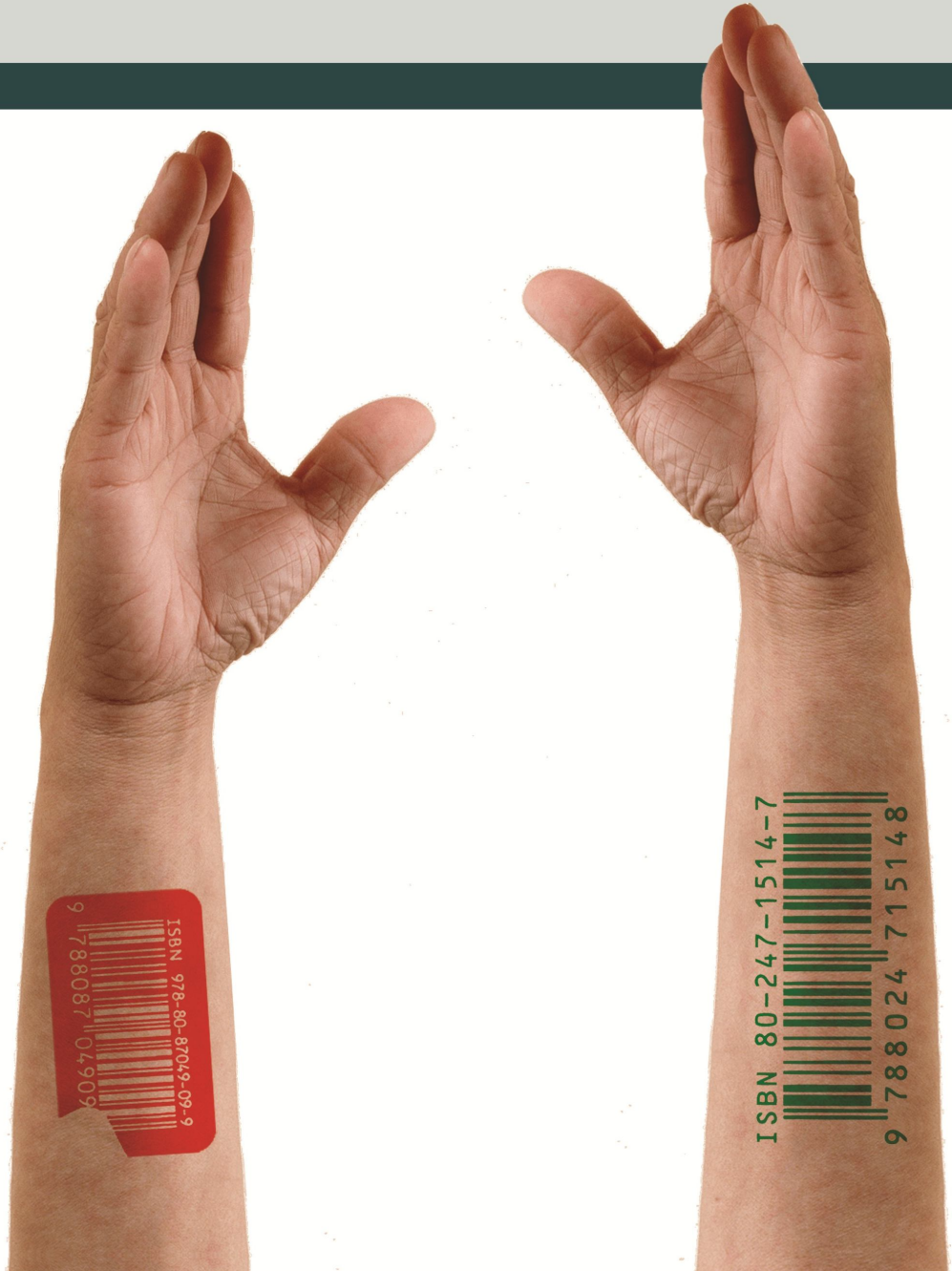


An Analytic Review of Jordanian Legislation Related to Anti-Trafficking



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Preface

The crime of human trafficking of the most heinous of crimes against humanity, as it is made from the use of the human as a mean to generate profit for the traffickers. It is widely considered as the third offense in the world, after drugs trafficking and arms dealing. The international community is alarmed at the horror of this crime as it has spread and escalated throughout the world and thus has taken measures to combat and prevent it.

Jordan is one of the first countries in the Middle East to respond to this crime; in terms of passing the anti-Human Trafficking Law on March of 2009, which was the third law to be passed in the Arab region, after the Bahrain and UAE laws. But since the passing of this law, it has not been reviewed and analyzed in the light of the cases monitored which may consist in human trafficking, and there has been not a review of the relevant legislation in force, which may provide a “fertile environment” which enables traffickers...

Combatting human trafficking includes prevention, protection of victims, and prosecution of criminal offenders. Some of the provisions contained in Jordan’s anti-trafficking legislation include provisions which hinder identifying of victims and prosecuting traffickers. While other provisions in the law actually weaken the protection of victims.

In 2010, a national strategy to combat human trafficking was launched, to implement its provisions within two years, this was among the terms of this strategic review of the legislation in force and amending the legislation to align them with international standards to combat the crime of human trafficking. Unfortunately, in spite of the expiry of this deadline, the relevant legislation has still not been revised. As part of the Civil Society Organization partnerships, and their role in promoting human rights and protecting the rights of human trafficking victims, Tamkeen Fields for Legal Aid appointed a team of expert legal researchers to revise and analyze the enforced legislation and to find the limit of its compatibility with international standards. One of the results of this analysis, was that a number of recommendations was issued to support combating the crime of human trafficking and protecting the rights of migrant workers.

In appreciation of the work carried out by our researchers and supporters, Tamkeen Fields for Legal Aid would like to thank Dr. Hamdi Qbailat, and Dr. Ayman Halasa, Mr. Hussein Omari, Mr. Shiban Taqa, Ms. Maram Maghalseh, Ms. Rana Younis, Mr. Yousef Al Salman and Professor Moath Al Momani. Finally, Tamkeen would like to thank Ms. Noor Qawasmi for her efforts in the editing and translation of this study.

It is our hope that these efforts will help to promote the rights of migrant workers and the fight against human trafficking.

Tamkeen Fields for Legal Aid staff
January 2015

Introduction

The contradiction of laws and legal loopholes of some of these laws cause difficulty in identifying victims of human trafficking and those migrants who are subjected to gross violations of their labour rights and other vulnerable categories.

This leads to weakness in the protection of the rights of these categories and to the evasion of punishment of the perpetrators, as loopholes in the legislation make their enforcement difficult, therefore obstructing access to justice, which leads to considering many cases of human trafficking and forced labour as labour law cases. However the anti-human trafficking law does not define clearly the crime of human trafficking, nor does it explicitly stipulate the rights of victims and neither does it provide for their protection, and it is generally devoid of any body of legislation which grants victims temporary residence. In short, there are many examples of legislative loopholes.

The value of this study

This study is considered valuable due to the fact that it discusses a particularly important topic on both national and international levels. Jordan, under international conventions, is committed to combat human trafficking and to ensure the rights of migrant workers as well

as the prohibition of forced labour, and that any breach of these obligations or failure to implement them through its national legislation will reflect negatively on the image of Jordan in front of authorities and international bodies in the combat against human trafficking, including the International Labour Organization, the Human Rights Council, reports of the Convention committees, and rapporteurs who visit Jordan.

The issue of this study

In spite of the fact that Jordan has fulfilled its international commitments with regards to combatting human trafficking and passing the necessary legislation, the real practice and the legal provisions in many cases are still far from meeting international standards. This leads to make Jordan's status in such regard come under criticism from the concerned international bodies.

Objectives of this study

- Assessing Jordan's fulfilment of its international obligations regarding criminalizing and combatting human trafficking.
- Determine the extent to which Jordanian legislation is compatible with international standards on combating human trafficking in all its forms, and with regard to prevention, protection and prosecution.
- Identify the rights of victims of human trafficking in Jordanian legislation in comparison with international standards.
- Issue recommendations for the improvement of the legislation in force in order to provide for the protection of victims of human trafficking and bring about the criminalization of acts which lead to the crime of human trafficking.

Methodology

In this study, an analytical comparative and descriptive methodology was applied by studying and analysing relevant legal provisions and comparing them with international standards. This was conducted by a team of concerned legal practitioners in the field who were chosen to carry out the task of collecting and analysing the enforced national legislation.

This study is divided into four sections, preceded by an introduction and followed by the conclusion:

Introduction

Section One: Jordan's Obligation to Criminalize Human Trafficking

Section Two: the Rights of Victims and Suspected Victims of Human Trafficking in National Legislation

Section Three: the Role of National Legislation in Combatting Forced Labour

Section Four: an Analysis of Various Provisions in the Penal Code

Conclusion

Chapter One

Jordan's Obligation to Criminalize Human Trafficking

Chapter One

Jordan's Obligation to Criminalize Human Trafficking

1. Jordan's International Obligations and their Legal Value

The Jordanian judiciary highlighted the necessity of ratifying international conventions according to article 33.2 of the Jordanian Constitution, which differentiates between two types of conventions; the first type is the one which involves financial commitments to the treasury or affects the public or private rights of Jordanians, and it shall not be valid unless approved by the National Assembly; the second type does not involve financial commitments to the treasury or affects the public or private rights of Jordanians, and this type does not require approval by the National Assembly. It is sufficient to

be published in the Official Gazette¹. There are several international conventions that have been signed by the Jordanian government, but have not been ratified in accordance with the Constitutional standard. Thus, the judiciary considers it unenforced on the national level².

The Jordanian Constitution has not addressed the legal value of the ratified international conventions. Nonetheless, the Jordanian judiciary addressed it on many occasions. It could be argued that the Jordanian judiciary has given the duly ratified international conventions higher value than domestic laws. This signifies that its provisions are enforced even if they contradict national laws. The Jordanian Court of Cassation states in one of its rulings that, "international conventions take precedence over national law"³. Moreover, in another ruling the venerable court stated that, "The judiciary and the jurisprudence of all countries of the world, including Jordan, agreed that the international conventions and treaties take precedence over domestic law. It is not permissible to apply the provisions of any domestic law that is inconsistent with international conventions and treaties. The domestic law is taken into account merely when it does not contradict with these conventions and treaties, so both can be jointly enforced. This is the adoption of our judiciary without disagreement"⁴. Based on the above, it can be

¹ Decision No. 2 of the Higher Council for the interpretation of the Constitution of 1955, passed on 28th March, 1955

² For example; The Supreme Court, Decree No. 27/1955, the Bar Association Journal of 1955, P.662; The Court of Cassation, Criminal, Decree No. 74/1999, the Bar Association Journal of 2000, P.4095; The Court of Cassation, Criminal, Decree No. 278/1997, the Bar Association Journal of 2000, P.3978; The Court of Cassation, Criminal, Decree No. 1429/2003, Judgment dated 29th August, 2004, the publications of Adaleh Center, the electronic version, Amman-Jordan, 2007.

³ The Magistrate Court of Cassation, Decree No. 599/1999, Judgment dated 16th October, 1999, the Bar Association Journal of 2000, P.3258 [unofficial translation]

⁴The Magistrate Court of Cassation, Decree No. 3965/2003, Judgment dated 29th February, 2004, Adaleh Center Publications, the electronic version of 2007. For the

undoubtedly said that the Jordanian judiciary has consecrated the principal of supremacy of international conventions above domestic law, with the endorsement of the Jordanian jurisprudence⁵. Some pointed out that the necessity of strengthening the enforcement of the convention over domestic law in order to maintain the stability of the conventions, fulfill international obligation and protect individual rights stipulated by international conventions and treaties, and signed by the states of entirely free will⁶.

Jordan ratified the basic human rights conventions with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990. This makes the legal framework of workers' protection lose one of its most important components. In the field of combating human trafficking, Jordan joined the 2000 United Nations Convention against Transnational Organized Crime, and the two Protocols thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against the Smuggling of Migrants. At the level of international labour law, Jordan is committed to the ILO Declaration on Fundamental Principles and Rights at Work that obliges the states parties to commit to its related conventions, whether they have been ratified or not. Jordan has also ratified 24 conventions. Only 14 conventions were published in the Official Gazette, which are as follows; Forced Labour Convention, 1930 (No.

same meaning, see also the Magistrate Court of Cassation, Decree No. 12/1970; the Magistrate Court of Cassation, Decree No. 38/1991; and the Magistrate Court of Cassation, Decree No. 768/1991 [unofficial translation]

⁵ Mohammad Yousuf Alwan, *The Public International Law, Introduction and Resources*, Dar Wae'l for Publication, Amman 2003, P.325-326; and Ghassan Aljundi, *Aesthetics Eruptions in the Principles of Public International Law (Resources)*, Dar Wae'l for Publication, Amman 2005, P.136. See also Salahuddin Amer, *An Introduction to the Study of Public International Law*, Dar Alnahda Alarabiah 2002, P.176

⁶ Salem Alksouani, *Principles of Constitutional Law with an Analytical Study of the Constitutional System of Jordan*, Alksouani Printing press, 1983, P.247

29); The Labour Inspection Convention, 1947 (No. 81); The Right to Organize and Collective Bargaining Convention, 1949 (No. 98); The Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, or Equal Remuneration, 1951 (No. 100); The Convention concerning Non-Discrimination in Respect of Employment and Occupation, 1958 (No. 111); the Convention concerning the Penal revision of conventions which were established by the General Conference in its prior sessions in order to unify provisions related to preparing the reports of the Board of Directors on the progress of the conventions, 1961 (No.116); The Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, 1962 (No.118); Guarding of Machinery Convention, 1963 (No. 119); Hygiene Commerce and Offices Convention, 1963 (No. 120); Employment Policy Convention, 1964 (No. 122); Minimum Age of Underground Work Convention, 1965 (No. 123); Medical Examination of Young Persons for Underground Work Convention, 1965 (No. 124); and Convention concerning Minimum Age for Admission to Employment, 1973 (No. 138).

