for researchers involved in the study of prostitution is the absence of an accurate definition of prostitution in Arab legislation, despite the severe punishment set for the crime in most cases.

It is a well-known fact that identifying concepts and defining them in detail is a crucial aspect of ensuring that legal rulings are just and equitable. This is due to the fact that semantic similarities and its overlapping presuppositions could allow a person to either escape punishment or suffer injustice for something he/she did not commit. Legislation in Arab countries, however, has largely ignored this fact; thus we find varying terms such as debauchery, prostitution, perversion or obscenity, used interchangeably without description or distinction.

In this respect, we can divide legislation in Arab states into three groups; the first includes Omani and Yemeni legislation that provides a specific definition for prostitution and sexual intercourse; the second deals with general and brief definitions of this phenomenon as is the case in Moroccan law; and the third group delegates the task of description and legal characterisation of criminal sexual behaviour to the judiciary, which means the judge plays a key role in determining whether the features of the crime's elements exist or not depending on the available information in the case file.

Omani legislators define prostitution in Article 219 of the *Penal Code* as follows: "Sexual intercourse or the act of debauchery occurs when the male sexual organ enters the female's organ, even to the least degree and regardless of whether semen is emitted." The legal text thus adopts a technical definition of the elements of the crime of prostitution.

The Yemeni *penal code* is not as specific as Omani law, although it still attempts to provide a clear definition. Article 277 of the Yemeni *penal code* stipulates that: "Debauchery and prostitution means committing an act related to honour, and contrary to the rules of Islam, with the aim of corrupting the morals of others or making a profit." Therefore, the legal text determines debauchery to be committing acts related to honour, and contrary to the rules of Islamic jurisprudence. This is considered a general definition that relies on religious and normative standards and depends on historical, ethical and religious heritage as criteria to

determine whether the elements of the crime exist or not. Additionally, it mentions the material element of profiteering and financial gain.

However, the clause does not identify whether prostitution refers to full sexual intercourse or simply the presence of a man and a woman, who do not know each other, together in a place that brings into question the presence of a sexual relationship between them. Such identification cannot take place without defining the "indecent act", set forth in article 273, and the definition of Zina (unlawful sexual intercourse), in article 263 of the aforementioned law. Article 273 of the *penal code* defines an indecent, immodest act as "any act that violates public morality or public decency, including exhibitionism, intentional exposure of private parts, indecent words or gesture" whereas unlawful sexual intercourse means insertion of the penis in the vagina [coitus].

From reading such texts, it can be assumed that the Yemeni legislator considers the presence of full sexual intercourse to be one of the elements of the crime of prostitution. In the absence of sexual intercourse, the act is legally characterised as an indecent act.

Arab legislation fails to provide an accurate legal definition or uses vague criterion without clearly identifying the nature of a sexual relationship or the elements thereof. For instance, article 490 of *Moroccan Penal Code* only mentions illicit sexual relationships, thus deeming any relationship between an unmarried couple to be a crime of depravity.

Thus, the absence of a marital relationship in a sexual relationship becomes an element of the crime of prostitution, without providing a clear definition of sex or depravity.

Legislation In other Arab states, including Libya, Algeria, Lebanon, Palestine, Kuwait, UAE, Jordan, and Tunisia, lacked legal texts that define prostitution in plain language, leaving definitions to be given by courts, where the judge depends on findings, testimonies and reports to legally characterise the crime.

For instance, the Tunisian law fails to define the concepts of "obscene act" and 'sexual act". The judiciary compensates for this loophole by defining "obscene act" as any indecent act that may affect one's body, sexual organs, or harm one's modesty. All circuits of the Tunisian Court of Cassation, in their decision *no 6417 dated 16 June 1969*, adopted this definition, considering that:

1: the judge shall describe the acts he is entrusted with describing, and he may change the description in the referral decision provided that it will not lie outside the purview of the acts mentioned in the said decision.

2: the obscene act is any immodest act that occurs intentionally and directly on the body of a man or a woman or sexual organs thereof.

3: sexual intercourse does not mean an obscene act, but only occurs in case of (normal) intromission.

Accordingly, the Tunisian Court of Cassation adopted the same criteria as the Omani and Yemeni legislation. The same applies to all legal systems in Arab countries which made use of the presence of full sexual intercourse as evidence for the crime of prostitution. They also deem any act to be obscene, indecent or immodest in the absence of full sexual intercourse, even in the presence of some of its elements.

B) Defining the concept of intermediating and trading in prostitution

The practice of prostitution, that is a woman trading her body, is prohibited in the legislations of all Arab states (save for Tunisia, which only incriminates prostitution if in private) and is a stigmatised behaviour. However, the practice of prostitution may not imply dangerous social and health repercussions compared to those caused by intermediating and trading in prostitution.

This aspect of prostitution is considered one of the darkest chapters of human history. Slavery and the slave trade led mercenaries to come up with the most brutal and unjust means of enslaving others including drawing women and children to the world of sex slavery either by duress, threat, blackmail, or trickery.

The Arab media bears witness to the dismantlement of many prostitution rings, arresting and indicting their leaders. This shows that the practice of prostitution, intermediating and trading in such activity is rampant in the Arab world despite the conservative nature of Arab societies.

Historians have differed in determining the historical era when the trade began to flourish. However, the slave trade, concubines, odalisques, and slave women have been present throughout history under different guises. The sex trade has witnessed periods both of booming growth and stagnation, but it has never disappeared completely.

Defining the concept of intermediating and trading in prostitution cannot occur without reference to the international conventions and treaties that suppress human trafficking. Many conventions have been issued on the topic, and international efforts to fight trafficking in women and children have been in place since the beginning of the last

century. These conventions include the following:

- International Agreement of 18 May 1904 for the Suppression of the “White Slave Traffic”, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948;
- International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol;
- International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947;
- International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol;
- Convention on the Elimination of All Forms of Discrimination against Women, which entered into force 3 September 1981. The need to combat all forms of trafficking in women and exploitation of prostitution of women is stipulated in Chapter VI of the convention; and
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others' approved by General Assembly resolution of 2 December 1949. Entry into force: 25 July 1951.

