LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE

Protection of victims of human trafficking in the Jordanian law: A comparative study with the UK Modern Slavery Act 2015

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Abstract: This study focuses on the adequacy of the protection provided by the Jordanian Human Trafficking Prevention Law and measures the obligations incurred by Jordan according to the Palermo Protocol. This study also compares the protection cited in the Jordanian Law for the victims of human trafficking with the protection provided by the UK Modern Slavery Act of 2015, a modern and world-leading law in addressing the crime of human trafficking. This study presents a number of important results involving the insufficient protection provided by the Jordanian Law to victims of human trafficking. Additionally, this study proposes a set of recommendations, such as stipulating the non-punishment principle, insisting on the victim’s right to remain in the state’s territory, either temporarily or permanently, and providing adequate protection for women and children by stipulating special measures for them in the Jordanian Law, as they are the groups most vulnerable to human trafficking.

Subjects: Criminal Law & Practice; Human Rights Law & Civil Liberties; Public Law

Keywords: Victims; Human Trafficking; Legal Protection

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PUBLIC INTEREST STATEMENT

Human trafficking receives remarkable international and national attention in our age since its negative consequences and rapid spread were exposed. This international interest was manifested in the Palermo Protocol and the Jordanian legislator recognized the necessity to counter the threat of this crime through issuing the Anti-Human Trafficking Law No.9 for the year 2009. This research focuses on the adequacy of the protection provided by this Law for victims of human trafficking crimes and the extent to which it meets Jordan’s commitments under the Palermo Protocol. It also compares it with the protection provided by the UK, 2015 as it is one of the world’s pioneering laws in addressing the crime of human trafficking. The research found that the protection provided by Jordanian law to victims of human trafficking is insufficient, fails to meet all the obligations contained in the Palermo Protocol, and requires urgent amendment.

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1. Introduction

Human trafficking is one of the new crimes that have clearly witnessed wide international interest over the past two decades because of its worldwide spread, increased number of victims, and serious impact on all countries, regardless of whether they send, receive, or just transport victims. International statistics reveal that human trafficking is the second most profitable industry worldwide, following drug trafficking. Profits of this illegal industry are estimated at 31.6 USD billion annually, and it is considered one of the fastest growing criminal industries in the world (Baird, 2019). Human trafficking, a form of modern-day slavery, is considered a crime against human dignity, as trafficking victims are treated as commodities that are usually sold and bought several times, depriving them of their freedom and their basic human needs by forcing them to live at the mercy of their traffickers (Williams, 2018).

Trafficking in human beings constitutes a violation of human rights because of the physical and psychological abuse and social stigma the victims suffer. The sort of suffering experienced by the victims results in their isolation and loss of family ties. Trafficking in human beings leads to the violation of many human rights of trafficked individuals, the most significant of which is perhaps their right to freedom, security, non-discrimination, freedom of movement, decent work, and freedom from torture (Al Badayneh & Al Khreisha, 2013).

The need to pay attention to providing protection to victims of human trafficking stems primarily from the protection of their human rights and their fundamental role in uncovering human trafficking crimes. Victims of human trafficking can also help in punishing the perpetrators by reporting these crimes to the relevant public authorities and testifying before the courts. The provision of protection for victims of human trafficking is crucial because of the vulnerability of the victims who are exposed to retaliation, especially since the perpetrators often know the victims and their families. Moreover, victims are usually very reluctant to report crimes of human trafficking, especially if they are non-citizens of the state, that is, expatriates who lack residence permits. In addition, ordinary protection mechanisms are insufficient for victims and witnesses during criminal proceedings (Rijken, 2009).

International concern is evident in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which supplements the United Nations Convention against Transnational Organised Crime (Palermo Protocol), which is one of the three protocols annexed to the United Nations Convention against Transnational Organised Crime. This protocol was adopted by General Assembly Resolution No. 55/25 of 15 November 2000 (UN Doc A/Res/55/25, 2000). This international concern is reflected in the national legislation of many states worldwide.

For example, the Jordanian legislator's interest in combating human trafficking came through the issuance of Law No. 9 of 2009 on the Prevention of Human Trafficking. This law was issued mainly to combat this crime, protect society from its negative effects, and enhance Jordan’s international status through its commitment to international treaties related to this subject and its ratification of the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Human Trafficking, Especially Women and Children, which complements this convention (Palermo Protocol).

Although the Jordanian Human Trafficking Prevention Law is considered one of the earliest Arab laws for the prevention of human trafficking, reports from non-government organisations suggest that it offers inadequate protection for victims of human trafficking. Victims hesitate to approach official authorities for fear of their families being harmed and losing support or housing. Victims of human trafficking in Jordan were subject to arrest, imprisonment, and deportation because of illegal acts committed as a direct result of exposure to trafficking, such as immigration violations and deserting abusive employers.
Therefore, this study attempts to explore the protection provided by the Jordanian Human Trafficking Prevention Law and the shortcomings of the law in order to address them. This will be accomplished by proposing amendments to the Jordanian Law. To achieve this, it is necessary to conduct a comparative study with another more advanced law to utilise its provisions to protect victims of human trafficking. The UK Modern Slavery Act of 2015 has been chosen for this purpose, as it is one of the world-leading laws for addressing the crime of human trafficking. This law is distinguished for preventing modern slavery because it criminalises slavery, servitude, forced labour, and human trafficking. Moreover, it is distinguished from other national laws because it regulates corporate liability.

Hence, the following problem arises, and this problem includes the following questions: Does the Jordanian Law regarding human trafficking provide adequate protection and care for victims? Is it in compliance with the requirements for victim protection contained in the Palermo Protocol? How adequate is the protection provided by the Jordanian Law regarding human trafficking compared with the UK (Modern Slavery Act, c. 30, 2015)?

It is important to apply a descriptive, analytical, and comparative approach. This will be conducted by analysing the legal texts regarding the protection of victims of human trafficking in the Jordanian Law on the Prevention of Trafficking in Human Beings, then comparing these texts with the provisions for the protection of victims of human trafficking in the UK (Modern Slavery Act, c. 30, 2015). The UK Act has been selected for this comparison because it sets an example for countries seeking to tackle human trafficking.

This study aims to shed light on the protection provided to victims of human trafficking by the Jordanian Law and the extent to which it meets the requirements of the Palermo Protocol. It also aims to benefit from the way the UK (Modern Slavery Act, c. 30, 2015) protects victims of human trafficking. In order to do this, we first have to identify how crimes of human trafficking are organised in both the 2009 Law and the UK Act and to study the penalties imposed on those crimes. After doing so, we need to discuss the most prominent protections that both laws provide to victims of human trafficking.