Until the preparation of this study, Jordan has not signed a number of important conventions including Convention No. 87 of 1948, the Convention on Freedom of Association and Protection of the Right to Organize, C098 (1949) Concerning the Right to Organize and Collective Bargaining convention; Convention concerning the Promotion of Collective Bargaining 154 (1981). Jordan has also not ratified convention 189 for 2011 Convention on Decent Work for Domestic Workers and the two conventions 97 and 143 which are directly related to the rights of migrant workers and the protection of the rights of irregular migrant workers.

2. Criminalization of Human Trafficking

Based on provision of article 2 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, the objective of one of the conventions is “To prevent and combat trafficking in persons, paying particular attention to women and children”. The states parties have obligations; including the criminalization of this practice which is defined by article 3, and clarified by article 5 of the protocol which states that each state party is obliged to adopt the appropriate legislative and other necessary measures to establish as a criminal offence the practice of human trafficking, when committed intentionally. Each state party shall also adopt the appropriate legislative and other measures as necessary to criminalize the following; attempting to commit and/or participate as an accomplice in, organizing or directing other persons to commit an act human trafficking.

In order to fulfil the above obligations, Jordan passed Anti-Human Trafficking Law 9, 2009, as required by the Protocol. As per its 3rd article, the Protocol defines the crime of combating human trafficking as;

- A. For the purpose of this law, Human Trafficking Crimes shall mean; 1. transporting, moving, lodging, or receiving, of people for the purpose of abusing them, whether by use or threat of the use of force or through any form of coercion, abduction, fraud, deceit, accusative power, accusative vulnerability, or through giving or receiving financial gifts, or any other privilege to secure the consent of a person who has control over those people or; 2. Transporting, moving, lodging or receiving of people who are under the age of 18 for the purpose of exploiting them whether by using or threatening

the use of force, or through any of the means states in item 1 of this paragraph.

- B. For the purpose of paragraph A of this article “exploitation” shall mean: abusing people by forcing them to work without charge and under coercion, slavery, servitude, removal of organs, prostitution or any other form of sexual exploitation.
- C. A crime shall be deemed “transnational” in any of the following cases: 1. Committed in more than one country, 2. Committed in a country but with the preparation, planning and direction having taken place in another country, 3. Committed in any country by an organized gang that has criminal activities in more than one country, 4. Committed in a country and its effect extending to another country.

It is notable that the definition stated in the law is similar to the definition stated in the Protocol⁷ with some minor differences.

⁷ For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) 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;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

2.1. Observations on the definition of human trafficking in Jordanian law

2.1.1. In terms of interpretation

The Jordanian legislature used the same terms which are included in the protocol⁸, in spite of the fact that these terms have meanings and implications specific to international law which do not exist on the national level. For instance, the term forced labour mentioned in the protocol has a definition in article 2 of the ILO Forced Labour Convention 130 (n. 29), which defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Similarly, in the Convention on the Abolition of Slavery 1926, slavery is defined in article 1 as “the status or condition of a person over whom any or all of the powers attached to the right of ownership are exercised”. Therefore, the definition of this crime became very general within the national law and was characterized as being broad, vague and imprecise since it lacks accuracy due to the absence of clear phrases or terms. The protocol was developed taking international law into account and built on a large number of international conventions related to international labour standards and human rights which have been previously approved by the international community. Many states adopted these conventions and amended their national legislation in order to match them. Therefore, for these states, adopting the same definitions as the

⁸ It is worth mentioning that the Abolition of Slavery Act of 1929, which stipulated in its Article No. 2 the abolition of slavery in all parts of Transjordan, addresses slavery in two ways. The first way considers that each contract includes a requirement or a pledge to buy someone, servitude, give it to another for a mortgage or insurance for debt or any other way is void according to the provisions of Article 4. The second way considers each person who buys, sells, reciprocates another person, gives him or takes him to another in order to be acquired or treated as a slave is subject to penalty according to the provision of Article five.

protocol corresponds with their national legislation. The situation for Jordan is different however, as there are many acts which need to be criminalized in accordance with the international conventions adopted by Jordan. National legislation does not correspond with these conventions; as is the case for forced labour, slavery, servitude and forced service. These acts have specific definitions and implications in international law since they were addressed in detail in the international conventions.

Based on the forgoing, it can be said that the legislative environment in Jordan does not fit with the definition of the protocol, as transferring the definition from the international convention to the national law without reforming it may cause many problems in its interpretation and application. Moreover, there is a need for an extended period of time until the national judiciary agrees on the interpretation of the provision and its terms mentioned in the definition. Ultimately, these interpretations may not be inconsistent with the interpretations of these terms on the international level.

The rules of interpretation on an international level differ from the rules of Jordanian national law. For instance, the Vienna Convention on the Law of Treaties addressed the mechanism for interpretation of conventions. In this regard, there is a need to take into consideration any agreement related to the convention. This agreement between different parties should be taken into account on the occasion of its establishment⁹. The Protocol to Prevent, Suppress and Punish Human Trafficking supplements the UN convention against Transnational Organized Crime, therefore its definition stated in the protocol should be in correspondence with the convention. This is clearly stated in article 1 of the protocol. Another anti-migrant smuggling protocol whether by land, sea or air

⁹ See Article 31 of the Vienna Convention on the Law of Treaties.

was adopted and is also complimentary with the Transnational Organized Crime Convention.

The provisions stated in the previously mentioned convention and protocol have particular value in enforcing the provisions of the Protocol to Prevent, Suppress and Punish Human Trafficking and the interpretation of its provisions. Its neglecting leads to breaching the state's obligations, particularly in the field of witness protection, assisting and protecting victims in addition to the criminalization or obstruction of justice, jurisdiction and resorting to alternative methods for such crimes¹⁰. The Protocol against the Smuggling of Migrants by Land, Sea and Air is of particular value when differentiating between human trafficking and smuggling, which is often accompaniment to human trafficking¹¹. As a result, it is not surprising that the Jordanian judiciary find this type of definition unusual and ambiguous. Some judges highlighted that the definition of a crime "must be overarching, inclusive and prohibitive (...) we interpret the laws without assuring its compatibility with national legislation"¹².

¹⁰ See Articles 15-23 of the United Nations Convention against Transnational Organized Crime.

¹¹ Article 3 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air provides that;

(a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident; (b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State; (c) "Fraudulent travel or identity document" shall mean any travel or identity document: (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or (iii) That is being used by a person other than the rightful holder;

¹² The Judge Mamdouh Nagada in a discussion panel entitled "Protecting Migrant Workers from Human Trafficking", Tamkeen Center for Legal Aid and Human Rights, 14th December, 2010, Amman, Jordan [unofficial translation]

2.1.2. In terms of the accuracy of the definition

The Jordanian legislature overlooked some phrases such as “slavery-like practices or practices similar to slavery”. There is a definition for this phrase in the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956. This convention states “each of the States Parties to this convention shall take all practical, legislative and other measures to bring about purposively and as soon as possible the complete abolition or abandonment of the following institutions and practices whether or not they are covered by the definition of slavery”¹³. Although the definition in Jordanian law is similar to that of the Protocol, the Jordanian legislature limited certain forms of exploitation, in spite of the fact that the protocol stated the term “minimum”; which means the possibility of having other forms not mentioned still exists.

¹³ These practices include;

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

2.1.3. In terms of the enforcement of the provision

Some acts mentioned in the definition constitute separate offences or crimes, such as kidnapping, fraud and forcing women into prostitution. This enables the judiciary to legally characterize human trafficking complaints under other legal descriptions which may appear more obvious such as abuse, indecent assault or deprivation of liberty, among other crimes.

2.1.4. In terms of the multiplicity of applicable laws

The Anti-Human Trafficking law criminalized the removal of human organs and consider it a form of exploitation within the crime of human trafficking. It stipulated in article 3.b of the Anti-Human Trafficking Law “for the purposes of this paragraph A of this article, “exploitation” shall mean; abusing people by forcing them to work without pay, and under coercion, slavery, servitude, removal of organs, prostitution or any other form of sexual abuse”. The Benefitting of Human Organs Law 23 of 1977 clarifies the terms and conditions of donating organs, be it from people deceased or alive, otherwise this act falls under the concept of human trafficking. In other words, if the organs are not willingly given as a donation, the transferal and/or removal or organs will be considered a form of human trafficking¹⁴.

¹⁴ Articles 3 and 4 of the Benefitting of Human Organs Law 23 of 1977

Chapter Two

The Rights of Victims and Suspected Victims of Human Trafficking in the National Legislation

Chapter Two

The Rights of Victims and Suspected Victims of Human Trafficking in the National Legislation

The Protocol to Prevent, Suppress and Punish Human Trafficking has not only addressed the definition of human trafficking but has also discussed many rights and benefits specific to victims and suspected victims of the crime of human trafficking, during both the complaint filing and investigation phases. This is due to the fact that victims of human trafficking are not considered regular victims of common crimes, since they were subjected to the worst forms of exploitation and abuse of their human rights. As many of these victims are often foreign, with limited education, they face many obstacles when seeking remedy, such as illiteracy, language barriers, poor knowledge of resident and foreign affairs law, a lack of financial means to hire a lawyer, as well as the shock and psychological impact

of being subjected to such types of abuse. The Protocol takes all of the above into account and obliges states parties to commit to ensuring victims' access to the means of remedy available in the state. In order to fulfil these obligations, it is important to amend a number of laws that regulate penalty, labour, social and foreign affairs within the states parties; in addition to passing a law criminalizing human trafficking. The State party has the freedom to adopt the appropriate legislative procedures in order to fulfil the international obligations of the convention whether through one or several laws. However this freedom is not absolute since the ultimate objective is to fulfil these obligations.

There are numerous rights afforded to the victims stated in the Protocol. Some of these are related to the procedures of filing a complaint while others specifically address the investigation of the crime. The final section of these rights addresses the rights enjoyed by the victim after passing the ruling determining whether he/she is in fact a victim of human trafficking. These were promoted through the Basic Principles on the Rights to an effective remedy, stipulated by the United Nations Human Rights Council which was issued 2 may 2014 concerning the rights of trafficking victims to access effective remedy. It must also be kept in mind that the purposes of this Protocol is based on the provisions of article 2 (b) of the Protection and assistance to victims of human trafficking with full respect for their human rights; the following are the most important of these rights discussed in relation to the extent to which it is possible for victims to enjoy them in accordance with the relevant Jordanian legislation.

1. The rights of victims during the investigation phase

A victim of human trafficking enjoys a set of rights during the investigation stage. These rights are stipulated in international

conventions and some of them are taken into account within national legislation.

1.1. Identifying the victim

Article 7 (e) of the Basic Principles concerning the rights of victims to access effective remedy stipulates “to determine the nature of the crime quickly and accurately through appropriate procedures and providing the state party officials with appropriate training and to have cooperation between the competent authorities and Non-Governmental Organizations”¹⁵. **The Jordanian anti-human trafficking law does not refer to these rights, but has left it to the general rules of the code of criminal procedures to treat it as any other crime.** With regards to the list of issues related to the Optional Protocol annexed to the Convention on the Rights of the Child concerning the sale of children, child prostitution and child pornography, the Hashemite Kingdom of Jordan’s response to the international committee related to the fore mentioned crimes in the adopted procedures, was that there exist numerous means to protect victims of Human Trafficking in the Kingdom and victims of other crimes in general in terms of criminal procedure law. In such regard, Jordan worked on;

¹⁵ Unofficial Translation

1.1 Defining the mechanisms to identify the victims and those affected by human trafficking

1.1. A. The right to file complaints;

is a right ensured by the constitution, national law and international conventions which embodies a commitment by the judicial police and their assistants as a rule of thumb. Judicial officials and their assistants must receive all reports and complaints submitted to them, and pay attention to facts that indicate crimes of human trafficking. They cannot reject any complaint under any circumstances, whether it is submitted by a victim or person affected by human trafficking, or by community members who were aware of the crime. The Hashemite Kingdom has also worked to facilitate the reporting of trafficking cases by establishing hotlines for different involved actors and organizations to receive any calls concerning suspected cases of human trafficking. These calls remain anonymous in order to protect privacy.

1.1. B. The right to accelerate criminal prosecution and conviction

As soon as the crime is convicted, the state has the right to punish the perpetrators. As a result, Jordanian Laws regulate speedy establishment and detecting the crime after it has been convicted and locating the offenders and evidence proving their guilt. This is carried out by a number of specialists in identifying and prosecuting such crimes in cooperation with civil society organizations, international organizations and embassies of countries involved in this particular field.

Additionally, the Hashemite Kingdom of Jordan worked on training the personnel that works on the official border crossings in coordination with international bodies and organizations. The training consisted in mechanisms to identify potential victims of trafficking as they crossed the borders. They also work on providing the border-crossings with the technical equipment to detect forged documents. The geographical borders of the Hashemite Kingdom are tightly controlled by the Jordanian Special Armed Forces who are highly experience and technically well-equipped to prevent illegal entry and smuggling into and out of the country. To further support border officers and security officials, publications have been provided containing information on how to identify trafficking victims.¹⁶

1.2. Confidentiality of the proceedings

Article (1/6) of the Protocol to Prevent, Suppress and Punish Human Trafficking ensures that each state party shall, in the appropriate cases, and to the extent allowed by domestic law, preserve the privacy and identity of victims of human trafficking by executing the relevant legal proceedings. Article 7j of the Basic Principles on the rights of victims of human trafficking to access remedy guarantees privacy and confidentiality prior to, during and after procedures, stating that “their rights and those of their families and the witnesses to safety (including safety from intimidation and reprisals), privacy and confidentiality are to be guaranteed and protected”¹⁷.