In its preamble, *the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others' approved by General Assembly resolution of 2 December 1949* states that "*prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community*". Therefore, the contracting parties agreed on a set of principles to suppress prostitution and traffic in persons. Among the principles that were agreed upon was to punish any person who, to gratify the passions of another:

- Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
- Exploits the prostitution of another person, even with the consent of that person;
- Keeps or manages, or knowingly finances or takes part in the financing of a brothel;
or
- Knowingly lets or rents a building or other place or any part thereof for the purpose

of the prostitution of others.

Notably, all Arab states criminalise such practices. For instance, the Libyan *penal code* criminalises the exploitation of prostitutes and sentences to prison anyone, male or female, who wholly or in part lives off a woman's earnings from prostitution¹. It also punishes anyone who opens or operates a place for practising debauchery or prostitution or helps, by any means whatsoever, in managing it.

The law also punishes any person who knowingly lets or offers, in any capacity, a house or a place managed for the practice of debauchery or prostitution, or for housing one or more persons where lewdness or prostitution is practised. It also punishes whoever owns or manages a furnished house/ flat or a place open for the public, as that person is deemed to be facilitating the practice of debauchery or prostitution.

It is to be noted that Libyan legislation addresses the issue of the international trafficking of women and facilitation thereof in articles 418 and 419 of the *penal code*. It sentences to prison anyone who compels a woman, either by force or threat, to travel to a place abroad, in the knowledge that she will be exploited for prostitution. It also punishes anyone who induces, by any means, a minor or a mentally disabled adult woman to travel abroad, in the knowledge that she will be exploited for prostitution. If such act is accompanied by violence or threat, the punishment is aggravated.

Jordanian legislation criminalises (article 310) the procurement of a woman to work as a prostitute in Jordan or abroad. The law even criminalises, in the same way, any attempt to procure "*any woman under the age of 20 who is not a prostitute or a woman of ill-repute in order for a person to illegally have sexual intercourse with her whether in Jordan or abroad; any woman to work as a prostitute in Jordan or abroad; any woman, causing her to leave Jordan with the intent to live in or frequent a brothel; any woman, causing her to leave her normal place of residence in Jordan, which is not a brothel, to live in a brothel in Jordan or elsewhere or to frequent it to work as a prostitute*". Article 311 tackles forcing a woman to work as a prostitute. It incorporates illegal means that may further aggravate the penalty: the use of threat, intimidation (whether by trickery or deception), forcing a woman to use a drug, with the intention of sedating her in order to enable a person to have illegal sexual intercourse with her.

The *penal Code* further establishes penalties for intermediating and working in the sex trade. For instance, it penalises anyone who establishes, manages, works in, or helps in managing a brothel; or rents a house, or is in charge of a house and knowingly allows using the property or part thereof as a brothel. It also penalises anyone who owns or acts as an agent for the owner of such a house and lets it, wholly or in part, in the knowledge that it is to be used as a brothel or intentionally assists in its habitual use as a brothel.

Article 314 penalises "Anyone who has been entrusted with looking after a child aged between 6 and 16 years and allows him/her to stay in a brothel or frequent it".

Such procedures aim at eliminating "white slave traffic" or traffic in women and children, as they criminalise the behaviour which makes someone commit such acts. Thus, the law penalises any male who lives off, wholly or in part, a female's earnings from prostitution. Article 315 deems a male to be knowingly living off a prostitute's earnings, unless otherwise proved, if he lives with a prostitute, used to have sexual intercourse with her, controls or affects her movements in a way that appears that he is assisting her or compelling her to practise prostitution.

Chapter II: Differences in Arab legislation pertaining to interpreting the presumptions of prostitution

One of the main elements of prostitution is the presence of intent, that is to intentionally have sex for money in the knowledge that such an act is illegal. The physical elements include the presence of a sexual relationship between a man and a woman; the presence of a place for prostitution, in addition to living off the earnings of prostitution.

Most Arab states legislate the same elements to describe a crime as being prostitution. However, they vary in interpreting or understanding the presumptions used to prove that sex is taking place for financial gain. They also vary in terms of the independent reasoning of the judiciary to legally characterise the act and apply the stipulated penalties for prostitution. In some Arab countries, such as Sudan, inferring the presence of presumptions becomes more severe, and independent reasoning tends to involve a wider reading of the legislative text. In other legislations, (such as Tunisia, Lebanon and Yemen), interpreting the text to read the evidence becomes less radical and more tolerant.

In articles 523-524 of the Lebanese *penal code*, the legislator criminalises prostitution and

identifies the following to be evidence for the offence: the physical act of copulation, the aim of practising prostitution for material gain, and criminal intent.

As for copulation, it is defined as illicit sexual intercourse in private between a man and woman. Otherwise, article 534 pertaining to copulation against nature in case of homosexual relationship shall apply. The sexual intercourse must be illicit, that is, outside of lawful marriage.

As for the second element - the aim of prostitution - it must be in exchange for financial or material gain, whether such gain is money, real estate, or other items. In the absence of this element, the act shall not be deemed prostitution. It is to be noted that articles 526 and 527 of the Lebanese *penal code* also stipulate that material gain is a prerequisite for the crime of "facilitation of prostitution of others." The legal text does not expressly tackle material gain as an evidence for the practice of prostitution. However, the judiciary tackled it to better differentiate between the practice of prostitution and other punishable moral crimes.

In addition, there must be criminal intent, to complete the elements of a crime. Lebanese courts deem prostitution as one of the intentional crimes. The intent here is to wilfully commit unlawful sexual intercourse in the knowledge that it is illegal, and with the aim of material gain. The criminal intent is based on two elements: knowledge and will. In the absence of the criminal intent, there is no crime. Thus, the act could have another legal characterisation as adultery/ fornication, or an immodest act, if the legal elements and intent are present.

