

National and International Mechanisms to Combat the Trafficking in Persons: An Iraqi Case Study

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This paper analyses the crime of human trafficking under national and international laws but with a special focus on Iraqi legislation. This paper examined human trafficking as a transnational organised crime and human trafficking as a crime against humanity by examining whether the International Criminal Court can be considered as an effective organisation to address human trafficking as a crime against humanity. This paper also showed the efforts made by the Iraqi Government to address the crime of human trafficking and the effectiveness of the Iraqi Anti-Trafficking Act Law No. 28 of 2012. Accordingly, this study concluded that human trafficking is a multi-dimensional problem and that the long-term success of combating this crime cannot be accomplished by taking a disjunctive approach to address its many facets. Therefore, if a unified approach is attained, it will result in a permanent solution or at least be a major contributing factor in the fight against the problem.

Key words: *Trafficking of persons, Crimes, Punitive measures, Victims, Iraq.*

Introduction

In spite of the abolition of all forms of legally sanctioned slavery in almost all the countries of the world, slavery still persists under the guise of human trafficking. It has also become increasingly difficult to ignore the fact that slavery was never completely eliminated; it just adopted a new terminology, i.e. ‘human trafficking’. By way of illustration, millions of people all over the world are exploited, sold like chattels, forced to work for a pittance or nothing, and live like slaves. Nowadays, human trafficking is usually referred to as ‘modern-day slavery’. That is to say, the term ‘human trafficking’ is merely a polite or nicer way of

saying ‘modern-day slavery’. It has also been debated that human trafficking should be looked upon as a historical issue instead of a modern-day problem because it is not new (Hijij, H., 2015).

Furthermore, no country can consider that it is immune to human trafficking. More specifically, human trafficking has been ranked as the third most profitable crime after the smuggling of drugs and illegal weapons. In this regard, human trafficking, together with drugs and weapons smuggling, are now the leading sources of income for organised crime syndicates, as together they generate billions of dollars. Moreover, human trafficking is considered to be one of the most serious crimes in the entire international community. It is estimated that about six to eight hundred thousand persons are trafficked annually across international borders and this number increases to about two to four million if intra-border human trafficking is included. In addition to this, citizens from 152 different countries have been identified as victims of human trafficking in 124 countries. As such, the perpetrators of human trafficking crimes have been prosecuted under many different types of legislations. Moreover, the law enforcement officers face numerous difficulties in identifying the trafficked victims because of the clandestine nature of human trafficking (UNODC, 2014).

It is important to note that human trafficking is an unlawful activity that is connected with transnational organised crime. Unlike the earlier attempts to tackle human trafficking as a human rights issue, since the 1990s, efforts have been made to identify human trafficking as a transnational organised crime. This new approach is embodied by the United Nations Convention against Transnational Organized Crime (UNCTOC). The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which supplements the UNCTOC is hereinafter referred to as the Trafficking in Persons Protocol (TIPP) (Annex, I. I., 2000).

Human trafficking is now a fast-growing transnational organised crime. In particular, the number of criminal organisations that are involved in human trafficking has increased recently. Specifically, human trafficking as a transnational organised crime has risen rapidly in the last few decades due to several reasons: the first reason is that there is only a small risk of prosecution; secondly, there are huge profits to be made; thirdly, there are minimal initial costs for the running of the operations; and lastly, is the ever increasing demand for personnel (Ibrahim, H., 2013).

It should be noted that the Iraqi Penal Code, Law No. 111 of 1969 does not criminalise human trafficking per se. It merely criminalises trafficking-related offences such as the exploitation of persons for prostitution, abduction, fraud and deception, and the abuse of persons who are vulnerable. Therefore, the Iraqi Anti-Trafficking Act, Law No. 28 of 2012 is regarded as the first step to address the crime of human trafficking (Hijij, H., 2015). Notably,

the main aspect of this law is to combat the crime of human trafficking. This study highlights the legislative gaps in the Iraqi Anti-trafficking Act, concerning the definition of the crime of human trafficking. The first gap is the use of the plural form to refer to the victims of human trafficking and the second, is the absence of definitions of the different forms of human trafficking.

Research Design and Procedure

This study uses the qualitative approach. The theoretical approach and an analytical examination as well as international and national instruments were also applied in this study. Comparisons with several of the international laws related to this type of serious crime were also carried out. In addition, a review of the various related sources was undertaken.