¹⁶ The Hashemite Kingdom of Jordan responds on the list of issues of the optional protocol on the Rights of the C (etc.), Committee of the Rights of the Child, Session number 66, 16-26th May 2014.

Tbinternet.ohchr.org/.../CRC_C_OPSC_JOR_1_Add-1_17265_A.doc

¹⁷ Unofficial Translation

With regards to the national law, article (101/2) of the Constitution stipulates that “the sittings of the court shall be public unless the court decides that it should sit in camera in the interest of public order or morals. In all cases, the verdict shall be made in a public hearing”¹⁸. In addition, article 171 of the Criminal Procedure Code of 1961 No. 9 as amended, states “the trial shall be made in public unless the court has decided to conduct it in secret for purposes related to preserving public order and morals. In all cases, juveniles or a certain group of people might be prohibited from attending the trial”. The anti-human trafficking law does not address this issue and thus it is shown here that the standard procedure is to conduct the trial publicly; but it can be held privately in some cases in order to protect the interests of public order and morality. As for the investigation procedures, they must remain confidential in accordance with the rule of confidentiality of the investigation and public trial as stipulated in the Jordan Criminal Procedure Law. The public nature of the trial is not incompatible with international standards which were set to consider cases of human trafficking. The legislature should explicitly state the confidentiality of the trial and had better not leave it to the court’s discretion to discuss if the case breaches public order or morality.

1.3. Information Provision

Article 6.2.a of the Protocol stipulates that states parties undertake to provide victims of human trafficking with information about the relevant judicial and administrative procedures, when necessary. Moreover, the Basic Principles confirm this in article 7.c. by stating “victims should be speedily and fully briefed about their legal rights in a language or a form that they can understand. These rights include: access to remedy, means of access to remedy as

¹⁸ Unofficial Translation

available, and the procedures to follow in order to obtain access to remedy”¹⁹. However the national legislation, particularly the anti-human trafficking law does not address this right.

The authorities of state parties have to cooperate with civil society organizations in accordance with article 9.3 of the Protocol which stipulates “policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.” Article 5 (g) of the Jordanian anti-human trafficking law has more or less the same meaning. It stipulates “cooperating with all official and private entities to provide physical, psychological and social recovery programmes necessary for supporting victims of human trafficking crimes and affected crime victims, and supervising their stay in special shelters established or accredited for this purpose”²⁰. **However in reality the enforcement of this provision was exclusive when the law was initially passed, to the National Centre for Human Rights, considering it as a representative for a civil society organization. But of late, the trend has been to expand the circle of civil society organizations with whom they interact.**

1.4. The Identity of the Victim

The Jordanian legislature did not highlight the necessity to determine the identity of the victim of human trafficking and protect the confidentiality of the victim’s identity if possible. In addition, the necessity to protect the identity of the child victim was also not highlighted as per the protocol. The purpose of the International Protocol is to protect the victim from the risk that he/she may face should his/her identity be revealed by the criminal organization. It is

¹⁹ Unofficial Translation

²⁰ Unofficial Translation

noteworthy the Jordanian Juvenile Act No. 24 of 1968 with its amendments stated in article 10 that “the trial of the juvenile is conducted in secret, no one is permitted to enter the court of law other than the probation officers and the parents or guardians of the juvenile and the lawyer, in addition to the people directly involved in the case.”²¹ Furthermore, article 12 of the same act prohibited the publication of the name or the photograph of the delinquent juvenile as well as the proceedings or the summary of the trial, by any means such as books, newspapers and cinemas. Whoever violates this act is imprisoned for a period not exceeding 30 days or must pay a fine not exceeding 100 dinars, or a combination of both penalties. The ruling can be published without referring to the name and surname of the juvenile. **It is understandable from this that the protection of the victim’s identity is ensured if he/she is a child; however if the victim is an adult, his/her identity is not afforded the same protection.**

2. The Rights of the Victim in the trial stage of the prosecution

Victims of human trafficking also enjoy a number of rights during the trial stage. These rights are stipulated in international conventions and are respected by national legislation:

2.1. Legal assistance

Article (6/2) of the Protocol confirms that each state party shall consider implementing measures to provide trafficked victims with the assistance in order to enable them to present their views and concerns, taking into consideration the appropriate stage of penal procedures against offenders, including not prejudicing the rights of the defense. Article 7 (e) of the basic principles on the rights of

²¹ Unofficial Translation

trafficking victims to remedy stipulates that the victim is to be given the necessary assistance to access remedy, regardless of their immigration status, including medical, psychological, social and administrative assistance, empowering them with the required linguistic and legal assistance such as free legal aid. The national law does not address judicial assistance to the victim which is a critical issue considering that most victims of human trafficking are destitute and cannot cover the costs of litigation and attorney fees.

The provisions stated in the Jordanian Bar Association Law do not convey this purpose strongly enough since Article 5.5 of Bar Code No.11 of 1972 and its amendments stipulates that “the Bar Association implements its work to fulfil the following objectives: 5 – providing legal aid to destitute citizens”²². The provision limits legal aid to citizens in spite of the fact that most trafficking victims are usually non-citizens, as well as assistance provision to the citizen-victim does not appear mandatory in the eyes of the Bar Association. Article 100 of the same law is fairer, it provides that “the president of the Bar has the right to appoint any lawyer with free professional service offered to the bar once a year. This free service consists in carrying out: 7 – to defend a person that is proved to the president of the bar as being poor and unable to pay legal fees. In this case, the court has to state in its ruling that the attorney fees should be covered by the accused, should they be proven guilty.”²³ Based on this article, it is clear that the President of the Bar has the right to appoint any attorney to defend a trafficked victim for those who are financially incapable of hiring an attorney. It is important to consider that the trafficking victim cannot benefit from the legal assistance stipulated in article 208 of the Code of Criminal Procedure no. 9 of 1961 and its amendments, which states “1- after the public

²² Unofficial Translation

²³ Unofficial Translation

prosecutor deposits the lawsuit file at the court, the head of court or whom he deputizes of the court judges for the crimes punished by capital punishment, life penal servitude, or life imprisonment shall summon the accused and ask him if he has chosen an attorney to defend him. If not, and his financial status does not allow him to appoint an attorney, the head or his vice shall appoint him an attorney". It is clear from this article that the state treasury will only cover the fees for an attorney appointed to a defendant who stands accused of committing crimes for which the penalties fall under capital punishment or a life sentence. It does not cover, under any circumstances, the victim. The victim of human trafficking cannot benefit from free legal aid even if his financial situation prevents him from appointing an attorney.

2.2. Briefing about and participation in judicial procedures

Article 7 (c) of the Basic Principles of the rights of trafficked victims, stipulates that "victims should be quickly and fully briefed about their legal rights in a language or a form of communication that they can understand. These rights include: access to remedy, means of access to remedy as available, and the procedures to follow in order to obtain access to remedy"²⁴. **On the national level there are no provisions which enable the victim to be briefed and participate in judicial procedures, particularly due to the fact that trafficked victims, according to international reports, are foreigners who cannot speak Arabic.**

2.3. The special status of children

Article 18 of the Basic Principles on the Right to an Effective Remedy for Trafficked Persons, in addition to the legislation mentioned above, the state shall facilitate the possibility of obtaining

²⁴ Unofficial Translation

remedy for children:(a) ensure that the best interests of the child are a primary consideration in providing trafficked children with remedies, taking into account the individual and personal circumstances of the child, including his or her age, sex, upbringing, ethnic, cultural and linguistic background and protection needs. When the age of the victim is not confirmed and there are reasons which lead to believe that the victim is a child, he or she must be treated as a child, until the investigation is assured of their age;

(b) Respect the child's right to express his or her views freely in all matters affecting the child who is capable of doing so. The opinions of the child should be considered according to his age and degree of his/her maturity. To this end, states should provide trafficked children with accessible information on all matters related to his/her benefits, such as their status rights, entitlements, services and access to available remedy and the family reunification and/or repatriation process;

(c) The procedures to obtain remedy and enforce it should be effective and considerate of all the needs of children and should remain available to them and their representatives including their legal guardians, appointed to represent the interests of the child;

(d) The child as a victim of human trafficking, shall enjoy the appropriate level of assistance and protection in terms of physical, psychological, legal, educational, medical, safety and housing assistance (including their protection during the legal proceedings); taking into consideration their age, specific rights and needs.

(e) To take measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with trafficked children on specific rights and obligations in cases involving children.

On the national level, the law does not define any special status for victims who are children, but simply included them in the adult definition without taking into consideration their age, sex and special needs, as the protocol and basic principles do. However, they were included within the optional elements of the victims' rights. Still, it would have been preferable had they been incorporated into the national legislature, due to the gravity of the effects these crimes have on children.

2.4. The Right to Compensation

Articles 10, 11 and 12 of the Basic Principles stipulate that: 10 – the state party shall offer compensation to the victims of trafficking for any viable economic damage which can be assessed. This compensation should be appropriate and proportionate to the gravity of the violation and the circumstances of each case. It is not permissible to invoke the difficulty of assessing the damage as justification to refuse to provide compensation.

11 – Forms of compensation can include, as appropriate, the following;

- a. Compensation for physical and psychological harm;
- b. Compensation for lost opportunities, including employment, education and social benefits;
- c. The payment of incurred costs such as the required transportation fees, temporary child care, housing, temporary housing or relocation to a temporary shelter;
- d. Compensation for material damage and loss of revenue, including income, loss of potential revenue, wages payable in accordance with national law and regulations related to wage loss;

- e. Compensation for moral or physical harm, including psychological or emotional distress, pain or suffering;
- f. Payment of legal fees and other expenses incurred, including those related to the participation of the victim in the criminal investigations and prosecutions;
- g. Coverage for the fees of legal or expert assistance, medical services or treatment for physical, social, psychological or mental health issues, or any further professional treatment or rehabilitation required by the victim;
- h. Payment of any costs or losses incurred by the victim as a direct result of exposure to trafficking, to be fairly evaluated by the relevant body.

12 – States should ensure the existence of laws, mechanisms and procedures that will enable victims of trafficking to obtain compensation, including;

- a. The prosecution of offenders and others for the civil and/or work related damages.
- b. Passing provisions or orders from the criminal courts to obtain compensation from the convicted.
- c. To provide access to national funds or programmes which were established for the benefit for the victims, and/or establishing special funds and programmes for victims of human trafficking in order to enable the state to demand compensation for damages; even when it is not possible to obtain compensation from the perpetrators of the crime.

- d. Freezing and confiscating assets and proceeds of traffickers for the purposes of supporting trafficked victims and providing them with compensation.
- e. Implementing the provisions which are related to repatriation including rulings for foreign victims.

On the national level, the law does not ensure the victim's right to compensation in the same manner as that of the protocol or basic principles. It does not stipulate any type of compensation for the victims that corresponds with the nature of the case or the possibility of obtaining compensation. This makes this issue subject to the general principles of compensation that are addressed by Jordanian law as it is included in the framework of what is called a 'personal claimant' and the mechanism of obtaining compensation for the crimes of the perpetrators. Thus the affected person has the right to claim compensation as a personal claimant in front of the court which considers penal cases. The personal claimant means receiving compensation resulting from damage incurred due to the crime. Article 52 of the Jordanian Code of Criminal Procedure states "Any person who deems himself injured by a felony or delict may lodge a complaint in which he shall hold the capacity of personal claimant with the public prosecutor or the court in accordance (...)."

2.5 Obstacles to the enforcement of national law

In general, through the definition that is defined by the anti-human trafficking law, the courts face practical legal problems in enforcing national law. The most prominent challenges are;

2.5.1. Legal obstacles

The definition in the law is substantively the same as the definition in the Protocol, with some minor differences. But in practice, it is clear

that this law is not easily applicable in the courts, due to the following reasons:

- The Jordanian legislature uses the same phrases that are mentioned in the Protocol in spite of the fact that these words have specific value in international law. These specific values do not exist within national law. As a result, the national judge faces difficulty in recognizing the significance of these terms when applying them. Some examples of these terms are 'slavery' and 'servitude' which are mentioned in the related anti-slavery and servitude conventions mentioned above.
- Jordanian national law uses in its definition the term 'persons' which in Arabic refers to two people or more.
- The Jordanian legislature overlooked some phrases such as "slavery-like practices" which has a definition in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices of 1956.
- Jordanian law limited forms of exploitation and omitted other types of exploitation such as begging.
- Some of the acts mentioned in the definition constitute separate offenses under the Penal Code, such as kidnapping, fraud and forcing women into prostitution. This encourages the judiciary to characterize the crime of human trafficking with other legal descriptions which are clearer within the national legal framework.
- Jordanian law does not address the definition of the victim or person affected by the crime: it is a priority to mention these definitions due to their value in enforcement. Indeed, the

mention of the definition of the victim before the Jordanian law helps to have the ideal implementation of the anti-human trafficking law. It is not possible to provide protection to the victim if these definitions are not clearly defined and identified. And here the definition of trafficked person should be, he/she who is subject to the act of trafficking in persons.

As for the definition of the affected, the one who suffered damages as a result of the trafficking crime, usually the victim himself, the Jordanian legislature overlooked referring to him/her in the definition materials. However he reconsidered it in articles 2 and 3 of the Regulation of Shelters and affected people by human trafficking crimes, no.30 of 2012.