Thus, the Lebanese legislation depends on interconnected evidence and elements. Where an element is absent, the judge resorts to a different legal characterisation of the crime.

Article 231 of the *Tunisian Penal Code* stipulates that in cases not set forth in law and in the ways agreed upon, "women who, by gestures or words, solicit themselves to passers-by or engage in prostitution, even on an occasional basis, are punishable by six months to two years' imprisonment and a fine of TND20 - 200 (USD14.4 - 144). Any person who has had sexual relations with one of these women is considered an accomplice and is subject to the same punishment. In applying this law, Tunisian courts, in many cases, consider a woman publicly standing in a street while making gestures or saying words in a way that show her to be soliciting herself to others to be subject to the aforementioned law. In one ruling the Court of Cassation ruled that "article 231 of the *penal code* has no reference whatsoever to money received or paid. It also expressly deems a woman to be guilty of

prostitution even if practised occasionally.² Thus the condition of frequently practising sex for money has no justification in the legislation. The Court of Cassation, in the said ruling, literally applied the text of the article, and deemed that the crime of prostitution is present with all its elements, once gestures are made, even if that takes place once and without money in return.

This decision was issued by the highest ranking court in Tunisia. However, the court later changed its legal opinion, deeming frequent practice of prostitution and getting material gain in return, without necessarily being money, an evidence for the crime of prostitution. As stated in *decision no 76182, dated 22 January 1998*: It is understood from article 231 of the *penal code* that “women who, by gestures or words, solicit themselves to passers-by or engage in prostitution, even on an occasional basis”, which means that the article refers to woman who practise prostitution as a profession and for money but not in the ways stipulated.

The Yemeni Legislation, adopted Islamic *Sharia* and *Hudud* (penal laws in Islam, singular *Hadd*) to punish those who commit *Zina* (adultery/fornication). However, it stipulated exceptional presumptions for rebutting the evidence of such crime. Article 266 of the *penal code* stipulates that the charge of committing *Zina* and the subsequent *hudud* are dropped if it is proved to the court that one of the following conditions is present:

- 1- Non-fulfilment of any of the conditions of *Ihsan*: sanity, Islam, puberty, not a slave , married and consummation of marriage.
- 2- Hesitation or confusion on the part of the witnesses, or anyone asked to testify.
- 3- Inability of the witnesses, or any one of them, to carry out stoning after judgment has been given.
- 4- Inconsistency in the testimony or absence of one of the elements of the crime, or recantation of testimony before execution of the judgment.
- 5- Testimony by women that the woman in the case is a virgin or has an overgrowth of genital scar tissue after testimony of adultery has been given against her.
- 6- An allegation of possible doubt.
- 7- An allegation of coercion or constraint.
- 8- The adulterer becomes dumb before the witnesses bear witness against him.

9- The convict recants his confession, in cases where the prosecution rests on this confession.

The cases in this are laden with social and religious overtones, such as the inability of any witness to implement the Hadd of *stoning once a ruling is made, and the issue of the dumbness of the adulterer*. However, the person charged with prostitution is not punished if one of the above- mentioned conditions are present, for example, if the woman is a virgin or if one of the conditions of *Ihsan* is absent.

The Yemeni legislation, theoretically and legally, seems more cautious about the legal characterisation of the act than its Sudanese counterpart. Article 154 of Sudanese *penal Code* deems whoever is found in a house of prostitution in a way that shows he may practise sexual acts or live off the earnings of prostitution, as guilty of the crime of prostitution.

Although the Sudanese legislator relies on Islamic *Sharia* in stipulating this ruling, it is to be noted that the same clause indicts a person of prostitution, if present in a house of prostitution in a way that raises doubts about the occurrence of sexual acts or living off its earnings. Islamic teachings rule that *Hudud* are not to be applied if there is doubt about whether punishable acts were committed or not. However, the article favours probability to certainty, deeming presence in a house of prostitution a presumption for the possibility of the occurrence of the sexual act and hence punishment.

Article 154 defines the place of prostitution as any place prepared for the gathering of men and women who are neither married nor relatives and amid circumstances that make the purchase of sex possible.

This definition differs from the standards adopted in other Arab legislation. For instance, Article 309 of the Jordanian *penal code* defines a brothel as any house, room or a number of rooms in any building wherein two or more women live or frequent to commit prostitution. In addition, the *Anti-prostitution Act 10/1961*, enforced in Syria and Egypt, defines, in article 10, a brothel as a place usually used for the prostitution or debauchery of others, even if practised by one person only. Some legal commentators deem that a brothel in the aforementioned law refers to the place where others commit prostitution, even if a person commits prostitution in his own house. If one commits prostitution or debauchery in his house and in the absence of another person, his act does not fall under the jurisdiction of this definition and the judge does not charge him with "preparing and managing a place for prostitution."

If Sudanese legislation rules that any place frequented by men and women who are not related to each other is a brothel, then airports, schools, government offices and agencies, mosques, and churches are all deemed suspicious places since they are frequented by both sexes and they mix therein, thus making the occurrence of sexual relationships likely or possible.

Although radical and widely criticised, even by religious scholars in Sudan and the Arab world in general, the article is still in force. It is another proof of the yawning differences in the evidence used to determine the elements of sex-for-money crime in the Arab world.

Chapter III: Prostitution or debauchery punishment between *Sharia* and Law

Prostitution is criminalised in law and prohibited by Islamic *Sharia*. In addition, different penalties have been stipulated for those who engage in prostitution and live off its earnings. Were people deterred? Was the sanctity of a woman's body protected from abuse and exploitation?

To answer these questions, we will attempt to A) review the rulings and *hudud* relating to extramarital sex in Islamic *Sharia* B) study the variation of penalties for extramarital sex in Arab legislations and C) examine the reasons for criminalisation of extramarital sex and the effects of this criminalisation.