2. Definition of human trafficking, according to the palermo protocols, Jordanian law, and MSA
First, let us examine the definition of human trafficking as provided in the Palermo Protocol Trafficking in Persons Article 3/a:

“(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” (United Nations, 2005).

This definition is important because the Palermo Protocol is the first legally binding global instrument to contain an agreed definition of trafficking in human beings. Through this definition, the protocol aims to facilitate the convergence of national approaches in the criminalisation of trafficking in human beings in order to support international cooperation in the investigation and prosecution of human trafficking cases (Cepeda et al., 2014).

Based on the definition provided in the Palermo Protocol, it is evident that trafficking in human beings has three constituent elements: the criminal act (what is done), the mean (how it is done), and the purpose (why it is done). All three elements must be present for the crime of trafficking in human beings (Roth, 2012). The protocol stipulates that no consideration be given to the victim’s
consent to the intended exploitation if any of the means mentioned in the protocol have been used; however, if the crime is committed against a child, then the means mentioned in the protocol are not required.

Through her analysis of the definition of human trafficking as mentioned in the Palermo Protocol, Anne Gallagher found that the concept is not limited to the process of moving an individual to a situation of exploitation; rather, it is extended to include the maintenance of that person in a situation of exploitation. Moreover, by including the definition's first element of the act of harbouring and receipt, she suggests that it is not limited to the process of recruitment, transportation, and transfer, but also includes the end situation of trafficking. Hence, the definition extends to include not only recruiters, brokers, and transporters, but also owners and supervisors of any place of exploitation.

She also explained that the second element, namely, the means, which is associated with the trafficking of adults, nullifies consent while the element of exploitation in the protocol includes but is not limited to many forms (Gallagher, 2010). The researcher supports this analysis.

In Jordan, the law criminalised human trafficking through Article 3 of the Jordanian Human Trafficking Prevention Law No. 9 of the year 2009, which states that:

‘A. For the purposes of this Law “Human Trafficking Crimes” shall mean:

(1) Attracting or transporting, moving, harbouring, or receiving of people for the purpose of exploiting them, whether by using or threatening the use of force, or through any form of coercion, abduction, fraud, deceit, abuse of power, abuse of vulnerability, or through giving or receiving payments or any other privileges to secure the consent of a person who has control over those people; or

(2) Transporting, moving, lodging, or receiving people who are under the age of 18 for the purpose of exploiting them, even if this exploit was not accompanied by the threat of [the] use of force, or through any of the means stated in item (1) of this paragraph.

B. For the purposes of paragraph (A) of this article, “Exploitation” shall mean: exploiting people by forcing them to work without charge and under coercion, slavery, servitude, removal of organs, prostitution, or any other form of sexual exploitation’.

It is noted that the definition of human trafficking crimes in the Jordanian Law is consistent with the definition stated in the Palermo Protocol. However, some differences exist, such as the Jordanian Law’s use of the word “attracting” instead of “recruitment”, in addition to the Jordanian Law not including transferring among the criminalised acts.

The Jordanian legislator has made a good provision by not requiring that the crime be transnational or carried out by an organised criminal group. That is because it fulfils the requirements of the Palermo Protocol in addition to it resulting in limiting human trafficking crimes at the national level, not only at the transnational level, thus providing greater protection for human trafficking victims.

Jordanian Law is criticised for using the word “attracting” instead of recruiting (Al Nsour & Abbasi, 2014), and for its failure to specify the meaning of attracting, which constitutes a difficulty in understanding what is meant by it and exposes the national judge to the same difficulty (Al Shurfat, 2012).

The researcher believes that the use of the word attracting by Jordanian Law was unsuccessful because the word used does not contain a precise meaning that fits the criminalisation of the act,
and when criminalising acts, the identification of the act must be clear and accurate and vague and unclear terms should be avoided. This is in addition to the fact that the Jordanian Law went against the Palermo Protocol, which used the word ‘recruitment’.

It is also criticised for its stipulation that persons be attracted; therefore, it does not relate to a single person, nor does it include forced begging, submission to medical experiments (Al Talbani, 2016), and securing services, which are new forms of exploitation in human trafficking, among the aspects of exploitation.

According to the United Kingdom (Modern Slavery Act, c. 30, 2015), which will be referred to hereinafter as ”MSA”, the crime of human trafficking is committed if a person arranges or facilitates the travel of another person who is “the victim” with a view to the victim being exploited. This is irrespective of whether the victim consents to the travel or whether the victim is an adult or a child. A person may, in particular, arrange or facilitate the victim’s travel by recruiting, transporting or transferring, harbouring or receiving, or transferring or exchanging control over the victim. The concept of “travel” includes arriving in or entering any country, departing from any country, and travelling within any country. Under this section, a person who is a UK national has committed an offence irrespective of the location where the arrangement or facilitation occurs. However, if the person is not a UK national, then under this section, he or she has committed an offence if any part of the arranging or facilitating occurs in the United Kingdom, or if the travel consists of arrival in or entry into, departure from, or travel within, the United Kingdom.

The MSA has stated the definition of exploitation as slavery, servitude, or forced or compulsory labour, sexual exploitation, removal of organs, etc., securing services, etc. by force, threats, or deception, or securing services etc. from children and vulnerable persons on the grounds that these persons are mentally or physically ill or disabled, or have a family relationship with a particular person.

Among the prioritised recommendations directed at the United Kingdom, the Trafficking in Persons Report of 2019 indicated that the definition in the MSA does not require the movement of the victim as an element of the crime. This is because the report criticised the requirement to include the victim’s movement in the definition of trafficking in human beings (Trafficking in Persons Report, 2019). This recommendation was emphasised again in the Trafficking in Persons Report of 2020 (Trafficking in Persons Report, 2020).

It is noteworthy that based on the Home Office’s explanatory notes regarding the MSA, the definition of human trafficking was interpreted as a comment to Section 2 regarding human trafficking: “Subsection (3) gives examples of what may amount to arranging or facilitating another person’s travel. This includes recruiting, transporting, transferring, harbouring, receiving, or exchanging control of that person. The language reflects the definitions of trafficking set out in the Convention on Action against Trafficking and the associated Palermo Protocol” (EXPLANATORY NOTES, Modern Slavery Act, c. 30, 2015 (c. 30)).

The Home Office elucidated through the (Modern Slavery Act, c. 30, 2015) — Statutory Guidance for England and Wales that “The essence of human trafficking is that the victim is coerced or deceived into a situation where they are exploited”. It referred to the definition of human trafficking included in Article 4(a) of the Council of Europe Convention on Action against Trafficking in Human Beings (Home Office, 2021a), and the researcher notes that the definition in this convention conforms completely with the definition in the Palermo Protocol.