2.5.2. Practical obstacles

In addition to legal obstacles, there is a range of challenges facing the judge working on investigation human trafficking crimes. These can be summarized as;

- Filing a complaint: in some cases, the victim does not file a claim against violations of his rights. The reasons for this can include:
 - Fear of deportation
 - Shame and fear of being found out
 - Loyalty to the trafficker
 - Distrust of investigative bodies
 - Fear of retaliation or harm against their families
 - Traditions and social customs

- **The participation of victims in crimes** such as theft or being accused by the employers is used as a means of pressure or blackmail on the victim. As a result, their testimony cannot be relied on as evidence.
- **Repatriation of victims** and those who may possess important information related to the crime.
- Interpretation issues:
 - Lack of an available interpreter or translator; when most of the workers are foreign and not fluent in Arabic.
 - Weakness of the translation process whereby the original meaning can be lost in translation.
 - The translator may have a biased approach in favor of the employer, as most translation professionals come from the recruitment agencies in charge of recruiting migrant and domestic labour.
 - Reluctance of the victims to cooperate with judicial authorities in attendance and in providing correct information.
 - Making settlements after filing the complaints and directly before hearing the testimony of the victim. In this stage the victim tends to alter the facts.
- **Evidence:** the evidence of these crimes is linked to a hidden crime called the crime of mysterious numbers, thus the evidence is not available. The victim has the responsibility to highlight proof to help the general prosecution obtain evidence.

- **Many perpetrators** of this crime are located outside the jurisdiction/reach of the country or are hidden from the police.

In addition, some crimes have been committed but the criminal intent is not available, such as in the case of passport withholding, deprivation of off days, or not allowing the worker to leave the house under any circumstances. It is possible these crimes are not committed with the sole purpose of exploiting or threatening the victim. They may be committed to protect the financial rights of the employer and to protect the family and preserve their social image.

2.6 Penalties stated in Jordan's Anti-Human Trafficking Law

Articles 8 to 11 of the Penal Code address the penalties for offenders of human trafficking whether these are natural persons or legal personalities. The law does not criminalize the people who participate or benefit from the crime of trafficking, thus there is a need to include a provision punishing every person physically or mentally benefitting from any services offered by trafficked victims, with the knowledge that he/she achieved benefit by exploiting a victim of human trafficking.

The law does not strengthen the penalty if this crime causes the death of the victim. The penalty is only greater /more stiff if the crime causes an incurable disease. Moreover the law does not include any provision punishing the initiation of crimes listed in the law under the name of "perfect crime". Due to the severity of these crimes, the law does not include an article punishing any individual who exposes the identity of victims, witnesses or experts whose privacy was guaranteed by the court In other words, the law does not afford protections to /for witnesses.

3. The rights of victims after the verdict

Victims of Trafficking in Persons enjoy a number of rights following the issuing of the verdict. These rights are clearly stated within international conventions, some which were considered within national legislation:

3.1. The right to remain in the territory

It is important to start by pointing out that this right should be guaranteed to the victim during the phases of investigation and trial as well as after the verdict, according to certain conditions. Article 7 of the Protocol stipulates:

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each state party shall give appropriate consideration to humanitarian and compassionate factors.

Article 7 (g) of the Basic Principles states victims should enjoy the right to legally remain in the territory. The country in which they seek remedy during the period of proceedings should, without prejudice, receive any claim submitted to obtain the right to stay on a more permanent basis, considering this in itself constitutes a means of access to remedy.²⁵ Article 9 (d) of the Basic Principles states “to grant trafficking victims temporary or permanent residency, asylum or resettlement in another country, for reasons such as the state’s inability to ensure their safe return and/or that of their families, and

²⁵ Unofficial Translation

to respect the principle of *non-refoulement* and the risk of being trafficked again and the risk of being subjected to reprisals.”²⁶

The Law No. 24 of 1973 on Residency and Foreign Affairs does not include a provision that provides foreigners who have been victims of trafficking with facilities or exemptions. Thus the foreign victim is treated as the one violating the residence law. Article 29 of the Residency Law lists the categories which are not subject to the provisions of the law. This list includes what is stated in Article (h) which stipulates: Persons exempted by the Minister on account of special considerations connected with international or humanitarian courtesy or of the right to political asylum or yet in application of the principle of reciprocity.

It is notable from the previous text that the Minister of Interior has the right to exempt the foreigner from the provisions of this law and has the discretionary authority with respect in its regard, having a foreign victim of human trafficking does not exempt him from the provisions of the Residency Law. There is a need for an explicit provision that grants the victim of human trafficking residency in order not to allow the employer to use the violation of the residency law as a means to blackmail the victim. On the other hand, the worker will be subjected to deportation based on article 12 of the Labour Law since in most cases, the employer does not issue a work permit to the worker who is a victim of human trafficking. Thus there is a need to make an exception for deportation within the Labour Law. Article 12 of the Labour Law regulates the subject of migrant labour, its conditions and how to obtain a work permit. Paragraph (g) of the same article gives the Minister of Labour the authority to issue a decision of deportation against the migrant worker who breaches

²⁶ Unofficial Translation

the terms of this article on the expense of the employer or director of the company.

This decision is supposed to be implemented by the competent authorities and prohibits recruiting this non-Jordanian worker who has been deported before the lapse of at least 3 years starting from the date of deportation. It did not consider the possibility of this worker being a victim of human trafficking. This consists in a breaching of the state's obligation towards the Protocol regarding returning the victim to his home country, according to article 8 of the Protocol. According to article 9 (d) of the Basic Principles, the state is obligated to grant the victim temporary or permanent residency, asylum or resettlement in another country, for the reason of the state's inability to ensure the safe repatriation of the victims and/or of their families, in addition to respecting the principle of *non-refoulement*, and the risk of being subjected to reprisals.

Returning to the Residency Law, we find that the fines that are accumulated on the migrant worker prevent him from returning to his home country. The migrant worker is committed to paying 1.5JD for each day he remains in Jordan without a residency permit. The Minister of Interior, upon the recommendation of the secretary general has the power to exempt the migrant worker from the fine if it does not exceed 250 JDs. If it exceeds this amount, the exemption should be based on the decision of the council of ministers upon the recommendation of the minister.²⁷ The law does not define the reasons for exemption and gives the Minister or the Council absolute discretion in this regard. It is important to confirm that the migrant worker residing illegally in Jordan cannot leave the Kingdom unless he/she pays the fines accumulated or obtains exemption from the Ministry or the Council of Ministers.

²⁷ Article 34 of Residence and Foreign Affairs Law

Based on practice, it is evident that the employer is committed to issuing a residency and work permit for the migrant worker. However, if the employer neglects to fulfil this obligation, the migrant worker is the one who must pay the fines. Therefore the worker's exemption from the fines is for the benefit of the employer failing to fulfil his legal obligations. Simultaneously, we find that in many cases, the exemption of the fines is the only solution for the worker to be able to be repatriated, particularly if the relationship between the worker and the employer has been severed for any reason. Many cases of migrant workers' inability to be repatriated were monitored due to the fines. This result constitutes a violation of article 12.2 of the International Covenant of Political and Civil Rights which states "everyone shall be free to leave any country, including his own", and article 12.4 from the same covenant, states "no one shall be arbitrarily deprived of the right to enter his own country". The General Comment No. 27 of the Human Rights Committee established based on the provisions of the International Covenant of Political and Civil Rights, states "in no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all state action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A state party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country."²⁸

²⁸ CCPR/C/21/Rev.1/Add.9, General Comment No.27, 2 November 1999, para21

Consequently, it is a requirement to have an explicit provision exempting the victim of human trafficking from fines for its repatriation and facilitate this repatriation. Jordanian Law highlighted this matter in article 5 (c) of the Jordanian Anti-Human Trafficking Law as one of the committee's tasks. This is insufficient. It is important to have an explicit legal provision in such regard in the Residency and Foreign Affairs Law.

3.2. Appeasement

Articles 15 and 16 of the Basic Principles state that “15 – the state should provide a form of non-financial appeasement in order to compensate the victim for moral harm or damage to his/her dignity and/or reputation” and “16 – Appeasement should include one or all of the following elements:

- a. To take effective measures to stop the on-going violations;
- b. Verify the facts and provide full public disclosure of the truth without causing further harm or threaten the safety or privacy or other interests of trafficked victims, witnesses or people who intervened to assist them or to prevent further violations;
- c. To issue a formal declaration or judicial decision to restore the dignity, reputation and rights to the trafficking victim and his/her close ones, according to the specific circumstances of the case;
- d. A public apology, including the recognition of the facts and accountability;

- e. The imposition of judicial and administrative sanctions on those responsible for the violations.”²⁹

The national law does not address such appeasements and moral compensation with the exception of its last paragraph which includes imposing penalties on those responsible for the violations according to the anti-human trafficking law.

3.3. Guarantee of non-repetition of the crime

Article 17 of the Basic Principles states “the states parties provide guarantee of non-repetition of human trafficking in order to address evasion punishment and to avoid future violations. These measures include, as appropriate, any or all of the following:

- a. Ensure the investigation effectively prosecutes and punishes the traffickers;
- b. Take all necessary measures to protect trafficking victims from being trafficked again, through the safe return and the granting of temporary or permanent residency, where appropriate, and to enable their integration;
- c. To provide training of law enforcement and immigration officials and other relevant personnel in the prevention of human trafficking;
- d. The consolidation of the independence of the judiciary;
- e. Amendment of the legal, social and cultural practices that enable, encourage and promote human trafficking, including sexual discrimination, conflict and post-conflict situations;

²⁹ Unofficial Translation

- f. Effective treatment of the root causes of trafficking such as poverty, gender inequality and discrimination;
- g. To encourage important figures of the public and private sectors to adhere to codes of conduct and ethical norms, in particular to international standards, including the promotion of partnerships between the public and private sectors in combatting trafficking in persons;
- h. The protection of people working in the legal, medical and health professions, and human rights defenders who are helping victims of human trafficking.”³⁰

These guarantees are mentioned whether directly or indirectly in the Jordanian Anti-Human Trafficking Law, within the tasks of the anti-human trafficking committee. Article 5 of the Jordanian Anti-Human Trafficking Law No.9 of 2009 states that the committee has the following tasks:

- “a. Formulating public policies to prevent anti-human trafficking and proposing plans necessary for the implementation and supervision on the application of those policies.
- b. Reviewing all relevant laws and proposing necessary related drafts and recommendations.
- c. Coordinating among official or private entities concerned with combating crimes of human trafficking, for the purpose of taking all necessary measures to facilitate the return of injured persons and victims of those crimes to their countries or any country they may chose and that the country accepts to receive them.

³⁰ Unofficial Translation

- d. Issuing national guidelines that include instructions and educational materials relevant to its activities and to publish them.
- e. Raising awareness among employers, recruitment agencies and employees on issues related to anti-human trafficking through holding conferences, conducting workshops, training programmes, and educational programmes, and any other means.
- f. Studying international, regional or national reports related to anti-human trafficking and taking appropriate procedures and measures thereof.
- g. Cooperating with all official and private entities to provide physical, psychological and social recovery programmes necessary for supporting victims of human trafficking crimes and affected crime victims, and supervising sheltering those victims in places that are established or recognized as a shelter for this purpose.
- h. Forming a sub-committee or more to assist the committee to perform its responsibilities and propose recommendations.
- i. Any other tasks related to its activities and proposed by the Chairman of the Committee.

3.4. The right to seek asylum

Article 7 (a) of the Protocol enables the trafficked victim to benefit in practice from the procedure of granting asylum which consists in, in other words, not forcing the victim to return to his/her country of origin. The fear of having them subjected to reprisals or being once again victims of human trafficking is in fact the reasoning behind obligating state parties to grant residency for trafficking victims and not forcing them to return. Jordan does not have any national mechanism for responding to an asylum application, nevertheless in the 5 April 1998 the Jordanian government signed a

Memorandum of Understanding with the United Nations High Commissioner for Refugees (UNHCR) in order to empower the organization to carry out its work related to international protection and humanitarian assistance for the benefit of refugees on Jordanian soil and the persons who fall under their protection. The Memorandum of Understanding adopted the definition of 'refugee' which is stated in the 1951 Convention relating to the Status of Refugees. The UNHCR office in Amman examines asylum applications from foreigners in the Kingdom and decide which applications deserve refugee status. The task of determining the legal status of asylum seekers is one of UNHCR's basic tasks, as its core mandate is to provide international protection to those who deserve it and who are covered by the provisions of its basic regulations. Additionally, it keeps seeking permanent solution to refugee issues in adherence to article 1 of its basic regulations. Based on the above, determining the legal status of the asylum seeker is a matter for the High Commissioner as part of his/her function to provide international protection to refugees. Therefore, UNHCR is a key actor in these procedures in many countries.³¹

Consequently, the foreign victim of human trafficking must be granted the opportunity to communicate with UNHCR; if he/she desires to submit an asylum application, the competent authorities are required to facilitate its application.

³¹ The UN High Commissioner for Refugees (UNHCR) carries out this task in over 60 countries, see:

KAGAN, Michael, *Frontier Justice: Refugee Legal Aid and UNHCR in the Developing World*, paper presented to the International Association for the Study of Forced Migration (IASFM) conference in Thailand (January 2003).

Chapter Three

The Role of National Legislation in Combating Forced Labour

Chapter Three

The Role of National Legislation in Combating Forced Labour

1. Forced Labour

The prohibition of forced labour dates back to the last century through the efforts of the International Labour Organization (ILO) which focused on the rights of labourers and protecting them from injustice on the international level. These efforts were crowned with the ratification of Convention C029, Forced Labour Convention, 1930.

Based on ILO statistics from 2014, more than 21 million people are victims of forced labour in the world. It is estimated that 19 million of these people are exploited by ordinary individuals or private companies. The rest are exploited by armed groups and a few states.