Definition of the Crime of Human Trafficking

At the outset, it should be emphasised that it is not easy to issue a consistent definition of human trafficking (Al Marzouq, K., 2005). This is because there are various ways of defining this type of crime. Incidentally, in 1994, the United Nations General Assembly (UNGA) defined that this crime is an illegal and clandestine movement of people across national and international borders, mainly from developing countries and those with economies in transition. The objective of this activity is to force women and female children into sexually or economically cruel and exploitative circumstances to enable the recruiters, traffickers and crime syndicates to derive huge financial profit from it. Other illegal activities linked to human trafficking include forced domestic labour, bogus marriages and adoptions, and clandestine employment. This definition might be disputed because its scope is narrow, and its focus is confined to the movement of people ‘from developing countries and some countries with economies in transition’. What's more, the UNGA's definition restricts human trafficking to just women and female children. In doing so, the other categories such as men and male children are disregarded. However, this definition includes several end purposes of human trafficking such as forced domestic labour, bogus marriages and adoptions, and clandestine employment as well as sexual exploitation (Raymond, G., 2002).

In the same year, the Inter-American Convention on International Traffic in Minors defined trafficking as “the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means”. The aforesaid definition has a strong impact on the definition of human trafficking that was approved by the UN in 2000 (Janabi, L., 2015). This definition makes use of expressions such as ‘unlawful purpose’ and ‘unlawful means’, which include the two main elements of human trafficking, i.e. purpose and means, and which were incorporated in the 2000 definition.

Also, a Joint Action was released by the Council of the European Union in 1997, whereby it defined trafficking as any behaviour which enables the entry into, transit through, reside in or depart from any territory of a member state with the objectives of sexually exploiting a person other than a child for gainful purposes and where coercion is used, especially violence or threats, or deception is used, or there is misuse of authority or other pressure resulting in the person not having any real and acceptable choice but to succumb to the pressure or abuse involved. It also includes trafficking in persons other than children with a view to their sexual exploitation in order to derive a profit from it (Gallagher, T., 2010). However, this definition was condemned for being narrow. In fact, the migratory aspects were highlighted, and it was envisaged that sexual exploitation is the only potential end result of trafficking.

Moreover, a recommendation on trafficking was accepted by the Committee of Ministers of the European Union. The recommendation defined trafficking as the procurement by one or more persons (natural or legal) and/or the organisation for the exploitation and/or transport or migration of (legal or illegal) persons, even if consent has been granted, in order to sexually exploit them, inter alia, by using coercion, especially violence or threats, deception, misuse of authority or a position of vulnerability. This definition takes into account the main elements of human trafficking; the action, means and purpose elements. Also, this definition does not have any gender limitations. Furthermore, the consent of the trafficked victims is irrelevant in human trafficking (Ibid, 22). However, this definition has been criticised because its focus is only on sexual exploitation and completely disregards the other end purposes of human trafficking.

Moreover, not too long before the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime — which is now commonly referred to as the Trafficking in Persons Protocol (TIPP) — in 2000, the UN Special Rapporteur on Violence against Women suggested that human trafficking should be defined as "the recruitment, transportation, purchase, sale, transfer, harboring or receipt of persons: (i) by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage for the purpose of (ii) placing or holding such person, whether for pay or not, in forced labor or slavery-like practices, in a community other than the one in which such persons lived at the time of the original act described in (i)" (Potts, G., 2003). This definition is broader and more inclusive when compared to earlier definitions. It included both men and women in the definition. Similarly, this definition shows that trafficking can happen for a number of exploitative purposes. More precisely, this definition attempts to fill the conceptual void between process and result by asserting that the human trafficking chain includes both the process of human trafficking (the action element) and the result of human trafficking (the purpose element). More importantly, the TIPP defines human trafficking as the recruitment, transport, transfer, harbouring or receiving of

persons, through the use of threat or force or other types of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or giving or receiving of payments or benefits to attain the consent of a person that has control over another person, for the objective of exploitation. Exploitation shall include, at the very least, the prostitution of others or other types of sexual exploitation, forced labour or services, slavery or practices analogous to slavery, servitude or the trafficking of human organs. It can be contended that Article three (3) of the TIPP defined 'trafficking in persons' for the first time (Gallagher, T., 2010). Furthermore, the definition aims to give consistency to and consensus on the phenomenon of trafficking throughout the world. In particular, this definition is a guideline for state parties to use this protocol to implement the most effective legislation to criminalise human trafficking. In addition to this, the definition categorises human trafficking as a crime against all persons, not just women and children. Together, the definition of human trafficking envisages several purposes of trafficking, in addition to sexual exploitation. More importantly, the definition of trafficking in persons in the TIPP is the most widely accepted and agreed upon worldwide (Piotrowicz, R., 2002).