However, the Independent Review of the (Modern Slavery Act, c. 30, 2015) mentioned that stakeholders noticed that the definition of human trafficking contained in Section 2(1) focuses heavily on the facilitation of travel of the victim, while the Palermo Protocol does not mention the word “travel” in its definition of human trafficking. Some stakeholders are concerned that this
could lead to the impunity of the offenders who do not participate directly in the transportation or transfer of the victim, or cause problems if the victim arranges their own travel. Crown Prosecution Service (CPS) pointed out that a wide interpretation of the word “travel” was assumed to include movement over a very small place, while some experts have suggested modifying the definition to be clearer (Secretary of State, 2019).

It is worth mentioning that the MSA does not include only the human trafficking offence; it also includes the offences of slavery, servitude, and forced labour. While defining the human trafficking offence, the MSA focuses on arranging or facilitating the travel of a victim. However, it does not mention “travel” specifically while defining slavery, servitude, and forced or compulsory labour (Sections 1–2 of the MSA).

The researcher believes that the use of the word “travel” in the MSA definition of human trafficking is inconsistent with the fact that the crime of human trafficking may involve victims who may not need to leave their homes. In this case, their transfer or movement is not required for the crime of human trafficking to occur. It is better to amend the definition of this crime to include the acts stipulated in the Palermo Protocol without the requirement of travel.

It is also noted that the MSA does not recognise the victim's consent to travel, which indicates that there is no real consent in crimes of human trafficking (Mantouvalou, 2018). The Independent Review of the Modern Slavery Act 2019 suggests that the law be amended to reflect clearly that a child is unable to approve any element of his or her trafficking. It also suggests that the meaning of exploitation contained in the law is flexible enough to cover a range of circumstances that include new forms of modern slavery (Secretary of State, 2019).

A comparison of how the Jordanian Law tackles human trafficking with how the MSA handles it shows that the Jordanian Law is the closest to the definition of the Palermo Protocol, while the MSA focuses on the human trafficking crime by concentrating on the act of travelling, which requires the movement of the victim and thus narrows the scope of criminalisation.

3. Penalties for crimes of human trafficking in the Jordanian law and the MSA to prevent re-trafficking

The Jordanian Human Trafficking Prevention Law has defined the penalty for committing the crime of human trafficking as imprisonment for six months and/or a fine of 1,000 to 5,000 Jordanian dinars. This penalty may reach up to temporary hard labour for a period not exceeding ten years and a fine of 5,000 to 20,000 Jordanian dinars in the following cases. (1) If the perpetrator of trafficking in human beings has established, organised, or managed an organised criminal group for trafficking in human beings or was one of its members; (2) if the perpetrator was the spouse, one of the ascendants or descendants, or custodian or guardian of the victim; (3) if the perpetrator is a public official or someone who was assigned to carry out a public service and committed the crime by exploiting this capacity; (4) if the victim was a child under 18 years of age, a female, or with disability; (5) if the crime has caused the victim a permanent disability or a serious and incurable disease; or (6) if the act was committed using or by threats of a deadly weapon, or through prostitution, or any form of sexual exploitation or removal of organs; or (7) if the crime was of a transnational nature. According to the same law, the consent of the victims or those affected by the crimes of human trafficking is not considered in order to mitigate any of the stipulated penalties.

The law also punishes anyone who possesses, conceals, or disposes any funds knowing that they are obtained by a crime of human trafficking with no more than one year of imprisonment and/or a fine between 200 and 1,000 Jordanian dinars.

It is noted that the penalties for human trafficking crimes in the Jordanian Law are not limited to natural persons, but include legal persons as well. It is stipulated that the penalty for a legal
person who commits the crime of trafficking human beings is a fine between 10,000 and 50,000 Jordanian dinars, without prejudice to the responsibility of his or her representative who committed this crime. According to this law, the court may decide to suspend the work of the legal person, either in whole or in part, for a period of not less than a month and not more than a year. In the event that the legal person repeats the crime, the court may decide to cancel his or her registration or liquidate his or her business. The chairperson and members of his or her board of directors, or chairperson and members of his or her committee, as the case may be, and his or her director and any partner whose personal responsibility for committing this crime is proven shall be prohibited from participating in or contributing to the capital of any legal person with similar goals or participating in its management.

The Trafficking in Persons Report of 2019 confirmed that, among the prioritised recommendations for Jordan, the penalties imposed for the crime of human trafficking are sufficiently stringent. However, it criticised the permission to replace imprisonment with fines. Therefore, there is a need to amend the penalties for sex trafficking crimes to be consistent with the penalties imposed for serious crimes such as kidnapping. The report also considered that the severe penalties stipulated in the law, such as those imposed on the perpetrator of the crime if it occurred against a child, are proportionate to the penalties for serious crimes (Trafficking in Persons Report, 2019). These notes and recommendations were repeated in the Trafficking in Persons Report of 2020 (Trafficking in Persons Report, 2020).

An opinion argues that it would have been more appropriate for the Jordanian legislator to amend the punishment because the penal code is incompatible with the ugliness and seriousness of the crime, and that, at the very least, it should have combined the two penalties of imprisonment and a fine. The circumstances to increase the severity of the punishment included exposing the victim to an incurable illness and did not include whether the commission of the crime resulted in the victim’s disability or death (Al Talbani, 2016).

The researcher supports this opinion regarding the need to increase the punishment imposed on the perpetrators of the crime of human trafficking, and adds that the punishment for the perpetrator of the crime of human trafficking in the event of repetition should be made severe by providing a special provision that includes a deterrent penalty. By doing so, the researcher believes that we can avoid resorting to the repetitive provisions mentioned in the Jordanian Penal Code in Articles 101–104 to achieve the necessary general and special deterrents.

It should be noted that when applying the law on human trafficking, the Jordanian courts sometimes grant discretionary mitigating reasons to reduce the penalty for the accused of trafficking in human beings, in which the legislator purposefully raises the minimum and upper periods for imprisonment and the fine in exclusive cases, including if the crime is transnational. In this regard, the Jordanian Court of Cassation has ruled to dismiss the cassation. Upon studying the reasons for this ruling, we found that the Amman Criminal Court, in its decision issued in Case No. 141/2011, ruled that the accused must be convicted of the crime only after modifying the criminal description to be a human trafficking crime of a transnational nature, since it was committed in more than one country according to Article (9/ B8) of Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings.

The facts of the case make it clear that the first accused had attracted the victim and convinced him to sell his kidney in Egypt, and the second accused received the victim in Egypt and assisted him with medical examinations to facilitate the completion of the process of selling the kidney. An operation was performed on the victim to remove his kidney, and the doctor paid him 6500. USD A few days later, the victim returned to Syria, and from there, to Jordan. The court sentenced them to three years of temporary hard labour and a fine of (JD5000) five thousand Jordanian dinars. However, discretionary mitigating reasons were taken into account in accordance with the penal code, so the court ruled temporary penal labour for a period of one year and a fine of (JD1650) one
thousand six hundred and fifty Jordanian dinars. (The judgment of the Court of Cassation, Penalty No. 2096 of 2016, dated 07-12-2016).