Usually, the term forced labour is linked to exploiting vulnerable simple labour, such as migrant labour, refugees, and local poor uneducated labour. Thus, it made many efforts to combat it. Ordinarily, these categories of labour are unable to protect their rights, whether it's due to ignorance or to lack of different financial, legal, or social abilities.

This chapter of the study will define the concept of forced labour according to the relevant conventions, present Jordan's obligation in such regards based on the duly ratified conventions, and the harmonization of national legislation with these commitments.

1.1. The definition of forced labour in international law

Defining forced labour according to international law is the starting point to identify the obligations of State parties to the conventions that prohibit it. Particularly due to the fact this compulsion comes in different forms and needs a number of national legislation to prevent this act and punish the perpetrators. Furthermore, while forced labor is human trafficking, it is our opinion that there is value under Jordanian law to recognize forced labour in and of itself. We have found that in doing so this helps to combat human trafficking more efficiently.

According to the provisions of article 2-1 of the ILO Convention C029 on Forced Labour, 1930, forced or compulsory labour shall mean "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Nevertheless, for the purposes of this Convention, the term forced or compulsory labour shall not include;

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services". In defining forced labour, the nature of the relationship between the employer and the person forced to work is of particular importance. Two basic elements have to be considered: firstly, that the work or service extracted was done under threat or penalty and, secondly, that the work was done involuntarily³².

The Convention declares that the states parties must undertake to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. That would be through imposing penalties on illegal forced or compulsory labour as a criminal offence.

³² A/HRC/12/21 , 10 July 2009, paragraph 31

The imposed sanctions are to be affective and enforced on the ground.

Article 8 of the International Covenant on Civil and Political Rights prohibits forced labour. The International Covenant on Economic, Social and Cultural Rights emphasizes consensual labour contract by stating clearly in article 1/6; The States Parties to the present Covenant recognize the right to work, which includes the right of all to the opportunity to gain their living by work which he or she freely chooses or accepts, and will take the appropriate steps to safeguard this right.

The international and regional judiciary play an important role in developing this concept, which was drafted in 1930, to make it dynamic in order to keep pace with the economic developments of the last century. For example, the International Criminal Tribunal for the former Yugoslavia³³ explained that not doing the work voluntarily is fundamental in the crime of forced labour, a matter which needs to be studied in each case separately. It must be proved that the person in question does not have a real choice to accept or reject the work required of him or her, and that the element of threat and intimidation plays a significant role in determining whether the person's choices were real or were made as a result of a state of fear. It should be taken into account that the impact of the threat varies from one person to another for psychological, social and cultural reasons; what constitutes a threat to one person may not to another person. The European Court of Human Rights ruled that coercion should be under the threat of punishment and this punishment may take various forms such as the denial of certain privileges in work or the threat of termination of the employment contract³⁴. In another

³³ Krnojelac Trial Judgment para, 359

³⁴ Van der Musselle v. Belgium, Application No. 8919/90 (23 November 1983)

case, the European Court made it clear that it is always required to take into account the worker's conditions to determine whether the worker agreed to do the work voluntarily or not. The domestic worker may travel to work in a foreign country to work for a family that she has not chosen, and her personal documents might be confiscated by the employer under the guise of correcting her status in the hosting country. In such a scenario, and due to her limited education and sense of alienation, her will is considered deprived, and consequently under forced labour³⁵. The ILO committee of experts had an important role in the commentary on the definition of forced labour through its various recommendations. Based on article 2 of the Convention, 1930, forced labour exists when the following criteria are present;

- a. **Doing work or service;** the Commission explained that compulsory education and compulsory vocational education are not listed under the definition of work or service according to Article 2. However, since vocational education includes some work, it would be advisable to study the facts of each case separately to determine if it is forced labour³⁶.

- b. **Under the menace of punishment;** this phrase must be interpreted in the broader sense of the term, which means not only penal or physical. Its definition can also include forms of deprivation of rights or privileges such as; promotion, transfer, getting a new job, or accommodation³⁷. Psychological compulsion might also be considered under the concept of "menace of punishment". Nonetheless, the Committee did not consider the general economic situation in which a person is

³⁵ Siliadin v. France, Application No. 73316/01 (26 July 2005)

³⁶ Abolition of forced labour, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ILC, 65th Session, Geneva, 1979, para. 20

³⁷ Abolition of forced labour, General Survey of 1979, op.cit., at para. 21

obliged to stay in his work as a kind of "menace of punishment"³⁸.

- c. **Not carrying out the work or the service voluntarily of free will**; although this criteria is separate from the previous criteria, the committee said that the work performed under the menace of any punishment is not considered an act or service that is done voluntarily. Moreover, if the employer resorts to fraud or deception, the worker's consent is considered negligible³⁹. In all circumstances, the worker's right to choose his work is non-derogable, and the worker's right to leave work must be permanently guaranteed⁴⁰.

Since Jordan is a state party in the 1930 Convention and other conventions that prohibit forced labour, it is highly committed to⁴¹;

Firstly, to enact appropriate legislation and to take appropriate administrative measures to eliminate this act and punish the perpetrators as forced labour is a crime;

³⁸ ILO, Report of the Committee set up to examine the Article 24 representation concerning Portugal, 1985, para. 97

³⁹ Individual Observation Concerning Peru, 87th Session, Geneva, 1999, para. 3 (noting that certain forms of deceitful or violent recruitment of labour were forced labour).

⁴⁰ Abolition of forced labour, General Survey of 1979, op. cit., para. 68

⁴¹ For more information please see;

Melik Özden, THE RIGHT TO WORK: A fundamental human right affirmed by the United Nations and recognized in regional treaties and numerous national constitutions, 2010, p 18. Also European Court of Human Rights, KEY CASE-LAW ISSUES, PROHIBITION OF SLAVERY AND FORCED LABOUR, ARTICLE 4 OF THE CONVENTION, Council of Europe, 2012, pp 11-13.

Secondly, to take the appropriate measures for the prevention of forced labour, particularly for the potential victims of said crime;

Thirdly, to investigate when there is a reasonable suspicion that a person might be a victim of trafficking.

1.2. The Jordanian Constitution and forced labour

Through article 13, the Jordanian Constitution addresses forced labour by stating that compulsory labour may not be imposed on any person:(i) in a state of necessity, such as a state of war, the occurrence of a public danger, or fire, flood, famine, earthquake, serious epidemic among human beings or animals or animal diseases, insects or pests or any other similar events, or in any other circumstances which might endanger the safety of the population, in whole or in part.(ii) As a result of the conviction of the person concerned by a court of law, provided that the work is done and the service rendered under the supervision of an official authority and provided further that no convicted person shall be hired to, or be placed at the disposal of, any persons, companies, societies or public bodies.

It is notable that the constitution prevents forced labour, but allows it in certain contexts which are in line with the international conventions as previously mentioned.

1.3. The Jordanian laws and forced labour

Presumably, national laws must correspond with the Constitution and the international obligations which Jordan has before the international community. To start, the legislative power has to enact laws to enforce the provisions of the Constitution, and to be in line

with the international conventions that have been duly ratified. The following are the most important laws related to this study to demonstrate its conformity with international conventions.

1.3.1. Penal Code

Undoubtedly, the Penal Code is of particular importance in combating forced labour. It must criminalize forced labour, since initially each act is permissible unless it is criminalized by a legal provision. In addition, the international conventions which oblige the states to criminalize some acts cannot be directly enforced due to the principle of no crime or penalty without a legal provision. It is not permissible to establish analogies between separate crimes.

Jordanian Penal Code and other penal laws lack any provision that criminalizes forced labour, despite being prohibited by the Constitution. It is a necessity to have a provision that criminalizes this act and imposes an appropriate penalty for committing it. Furthermore, the 1930 Convention necessitates the State party to consider forced labour as a crime, and not as a labour violation like that of other violations. The prohibition of forced labour came in Chapter II of the Constitution, which is entitled "Rights and Duties of Jordanians". Violation of these rights and freedoms must be criminalized by a penal provision. Forced labour is a crime similar in nature to violating the right to life, physical abuse, deprivation of liberty, assault on personal freedom, and other abuses of human rights. In such context, it is appropriate to refer to the Article 7.2 of the Constitution, which explicitly stipulates that every assault on the rights and public freedoms or sanctity of private life for Jordanians is a crime penalized by law.

1.3.2. Labour Law

Labour law is assumed to regulate the relationship between the worker and the employer, and to develop appropriate adjustments to prevent the worker from being a victim of forced labour. Jordanian labour law was issued in 1996. A series of amendments, most recently in 2010, were made to the labour law, where a set of provisions were modified in order to make the law more harmonized with international standards after receiving many observations by the Human Rights Council during the UPR. It also received observations from the Committee of Economic, Social, and Cultural Rights when reviewing the periodic report submitted by Jordan. Additionally, many national and international organizations demanded these changes. It could be argued that a number of these amendments are directly related to the reduction of forced labour, such as the amended law to tighten the penalties for those who recruit migrant workers without duly issuing a work permit, to make the fine of not less than two hundred dinars and not more than five hundred dinars. This fine is doubled in case of repetition⁴². In the old law the fine could only amount to a maximum of a hundred and fifty dinars. This amendment came as a response to the requests of various human rights groups which monitored many cases of not issuing work permits to migrant workers in the qualified industrial zones. This leads them to be illegal residents and subject to deportation. The factories use this vulnerability as means to put pressure on the migrant worker to force them to work for longer hours and intimidate them to not file complaints against the factory in the relevant governmental

⁴² Article 5 of the amended law was abolished the phrase “not less than 100 dinars and not more than 150 dinars for every non Jordanian worker recruited in contravention of the provisions of the Law” included in paragraph e of Article 12 and replaced with the words “not less than two hundred dinars and not more than five hundred dinars for every non Jordanian worker recruited in contravention of the provisions of this law. The fine is doubled in case of repetition”.

authorities. A new paragraph was also added to the text of Article 15 of the Labour Law obligating the employer to regulate another copy of the contract in a foreign language so that the worker may understand if the worker is non-Arab, as based on regulations issued by the Labour Minister⁴³. It seems that the purpose of this addendum is to enable the migrant worker to check out the provisions of the employment contract to know his rights and obligations. Unfortunately, up until the preparation of this study, these regulations were still not issued, even though this is an extremely important step in combating forced labour. The lack of the worker's knowledge in the terms of the contract may lead to deceiving him/her, and lead him/her into accepting a type of work that does not suit him/her. Presumably, these regulations should take into account the fact that, in some cases, the worker does not know how to read and write. It is a necessity to adopt an effective mechanism in order to be familiar with the terms of the contract, since most of the migrant labour workers, according to the statistics of the Ministry of Labour, are illiterate.

The penalty was also harshened on the employer, or whoever acts on his behalf, for non-compliance with the minimum wage set. It now ranges between fifty Dinars and two hundred Dinars, after only amounting to a maximum of one hundred Dinars⁴⁴. It is also worth noting that some national courts considered non-compliance with the minimum wages as a form of forced labor⁴⁵. Article 57 of the Labour Law was amended; it previously allowed the employer to force the worker to work more than the daily working hours in specific cases

⁴³ Article 7 of the Modified Labour Law

⁴⁴ Article 17 of the amended law stated to "modify Article (53) of the original law by deleting the phrase (twenty-five dinars and not more than a hundred dinars) mentioned therein and replacing it with the phrase (fifty dinars and not more than two hundred dinars)"

⁴⁵ Supreme Court of India, People's Union for Democratic Rights v. Union of India, A.I.R. 1982 S.C. 1473 (19 September 1982)

under the condition of receiving overtime pay, note that these cases are;

a) Carrying out the establishment's annual inventory, preparing the balance sheet, closing accounts, preparing for sales at discounted prices, provided that the number of days on which the provisions of these paragraphs are applied does not exceed thirty days per year and that the actual working hours do not exceed ten hours every day thereof.

b) To avoid the occurrence of loss of goods or any other item which is exposed to damage, to avoid the risks of a technical work or to receive certain materials, delivery or transporting of same.

Under the amendment, paragraph (b) had an additional part which states "provided that the number of days on which the provisions of these paragraphs are applied does not exceed twenty days per year."⁴⁶ "Accordingly, the legislature put an end to the employers' misusing of paragraph (b) of Article 57 to force workers to work against their will. This issue has been raised by many international and national reports.

Although the Labour Law does not expressly provide for the consensual factor when defining the employment contract in Article 2, since it only emphasized the dependency in terms of supervision and administration, Article 77.b considered that work violations include; recruiting any worker forcibly, or under threat, fraud or coercion, including withholding of passports. The penalty is a fine of no less than five hundred dinars and not more than one thousand dinars. The partner, instigator and the intervener in this recruitment will have the same penalty. Additionally, paragraph (c) refers to doubling the fine in the case of repetition⁴⁷.

⁴⁶ Article 19 of the amended law

⁴⁷ This article was amended according to the Amended Law No.48 of 2008.

Notably, this article covers most forms of forced labour. However, the definition stated in 1930 Convention is wider; as it includes “under the menace of any penalty”. The provision considers, as well, forced labour as a type of labour violation, and not as a crime, contrary to what is stipulated in the convention. Furthermore, this provision was not applied on the ground. This also violates Article 9 of the Convention, which stipulated that the sanctions should be effectively imposed and implemented on the ground by law.

Forced labour is a crime which is no less serious than abuse, deprivation of liberty and kidnapping. Therefore, it is essential to be penalized as severely as other crimes, and not to be considered as a labour violation with a fine penalty.