1) Islamic *Sharia*, *Hudud* and rulings about extra-marital sex

Allah Almighty says in sura An Nahl: "Lo! Allah enjoineeth justice and kindness, and giving to kinsfolk, and forbiddeth lewdness and abomination and wickedness. He exhorteth you in order that ye may take heed. " (16:90). In applying Allah's verses in the Holy Qur'an, Islam encourages justice, good conduct with others, and giving to kinsfolk. It also forbids indecency, abomination and wickedness, which harm the individual and society in general.

In Islam, *Zina* [extra-marital or premarital sex] and prostitution are prohibited. Jurisprudents have a general consensus about this Shari'a ruling since Islam categorically forbids *Zina*: "(32) And come not near unto adultery. Lo! it is an abomination and an evil way." (Al Israa, 17:32).

Islam also forbids the root causes of committing *Zina* based on the verse: "(30) Tell the believing men to lower their gaze and be modest. That is purer for them. Lo! Allah is aware of what they do. (31) And tell the believing women to lower their gaze and be modest, and

to display of their adornment only that which is apparent, and to draw their veils over their bosoms" (An-Noor 24: 30-31).

Many jurists argue that Islam has no set penalty for merely committing *Zina*, but rather penalises promoting it in public. Thus, in Islamic *Sharia*, there is no set penalty in case *Zina* is committed as an individual act in private, if the person who committed *Zina* refuses to confess, or if there were not four eyewitnesses to testify that they have seen the act. However, if *Zina* takes place publicly and there were four competent eye witnesses to testify, the penalty is 100 lashes.

To avoid false accusations against chaste woman of committing *Zina*, Allah Almighty states the penalty for false accusation in An-Noor (24:4) "And those who accuse honourable women but bring not four witnesses, scourge them (with) eighty stripes and never (afterward) accept their testimony - They indeed are evil-doers -"

Scholars in the Muslim world agree on the exegesis of such verses but they disagree on the *Hadd* of *Rajm* (stoning). Is it a *Hadd* that is obligatorily applied to Muslims or is the punishment lashing alone?

Some jurists deny the presence of stoning as a penalty in Islam. They believe that during the era of the Prophet Muhammad Peace be Unto Him (PBUH), Jews living in the suburbs of Al Madinah came up with a new punishment for *Zina* instead of stoning. This punishment was blackening the face of the offenders (with coal), making them ride backwards on a donkey and then taking them around the city³. At the end of 4th Hijri year, the Jews came to the prophet (PBUH) to rule on a case of *Zina* between a Jewish man and woman. The prophet asked them: "What punishment do you find in the Torah?". They lied to him by telling him about the penalty they had introduced. Abdullah b. Salim was one of the Jewish scholars who had converted to Islam said: No, the penalty is stoning. The Prophet Muhammad ordered the Jews to bring the Torah and recite it. They brought it and recited it until when they came to the verse pertaining to stoning. The person who was reading placed his hand on the verse pertaining to stoning, and read only the preceding and subsequent verses. Abdullah b. Salim, who was at that time with the Prophet (PBUH) objected and he personally read the verse pertaining to stoning. Prophet Muhammad said: "Oh Allah, I am the first to revive Thy command when they had made it dead". He then pronounced judgement about both and they were stoned.⁴ Some scholars say that the paragraph about stoning in this incident is the same mentioned in Deuteronomy in the Old Testament.⁵ The term "verse of stoning" was used to indicate this judgment. Hence the

term spread among Muslims to the extent that it was thought to be a Quranic ruling.

Jurists believe that the ruling of flogging prescribed in An-Noor (24: 2): "The adulterer and the adulteress, scourge ye each one of them (with) a hundred stripes. And let not pity for the twain withhold you from obedience to Allah, if ye believe in Allah and the Last Day. And let a party of believers witness their punishment," is a general ruling applying to all who commit *Zina*, married and unmarried alike.

The *Allama* (illustrious scholar) Ar-Razi (May Allah bless his soul) says "There is a consensus among Islamic Ummah that Allah's (SWT) reference to "the man and woman found guilty of *Zina*" is a ruling that is generally applied in both cases: adultery and fornication but they differed in the matter of significance. Some argue that it is general and others say it is specific."

Allama Muhammad Al Alousi says "the ruling is generally applied to whoever commits *Zina*, whether married or not."⁶

Allama Ibn Hayyan says: "the ruling in the verse is general and applied to whoever commits *Zina*."⁷

Allama Abu Al Farag Al-Jawzi says; "Our sheikh Ali Ibn Obeid Allah says: This verse obligates the application of flogging to virgins, married, and previously married women alike."⁸

Jurists have derived from the verse "And if when they are honourably married they commit lewdness they shall incur the half of the punishment (prescribed) for free women (in that case)"⁹ that the prescribed penalty for *Zina* is divided into two: 100 lashes, and 50 lashes. As for stoning, it cannot be halved. They argue that saying that the penalty of stoning cancelled out flogging not only means rejecting the verse of flogging in An-Noor chapter, but it also distorts the meaning of verse two in An-Nisa'. Thus, the penalty (100 lashes) is considered to be a general one applied to all who commit *Zina* as long as they are free (not slaves) whether married or unmarried, of both sexes.

Scholars who hold the opinion that stoning is a legitimate *Hadd* in Islam, support their view by referring to Al-Ahzab 33:60-62 "[60] *If the hypocrites, and those in whose hearts is a disease, and the alarmists in the city do not cease, We verily shall urge thee on against them, then they will be your neighbours in it but a little while. [61] Accursed, they will be*

seized wherever found and slain with a (fierce) slaughter. [62] That was the way of Allah in the case of those who passed away of old; thou wilt not find for the way of Allah aught of power to change.” Although the word *Zina* is not explicitly mentioned in the verses, some scholars believe that the verse refers to promoting *Zina* and that the verse may refer to those who promote debauchery. As the “accursed”, this could also be interpreted as those who promote *Zina* and debauchery. The slaughter referred to in the verse is interpreted as referring to the *Hadd* of stoning.