On the other hand, the MSA imposes penalties of life imprisonment on conviction on indictment, and imprisonment for a period not exceeding 12 months and/or a fine or both on summary conviction.

The MSA also punishes a person committing any crime if it is committed with the intent to commit a crime of human trafficking. This includes providing aid, incitement, counselling, or procuring, as follows: (1) when the person is convicted on indictment, the perpetrator will be punished with imprisonment for a period not exceeding ten years; (2) when the person is on summary conviction, the perpetrator will be punished with imprisonment for a period not exceeding 12 months and/or a fine, or both; and (3) if the crime was committed through kidnapping or false imprisonment, then the perpetrator will be punished with life imprisonment.

The Trafficking in Persons Report of 2019 has described the penalties imposed by the law on human trafficking, especially in relation to trafficking for purposes of sexual exploitation, as severe punishments (Trafficking in Persons Report, 2019). This note was repeated in the Trafficking of Persons Report of 2020 (Trafficking in Persons Report, 2020).

It is worth mentioning that Section 54 of the MSA regulates transparency in supply chains by obligating commercial organisations that supply goods or services and have a total turnover of not less than the amount prescribed by regulations made by the Secretary of State to submit “a slavery and human trafficking statement” for each financial year of the organisation. The statement should outline the steps taken to ensure there is no slavery or human trafficking in any of its supply chains or any part of its own business.

The Transparency in Supply Chains Regulations of 2015 of the Modern Slavery Act of 2015 require commercial organisations whose sales exceed £36 million to report annually on the procedures taken to ensure there is no modern slavery in any part of their own business and their supply chains (Section 2 of the Modern Slavery Act, c. 30, 2015 “Transparency in Supply Chains” Regulations 2015 No. 1833).

Large organisations are obligated to do so because they have sufficient resources, given their purchase power, and they are able to effect changes to their supply chains. However, if these organisations fail to report the measures taken to prevent slavery and human trafficking, they will be practically exposed to the danger of negative publicity and they may compromise their reputation and relationship with investors (Whincup et al., 2016).

The “Independent Review of the (Modern Slavery Act, c. 30, 2015): Final Report” estimates that around 40% of eligible companies are not complying with the legislation. Although the Act makes a provision for the Secretary of State to seek an injunction against non-compliant companies, this has not been used, and there have been no penalties to date for non-compliant organisations. Therefore, the final report of the independent review of the said act recommends that companies not be allowed to state that they have taken no steps to address modern slavery in their supply chains, as the legislation currently permits, that the areas of reporting currently recommended in guidance be made mandatory, and that non-compliant organisations be sanctioned (Secretary of State, 2019, pp. 14–15).

Not requiring disclosure from small and medium enterprises (SMEs) has also drawn criticism, as they make up the majority of British companies and many of these companies supply and manufacture products. They should therefore occupy a leading position in the battle against slavery and human trafficking (Wen, 2016, p. 353). Unfortunately, the Jordanian Law does not stipulate that companies be required to report the measures taken to prevent human trafficking.
The MSA stipulates the forfeiture of land vehicles, ships, or aircraft used, or intended to be used, in connection with the offence of human trafficking, if a person is convicted on indictment of an offence (Part 1, Section 11 of the Modern Slavery Act, c. 30, 2015).

This is consistent with the text of the Palermo Protocols, which stipulates that each State Party must adopt legislative measures to prevent the use of means of transport operated by commercial carriers in committing the offence of human trafficking. Such measures shall oblige commercial carriers, including any carrier, owner, or operator of any means of transport, to ensure that all passengers have the necessary travel documents to enter the receiving state and impose penalties in cases of breach of such commitment (Article 11/2-4 of the Palermo Protocols).

It is worth mentioning that the MSA tackles maritime enforcement in terms of clarifying enforcement powers in relation to ships, particularly the provisions relating to the use of powers for the purpose of preventing, detecting, investigating, or prosecuting an offence under Section 1 or 2 relating to slavery, servitude, and forced or compulsory labour and human trafficking (Sections 32–39 of the MSA). Unfortunately, the Jordanian law does not provide for similar provisions.

Comparing the penalties imposed on human trafficking crimes in the Jordanian Law and in the MSA makes it evident that the penalties imposed in the MSA are more severe than those contained in the Jordanian Law. However, the MSA does not single out a specific provision for the punishment of a legal person, which the Jordanian Law does. It is noteworthy that the Palermo Protocol does not indicate the severity of penalties.

The researcher found that regulating penalties in laws that criminalise human trafficking is important in protecting the victims. Regulation can be undertaken by providing for deterrent penalties, not allowing mitigating reasons for reducing the penalty, prohibiting the replacement of the penalty, and aggravating the penalty in events of repetition of the crime of human trafficking, since these measures would protect the victims of human trafficking from exposure to re-trafficking. This is demonstrated in the recommendation of Alison Jobe in her report for the International Organisation for Migration (IOM) regarding the causes and consequences of re-trafficking, wherein she states the need to impose severe penalties on state officials who collude with traffickers, so that the penalties are stringent and applied more vigorously (Jobe, 2010).

4. The definition of victim of human trafficking in the Jordanian law and the msa

Jordanian Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings does not explicitly use the term victim. However, Article (13) of this law indicates that the consent of those “injured or affected” by human trafficking crimes is not taken into consideration, and “injured or affected” is referred to together in several articles, namely, Article 5/C, G, Article 7, Article 12/ A-B, and Article 13.

Among jurists, there are those who differentiate between the “injured/affected” and the “victim”. They consider the injured/affected as the one who was affected directly and surely because of the criminal act, while the victim is the one who was indirectly affected by the effects of the crime and whose rights were violated during the crime. An opinion was raised demanding the need to amend the Jordanian Law and replace the use of “injured/affected” with “victim”. This opinion suggests a definition of victim as “Every natural or legal person who has suffered, directly or indirectly, and with certainty, from physical or moral damages as a result of human trafficking behaviour, whether locally or internationally, through intentional or unintentional acts. This definition shall also include whoever suffered from the effects of the crime and not the injured alone” (Maqableh, 2016).

The researcher does not support the proposed definition to include the natural and moral persons affected by the crime of human trafficking and everyone who suffered from its effects.
because it may lead to an unjustified expansion of the concept of the victim. The researcher also thinks that, since the crime of human trafficking only applies to normal persons—not on legal persons—if damages occur to moral persons, it is permissible to claim compensation for the damages caused to them. Therefore, their inclusion in the concept of the victim will lead to the provision of care and protection, which is illogical.

The Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking, which was issued based on Jordanian Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings, provides a definition of a person injured by human trafficking. Therefore, a person injured by human trafficking is any person against whom any of the crimes of human trafficking have occurred. The regulation defined the affected person by the crime as the one who is a second-degree relative of the “injured person”. This person must be younger than 18 years old, present in Jordan when the injured is admitted to the shelter, and have no suitable caretaker, according to what the minister or his or her authorised representative decides.

It is noteworthy that the Palermo Protocol does not contain a definition of “victim”, while the Council of Europe Convention on Action against Trafficking in Human Beings defined “victim” in Article 4(e) as “any natural person who is subject to trafficking in human beings as defined in this article” (Council of Europe Convention on Action against Trafficking in Human Beings, 2005).

Defining a victim of human trafficking is a complex matter because the process of identifying victims of human trafficking is complex and time-consuming. It also has the serious consequence of withholding the victim status from a person who has been subjected to human trafficking and thus deprives the person of assistance. One of the best solutions to deal with this problem is the presumption of victim status. This approach has been adopted by Article 10(2) of the Council of Europe Convention on Action against Trafficking in Human Beings (Gallagher, 2010).

The MSA has used the term “victim of human trafficking” in its sections, and has defined a victim of human trafficking for the purpose of implementing its provisions in Section 56(2) as a person who is a victim of a conduct that constitutes a crime under Section 2, or would constitute a crime under this section, if the person responsible for the conduct is a UK citizen, or if Section 2 had been in effect when the conduct occurred.

By comparing the provisions of Jordanian Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings with the MSA, it becomes clear that unlike the MSA, the Jordanian Law does not define the victim. Rather, the Jordanian Law uses the words “injured/affected” by the crime, not “victim”. On the other hand, the Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking has defined a person injured by human trafficking and limited this definition to any person against whom any of the crimes of human trafficking has occurred. The researcher believes that the Jordanian Law should be amended so that a clear definition of the victim of human trafficking is stipulated. The researcher also believes that the definition should not be limited to whomever the crime of human trafficking has occurred against, but should include those directly affected by the occurrence of this crime, such as the relatives and spouses of the victims. Expanding this definition will ensure they enjoy the protection and care provided to victims of human trafficking.

The researcher believes that the necessity to expand the definition of a victim of human trafficking arises from the fact that one of the factors that hinders victim identification is the victims’ fear of their personal safety or the safety of their families and loved ones (United Nations, 2015). Hence, they refrain from reporting their exposure to human trafficking because of fear of reprisals against them or their family members, such as threats, violence, or damage to property. Therefore, it is imperative to provide human trafficking victims with the support and assistance needed to make informed decisions about their lives in order to combat human trafficking. This support includes providing them with services that enable them to recover and
place them in situations wherein they can sustain themselves and their families (Pearson, Elaine, 2002). It is also noteworthy that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defined victims as “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power”. It also stipulated that “The term ‘victim’ also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation” (United Nations, 1985).

The researcher does not see any potential benefits to the introduction of a broad concept in the Jordanian Human Trafficking Prevention Law by using the term “injured/affected” instead of “victim” while the Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking follows a narrower approach since the benefit of the law’s definition of a human trafficking victim is in identifying the victim for the purposes of providing him/her with protection and support (Gallagher, 2010).

The MSA has authorised the court to make a slavery and trafficking prevention order against the defendant in connection with its conviction of the crime of human trafficking or when concluding that the accused is not guilty of committing the crime of human trafficking because of insanity, or when concluding that he or she is under disability and has already committed the act charged. In order for the court to issue such an order, it must be satisfied that there is a risk of the defendant committing the crime of human trafficking, and that there is a need to protect general or specific persons from the physical or psychological harm that may be caused by the accused.

The role of trafficking prevention orders in supporting victim protection is demonstrated by the restriction of the activity of those who have already been convicted of a modern slavery offence (Fudge, 2018). The 2020 UK Annual Report on Modern Slavery stated that 147 slavery and trafficking prevention orders were issued in England and Wales for the period from July 2015 to March 2020. The report noted that bringing evidence-led prosecutions has been successful in county lines cases, as children and vulnerable victims did not give their testimony when heavy sentences were imposed and prosecutors succeeded in obtaining slavery and trafficking prevention orders (2020 UK Annual Report on Modern Slavery, 2020).

The MSA has also authorised the magistrates’ court to make slavery and trafficking risk orders against defendants at the request of a chief officer of the police, an immigration officer, the Director General of the National Crime Agency, or the Gangmasters and Labour Abuse Authority.

This order may be allowed if the court is convinced that the defendant acted in a way that suggests his or her commitment of the crime of human trafficking or senses the need to protect general or specific persons from physical and psychological harm. This order prevents the defendant from performing any of the actions mentioned in the order that the court is convinced are necessary to protect general or specific persons from, physical and psychological harm that may be caused by the person accused of committing the crime of human trafficking.

According to the UK Annual Report on Modern Slavery of 2020, 60 slavery and trafficking risk orders were issued for the period from July 2015 to March 2020 in England and Wales (2020 UK Annual Report on Modern Slavery, 2020).

The MSA considers any person who commits any of the acts prohibited under a slavery and trafficking prevention order or commits a slavery and trafficking risk order crime without a reasonable excuse to have committed a crime. There is nothing in the Jordanian Law corresponding to these two orders.
5. The National Referral Mechanism (NRM) as a first step for victims of human trafficking to receive protection

The Jordanian National Referral Mechanism for victims of human trafficking was adopted by the National Committee for Anti-Human Trafficking in January 2016 with the aim of coordinating the efforts of all service providers and protecting victims of human trafficking in Jordan. The National Referral Mechanism was issued subsequently to identify and refer victims of trafficking in Jordan within the framework of the “Support to the Mobility partnership between the European Union and the Hashemite Kingdom of Jordan” (JEMPS) project, which is implemented by the International Centre for Migration Policy Development “ICMPD” with funding from the European Union, and the JEMPS project included among its clauses a preliminary risk and needs assessment to assess health and safety risks, assess the needs of a potential trafficking victim, and immediately refer her/him to receive assistance. The National Referral Mechanism contains six interrelated phases. These are: 1. Identifying the victims and those affected by human trafficking crimes; 2. Rescue and refer; 3. Protection and assistance; 4. Voluntary return; 5. Reintegration; 6. Case file of the victims and those affected by human trafficking crimes. (The International Centre for Migration Policy Development (ICMPD), 2019).

It is noted from the foregoing that the National Referral Mechanism (NRM) in Jordan does not specify a timeframe for the provision of protection to the victim, which ensures the victim does not face anxiety about the disruption of protection after a certain period.