1.3.3. Crime Prevention Code

It seems at first glance that there is no relation between the Prevention of Crime Act and forced labour. Conversely, many reports monitored violations against migrant workers. These violations include having the employers resort to the administrative governor to report that the migrant worker left his/her employment, or expressed the interest to work for another employer. The governor arrests the worker in pursuant to the provisions of the Prevention of Crime Act⁴⁸. Egyptian migrant workers who are exempted from the provisions of Residency Law, and other migrant workers from other nationalities who have expired residency permits become victims of such practice.

⁴⁸ See for example, Between the Rock and the Hard Place- Migrant workers are between the Rock of Employers and the Hard Place of Official Practices, Tamkeen Center.

The Prevention of Crime Act No.7 of 1954 is well known. It has been addressed by many specialized legal and academic studies. Numerous reports monitored violations resulting from the exercise of this law. In fact, some of those reports pointed out that its provisions are unconstitutional and breach the International Conventions on Human Rights. The fame of this law spread throughout the international level and not only on the national level; the name of this law and its consequences were frequently mentioned in the United Nations' halls and in the reports of its committees.

The Prevention of Crime Act grants the administrative governor the right to receive a Pledge of Good Conduct and to impose house arrest or administrative detention against any of the following categories;

- Any person caught in a public or private place in circumstances that may lead the governor to consider that this person was about to commit a crime or assist in committing it.
- Any person found to be involved in robbery, theft, possession of stolen property, protecting or harboring robbers, assisting in the hiding the stolen property or disposing of them.
- Any person who has been released without a warranty might constitute a danger to others.

Obviously, the expressions used in the previous provision are vague, broad and can have multiple interpretations according to the person who is in charge of enforcing law provisions, such as “circumstances that may lead the governor to consider that this person was about to commit a crime” or “being released without a warranty might constitute a danger to others”. National and

international reports⁴⁹ refer to the fact that most of the categories other than The Prevention of Crime Act are different than the ones stated in the Law. It can be limited to; 1. People with security restrictions; to clarify the security restrictions, having judicial rulings issued against the person does not necessarily mean that he/she committed a specific crime. He/she might be subject of a complaint or accusation, even if the judiciary declared his innocence or lack of responsibility for the alleged offense⁵⁰. 2. Women whose lives are in danger from their relative due to honour matters; here the administrative detention is used with the purpose of protection and it may last for many years. One of these lasted for 17 years. 3. Foreign workers whose employers submitted a complaint against them and foreigners who do not have identity documents or whose residency and/or work permits have expired.

Based on Article 8 of the Prevention of Crime Act, the Administrative Governor has the right to administratively detain the person in respect of whom a resolution of giving a pledge has failed to provide such pledge on the specified date. If he/she has already been imprisoned, he/she shall remain imprisoned until he/she provides the required pledge or if the period mentioned in the resolution of giving the pledge has passed. The governor has the power to issue a decision

⁴⁹ See, for example, the National Center for Human Rights, Administrative Detention- Judicial Powers in Executive hands, 2009; HRW (Human Rights Watch), Guests of the Governor- Administrative Detention Undermines the Rule of Law, May 2009; The Report of the Special Rapporteur on Torture and other types of cruel, inhuman or degrading treatment or punishment of the Crime Prevention Law after his visit to Jordan in June 2006; the opinion of the Special Rapporteur on violence against women, its causes and consequences after her visit to Jordan in November 2011.

⁵⁰ It should be noted that there is an explicit decision of the Court of Justice stating that "just having a person accused of a crime does not mean that he/she belongs to one of the categories stipulated by the Law," Justice Supreme Decree No. 170/2004.

of detention, without specifying the duration of such detention, based on his personal conviction as long as the terms of Article 8 are available. For confirmation, the Supreme Court has pointed out, "if the District Administrator is convinced that the evidence he has heard from the summoned indicates that he/she was about to commit a crime(...), the administrator has the right of recourse to law enforcement"⁵¹. The purpose here is not to discuss the Prevention of Crime Act and its consequences. Unanimously, national and international reports agreed on the severity of this law for it violates the rights and freedoms set forth in the Constitution and international conventions ratified by Jordan, in addition to the national legislation guaranteeing the protection of human rights.

What concerns us here is that this law is used by some employers to force migrant workers into employment. Consequently, this law is used as a means of threat of punishment, which is rejected by the 1930 Convention. In other words, the Prevention of Crimes Act promotes the practice of forced labour through the powers of the Administrative Governor, which falls within the concept of administrative control⁵². It is represented by restrictions and controls on the action and freedoms of individuals in order to protect public order.

1.3.4. Passport Act

Article 23.2 of Passport Act No. 2 of 1969, and its amendments of 2013 provide imprisonment for no less than six months and not exceeding three years; or a fine amounting to no less than five hundred dinars and no more than one thousand dinars, or both

⁵¹ Justice Supreme Court Decree No. 119/1956, as well as the following decrees; 378/1999, 480/2003, 175/2005 and 66/1995 [unofficial translation]

⁵² Confirmed by the Supreme Court of Justice Decree No. 4320/2002

penalties for every person found with illegal possession of a passport or travel document.

Withholding migrant workers' passports is common practice in Jordan. Some employers withhold migrant workers' passports to forcefully ensure him/her remains in Jordan. Thus, passport withholding is a means to promote forced labour. However, the question here is "Is the employers retaining of the worker's passport considered illegal retention as per Article 23.b"? It is difficult to find an absolute ruling in such regard and it is often down to the estimation of the judge.

It is noteworthy that common culture in Jordanian society considers confiscating the passport of the worker acceptable⁵³. One of the reports of 2013 states that 34 Jordanian citizens in Jordan were convicted of illegally confiscating migrant workers' passports. In spite of such conviction, some employers who were convicted were reportedly not required to return the passports back to their employees as a part of their sentence.⁵⁴

To avoid any difficulties, there is a need for an explicit provision which penalizes the employer for confiscating the worker's passport to resolve any dispute in diligence, in addition to adopting an active mechanism to ensure that the worker will receive his passport which was withheld illegally.

⁵³ See, for example, *The Weakest Link*, Tamkeen Center for Legal Aid, 2011; *Between The Rock and The Hard Place*, Tamkeen Center for Legal Aid ,2012; and *Systematic Gross Violations of Human and Worker Rights Continue under the U.S.-Jordan FTA: Classic Fashion Apparel*, 10 November 2010

⁵⁴ US department of state, *Trafficking in Persons Report*, June 2014 *TRAFFICKING IN PERSONS REPORT JUNE 2014*, 224

1.3.5. The regulations & instructions issued under the labour law

Many regulations and instructions were issued on the basis of labour law, addressed below are the most important related ones;

1.3.5.1. The Regulation of Domestic Workers

In August 2008, Article 3 of the Labour Law was amended under Law No. 48 of 2008. According to this amendment, Labour Law shall apply to agricultural workers, domestic workers, cooks, gardeners, and similar categories. The provisions that these categories will be subject to are to be determined based on a regulation issued for this purpose. This regulation includes organization of the employment contracts, working hours, rest and inspection, and any other matters related to their recruitment. In October 2009, Regulation No. 90 of Domestic Workers, Cooks, Gardeners, and Similar Categories was passed.

The Regulation states sanction against the worker in case of a breach of the regulation. In some cases, the sanction is the loss of all his/her labour rights; simultaneously, it does not provide any penalty on the employer. It only states “if it appears that there is any breach, the home owner will be warned to settle it within a week from the date of being informed. Otherwise, a seizure report will be prepared against him/her, and the necessary measures stipulated in the Labour Law will be taken.”⁵⁵ Nothing is mentioned in the regulation about the right of the worker to keep his/her passport. Additionally, Article 5 of the Regulation prevents the worker from leaving the house without the permission or consent of the employer. This article was

⁵⁵ Unofficial Translation

amended in 2011 to be “informing the home owner before leaving the house, departure, or absentees”⁵⁶. Although this amendment is considered a positive step, leaving the house without the permission of the employer or informing him is considered breaching one of the worker’s labour commitments. Article 12 of the Provision provides that Minister of Labour will issue the necessary instructions to implement the provisions of this Regulation, including the terms and conditions contained in the employment contract form, but these instructions were not issued until now.

1.3.5.2. The Regulation of Organizing Private Recruitment Offices for Domestic non-Jordanian Workers of 2009

This regulation was passed based on the Labour Law in order to regulate the licensing process of recruitment agencies. Article 10 of the regulation commits the employer, or the person he/she authorizes, to report to the Ministry and the relevant police station in writing when the worker leaves work without having obtained the employer’s approval or providing notice. It has to be within a period not exceeding 48 hours of the worker’s leaving. Paragraph b. of the same article stipulates, “notwithstanding the provisions of any other regulation, in case the worker left the work during the contract period without the homeowner’s approval or notice, the homeowner must be compensated for the amounts paid to the agency for the rest of the contract duration, provided that the period of leaving work must be no less than five days from the date of notification”.⁵⁷

It is understood from the previous provision that once the worker leaves the work, the employer deserves compensation for the amounts he/she paid without investigating the reasons that led the worker to leave the job. This contradicts what is stated in the

⁵⁶ Unofficial Translation

⁵⁷ Unofficial Translation

Domestic Workers' Regulation, since according to Article 11 of the Domestic Workers' Regulation, the Ministry of Labour is required to investigate any complaint related to violating the obligations by the employer and the workers, in addition to taking the appropriate action in accordance with the Labour Law.

Based on the 2012 amendments on this regulation, Article 11.b stipulated that the Minister, or his authorized representative, has the right to refuse to grant or renew a work permit in case of finding the homeowner, or a member of his/her family, has violated the rights of the worker, subjected him/her to physical abuse, hurt, or ill-treatment, provided that the worker in such condition will have the opportunity to receive a work permit to work for another homeowner. This is the first provision which gives the worker the right to change the employer. However, the previous version was limited to coercion and physical abuse, while the definition of forced labour, according to the 1930 Convention includes all types of threats, abuse and mistreatment.

1.3.5.3. The regulations relating to migrant labour in the Qualified Industrial Zones

In 2007, the Minister of Labour issued instructions on the conditions and procedures for the recruitment of non-Jordanian workers in the Qualified Industrial Zones, issued under Article 4 of Regulations No. 36 of 1997 Concerning Work Permit Fees for Non-Jordanian Workers and its amendments. According to these instructions it is not permissible for the worker in the Qualified Industrial Zone to move from one productive sector to another⁵⁸. The employer is also responsible for repatriating the workers that he/she

⁵⁸ Article 9.a of Regulations No. 36 of 1997 concerning Work Permit Fees for Non-Jordanian Workers

recruited to their original country upon the legal expiration or termination of their contracts, and to duly prove their departure. The instructions do not explicitly provide the possibility for a worker to change their employer.

1.3.5.4. Workers in the Agricultural Sector

According to Article 3 of the Labour Law, workers in the agriculture sector are subject to the provision of the Labour Law, provided that a special regulation defining the provisions which are applied to such workers is to be passed. Unfortunately, until now this regulation has not been passed, which leaves a vacuum in the legal system allowing the employers to exploit the workers in the agriculture sector. That is in addition to the multiplicity of jurisprudence whether the Labour Law is applied on them or not⁵⁹. Ultimately, the absence of a clear legal framework for this category of workers contradicts Jordan's obligations.

1.3.6. The sponsorship system & police notification

The sponsorship system appeared in the fifties of the last century in West Asian countries in order to regulate the relationship between the migrant worker and the citizen employer. The aim of this system was to facilitate the arrival of the worker to the recruiting country by making the citizen who recruited him/her responsible for meeting the worker's needs, since he/she is an expatriate and away from his/her family. It means that the main objective of this system is to take care of the worker in the spirit of welcoming a guest and with a sense of hospitality, traditions for which the Arabs are well known. In addition, this system made the arrival of the migrant workers to the Arab

⁵⁹ For more details, see *Between the Rock and the Hard Place*, Tamkeen Center for Legal Aid, P.67

countries easier which brought about a sudden economic boom which then increased the need for migrant workers. The sponsorship system is still applicable, with slight differences, in Jordan, Lebanon and the Gulf Countries. Nevertheless, the mechanism of the application of this system turned out to be a practice that violates the basis of employment contract, which is supposed to be consensual⁶⁰.

The sponsorship system is based on the idea that the migrant worker cannot come to the recruitment country except through an employer known as “the sponsor”. The migrant worker is committed to work for this “sponsor” until the expiration of his/her contract, and cannot change his/her employer or return to his/her country of origin without the permission of the employer. The employer can report the worker who leaves his working place, and the competent authority forces such worker to return to the employer. It is the “sponsor’s” duty to ensure the repatriation of the worker after the expiration of his/her contract in case of it not being renewed. The expenses of the worker’s repatriation are to be covered by “the sponsor”.

The regulatory proceedings that the Egyptian workers have to follow in order to leave the country are a notable example of the Sponsorship System. They state that the Egyptian worker cannot leave Jordanian Territory before receiving a clearance from his or her employers. It makes the worker subject to the employer’s exploitation and blackmailing to order to receive this clearance, it additionally

⁶⁰ For more information please see; KAFA (enough) Violence & Exploitation, Policy Paper on Reforming the “Sponsorship System” for Migrant Domestic Workers: Towards an Alternative Governance Scheme in Lebanon, January 2012. Also H el ene Harroff-Tavel and Alix Nasri, TRICKED AND TRAPPED HUMAN TRAFFICKING IN THE MIDDLE EAST, ILO, 2003

creates a distinction between Egyptian workers and workers of other nationalities.

Such practices empower “the sponsor” to impose control over the migrant worker, since the worker cannot return to the home country or change the employer without an explicit consent from “the sponsor”. Furthermore, this system is being promoted by other practices done by "the sponsor" such as; withholding of passports and preventing the worker from leaving the working place as is the case of migrant domestic workers, for instance. The Sponsorship System serves also another goal, which is emphasizing that the presence of the worker in the recruitment country is temporary, even if he/she stays for a long duration, in order to not grant the right to demand access to nationality.