They also base their opinion on the verse: "Lo! those who love that slander should be spread concerning those who believe, theirs will be a painful punishment in the world and the Hereafter. Allah knoweth. Ye know not."¹⁰

They also said that the penalty of 100 lashes in An-Noor was described as *Az'ab* (punishment). The latter refers to the penalty of 100 lashes. The word “punishment” in the aforementioned verse from An-Nisa' also refers to the 100 lashes. However, in the verse under discussion (Verse 19 of An-Noor), spreading vice (lewdness) is not penalised only by *Az'ab* but by *Az'ab Aleem* (painful punishment). They interpret painful punishment not to be merely physical harm (i.e. flogging) but rather to be stoning to death.

As with juristic interpretations, penalties vary among legislations in different Arab states.

2) Variation in penalties among Arab states

The punishment of committing prostitution and *Zina* vary between legislation in different Arab states, ranging from direct corporal punishment like flogging to custodial penalties and the death penalty. Penalties are aggravated if the crimes involve instigating prostitution, inducing a minor into practising sex for money, or managing a brothel.

In Saudi Arabia, a person found guilty of *Zina* is punished by flogging. In this regard, the story of the “Al-Qatif girl” is worth mentioning. The case was much publicised in the media in March 2006. A Saudi teenage girl in the company of a man (not one of her relatives) was gang raped by seven young men. The rapists also kidnapped the man who was with her, assaulted and battered him. In November 2006, the woman and her companion were sentenced to 90 lashes each for the offence of "being alone with a man who is not a relative in a private place". Four of the rapists were sentenced to 80 to 1000 lashes and one to four years in jail.

The young woman appealed the ruling, which was referred to the Supreme Judicial Council, which granted a retrial at the Al-Qatif Court, with a recommendation to double the

discretionary punishment for the defendants in a way commensurate with the crime of each, including the crime of the woman and her companion. In Saudi media, a judicial source justified that recommendation on the basis that the woman and her companion were the primary cause of the incident since they had an unlawful extra-marital affair lasting several months. Much of the blame fell on the woman as being the main reason for the rape, particularly because she was married.

The Saudi legal system grants a judge the right to set the discretionary punishment, amid the absence of any penalty that is stipulated in any written legal code. This legislative loophole has led to rulings that do not take into consideration mitigating circumstances or the motives of a crime. It is to be noted that the rulings pertaining to discretionary punishments dispute the principle of legality; the Saudi constitution stipulates (in article 38) that “there shall be no crime or penalty except in accordance with Shari'a or organisational law”. Legal rulings such as this are intended to guarantee the administration of justice, since knowing in advance the punishment may dissuade the would-be perpetrator from committing his crime.

In Sudan, the penalty of flogging is expressly stipulated in article 154. The Sudanese legislation stipulates that a maximum penalty of 100 lashes or up to three years in jail. However, the penalty is not uniformly applied. For instance, there is a famous video, still available on many websites, displaying a Sudanese woman being flogged brutally and barbarically in a way that shows a lot of gloating and contradicts with the main aim of punishment as a warning not to repeat the crime.

The flogging incident was videoed in a public square. In the video, two police officers in uniform are seen flogging her alternately using two different whips, while mocking her. The video caused a row in the Sudanese Judicial system, which hurried to announce in the media that an investigation would be opened into the incident. The investigation concluded that the woman was a student who had habitually worked as a prostitute in addition to managing a brothel, and inducing other girls to commit debauchery. The United Nations High Commissioner for Human Rights concluded in 1997 that corporal punishment (such as flogging) is a cruel and inhumane torture. The *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* has defined torture in its first article as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person.”

However, countries that follow Sharia in their constitution or as a principal source of law have continued to use flogging as a punishment, refusing to replace it with alternative sanctions.

Other Arab countries that inherited legislative systems from the English and French colonial heritage have punishments that vary between prison and financial fines. An example is Article number 417 bis A of the *Libyan penal code* that inflicts a minimum of a year in prison for women who have taken to prostitution as a means of livelihood. Also, Article 622 bis of the *Omani penal code* rules a sentence between three months and two years for prostitution and lewdness in exchange for money, without discrimination. Those penalties seem lenient when compared to Article 298 of the Qatari law that states that whoever takes prostitution or homosexuality as a profession or a means livelihood shall be punished by a maximum of ten years in prison.

Moreover, the stigma and discrimination against women puts her under social pressure even after being punished. Although a woman may be a partner in paid sexual intercourse, society and even most judicial applications in the majority of Arab world laws ignore the man and overlook pursuing him, while exposing the sex worker or the abuser of sexual activity to imprisonment or *Hudud* in legislations with an Islamic background.

On the other hand, all Arab legislations inflict punishment for those who run brothels or for those who earn money from the prostitution of others. Article 203 of the *Kuwaiti penal code* for example, punishes any person who establishes or runs a business for debauchery and prostitution, or assists in that process, by imprisonment for a term of no longer than seven years and a fine that does not exceed KWD7,000 (USD\$25,500). The Emirati legislation stipulates temporary imprisonment in Article 365 for whoever runs a prostitution house.

The majority of legislation in the Arab states punishes those who depend for some or all of their livelihood on prostitution of women, which includes helping a sex worker get clients, mediating or living with her.¹¹

Arab legislation also tackles forcing, threatening or tricking others into engaging in prostitution, as in Article 324 of the *Bahraini penal code*. Anyone found guilty of such offences is punishable by between two to seven years imprisonment. This sentence becomes more severe if the victim is related to the offender, or is someone over whom he has authority, or someone he is raising or administrating. Article 342 of the *Algerian penal code* stipulates that inciting minors under the age of 19, male or female, to immorality and

depravity or encouraging them is punishable by imprisonment for five to ten years together with a fine. The same punishment is applied to those who accidentally do the same with minors below 16. The punishment could be death according to Article 280 of the *Yemeni penal code* for parents who make their children carry on obscenities.