Therefore, by examining the earlier definitions, it can be said that the definition of trafficking in persons in the TIPP is the best existing definition, but not the best possible definition because of the following reasons. Firstly, this definition offers a unified meaning to what human trafficking represents. Secondly, this definition does not limit human trafficking to only one purpose for it includes a list of exploitative purposes. Thirdly, this definition treats human trafficking as a crime against all persons instead of just women and children. However, it is apparent that it has a special focus on women and children. Fourthly, this definition does not need the crossing of borders for an offence to be committed. Finally, this definition contains all the main elements of human trafficking. These elements will be addressed in the following section (Gallagher, T., 2010).

The Elements of Human Trafficking Crime

Three elements of the crime of human trafficking can be derived from the TIPP's definition of trafficking. The first of these elements is the 'actus reus' of the human trafficking process. This element is the process or act, i.e. what was done in the course of human trafficking. The actions here include the recruitment, transport, transfer, harbouring or receipt of persons. The action element can be achieved through several activities. However, the inclusion of 'harbouring' and 'receipt' can be criticised because they refer to the process and the end condition of human trafficking. In the case of trafficking in children, only the action and purpose element are required (Whitman, A., & Gray, D., 2015).

The second element of human trafficking crime is the means, which is part of the actus reus. This element is the method by which the human trafficking is carried out. It includes threat or



use of force or other types of coercion, abduction, fraud, deception, misuse of power or position of vulnerability or giving or receiving of money or benefits to obtain the consent of a person that has control over another person (Gallagher, T., 2010). However, this element is not applicable to trafficking in children and only refers to trafficking in adults. According to the TIPPP, the means element is not relevant if the trafficked persons are below eighteen years old. In such cases, the prosecution needs to prove the presence of the action and purpose elements. However, it must be noted here that coercion is important to the idea of human trafficking. Similarly, coercion is what differentiates trafficking from other almost similar phenomena. For instance, the smuggling of migrants, legally and conceptually. In addition to this, coercion necessitates the use of threats or force. In addition, other means of trafficking have been categorised as additional means. For instance, the abuse of power or a position of vulnerability (John, W., Perrin, B., & Reichel, P., 2011). Also, under the TIPPP, the consent of the trafficked victims is deemed to be irrelevant when one of the means of human trafficking have been implemented, as the consent of the trafficked victims would be unimaginable under those situations. On this matter, the 'Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto' stipulates that once it is proven that deception, coercion, force or other prohibited methods were used, then the consent becomes irrelevant and can no longer be used as a defence (Kendall, M., & Funk, T., 2012).

The third and final element is the purpose, which is made up of a part of the actus reus and the mens rea of human trafficking. This element is the goal and it is the reason why human trafficking is carried out. Specifically, the main purpose of human trafficking is exploitation and it includes exploiting others through prostitution or other forms of sex-related activities, forced labour or services, slavery or practices similar to it, servitude or the removal of organs (Gallagher, T., 2010). The purpose element satisfies the requirement of mens rea, as per the definition of human trafficking. Although the main purpose of trafficking is to exploit the victims, unfortunately the TIPPP did not define exploitation and instead it provided a list of exploitative acts. Accordingly, in human trafficking crime, all of these elements must be present. In other words, no less than one component of each element of the human trafficking crime must be present. However, in the case of trafficking in children, the means element is not required. This is because the children cannot give informed consents under human trafficking situations. In this regard, the TIPPP stipulates that the recruitment, transport, transfer, harbouring or receiving of a child for exploitative purposes shall be deemed as "trafficking in persons" even if none of the means are involved. As such, it is contended that these elements (the action, means and purpose elements) give human trafficking its particularity (John, W., Perrin, B., & Reichel, P., 2011).