In the UK, it is important to refer to the National Referral Mechanism (NRM) applied in England and Wales, which is the main administrative mechanism that deals with identifying potential victims of modern slavery, most notably human trafficking, referring victims, and ensuring that they receive appropriate support (Mantouvalou, 2015). The National Referral Mechanism (NRM) is also considered a reliable source of data on the extent and types of modern slavery and human trafficking in the United Kingdom. It should be noted that the scope of the NRM has been expanded to include all victims of slavery in England and Wales (Fudge, 2018). Referring any adult to the NRM requires obtaining his or her approval, but if the potential victim is a child, then consent is not required. People who have been identified as potential victims of modern slavery through the NRM can obtain, for a period of at least 45 days (while their case is considered), specialised support including legal advice, residency, protection, practical assistance, and psychological support. Upon applying the NRM referral request, the Single Competent Authority (SCA) in the Home Office issues a reasonable grounds decision within five working days whenever possible.

The NRM guidance: adult (England and Wales) has identified those who can make referrals and has limited them to only staff at designated “first responders Organisations”. It defined a ‘first responder organisation’ as “an authority that is authorised to refer a potential victim of modern slavery into the National Referral Mechanism”, then exclusively enumerated them; the list includes police forces, certain parts of the Home Office, UK Visas and Immigration, and the Border Force (National referral mechanism guidance: adult (England and Wales), 2020).

This period of protection provided by the NRM used to be 14 days in 2017, and on 1 February 2019, it was increased to 45 days (Nicholson et al., 2019). These timeframes for ending support were criticised because they are relatively short, which leads to the recognised human trafficking victims’ loss of support and provision of their basic short-term needs, such as residence; this results in their loss of confidence in the authorities, exposes them to re-trafficking, and causes them to avoid giving their testimonies regarding the traffickers, thus providing impunity for the perpetrators (Roberts, 2018).

The time-limited support was challenged in the NN and LP v Secretary of State for the Home Department case, and the ruling stated that the 45-day policy was illegal and incompatible with the Council of Europe Convention on Action against Trafficking in Human Beings, and that support should be provided by considering the individual’s needs rather than by determining the duration of the support. The Home Office committed to formulating a sustainable
needs-based system to support victims of trafficking and not re-enforcing the 45-day rule or limiting support to a specific period (NN and LP v Secretary of State for the Home Department [2019] EWHC 766 (Admin)).

Therefore, the Home Office developed the Recovery Needs Assessment (RNA) Guidance and explained that potential victims’ support needs were assessed upon their entry into the NRM by contacting their support worker prior to the issuance of a conclusive grounds (CG) decision. After a positive CG decision is reached, an RNA is conducted. RNA permits “support workers to work with victims in developing recommendations for support where they have on-going recovery needs arising from their modern slavery experiences, whether through the MSVCC or other services” (Home Office, 2021b).

6. Support for victims of human trafficking: gaps and challenges
When human trafficking victims receive support, it encourages them to uncover crimes of human trafficking, helps them avoid re-trafficking, qualifies them physically and psychologically, and enables them to recover from the effects of human trafficking. Therefore, the Palermo Protocol stipulated that the State Party shall consider providing protection and assistance to victims of human trafficking, including protecting their privacy and identity, ensuring the confidentiality of legal proceedings and information, and providing assistance regarding the legal system. Moreover, the State Party shall consider implementing measures to provide appropriate housing, counselling, and information to the victim of human trafficking, especially with regard to their legal rights, in a language that the victim understands, as well as medical, psychological, and material assistance, employment, educational and training opportunities, and permit them to remain in its territory, temporarily or permanently.

Although the victims’ need for protection and assistance is recognised in the Palermo Protocols, the protection provisions contain weaker terms, such as “in appropriate cases” and “to the extent possible”. This non-binding nature of the provisions affects the effectiveness of the protocols as a law enforcement instrument. The prosecution and punishment of human traffickers depend mainly on the cooperation of the victims, who need protection and assistance (Simon, 2010).

Unfortunately, the Jordanian Human Trafficking Prevention Law does not address the provision of medical and psychological assistance to victims of human trafficking, the provision of education, training and employment opportunities, the provision of advice and information in a language the victim understands, the protection of their identity in legal proceedings, and the provision of information and assistance in the legal system. The researcher believes that this is one of the most significant shortcomings of the Jordanian Law, and it is in violation of the Palermo Protocol. The Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking stipulates the provision of protection and temporary accommodation for the injured and affected until his/her problem is resolved or he or she is returned to his/her country of origin or a country that chooses and agrees to receive him/her. It also stipulates the provision of social care and living, psychological, health, counselling, cultural, and legal services necessary for those injured or affected by human trafficking, as well as the provision of suitable job opportunities for the injured and affected through employment programs and small home-based businesses, depending on the available capabilities. Moreover, it stipulates the securement of the necessary information for the injured and affected, enabling them to communicate and request the assistance of representatives or consuls of their state of nationality, and the maintenance of the confidentiality of the information related to the injured and affected. All these stipulations are subject to legal liability. The researcher believes that according to this regulation, the support and services provided are only for the injured and affected people who reside in the shelters. Therefore, this support is not available to all the injured and affected by human trafficking, and the Jordanian Human Trafficking Prevention Law does not provide them protection; hence, it is not possible to compare it with the MSA in this regard.
6.1. The right of human trafficking victims in residency

The importance of this right lies in the state’s establishment of a balance between identifying the victim of human trafficking and the procedures and decisions related to human trafficking, and taking into account the needs of victims who fear deportation or arrest. Therefore, the state shall base its criminal policy on granting victims permanent or temporary residency, as this protects the rights of victims (Nashmi & Abbas, 2020), strengthens the bonds of trust between the victim and the state, and improves its ability to protect their rights, which reduces the likelihood of them hesitating and withdrawing their testimonies (Maqableh, 2016).

The Palermo Protocol stipulates that States Parties shall consider adopting legislative or other appropriate measures that permit victims of human trafficking to remain in its territory, temporarily or permanently, in appropriate cases, and that each State Party shall adequately consider humanitarian and compassionate factors.

The Palermo Protocol affirms the repatriation of victims through its stipulation that: (1) the State party of which a victim of human trafficking is a national or in which the victim had the right of permanent residence shall facilitate and accept, with due regard for the safety of that victim, the return of that victim without undue or unreasonable delay, (2) at the request of a receiving State Party, it shall, without undue or unreasonable delay, verify whether a person who is a victim of human trafficking is its national or had the right of permanent residence in its territory, (3) it shall agree to issue such travel documents or other authorisation as may be necessary to enable the victim to travel to and re-enter its territory, and (4) the receiving state, in returning the victim, shall consider the safety of the victim and the status of any legal proceedings related to the victim, and the return shall preferably be voluntary. The protocol stresses that the rights, obligations, and responsibilities of States and individuals under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein should not be prejudiced.