In reality, the sponsorship system does not only consolidate forced labour, but also contributes to finding cases of the contemporary form of slavery, through the imposition of full control over the worker which deprives them from their basic rights, and facilitates exploitation and violation of the related international and national standards.

Legally, the Labour Law and the Law of Residency and Foreign Affairs do not refer to the sponsorship system, and do not use the word "sponsor" at all, but this term appeared through the administrative practices of the Ministries of Labour and Interior. The word “sponsor” appears on the forms and official letters.

Based on what has been previously mentioned, the word “police notification”, which has no legal basis, appeared. It gives the employer, “the sponsor”, the right to report the worker’s leaving the workplace to the competent police station. The police station, in turn,

passes a notification against the worker treating him/her as a wanted person. After finding the worker, he/she is administratively detained until the employer decides what he deems an appropriate response; forcing the worker to return to the work place, or leaving him/her under detention or deportation.

The Public Security Department issued instructions which prohibit such practices based on requests received from human rights organizations concerned about this topic⁶¹. However, police stations still resort to such practices⁶².

Police notification and the sponsorship system do not only consolidate forced labour, but also violate the fundamental rights of workers and turn him/her into a wanted person instead of a worker in dispute or disagreement with the employer. This practice is not assigned to a legal basis and undermines the principle of the rule of law. It is for all the concerned parties' benefit to work on its abolition.

⁶¹ See , for example, Double Aliation, 2012, Tamkeen Center for Legal Aid, P.26

⁶² US department of state, Trafficking in Persons Report, June 2014 TRAFFICKING IN PERSONS REPORT JUNE 2014, p 223

Chapter Four

A Reading into Various Provisions in the Penal Code

Chapter Four

A Reading into Various Provisions in the Penal Code

It is appropriate, and necessary, to allocate a chapter of this analytical study to various Penal Code provisions due to their valuable role in criminalization and evading punishment to achieve justice and ensure security among members of the community.

The Jordanian Penal Code No. 16 of 1960 was passed. During previous years, more than 27 amendments were applied to some of its provisions to be in line with new occurrences and crimes in order to reduce its severity on individuals and greater society. Perhaps the most important amendment is the one which took place in 2011. It included more than 97 legal articles (Amended Code No.8 of 2011). The amendment revised many legal provisions and added new incriminating provisions. The most notable and prominent part of the amendment is the revision of provisions related to rape, indecent

assault, attacking or assaulting public officials, begging and others. The legislature adopted an approach in this amendment which tends to pose harsher penalties on specific crimes.

The Code includes a wide spectrum of penal protection aspects for many rights which are internationally recognized, such as the right to life, the right to personal safety, the right to freedom, the right to ownership, the right to property, the right to human dignity and other rights. It stated the criminal liability for breaching these rights and stipulated penalties commensurate with the gravity of the violation or abuse.

Nevertheless, the Code disregarded criminalizing a number of offences which have started to concern society and constitute serious violations of human rights. This primarily includes slavery-like practices, forced labour, child labour and begging. This is in spite of the fact that the general international trend prohibits and criminalizes these offences as they are closely tied to human dignity. These offences also pose a serious violation of human rights and restrict human freedom. They are also tightly linked to Trafficking in Persons which is criminalized by Jordanian legislation as per a special law in which legislative inadequacies have been already addressed above. It contributes to creating an environment which stimulates serious violation in the absence of protection and the weakness of prosecution mechanisms. Additionally, the lack of legislation that regulates practices and offences does not live up to the concept of human trafficking due to the absence of a national concept for some of its elements such as exploitation, and the ambiguity of some other terms create a stimulating environment for such crime and promotes the evasion of punishment for the perpetrators.

The crime of human trafficking is a set of acts which does not constitute by itself an independent crime, thus the link between the

Penal Code and combating human trafficking is strong. It comes as a result of contributing legal articles criminalizing human trafficking-related acts, whether directly or indirectly, to reduce the rate of human trafficking crimes. These include forced labour, slavery, child labour, prostitution, and the exploitation of migrant workers.

1. Forced labour and violations related to work conditions and environment

Forced labour is already discussed in Chapter Three. On the other hand, the Penal Code does not address violations related work conditions and environment, and does not ensure human dignity. The legislature might find it to be addressed by the Labour Law, although it is necessary to have these issues be addressed by the Penal Code. In spite of Articles 358 and 360 of the Penal Code criminalizing humiliation and ill-treatment, the provided penalties incur a 10JD fine and thus are not deterrent. As a result, amending the provisions of these articles and toughening the penalties may have a positive reflection on the protection of the rights of workers and ensuring their respectful treatment by employers.

No penal articles are mentioned in the Penal Code in relation to passport and personal identification confiscation which has allowed this offence to widely spread among employers to coerce labour into continuing working.

The Penal Code does not include any clear text that criminalizes the exploitation of workers and the coercion to sign clearance documents or promissory notes to ensure their full obedience to the employer. Article 418 of the Penal Code which addresses exploiting the vulnerability of a person to sign a promissory note, clearance, pledge or receipt or the annulment or amendment of such document, criminalizes this act. Unfortunately this criminalization is

under the condition for those who are subjected to this act to be under 18 years of age. This means that the provision of this article needs to be amended in order to provide all human beings, including labour workers, with sufficient protection.

2. Child Labour

The enforced Penal Code does not include any articles which criminalize child labour for defined ages or for having them recruited into hazardous occupations. The absence of such an article allows for the exploitation of children in occupations of a hazardous nature without having their exploiters being subjected to deterrent punishment. However, the legislature in the Labour Law prohibits recruiting children into hazardous occupations as defined by the minister. Unfortunately, this prohibition is not accompanied by criminalization except for what has is stated in Article 77 of Labour Law, which stipulates the payment of a fine, which is not a deterrent penalty commensurate with the gravity of recruiting children into a hazardous occupation and exploiting them for low wages and depriving them of proper working conditions. Consequently, it is highly essential to re-develop provisions to criminalize such acts since currently they increase the possibility of exposing children to be victims of human trafficking.

3. Begging

Provisions related to begging in general, women and children begging in particular were not successfully addressed. Child begging is listed under the worst forms of child labour, since child begging in most scenarios is forced labour for the benefit of other people. The remarkable increase of this phenomenon was notable during recent years, and there are no deterrent penalties in the Penal Code which criminalize begging in Article no. 398. In spite of amending the

provision of this article in 2011 to punish each person procuring another person to practice begging with a penalty of not less than one year in prison, it does not provide adequate protection to begging women and children. This insufficient protection has been mentioned in national and international reports which highlight the dramatically increasing phenomenon of begging in Jordan.

4. Prostitution and incitement to debauchery

Although articles 309 to 318 of the Penal Code criminalize and penalize prostitution, the code does not provide a clear and explicit definition of prostitution. However, it may define prostitution based on the previously mentioned articles as establishing a secret, illegitimate sexual relation in exchange for money; meaning that the purpose of such a secret, illegitimate sexual relation would be materialistic gain.

The law penalizes anyone for being engaged in, facilitating, inciting or forcing someone into prostitution. The provisions of articles 309-318, which are related to inciting debauchery and prostitution, the violation of general ethics and public moral norms, provides the same penalty for the criminal as for the victim. A considerable number of women working in this sector were victims of human trafficking at some point; as a result this chapter of the code should include a provision exempting individuals from the penalty when it is proven that the person is a victim of trafficking. Moreover, all the related legal material should be reconsidered and should tighten sanctions against the perpetrators.

5. Forced and underage marriage

In articles 279 and 280, in the chapter of crimes related to family, the Jordanian legislature addressed the provisions of marriage. The legislature penalizes celebration of a marriage otherwise than in

accordance with the personal status law. The provision of this article was amended in 2011, yet the legal loopholes and the latest updates were not dealt with. It tightened sanctions against many forms of marriage masked with legitimacy, which started to be listed under the concept of human trafficking. The law should criminalize each person who anticipates or facilitates such a marriage or for signing such a contract, for it is shrouded with suspicions of exploitation, coercion, and seduction, with the use of money that affects the validity of the marriage contact.

Jordan has not witnessed the appearance of types of marriage that exist in the neighboring countries, such as transactional marriage, temporary marriage, seasonal marriage and touristic marriage. Nevertheless, many CSOs and a number of national and international reports has monitored, with the increased number of Syrian refugees, a dramatic increase in the percentage of Syrian underage marriages to wealthy Arab and Jordanian men. There is a fear of a rise in this rate since it carries a suspicion of human trafficking. Therefore, all the legal provisions related to underage marriage and regulated by the Personal Status Law must be reconsidered, and simultaneously must criminalize some of its forms with deterrent penalties as part of the penal code in order to reduce its spread in the name of religion.

6. Non-enforcement of provisions of the law

The activation of some Penal Code provisions by the executive and judicial authorities will have a highly positive reflection on labourers' files, particularly in the case of women domestic workers, such as articles 178 & 179 which are related to the deprivation of liberty as observed in the detention centers, in the absence of legal documents and the infringements on a person's freedom; and articles 292 and the following ones which are related to rape and its

concept and definition, in addition to the expansion in the interpretation of the concept of moral coercion by the judiciary to include the influence of employers on workers as a form of such coercion.

Conclusion

After presenting the analysis of national legislation for combating the crime of human trafficking, including protection, prevention and prosecution, this study produced a number of findings and recommendations which are as follows:

Findings

1. Until the preparation of this study, Jordan did not sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990. In addition, Jordan has not signed a number of other important conventions, among them Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organize, and The Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Convention 154 of 1981 on Promoting Collective Bargaining, and Convention No. 189 on Decent Work for Domestic Workers. These conventions are important international instruments to combat forced labour and human trafficking.
2. The Jordanian legislature adopted the same terms used in the protocol to define the crime of human trafficking. Yet these terms have different meanings and implications which are specific and particular to public international law, and do not exist on the national level. As a result, the crime of human trafficking defined in national law is characterized as broad,

vague and imprecise due to the absence of clarification of the terms used. Based on the foregoing, it can be said that the legislative environment in Jordan does not correspond with the definition of the protocol. As a result, incorporating the definition of the International Convention into national law without appropriately customizing it causes many problems in its interpretation and application.

3. There are phrases overlooked by the Jordanian legislature such as “practices similar to slavery” which is defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. This convention stipulates “each of the States Parties to this convention shall take all practical and legislative and other measures to bring about purposively and as soon as possible the complete abolition or abandonment of the following institutions and practices whether or not they are covered by the definition of slavery”. Domestic law has also limited exploitation of certain forms of exploitation. It does not refer to it with the minimum term as mentioned in the Protocol.
4. Some acts mentioned in the definition constitute separate offences or crimes, such as kidnapping, fraud and forcing women into prostitution. This enables the judiciary to legally characterize human trafficking complaints under other legal descriptions which may appear more obvious such as abuse, indecent assault or deprivation of liberty, among other crimes.
5. Jordan's anti-human trafficking law does not refer to the right of the victim to be identified quickly and accurately through appropriate procedures and providing the state party officials with appropriate training and to have cooperation with the

competent authorities and Non-Governmental Organizations as required per international standards. Instead it has left it to the general rules of the code of criminal procedures to treat it as any other crime.

6. The public hearing of trials in human trafficking cases according to the general assets of the Jordanian law remains incompatible with international standards with are related to the consideration of human trafficking cases. The Jordanian legislature had better to stipulate the confidentiality of human trafficking cases and not leave it to the discretion of the court to consider the case a breach of public morality or not. However the practical application asserts that the trials of such crimes are to be implemented openly.
7. The Jordanian law did not address any obligation for public authorities to provide victims of human trafficking, when necessary, with information about the related judicial and administrative procedures, as required by the protocol and basic principles.
8. The Jordanian legislature does not highlight the importance of protecting the confidentiality of the child victim of human trafficking's identity as is the case in the International Protocol.
9. In spite of the fact that there is a provision in the national law in conformity with the protocol stipulating the necessity to establish a shelter for victims of human trafficking in order to rehabilitate them psychologically and socially, and passing a regulation in such regard, the referral to the shelter is based on a decision of the General Prosecutor and not only for the status of the person as a potential victim of human trafficking. Additionally, the regulation stipulates defining the length of

the stay in the shelter to only 2 months, despite the fact that this period is not sufficient at all.

10. The national law does not address judicial assistance to the victim which is a critical issue considering that most victims of human trafficking are destitute and cannot cover the costs of litigation and attorney fees. Moreover, the provisions stated in the Jordanian Bar Association Law are insufficient. The trafficking victim cannot benefit from the legal assistance stipulated in article 208 of the Code of Criminal Procedures No. 9 of 1961 and its amendments, as the legal assistance for the appointment of a lawyer by the government treasury will only cover the fees for an attorney appointed to a defendant who stands accused of committing crimes for which the penalties fall under capital punishment or a life sentence. It does not cover, under any circumstances, the victim. The victim of human trafficking cannot benefit from free legal aid even if his financial situation prevents him from appointing an attorney.
11. There are no special provisions in the national law which enable the victim to be briefed and participate in judicial procedures, as required by the Basic Principles of the rights of human trafficking victims. Particularly taking into account the fact that trafficked victims, according to international reports, are non-Arab and who cannot speak Arabic.
12. The national law does not define any special status for victims who are children, but simply included them in the adult definition without taking into consideration their age, sex and special needs, as the basic principles and the protocol do. However, they were included within the optional elements of the victims' rights. Still, it would have been preferable had

they been incorporated into the national legislature, due to the gravity of the effects these crimes have on children.