It is remarkable that the remaining penalties in the Arab world are of a preventive nature that aims at maintaining society's best interest and deterring the offender from repeating the act, while warning those tempted to commit similar crimes with the punishment.

But what are the causes behind criminalisation and what are its effects?

Criminalisation Causes and Effects:

Prostitution, as recorded by Herodotus, was not considered an immoral or irreligious act but rather an act of rapprochement and worship to god and an essential resource for temple expenses. Temple girls who exchanged sex for money were bestowed an aura of sanctity and chastity, and were called by various names such as "the Holy one", "the sacrificial" and "the bearer of fertility to the land".

The Monotheistic religions were the first source of criminalisation, as they all prohibited adultery and encouraged chastity and abstinence from questionable sexual relations. Judaism, Christianity, and Islam call for rising above sin and desires of the flesh and working to purify the soul from all sinful lusts.

Compliance with all religious teachings prevailed in communities at that time, and adultery was considered a social crime that caused great psychological and physical harm.

Societies also condemned this phenomenon for its link to honour. Legislative and religious punishments, no matter how harsh, are merciful if compared to the inferiority and contempt a woman is treated with after being discovered, if she is not killed. Most Arab legislation, affected by customs and traditions, hand out mitigated punishments for murder if they are part of a so-called "honour crime". This is the case in the legislation of many Arab states, such as the *Iraqi penal code*: anyone who catches his wife or a female relative in bed with her partner and kills one or both of them right away, or attacks one or both of them in an assault that leads to death or a permanent disability, is sentenced to imprisonment of no longer than three years. For further protection for the killer, the legislation stresses that sentences for aggravated circumstances are not applicable against him.¹² This text is repeated in numerous penal codes, such as the Egyptian legislation that replaces the death sentence for a man who walks in on his wife and kills her along with her partner, with

imprisonment. This is similarly stated in the Jordanian and Syrian legislation, along with that of other Arab states..

After the discovery of sexually transmitted diseases and the difficulty of finding cures for them, and the evolution of those diseases with each newly discovered medicine, there was no other way to fight the diseases except with legal extremism with the perpetrator of adultery.

Criminalisation also had other objectives, including protecting the nucleus of any society; the family, from disintegration and falling apart as a result of illicit sexual relations.

The phenomenon of sex trafficking developed out of its traditional background - economic decline and poverty - to enter the era of globalisation, emerging as a new force that superseded all previous expectations. Now trafficking of women and children is a frequent global phenomenon.

Addressing this problem can never happen through social, religious, and legal oppression as few criminals refrain from committing crimes just because deterrent laws exist. Had that been true, crime would have ceased long ago.

It is no longer justifiable to embrace the idea that overlapping factors have led to the outbreak of this phenomenon as a means of excusing society's failure to deal with the issue. Poverty, unemployment, forced marriage, abstinence from marriage, organised gangs, forced displacement, weakness of religious morals, weakness of state control over resources, promoting prostitution, misguided policies, weakness of familial supervision, lack of media attention and the weakness of its supervisory role, poor distribution of wealth and the failure of governments in carrying out their official duties, such as employment, unemployment aid, are all factors that exist despite the presence of multiple economic and social theories.

The solution lies in awareness and education that the body is to be maintained and preserved, together with empowering women and helping them reach the desired level of equality in order to help them avoid the clutches of exploitation and violence.

Section II : Public Prostitution in Tunisia

Tunisia retained the legal regulation of prostitution following independence.¹³ The majority of the French and British colonies in the Arab region had the same regulation on public prostitution, but they abandoned it following independence, such as Egypt, which

abolished laws regulating prostitution in 1949.

But the legal presence of this activity is subject to many conditions that cannot be bypassed. Perhaps the question now is why hang onto this legacy when the rest of the Arab countries have renounced it?

Chapter I: Texts Regulating Public Prostitution in Tunisia

The first text regulating prostitution in Tunisia is an old legal text that dates back to 1942. It was a decision issued on 30th April 1942 to regulate prostitution on behalf of the Governor; the general secretary of the Tunisian government and the governor responsible for managing public security for the Tunisian government. It was published on May 5th 1942 in the Official Gazette of the Kingdom of Tunisia.

This legal text remained in effect until 1977, when a publication issued by the Tunisian Ministry of Interior on January 12th 1977 - number 399 – reorganised public prostitution in Tunisia and revised the 1942 law to be in line with the social and legislative developments that Tunisia had witnessed.

In both laws, special attention was paid to the work flow in brothels and the identification of the legal obligations of women engaged in the activity of prostitution. The medical and administrative methods of supervision on the workers in this field were emphasised for both prostitutes and supervisors in brothels.

That text defined the legal concept of public prostitution and accurately defined the conditions of lawful practice.

A)The legal concept of public prostitution:

The Tunisian legislation adopted the phrase “public prostitution” in the legislative text to refer to legal prostitution. “Public” refers to the obtaining of legal licences to practise this activity, rather than a sense of publicly engaging in prostitution on the street. This Ministerial publication of 1977 differentiated between secret and public prostitution stressing that “providing women with administrative tolerance to engage in public prostitution could only happen in certain situations under the specific formalities applicable.”

In order to prevent misinterpretation of the concept of “public” in “public prostitution”, which could result in practising prostitution in public, outside the legal frameworks based on the phrase “public prostitution”, the ministerial publication asserted that prostitution in public

was a punishable crime. It set some conditions for considering a woman engaged in secret prostitution, according to the meaning of chapter 231 in the *Tunisian penal code*. Some of which are:

- Women that voluntarily and publicly associate with other women known for engaging in prostitution or individuals – men or women - living off prostitution. Also, women found on various occasions with different men (inside inns, furnished shops, nightclubs or drink shops) and cannot provide legitimate evidence as to their means of sustaining their level of living.
- Women found on the street using signals or words, offering themselves to passers- by or caught in the act of seduction.
- Women with an unsavoury reputation, used to accepting different men in their private residences and while being unable to provide legitimate evidence as to their means of sustaining their level of living.
- Women with unsavoury reputation working in dance houses, furnished shops, motels, nightclubs, bars, or show rooms with a correct and supported complaint against them for a venereal disease infection and being unable to provide legitimate evidence as to their means of sustaining their level of living.