Trafficking in Persons a Crime Against Humanity

The focus of this section will be on human trafficking as a crime against humanity, specifically under the category of enslavement. This is because human trafficking was explicitly placed under the enslavement category in the Rome Statute of the International Criminal Court (RSICC) (UN, 1999). However, the RSICC did not define human trafficking. As such, this section will look at the extent to which human trafficking satisfies the legal definition of enslavement. Firstly, enslavement means placing a person under a state of slavery, servitude or forced labour which is contrary to the long established and globally recognised standards of international law. Moreover, since 1945, enslavement has been considered as a crime against humanity and it contains the elements of slavery, slavery-like practices and forced labour. Further, the trial chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) noted that additional indications of enslavement include exploitation and exaction of forced or compulsory labour or service. In addition, the insertion of slavery, servitude or forced labour under the concept of enslavement was affirmed in Article 18(D) of the 1996 draft code (Gallagher, T., 2010). According to the trial chamber of the ICTY, the definition of enslavement is a reflection of customary international law and this definition was accepted by the appeals chamber. It noted that the conventional concept of slavery found in the 1926 Slavery Convention, often referred to as ‘chattel slavery’, has evolved to include the various modern forms of slavery which are also founded on the use of any or all of the controls that are attached to the right of ownership. Accordingly, it can be seen that the difference between conventional and contemporary slavery is a matter of degree, not substance (Ibid, 186).

Furthermore, it can be debated that the concept of slavery has expanded to include human trafficking. To be more exact, understanding what comprises slavery from a legal viewpoint has evolved to include modern types of exploitation and trafficking in persons. Therefore, human trafficking has been imagined to be a type of slavery because slavery is inclusive of human trafficking. In this regard, it should be emphasised that it is hard to draw the line between human trafficking and slavery because of the enlargement of the notion of slavery. Furthermore, it can be argued that human trafficking can amount to slavery when a trafficker has control over a trafficked person because the trafficker owns the trafficked persons, as if the person is a commodity (Justin, H., 2012).

However, this can be challenged because the relationship between human trafficking and slavery is not well defined in international law. This might be because certain aspects of human trafficking in some situations may include slavery, but others will not. It is worth mentioning that the concept of slavery can be extended to include practices like forced labour, prostitution and debt bondage which are generally associated with human trafficking. However, other facets of human trafficking do not obviously come within the idea of

ownership. One counter argument asserts that there is a clear relationship between human trafficking and slavery (Gallagher, T., 2010). For instance, the organised movement of people for the purpose of exploitation across borders is a common factor in human trafficking and slavery practices. Furthermore, human trafficking and slavery activities are motivated by profits and include control over other people. Moreover, human trafficking and slavery are gross and systematic violations of human rights. In particular, references to human trafficking and slavery are used interchangeably within the international legal framework as both of them are concerned with the exploitation of people for profit (Justin, H., 2012).

According to the 1926 Slavery Convention, any practice, irrespective of its designation, can be deemed to be slavery if it concerns any or all of the powers attached to the right of ownership. Of equal importance, is that there is a substantive relationship between human trafficking and slavery. This relationship can be seen in the definition of trafficking in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which supplements the TIPP, as the definition deems slavery to be an exploitative act (Defeis, F., 2003).

The relationship between trafficking in persons and slavery are found in several international instruments. For instance, the Council of Europe Convention on Action against Trafficking in Human Beings (CoE) states that trafficking in human beings may result in the victims becoming slaves (Gallagher, T., 2010). Another example of the relationship between human trafficking and slavery is contained in the Charter of Fundamental Rights of the EU. According to this Charter, the prohibition of human trafficking is listed under the prohibition of slavery and forced labour (Sembacher, A., 2005).

It is noted that the European Court of Human Rights admits that the expression ‘trafficking in persons’ is not used in Article four (4) of the European Convention on Human Rights. Article four (4) stipulates that no one shall be held in slavery or servitude and neither shall they be obliged to perform forced or compulsory labour. However, the European Court of Human Rights asserted that, under the Vienna Convention on the Law of Treaties, according to the general rules of interpretation, the interpretation of a treaty must be in harmony with the ordinary meaning and in line with the object and purpose of the treaty. Therefore, it is not necessary to classify whether an action is deemed to be slavery, forced and compulsory labour, or servitude. It is more important for the court to consider human trafficking, as defined in the TIPP and CoE, to be a procedure that falls within the scope of Article four (4) of the European Convention on Human Rights (Allain, J., 2010).