The Palermo Protocol does not provide for the granting of a residence permit to victims of human trafficking, nor does it stipulate the recovery and reflection period; it only mentions that States Parties should take into account the adoption of legislative measures to allow victims to remain in their territory in accordance with Article 7 thereof, and without prejudice to the right to seek asylum (Roth, 2012). The protocol is not concerned with victims after their return to their homelands, despite the importance of continuing to provide them with protection (Cepedo et al., 2014). This emphasises the necessity of providing more protection for victims of human trafficking.

The Jordanian Law does not stipulate the victim’s right to, temporarily or permanently, remain in the State’s territory, which constitutes a legislative gap and is not in line with the Palermo Protocol. However, it has stipulated that one of the tasks of the National Committee for the Prevention of Human Trafficking is to coordinate with all relevant official and non-official bodies to facilitate the return of victims and those affected by human trafficking crimes to their homelands or any country they choose, provided the receiving state agrees to receive them.

It is worth noting that the voluntary return of the victim should not be limited solely to the transfer of the victim; it must also include ensuring that the victim returns safely, in dignity, and obtains assistance (Tamkeen, 2016).

In the UK, the victim may have a statutory right of residence before human trafficking occurs, and the victim must demonstrate that she or he has a legal right to reside in the UK.

Victims of modern slavery, including victims of human trafficking, can be granted discretionary leave to remain (DL) after the Single Competent Authority (SCA) issues a positive conclusive grounds decision that an individual is a victim of modern slavery, provided he/she satisfies one of the following criteria, namely “leave is necessary owing to personal circumstances, leave is necessary to pursue compensation, or victims who are helping police with their inquiries”.
If the DL is granted for the purposes of medical treatment, it should be for a period of up to 30 months, and at the expiration of the initial leave period, a further period of leave may be requested. If the DL is granted for purposes of assisting in police investigations or for the purposes of pursuing a compensation claim, then the period of leave will be granted according to the circumstances provided, but it does not exceed 12 months for the initial leave. To obtain longer periods of DL, sufficient evidence of the victim's circumstances must be provided (Home Office, 2020).

Denying victims of human trafficking the right to residency poses a big problem for them, as deporting these victims exposes them to the risk of re-trafficking because they are placed in the same conditions that originally led to their trafficking. It is worth noting that the government did not collect data on re-trafficked victims between 2014 and 2016 (Mantouvalou, 2018), while only 384 of the 2563 conclusively identified victims were granted discretionary leave to remain in the UK (Fudge, 2018).

It is worth noting that some amendments have been made to the Immigration Law of 2016, granting migrant domestic workers who have been categorically recognised as victims of human trafficking the right to stay in the United Kingdom for a period of up to two and a half years through the NRM. Several criticisms have been raised against this amendment, perhaps the most prominent of which is that if domestic workers are not conclusively proven to be victims of human trafficking, they will be unable to enjoy that protection, which makes them hesitant to leave their employers and report their exposure to human trafficking. This hesitation in reporting is due to the fear of being unable to prove that they are victims of human trafficking and the risk of deportation they may face (Mantouvalou, 2018).

It is noteworthy that there is currently a Modern Slavery (Victim Support) Bill, which aims to amend the MSA in order to create a statutory duty to provide support to a potential victim for at least 45 days or longer until a conclusive determination is made. Confirmed victims receive a period of 12 months from the date of confirmation of their status as modern slavery victims. The Bill specified that the Secretary of State must ensure that discretionary leave to remain is granted to victims so that they receive support for 12 months, and discretionary extension of the support and leave to remain can be granted (Modern Slavery (Victim Support) bill, explanatory notes, 2018).

6.2. The right of human trafficking victims for adequate housing

The Palermo Protocol stipulates that States Parties consider implementing measures for the physical, psychological, and social recovery of victims of human trafficking by cooperation with non-governmental organisations, related bodies, and other elements of civil society. This recovery includes adequate housing. This provision applies to the receiving state of victims of human trafficking until they return to their state of origin (United Nations, 2005).

It is noted that the Palermo Protocol did not use expressions obligating states to provide adequate housing for victims, but rather made it one of the matters considered by States Parties. Therefore, the protocol is described as focusing primarily on punishing human traffickers rather than developing methods to help victims of human trafficking, and the strong language used in it to criminalise human trafficking does not extend to protecting victims (Baird, 2019).

One of the tasks of the National Committee for the Prevention of Human Trafficking in accordance with Jordanian Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings is to cooperate with official and non-official bodies to implement physical, psychological, and social recovery programs for victims and those affected by those crimes. Its tasks also include supervising their accommodation in places that have been established or approved for this purpose. This law grants the Council of Ministers the authority, based on the Committee's recommendation, to establish one or more homes to shelter those injured/affected by these crimes. The task of regulating the grounds for entry and exit into these homes, the enrolment and management of
recovery programs provided to inmates, and the conditions that must be met by their workers is left to the Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking.

The Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking No. (30) was issued in 2012. One of its goals is to provide protection and temporary accommodation for those injured/affected by crimes of human trafficking until their problem is resolved or until they return to their countries of origin or to any country they choose that agrees to receive them. This also includes the provision of social care and living, health, psychological, counselling, legal, and cultural services, and building an information base for those injured/affected by crimes of human trafficking.

The regulation requires the consent of the person injured/affected by crimes of human trafficking and the consent of whoever represents the injured/affected person for the purpose of housing in the shelter if it becomes evident to the public prosecutor that any of the human trafficking crimes have occurred against the injured/affected, or if the public prosecutor decides to stop pursuing the injured/affected if he or she is a perpetrator, participant, interferer, or instigator in any of the human trafficking crimes. It is permissible to receive the injured/affected person in cases of emergency with the approval of the Minister or someone authorised based on data provided by a competent authority, which confirm the status of the affected/injured person. The duration of the accommodation should not exceed two months, and the Minister, upon the recommendation of the director of the shelter, is entitled to extend this period. The accommodation extends in several cases, including the end of the period of the accommodation, if the proof of the status of the injured/affected person is unavailable, or if the injured/affected person wants to leave the shelter. The regulation stipulates that one of the objectives, tasks, and powers of the shelter is to provide legal aid to the injured/affected person. The administrative body consists of several specialists in legal affairs.

The Jordanian legislator was right by not restricting the right to shelter to the injured, but also including those affected by the crimes of human trafficking. The Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking has clarified the definition of the affected as the person who is a second relative of the injured, who has not completed 18 years of age, and who is present in Jordan upon admission of the injured to the shelter, in the absence of a suitable person to take care of the affected, as determined by the Minister or whomever he authorises in writing. The researcher believes that the provisions of this article should be amended to remove the condition that the affected person be below the age of eighteen and include first- and second-degree relatives and dependents of the injured person even if they exceed this age. By doing so, we encourage the injured persons to uncover the crimes of human trafficking.