However, the Tunisian law does not define public prostitution in clear-cut terms and does not single it out in a specific clause. In an attempt to overcome this shortcoming, a distinction is made between prostitution in general and debauchery based on an inaccurate comparison to define the legal concept of the two phrases. In the second chapter of the 1977 ministerial publication it is noted that a distinction should be made between prostitution and debauchery. The elements of the first were clear in chapter 231 of the Algerian [sic] law, where financial gain was the most important element. On the other hand, debauchery is the behaviour of an unmarried adult woman offering herself to others to please her own desires. Though it is a morally offensive behaviour and should be controlled to prevent its outbreak, it is different from prostitution and adultery and other crimes involving intercourse.

Thus, we can notice that laws organising public prostitution distinguish between the concept of prostitution in general and debauchery according to the concept of financial gain in exchange for sexual activities, without making a separate definition for legal, public prostitution.

This is not the only shortcoming in the text. Besides its inability to provide a clear definition of public prostitution, it also deals with prostitution from a moral perspective that we can discern from the definition of a prostitute: a woman who is accustomed to offering her body to others to satisfy her sexual desires in return for money, regardless of its value. This definition carries a social stigma and disdain for women who have sex for money.

The diversion of the legislator from his legal role can be observed through his use of the phrase “this immoral activity” on various occasions in the text, referring to sex for money as part of public prostitution. This moral evaluation of the sexual activity, despite its legitimacy and legal permissibility, can be attributed to the legislator’s desire to impose his policy to fight secret prostitution and sexual trafficking of women, without provoking the feelings of conservative citizens within a global tendency to abandon legal regulation of prostitution.

However, the legislation's failure to define the legal concept of public prostitution can be overlooked through studying the standards and measures put in place to regulate public prostitution.

B) Legal conditions for practising legal public prostitution

Tunisian law attempts to acknowledge the different parts of practising legal prostitution, seeking to regulate all stages so there are no legal gaps that can be exploited in order to deviate from the real goals that drove the Tunisian law makers to retain public prostitution as part of the legal system. The legal regulation of prostitution included (1) classification and demarcation of prostitutes as well as (2) conditions for using prostitution houses.

1) Classification and Demarcation of Prostitutes

Tunisian legislation classifies women who legally practise prostitution in two categories: The first practises prostitution in a brothel, living exclusively in it, without any possibility of visiting the outside world except once a week or when having a disease that requires hospitalisation. They place themselves within their supervisor’s responsibility. The public can frequent closed houses, visit them, or wander around in them out of curiosity in the official working hours. They exist in known neighborhoods and they are usually guarded by security agents who work to protect the workers.

The second category includes women who practise legal prostitution in their private residences and on their own responsibility. It takes place in private houses frequented by certain customers who tend to be of a higher social and cultural level than those who visit

brothels.

Tunisian legislation forces women wishing to engage in sex work - of both categories - to demarcate themselves to central and local authorities prepared for this purpose. Women interested in pursuing the profession have to submit a request at the security center, to be heard by the chief of police in private. After making sure that she is doing this at her own free will and no one is forcing her, her request is received in writing.

Despite the mandatory nature of demarcation, this procedure no longer has the retaliatory and stigmatic nature that dominated its old 1942 form, where each woman that practised "concealed, quarantined lewdness" should determine her category, otherwise be forced to leave the Kingdom of Tunisia. If she was a foreigner, she was forcibly deported. Though demarcation became optional and done willingly by women interested in prostitution, it did not reach its intended goal, which is ending this procedure entirely as mentioned in Article VI of the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* that was approved by the General Assembly of the United Nations on December 3rd 1949. It states "*Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.*"

It is well known that Tunisia did not ratify this Convention because it contradicts its policy in fighting secret prostitution. The 1977 legal text justified demarcation as a way to preserve good morals, but lawmakers also intended to limit their numbers and tighten health and security supervision.

A number of stipulations were forced on a woman who wishes to determine her category as a prostitute; she should be an unmarried adult below the age of 50. In addition to proving her civil status, she has to provide a medical certificate from the public health physician, or the physician in charge of checking prostitutes appointed by the Ministry of Health, to prove that she is free of infectious or septic diseases, especially neurological, spinal, genital, thoracic and cancerous diseases and that her mental abilities are intact.

Perhaps this medical and clinical examination is one of the guarantees the Tunisian legislator required in order to limit the spread of diseases. Not taking those tests or not proving full recovery from a certain disease is an impediment to demarcation, in addition to others that include: women wishing to join this profession being below the age of 20 or

above the age of 50.

In addition to the demarcation requirements, the Tunisian legislation sets the medical supervision procedure, which takes place weekly on a regular basis on certain days and times determined by the responsible administrative authority. The medical examination takes place outside prostitution houses in a hospital or a health clinic.

The worker cannot miss her medical examination or refuse to contact the physician, otherwise she will be removed from the demarcation register. If she is absent due to a sudden illness, she is bound to submit a sick note written by a physician of her choice but she has to be re-examined by the relevant health authorities within 24 hours. The worker cannot resume her activities unless they make sure of the integrity of her health.

The law regulating public prostitution in Tunisia stresses the necessity of being transferred to a hospital if the sex worker develops a septic or venereal disease.

The Tunisian law states, in the chapter dealing with preserving health and general hygiene, that supervisors are required to:

- Comply fully with the standards of cleanliness and health set by the administrative and municipal authorities.
- Help distribute the protective materials recommended by the authorities in charge affiliated from the general or municipal ministry of health.
- Ensure the presence of all informational leaflets. Hand out flyers given to them by the authorities, which include prevention recommendations.
- Place the protective materials recommended by the authorities in charge affiliated from the general or municipal ministry of health within the possession of clients and residents.
- Inform the physician in charge of any suspected infections.
- Ensure that there is adequate ventilation in the rooms and their adjacents.