13. The Jordanian law does not ensure the victim's right to compensation in the same manner as that of the protocol or basic principles. It does not stipulate any type of compensation for the victims that corresponds with the nature of the case or the possibility of obtaining compensation. This makes this issue subject to the general principles of compensation that are addressed by what is known as a 'personal claimant' and the mechanism of obtaining compensation for crimes of the perpetrators. Thus the affected person has the right to claim compensation as a "personal claimant" in front of the court which considers penal cases. The national law also does not address the victim's right to moral compensation and appeasement as stated in the Basic Principles of the rights of human trafficking victims.
14. The law does not address the definitions of both the victim and the affected person in the anti-human trafficking law in spite of the importance of the application of this law.
15. Some crimes have been committed but the criminal intent is not available, such as in the case of passport confiscation, deprivation of off days, or not allowing the worker to leave the house under any circumstances. These crimes are not committed with the purpose of exploiting or threatening the victim. They are usually committed to protect the financial rights of the employer and to protect the family and preserve their social image.
16. Human trafficking penalties do not include any provisions that criminalize participation in and initiation of a crime. In

addition, it does not provide penalties for the death of the victim as a result of human trafficking.

17. The deportation and the absence of translation facilities and prolonged judicial procedures in the absence of provisions that make obsolescence of labour rights after 2 years. This issue is exacerbated as after three years the victims of human trafficking lose the possibility to obtain judicial remedy to reclaim their rights.
18. The Law No. 24 of 1973 on Residency and Foreign Affairs does not include a provision that provides foreigners who have been victims of trafficking with facilities or exemptions. Thus the foreign victim is treated as the one violating the residency law. Article 29 of the Residency Law lists the categories which are not subject to the provisions of the law. This list includes what is stated in Article (h) which stipulates: Persons exempted by the Minister on account of special considerations connected with international or humanitarian courtesy or the right to political asylum or in application of the principle of reciprocity. Victims of human trafficking are not included within these categories.
19. The Minister of Interior has the power and authority to exempt the foreign victim of human trafficking from the provisions of this law, there is a need for an explicit provision that grants the victim of human trafficking residency in order not to allow the employer to use the violation of the residency law as a means to blackmail the victim.
20. Returning to the Residency Law, the fines that are accumulated on the migrant worker prevent him from returning to his home country. The migrant worker is committed to paying 1.5JD for each day he remains in Jordan

without a residency permit according to the Returning to the Residency Law. The Minister of Interior, upon the recommendation of the secretary general has the power to exempt the migrant worker from the fine if it does not exceed 250 JDs. If it exceeds this amount, the exemption should be based on the decision of the council of ministers. Based on practice, it is evident that the employer is committed to issuing a residency and work permit for the migrant worker. However, if the employer neglects to fulfil this obligation, the migrant worker is the one who must pay the fines. Therefore the worker's exemption from the fines is for the benefit of the employer failing to fulfil his legal obligations. Consequently, it is a requirement to have an explicit provision exempting the victim of human trafficking from fines and facilitate his repatriation. Jordanian Law highlighted this matter in article 5 (c) of the Jordanian Anti-Human Trafficking Law as one of the committee's tasks. This is insufficient. It is necessary to have an explicit legal provision in such regard.

21. The right to request asylum from persecution is a fundamental human right. The relevant authorities should enable the trafficked victim to contact the UN High Commissioner for Refugees (UNHCR) if he/she so wishes.
22. The Jordanian Penal Code and other penal laws lack any provision that criminalizes forced labour, despite being prohibited by the Constitution. It is necessary to have a provision that criminalizes this practice and imposes an appropriate penalty for committing it. Furthermore, the 1930 Convention necessitates the State party to consider forced labour as a crime, and not as a labour violation like that of any other violations.

23. The Crime Prevention Act is used by some employers to coerce foreign workers to work for them. Thus they use it as a means of threat. This was prohibited by the 1930 agreement, in other words, the Crime Prevention Act promotes practicing forced labour by the powers it grants the local governor which falls within the concept of the administrative control. This control is represented by restrictions and constraints reflected in the individuals freedoms and to protect public order.
24. There is no provision in the Regulation of Domestic Workers no. 90 of 2009 which ensures the worker's right to retain his/her passport. To avoid any legal and practical problems, there has to be an explicit provision that punishes the employer for withholding the passport of a worker to resolve any conflict in diligence; in addition to adopting an effective mechanism for the return of the passport which was illegally confiscated to the worker.
25. Article 10 of the Regulation of Organizing Private Recruitment Offices for Domestic non-Jordanians Workers of 2009 conveys that once the worker leaves the place of employment, the employer deserves compensation for the amount of money paid, without investigating the reasons that led the worker to quit his job. This contradicts what is stated with the Regulation for Domestic Workers. According to Article 11 of the Regulation for Domestic Workers, the Ministry of Labour must investigate any complaint regarding the violation of the obligations of the employer and workers, in addition to taking the appropriate action in accordance with the labour law.
26. According to Article 3 of the Labour Law, workers in the agricultural sector are subject to the provision of the Labour Law, provided that a special regulation defining the provisions which are applied to such workers is to be passed. Unfortunately, until now this regulation has not been passed,

which leaves a vacuum in the legal system allowing the employers to exploit the workers in the agricultural sector. That is in addition to the multiplicity of jurisprudence whether the Labour Law is applied on them or not.

27. Police notification and the sponsorship system do not only consolidate forced labour, but enables its existence and also violates the fundamental rights of workers and turn him/her into a wanted person instead of giving them the status of a worker in dispute or disagreement with the employer. This practice is not founded on a legal basis and undermines the principle of the rule of law. It is for all the concerned parties' benefit to work on its abolition.
28. The Penal Code does not include incriminating provisions and deterrent penalties for some of the acts that may lead to human trafficking, such as begging, child labour and exploitation of women in prostitution, as well as violations related to the work conditions and environments.

Recommendations

1. Redefine the crime of human trafficking with more accuracy and clarity which corresponds with the national legislation in Jordan. The legislative definition should correspond with more the national legislation than with the protocol in order limit the challenges in the enforcement of this law which is due to its vague definition.
2. Include the phrases overlooked by the Jordanian legislature in the definition of the crime such as “similar to slavery practices” which has a definition in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, and not to limit exploitation in certain forms of practices.
3. Under take efforts to better ensure identified victims are not punished for unlawful acts committed as a direct result of being subjected to human trafficking, such as immigration or prostitution violations.
4. Amend the law which proscribes the same penalty for the convicted of a crime as for the victim of the crime (*e.g., a trafficking victim forced to engage in prostitution*).
5. Harmonize the anti-human trafficking law and the Penal Code since some of the acts included in the definition of human trafficking in the anti-trafficking law, constitute separate offences under the Penal Code, such as kidnapping, fraud and forcing women into prostitution. This encourages the Judiciary to legally characterize human trafficking among other legal descriptions which are more obvious such as abuse, indecent assault, deprivation of liberty, or other crimes.

6. The anti-trafficking law should stipulate the right of human trafficking victims to be quickly and accurately identified, through adopting the appropriate procedures including and providing the appropriate training for state officials and cooperation between the competent authorities and non-governmental organizations as stipulated by international standards.
7. Include a clear and explicit provision on the confidentiality of human trafficking cases trials and it should not be left to the discretion of the court to consider if it is a breach of public order or morality.
8. Provide a legal provision obliging the public authorities to provide victims of human trafficking when necessary with information about the judicial and administrative proceedings in a language the victim understands, as required by the protocol and basic principles.
9. Explicitly highlight the importance of identifying the human trafficking victim, and maintaining the confidentiality of his/her identity. If possible the Jordanian legislature also must emphasize on keeping the child's identity secret as required by the international protocol.
10. Amend the shelters for the victims and those affected by human trafficking crimes which is applied in the Regulation of Shelters for victims of human trafficking and affected people of 2012. It should allow victim referrals without requiring approval from the Attorney General. It should be sufficient to be a suspected victim to be accommodated. It is also important to enable the victim or suspected victim to extend the duration of stay at the shelter until the completion of the proceedings trial.

11 . Explicitly stipulate in the law to prevent human trafficking to provide victims with judicial assistance, especially since most of the victims of human trafficking are destitute and cannot cover the cost of litigation and attorneys' fees.

12 . State in the anti-human trafficking law to have a special status for child victims of human trafficking and not to including them within the status of adults in this law.

13 . Explicitly stipulate in the anti-human trafficking law that the victim has the right to compensation, as well as moral compensation and appeasement, as stipulated in the protocol and the basic principles.

14 . Define both the victim and the affected person in the anti-human trafficking law in view of its importance in enforcing this law.

15 . Harshen the penalty for the crime of human trafficking, and add a provision concerning penalties for participation and initiation.

16 . Specifically criminalize the withholding of passports, the refusal to grant time off and prevention of leaving the workplace since these actions are not considered crimes in accordance with the general rules.

17 . Search for legal solutions that prevent deportation of workers, and provide them with the required translation and produce the means to accelerate the pace of litigation in the presence of provisions that make for obsolescence for two years of labour rights and 3 years after which the workers lose the right to access remedy, and thus guarantee their rights.

18 . Amend the Residency and Foreign Affairs Law (24) of 1973 to stipulate providing facilities and exemptions to the foreigner

who has been the victim of human trafficking, and not to be treated as a migrant in breach of the residency law. He/she should be included in the categories enumerated under Article 29 of the Residency Law who are subject to the provisions of the law.

19. Grant permanent or temporary residence to a victim of human trafficking, in order to prevent the employer from using the violation of residency law as a means of blackmail the victim as well as providing the victim or suspected victim with temporary working permits.

20. Exempt victims of human trafficking from the fines imposed under the residency law and facilitating his/her return to his/her country. The article (5 / c) of Jordanian anti-human trafficking law states that this matter is one of the committee's tasks. This is insufficient; there must be an explicit legal provision in this regard.

21. Adopt an effective mechanism by the concerned authorities to enable foreign victims of trafficking to contact the UN High Commissioner for Refugees (UNHCR) should they express the need to apply for asylum.

22. Since Jordan is party to the 1930 Convention and other conventions that prohibit forced labour, the most important steps it must take are: 1. to enact appropriate legislation and to take appropriate administrative measures to eliminate this practice and punish the perpetrators as forced labour is a crime; 2. to take the appropriate measures for the prevention of forced labour, particularly for the potential victims of said crime; 3. to investigate when there is a reasonable suspicion that a person might be a victim of trafficking.

23. The Jordanian Penal Code and other penal laws must explicitly criminalize forced labour which is prohibited by the Constitution. It is a necessity to have a provision that criminalizes this act and imposes an appropriate penalty for committing it. Furthermore, the 1930 Convention necessitates the state party to consider forced labour as a crime, and not as a labour violation similar to that of any other more common violations.

24. It is important to amend the Prevention of Crimes Act so that it is not used by employers to force foreign workers to work for them. And thus using it as a means of threat of a type of punishment which is prohibited by the 1930 agreement. In other words, the Crime Prevention Act should not promote practicing forced labour by the power it grants the local governor which falls within the concept of administrative control. This control is represented by restrictions and constraints reflected in the individual's freedoms and activities to protect public order.

25. The Regulation of Domestic Workers No. 90 of 2009 must stipulate a provision which ensures the worker's right to retain his/her passport. There is also a need to find a provision that explicitly states punishing the employer for confiscating the passport of the worker to resolve any disagreement in diligence and adopt an effective mechanism for the return of the passport which was illegally confiscated from the worker.

26. Remove the discrepancies between Article 10 of the Regulation of Organizing Private Recruitment Offices for Domestic non-Jordanians Workers of 2009 which stipulates that once the worker leaves his place of work, the employer deserves compensation for paid money without investigating the reasons leading the worker to leave; and the provision of article 11 of the Regulation of Domestic Workers which stipulates that the Ministry of Labour investigates any

complaint regarding the violation of the obligations of the employer and the workers and take the appropriate action in accordance with the labour law.

27. Issue a regulation for workers in the agriculture sector based on the provisions of Article 3 of Labour Law to fill the legal vacuum enabling the employer to exploit them. In addition, allow the multiplicity of jurisprudence whether they are subject to the labour law or not.

28. Cancel the regulatory procedures which are related to the vacation system of Egyptian workers, cancel the police notification and the sponsorship system that consolidates the existence of forced labour.

29. Revise and harshen the penalties for the exploitation of women in prostitution and begging, child labour, working conditions within the legal environment of the Penal Code. Moreover, it is important to criminalize forced and underage marriage and impose penalties.

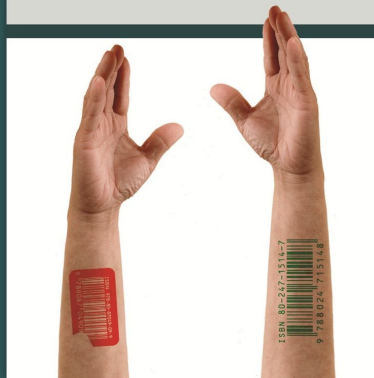
30. Activate and enforce provisions of the Penal Code by the executive and judicial authorities such as the provisions of articles 178/179 which address administrative detention without any legal basis and the infringement on the freedom of any person; as well as the provisions of Articles 292 and onwards which address rape and its definition; in addition to the expansion of the interpretation of the concept of moral coercion carried out by the judiciary to include the influence of the employer on the worker as a form of moral coercion which has a significant and positive reflection on the workers' status, especially domestic workers.

31. Jordan must work towards the ratification of the following; the International Convention on the Protection of the

Rights of All Migrant Workers and Members of Their Families of 1990, Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organize, and The Right to Organize and Collective Bargaining Convention of 1949 (No. 98); Convention 154 of 1981 on Promoting Collective Bargaining and Convention No. 189 on Decent Work for Domestic Workers.



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