It is worth noting that, in line with the European Court of Human Rights, human trafficking is founded on the exercise of powers that is attached to the right of ownership. Therefore, it is clear that human trafficking, according to the court, is based on slavery because the 1926



Convention to Suppress the Slave Trade and Slavery defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”, and this is believed to be the approach the court relied on when adjudicating cases on human trafficking (Ibid, 551). This approach has been criticised because the European Court of Human Rights has narrowed the scope of the exploitative purposes in the TIPP by limiting human trafficking to just one practice, i.e. slavery. In conformity with the TIPP, the list of exploitative purposes includes the exploiting of persons by forcing them into prostitution or other forms of sexual exploitation, forced labour or services, slavery or other similar practices, servitude or the removal of organs (Ibid, 553).

It is now clear that, the European Court of Human Rights, in *Rantsev v. Cyprus and Russia*, when handling human trafficking-related cases, did not explain the elements of human trafficking and in what way these elements are linked to Article four (4) of the European Convention on Human Rights. Therefore, it can be argued that human trafficking does not overlap with Article four (4) of the European Convention on Human Rights because the TIPP forbids certain actions and means that can lead to the exploitation of the victims, while the Article forbids the actual abuses. Furthermore, the exploitation, which falls under the aforementioned article, ought to be linked to the action and means elements of human trafficking. It can be argued that slavery must not be given a broad meaning that goes beyond the limits stated in the 1926 Slavery Convention (Pati, R., 2011). To be more precise, it is important to realise that the exploitative and harsh conditions do not amount to slavery. Equally important, is the fact that the European Court of Human Rights does not use the two terms, i.e. trafficking in persons and slavery, synonymously. The aforementioned court merely expanded the extent of Article four (4) by making the article applicable to all forms of exploitation. The importance of this, is that exploitation is deemed to be the purpose of human trafficking (Allain, J., 2010).

Trafficking in Persons as a Crime under Iraqi Legislations

In Iraq, the Abolition of Slavery Act was the first law to tackle the issues related to slavery. More specifically, in accordance with this law, slavery was abolished in all the territories within Trans-Iraq. Furthermore, under this law, all Iraqi law courts are authorised to issue certificates of emancipation to persons who are emancipated by this law. Also, any contract or agreement that enslaves any person into marriage, services or other purposes, shall be void at initio. Along with this, any contract which contains a condition or pledge to buy, sell, enslave anyone or any other practice to do so, shall be considered as null and void under this law. Finally, persons found guilty of violating this law can be imprisoned (Hammad, M., 2012).

The Iraqi Constitution of 2005 laid emphasis on the abolition of all types of slavery and servitude. It also deemed that forcing a person to work against his will and without the presence of compelling circumstances is a breach of the person's constitutional rights. The Iraqi Constitution confirmed that nobody should be compelled to work, except in a state of necessity or as a result of a conviction by a court (Article 37/3 of Iraqi Constitution of 2005). Furthermore, forcing a person to work against his will and without the presence of compelling circumstances is a violation of the law. The Iraqi laws do not allow forcing a person to work without his consent unless there is a need to prevent an accident from happening, correct the results of the accident or if there is a force majeure, such as a state of war, occurrence of a public danger, fire, flood, famine, earthquake or serious epidemic that requires such work. However, it should be emphasised that the work should not go beyond the worker's capacity and it should be within the requirement of the circumstances (Janabi, L., 2015).

Law No. 23 of 2007 authorised the Iraqi Government to submit the papers that are required to join the TIPP. This step was significant because the TIPP is deemed to be the most important and first international legal tool to comprehensively address the crime of human trafficking, for it covers all the aspects of the crime. By submitting the papers needed to join the protocol, Iraq was committed to conform to the international standards in tackling human trafficking. It also had the greatest impact on the legislating of the Anti-Human Trafficking Act, Law No. 28 of 2012, after the Iraqi legislation was not contained in provisions to criminalise the act or prescribe the punishment for this crime. In line with Article two (2) of this law, the Ministry of the Interior set up a committee known as the Central Committee against Trafficking in Human Beings, in order to achieve the goals of this law (Ibrahim, H., 2013).