This part of the chapter banned supervisors of prostitution houses from:

- Allowing new residents to engage in sexual activities before being examined in the medical center or the place prepared for this purpose.
- Allowing residents that have not undergone their weekly examination for any

reason, to resume their activity unless they are examined by the qualified physician in the health center or the place prepared for this purpose.

- Treating infectious reproductive diseases themselves, or other serious infectious diseases or allowing others or entrusting them with the treatment.
- Also, the law prevented supervisors from allocating a room in their work places for treatment, or medical examinations.

It is well known that all these procedures and legal restraints are monitored periodically by officers and physicians in the Public Health department to ensure that the work flow in these places is maintained with the highest degree of health care and medical supervision, to anticipate any outbreak of sexually transmitted diseases. Any violation of these instructions will lead to the permanent closure of the offending brothel and withdrawal of the administrative tolerance license for public prostitution from the owner.

Besides those obligations, the legislator has imposed strict conditions for managing brothels.

C) Conditions for managing brothels

Even though Tunisian lawmakers continue to support prostitution as a legal activity performed with specific regulations, they have taken in account specific standards and several conditions to abide by social norms. Legislation states that the establishment or house prepared for public prostitution should be in a low traffic location, far from any custodial, correctional or health facilities. It should also be an appropriate distance from barracks and mosques.

It is forbidden for brothels to have any writing, sign, or external mark whether on the walls, doors, or windows. Windows should be made out of a thick insulating material if they overlook the street.

In adopting those conditions, the Tunisian law provides public prostitution with a strong legislative foundation, but without implying total tolerance or permission for simply providing physical pleasure or declaration of existence in a provocative way. The shop should be on the outskirts of cities to preserve feelings, protect the community, and assert that the reasons behind the administrative tolerance were to protect ethics and health protection.

Other conditions related to general health were also adopted; the prostitution shop should

be in a good condition, not shaky or rickety, its rooms should be well ventilated and lit during day and night. It should include sinks and other necessary utilities for protecting the health of clients as well as workers.

It should be noted that the administrative and security authorities are totally free to monitor house supervisors and managers to ensure health standards are met. The Ministry of Interior can also adopt extra stipulations and standards to further protect public health and security.

Chapter II: Causes for Public Prostitution in Tunisia

Laws regulating prostitution in Tunisia carry some justification, with legislation declaring that according to the requirements of maintaining public order, public health and the protection of morality on the one hand, and to combat venereal disease and underground prostitution on the other, it has been decided to enforce a law that regulates the legal prostitution.

Lawmakers decided that maintaining public prostitution was a social necessity, or a lesser evil, because sexual repression in society creates many other crimes like kidnapping, murder, rape, and sexual assault, which could target children.

The existence of public brothels and prostitutes registered in governmental and medical circuits was considered a means for reducing the risk of underground prostitution and outbreaks of sexually transmitted diseases. Public prostitution guarantees medical supervision, follow up and health care that effectively contributes to reducing sexually transmitted diseases.

General order and public health were the main objectives for enacting this law.

It has been proven that criminalising prostitution is not effective in limiting prostitution. On the contrary criminalisation and stigma result in more underground prostitution, which in turn increases the risk of disease transmission. Society's stigma towards prostitutes sometimes forces patients to not seek treatment even after experiencing the symptoms of disease.

In addition, legal prostitution ensures that a woman can practise her profession with the protection of health care, which ensures the immunity of the society's health. In Arab societies, prostitution is predominantly denied or considered isolated, as it is believed that declaring it would damage the honor of the nation. This might lead to the phenomenon's

continued prevalence and social degeneration.

The voice of women working in the sex industry is never heard, while many work to defame sex workers without paying attention to the healthy side of the phenomenon.

Even though no research was able to produce successful solutions for this phenomenon, behavioural correction will never be achieved through deterrence, imprisonment, or stigma. Only programs designed to evaluate behaviour and provide information and means of prevention will limit the spread of HIV as well as other sexually transmitted diseases.

Conclusion:

This research was an attempt to reflect on the phenomenon from a legal perspective, list the punishments inflicted on sex workers, as well as proving that the severity of punishment and stigma present in the language found in legislation in various Arab states has not and will not succeed in containing the phenomenon of the sex industry. It could also be argued that the Tunisian experiment in regulating prostitution, rather than ignoring it or forgetting about it, has contributed in providing objective solutions, even though there is still more to work on to improve the social conditions of sex workers.

We can never overcome our failure to contain the sex industry unless we acknowledge that sex workers are human beings entitled to all the human rights approved by *The Declaration of the Rights of Sex Workers in Europe*. Sex workers have the right to educational programs, rehabilitation, health care, and social coverage.

Although this is a non-official agreement, it could force us to admit that a sex worker is a human being who needs us after all.

¹ Article 417 of the *Libyan penal code*

² 30735, dated 27 March 1991

³ Sahih Al Bukhari collection of Hadith - Book of Disbelievers and Apostates at War with Allah and his Apostle

⁴ *Ibid*, and Sunan Abu Dawud, Abu Dawwod traditions- Book of Hudud, stoning verse.

⁵ Sahih Al Bukhari, Book of *Tafsir* (interpretation).

⁶ Tafsir Ruuh Al Maani: An-Noor; the verse "The woman and man found guilty of *Zina*"

⁷ Al Bahr Al Moheet.

⁸ Tafsir Al-Jawzi.

⁹ An-Nisa' Q2:25.

¹⁰ An-Noor 24:19.

¹¹ See for example Article 166 of the *Palestinian penal code*, Article 201 of the *Kuwaiti penal code*, Article 220 of the *Kuwaiti penal code* and Article 220 of the Tunisian law.

¹² *Iraqi penal code* Article 409.

¹³ Algeria did the same, but the lack of data on this country forces us to dedicate this thesis to Tunisia alone.