The Iraqi legislature defined trafficking in persons under the Anti-Human Trafficking Act of 2012 as polarisation, transport, harbouring or receiving of persons in order to exploit, whether through threat, use of force or other types of coercion, abduction, fraud, deceit, misuse of power, a position of vulnerability or the giving or receiving of payments or benefits to attain the consent of a person that has control over another person. For the purpose of defining trafficking in persons, exploitation means taking advantage of persons in forced labour or services, slavery, servitude, removal of organs, prostitution, or other forms of sexual exploitation (Mohieddin, M., 2015). It is evident that the definition of human trafficking crime is in accordance with the Iraqi Anti-Human Trafficking Act, which in turn is relatively similar to that found in the TIPP. The latter, i.e. the TIPP, is the most generally accepted definition of trafficking in persons. In particular, the definition of the human trafficking crime in the Iraqi Anti-Human Trafficking Act has all the main elements of human trafficking that is required by the TIPP. These elements are the action, means and purpose element (Hammad, M., 2012).

The Iraqi Anti-Human Trafficking Act, Law No. 28 of 2012 is in harmony with the TIPP on the issue of stating the components of the human trafficking elements and without defining them. On this matter, it can be argued that by not defining these components in the protocol, it shows that the TIPP does not want to interfere with how the individual states choose to define the components. Nonetheless, the failure to define these components in the Iraqi Anti-Human Trafficking Act can lead to an uncertainty of the law. Further, not defining them may also increase enforcement errors, make it more difficult to predict the outcome of the trial and produce future uncertainties. Additionally, by not defining these components, it may violate the principle of legality, 'nullum crimen, nulla poena sine lege'. Nevertheless, this can be challenged because in Iraqi criminal matters in Iraq, the definition is limited to two situations (Janabi, L., 2015). The first situation is the resolution of jurisprudential debate. For instance, the definition of intent in the Iraqi Penal Code, Law No. 111 of 1969, is to resolve the jurisprudential debate on the matter of whether criminal intent requires the availability of both the knowledge and will to commit the crime or either of them. On this, the Iraqi Penal Code supports the opinion that what is needed in the criminal intent is the availability of the will to carry out the crime. However, it must be noted that criminal legislation cannot be comprehensively clear, as jurisprudential debate illustrates (Mahmoud, D., 1988). The second situation involves the alteration of a settled meaning. A case in point is the definition of a state official in the Iraqi Penal Code, which in this case is in broader terms than those employed in the Iraqi legislation. Particularly, the Iraqi Penal Code defines a state official as any public official working in the administrative or judicial authority, as well as any officer who works in the civil or military authorities or any of its members including any worker or employee of the state or the public administration. However, under the Iraqi Constitution of 2005, a state official is any person who receives his salary from public funds. Therefore, the Iraqi Penal Code's definition is evidently more specific and contains more details about who is holding an official state position. As such, it is not wrong to say that the certainty in Iraq's criminal law does not leave out all doubts (AL-Nasri, S., 1980).

The Challenges of Combating Human Trafficking Crime in Iraq

There are a few legal challenges that must be overcome when tackling the crime of human trafficking in Iraq. The first legal challenge is from the legislative aspect. In particular, the definition of the human trafficking crime and the components of its elements under the Iraqi Anti-Human Trafficking Act, Law No. 28 of 2012. The definitions, to a certain extent, are not clear and are inaccurate and generic, which makes the implementation of this Act difficult for judges as the provisions of this Act does not spell out the components of the elements of the crime (Hijij, H., 2015). Incidentally, it is difficult for judges, when they are implementing the Iraqi Anti-Human Trafficking Act, to come out with the correct interpretation of certain phrases used in the definition because when the Act was drafted, it adopted the definitions used in the TIPP. In doing so, many phrases used in the Act were literally copied from the

TIPP. The phrases used in the TIPP have their own specific definitions under international law, but they were not defined under the national legislation; for example slavery. As such, it makes it more difficult for the judges to interpret the phrases as they are not found in Iraqi legislation. As such, it can be argued that the vague definitions can lead to uncertainty in this Act, thus violating the principle of legality (Ibrahim, H., 2013).

Furthermore, the vague definitions in the Iraqi Anti-Human Trafficking Act may result in the human trafficking crime being prosecuted under other laws because the offences under these laws are clearer and have their own procedural safeguards for their application. In other words, some of the offences contained in the definition of human trafficking crime, such as abduction, fraud, and sexual exploitation, are crimes per se under the Iraqi Penal Code, Law No. 111 of 1969 (Al-Khalaf, A., & Abdul Qader, S., 1982). As such, instead of being prosecuted for the crime of human trafficking, the accused may be charged for committing other crimes (Hijij, H., 2015).

The second legal challenge is that the Iraqi Anti-Human Trafficking Act does not criminalise attempts to traffic in persons. Consequently, this issue falls under the general rules of the Iraqi Penal Code. The rule states that any attempt to commit a misdemeanour cannot be punished unless it is explicitly stipulated by the law. Therefore, the attempt to traffic in persons is not punishable when it is regarded as a misdemeanour. As such, the crime of human trafficking will be a misdemeanour if there are no aggravating circumstances. However, if human trafficking is regarded as a felony, the attempt to commit it is punishable. Therefore, if human trafficking is accompanied by aggravating circumstances, it will be regarded as a felony and it will be punishable under Iraqi legislation (Rahim, A., 2015).

The third legal challenge is that the Iraqi Anti-Human Trafficking Act does not deal with the issue of criminal participation in human trafficking crime. Therefore, the issue will have to be dealt with by the general rules of the Iraqi Penal Code. In this regard, it should be highlighted that the crime of human trafficking, more often than not, requires more than one person to carry it out because this crime contains several elements such as recruiting, deceiving, transporting and exploiting the victims. Consequently, the better way to address criminal participation in the commission of human trafficking crime is to put it in the Iraqi Anti-Human Trafficking Act, rather than subjecting it to the general rules of the Iraqi Penal Code. This is because the Iraqi Anti-Human Trafficking Act is more pertinent to address the issues associated with human trafficking crime for it is a special law. Therefore, it is better to include the provisions on criminal participation in this Act and make it a part of its comprehensive approach to tackle human trafficking crimes (Suha, S., 2015).

The fourth legal challenge is that the punishment for the commission of human trafficking crime under the Iraqi Anti-Human Trafficking Act does not commensurate with the severity

of the crime (Rahim, A., 2015). This would mean that the Act is not consistent with the criminal justice system as well as the international standards, as there must be proportionality between the severity of the penalty and gravity of the crime. In other words, the penalties prescribed for the commission of human trafficking crime under the Iraqi Anti-Human Trafficking Act are not stringent enough and they do not commensurate with the severity of the crime (Suha, S., 2015). In particular, if the human trafficking crime is not accompanied by aggravating circumstances, the guilty person, according to Article 5(1) of this Act, can be imprisoned for a period of no less than six months or pay a fine of no less than five million Iraqi dinars and not more than ten million Iraqi dinars or both. However, is the punishment for the crime of human trafficking under the Iraqi Anti-Human Trafficking Act consistent with the TIPP? It should be highlighted that although the TIPP does not prescribe the punishment for human trafficking crime, it stipulates that such acts should be criminalised by the state when this crime is committed intentionally (Ibrahim, H., 2013). However, UNCTOC recommends that persons guilty of committing serious crimes should be punished by a maximum deprivation of liberty of no less than four years or a more severe penalty. It should be noted that the seriousness of human trafficking crime needs the imposition of stringent penalties to serve as a deterrent. However, only administrative penalties were imposed for the commission of labour violations against Iraqi or foreign workers in accordance with the Iraqi Labor Act, Law No. 37 of 2015, as part of the battle against human trafficking. On this issue, the administrative penalties are definitely insufficient to act as a deterrent against human trafficking (Rahim, A., 2015).

The fifth legal challenge is concerned with the overlap between the Iraqi Anti-Human Trafficking Act and other legislations. In particular, the aforementioned Act overlaps with the Iraqi Penal Code on the matter of criminal groups. Under the Anti-Human Trafficking Act, a criminal group is made up of three or more persons. This contradicts with the Iraqi Penal Code which requires two or more persons to participate in an agreement, in order for it to be criminalised (Suha, S., 2015). Furthermore, the aforementioned Act overlaps with the Iraqi Residence and Foreigners' Affairs Act, Law No. 76 of 2017. Specifically, the right of repatriation, as set out in the Iraqi Anti-Human Trafficking Act, can be hampered by the application of the latter. Particularly, if the trafficked person is a foreigner who was ordered to pay a fine for violating the Iraqi Residence and Foreigners' Affairs Act, the trafficked person will not be able to exercise his right of repatriation as set out in the Anti-Human Trafficking Act and the TIPP, unless he pays the fine. This is because the denial of the right of repatriation is deemed to be a violation of the Iraqi Anti-Human Trafficking Act and the TIPP (Ibrahim, H., 2013).

Conclusion

The most important issue in this study is the identification of human trafficking crime in Iraq and it was accomplished by dealing with two matters. The first matter is concerned with the definition of human trafficking under the Iraqi Anti-Human Trafficking Act, Law No. 28 of 2012. On this matter, although the definition of the human trafficking crime under this Act is relatively consistent with the TIPP's definition, there are two issues in the Act's definition. The first issue is the fact that the Anti-Human Trafficking Act stipulates that the crime of human trafficking has to be carried out against more than one person, a prerequisite influenced by the TIPP's definition. This is justifiable under the TIPP as it is applicable to the transnational trafficking in persons, but it is not so for the Iraqi Anti-Human Trafficking Act because it is a national law. The second issue is the limited number of exploitative acts under the 'purpose' element in the definition of human trafficking crime, which may result in other exploitative acts escaping punishment under the principle of legality 'nullum crimen nulla poena sine lege' (there is no crime nor punishment except in accordance with the law). This study also showed that human trafficking is a crime against humanity. It examined when human trafficking can be regarded as a crime against humanity and categorised under the concept of enslavement. Interestingly, the RSICC has explicitly recognised human trafficking under the concept of enslavement. Therefore, if all the elements needed for enslavement are present, then this crime will be treated as a crime against humanity.

To tackle these challenges and enable the provision of recommendations and solutions to fill these gaps, this study indicated there is no clear definition of human trafficking crime under the RSICC. This omission may hamper the ICC's prosecution of this crime, thus creating uncertainty in the law and broadening the gap between the definition of human trafficking crime at the national and international level. Therefore, the definition of human trafficking crime under the TIPP might be adopted because it has achieved a worldwide consensus and is considered to be the most comprehensive definition of human trafficking. This study recommends that human trafficking, a crime against humanity, should be added to the list of crimes under of the RSICC. Although as discussed in this study, human trafficking may already be such a crime in some, if not in all the cases. In other words, the ICC should, at the earliest opportune moment, amend its statute to elevate or encompass human trafficking as a substantive crime within its jurisdiction and with an advantaged position to at least reduce the occurrence of this crime in the first instance within the states.

Adopting the Iraqi national strategy to prevent human trafficking is one of the most significant efforts made by Iraq to tackle the aforesaid crime. Consequently, it was suggested that this strategy should be reviewed, evaluated, monitored, and updated to help Iraq achieve its strategic aims. The Iraqi Anti-Human Trafficking Act was influenced by the TIPP. However, unlike the TIPP, which gave particular attention to women and children, this Act



does not. Therefore, this author suggests that comprehensive provisions be included under this Act to deal with the rights of women and children. Furthermore, the Anti-Human Trafficking Act has two important issues that have not been addressed. These issues are attempted human trafficking and the criminal participation of the aforementioned crime. Subsequently, these issues were dealt with under the Iraqi Penal Code's general rules and such a move may not be suitable for the crime of human trafficking. Therefore, it is proposed that provisions dealing with attempted and criminal participation be included under the Anti-Human Trafficking Act, as it will make the Act more comprehensive in tackling the crime of human trafficking. Furthermore, the Anti-Human Trafficking Act does not include counselling as one of the rights of the victims of human trafficking. As such, this study recommends that such a right should be incorporated into the Anti-Human Trafficking Act, at the investigation or trial stage. Interestingly, the right of the trafficked person to remain temporarily or permanently in Iraq has not been addressed under this Act. This can lead to trafficked victims being vulnerable to human trafficking. Therefore, it is suggested that this provision is included in the Act to grant special work permits and/or visas to the trafficked victims, thus enabling them to stay in Iraq legally. This study also recommends a focus on training on several aspects of human trafficking after taking into consideration that it is one of the most important implements used in Iraq's holistic approach in its fight against this crime. However, because of the special nature of this crime, such training should not only be more structured, it should also be comprehensive.



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