This is because victims of human trafficking are afraid to turn to the official authorities for fear of their families being harmed and losing support or housing, especially if the victim is a refugee. A report by Tamkeen, a Jordanian non-governmental organisation that aims to combat human trafficking, indicated that Syrian refugees are increasingly exposed to the risk of human trafficking because of their economic situation. Non-governmental organisations have detected an increased likelihood of cases of forced labour among refugee children who work alongside their families in the agricultural and service sectors, and as street vendors, in addition to the presence of cases of Syrian girls and women being sold through temporary or forced marriages for the purpose of forced prostitution (Tamkeen, 2016).

In the UK, if the victims are British citizens or persons who have leave to remain on a condition that makes them eligible for homelessness assistance, because Section 188(1) of the Housing Act (1996) requires the housing authorities to secure accommodation if the person who applied is homeless or eligible for assistance, the housing must be suitable for him or her based on an assessment of his or her conditions and needs. While asylum seekers can receive support under Section 95 of the Immigration and Asylum Act 1999, if the potential victim has appropriate accommodation, such as local authority accommodation, asylum accommodation, or any other
form of accommodation, they will continue to enjoy that housing unless it becomes evident through needs-based assessment that the victim needs to obtain housing through Modern Slavery Victim Care Contract accommodation.

The first responder must make an immediate referral for Modern Slavery Victim Care Contract Support (MSVCC), which includes providing accommodation in pre-reasonable grounds cases for a potential human trafficking victim when she/he is destitute or at risk of becoming destitute, or when he or she is ineligible for local authority support or available local authority support is unsuitable or unsafe for them, provided the first responder ensures that the potential victim agrees to enter MSVCC support (Home Office, 2021a).

It is worth noting that there are fears regarding the end of the support period, especially when it was previously set at 45 days, before the amendments mentioned earlier were made; victims of human trafficking were driven to struggle to find housing and rebuild their physical and mental stability because of the fear of the risk of refoulement to countries and societies where their exploitation had begun (Gadd & Broad, 2018).

The new MSVCC provides customised support and protection that is proportionate to the needs of the victims in order to extract them from exploitation situations and prepare them to start rebuilding their lives in a manner that protects them from being exploited in the future. Their needs, which are evaluated when the victims are preparing to leave the service, are continuously evaluated; thus, the services provided by MSVCC are specialised to match their needs, including accommodation (2020UK Annual Report on Modern Slavery, 2020).

7. Non-punishment principle: victims, not criminals
Vicims of human trafficking are reluctant to seek help from law enforcement agencies for fear of being detained, prosecuted, convicted, and deported. Even after charges are brought against the perpetrators, victims of human trafficking do not tell their stories to their lawyers because of their feelings of mistrust, shame, and psychological trauma (Baird, 2019), which traffickers exploit to control their victims. This constitutes a significant obstacle to the protection of victims and prevents the crime from being discovered in the first place (Jovanovic, 2017). Therefore, the non-punishment principle is one of the most important ways of protecting victims of human trafficking, as it encourages the victim to report the crime of human trafficking, resort to courts, and not hide that crime for fear of criminal prosecution for the acts they committed because they were exposed to the crime of human trafficking.

The non-punishment principle is especially salient for the protection of victims of human trafficking who were forced to commit crimes (Haynes, 2016), since the fear of punishment prevents victims from seeking recourse from authorities and the exploitation of this fear is one of the methods traffickers use to control their victims (Muraszkiewicz, 2019).

The Palermo Protocol does not contain any provisions related to the non-punishment principle, although this protocol is the first comprehensive international instrument for the crime of human trafficking (Jovanovic, 2017; Roth, 2012). Accordingly, the countries that have acceded to this protocol are not bound to adopt this principle despite its importance in protecting the victims of human trafficking.

However, this principle is required by the European instruments, as stipulated in Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings and Article 8 of the EU Directive 2011/36/EU of the European Parliament and of the Council on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, which demonstrates the UK’s commitment to stipulating this principle in its law, as will be discussed later.
The European instruments are distinguished for their victim-centred approach and, as such, they stipulate a non-punishment provision to protect the victims who have been forced to commit illegal acts, such as begging, theft, or drug-related offences (Cepeda et al., 2014).

Although it takes into account the vulnerability of the victims of human trafficking and considers that they may have been forced to commit offences, the EU Directive 2011/36/EU has been criticised because Article 8 thereof has not stipulated the non-detention of the victims of human trafficking. It also lacks constraints on the Member States in terms of non-prosecution and non-punishment (Gromek-Broc, 2011).

Gallagher suggests that the language of Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings is weak because, according to her, it is “providing only for such a possibility and not imposing any obligation on the Member States” (Gallagher, 2006).

It is also noted that both instruments are carefully drafted and do not interfere with the penal systems of the Member States (Gromek-Broc, 2011).

The Jordanian Law has granted the public prosecutor the power to decide to stop prosecuting any of the persons injured/affected by the crimes of human trafficking if it is found that they have committed, participated in, interfered in, or incited any of the crimes of human trafficking. The public prosecutor’s decision is subject to the approval of a committee consisting of the Chief Prosecutor (appointed as the president) and two judges from the Court of Cassation chosen by the President of the Judicial Council.

The Jordanian legislator has restricted the cessation of the prosecution to the discretion of the public prosecutor and the approval of the Judicial Committee. It would have been more appropriate to stipulate that the victim may not be imprisoned, detained, or prosecuted in a criminal, civil, or administrative manner for criminal acts he or she committed as a direct result of the crime of human trafficking (Maqableh, 2016).

The Trafficking in Persons Report of 2019 indicated that victims of human trafficking in Jordan were subject to arrest, imprisonment, and deportation because of illegal acts committed as a direct result of exposure to trafficking, such as immigration violations and deserting from abusive employers (Trafficking in Persons Report, 2019). This note was emphasised in the Trafficking in Persons Report of 2020 (Trafficking in Persons Report, 2020).

In her visit to Jordan, the Special Rapporteur’s Report mentioned that criminalising irregular migrants who are human trafficking victims and prosecuting them affects the victims adversely. The report presented information proving that victims of human trafficking who have been found to have violated the residency law do not benefit from the deportation exemption. Therefore, victims are afraid to contact the authorities and seek legal protection, and this approach leads to the criminalisation of victims for crimes committed during their trafficking, for which they must not be held liable. Criminalising people who have sexual relations and are likely to be forced into prostitution also discourages victims of sexual trafficking from reporting to the police (Human Rights Council, 2016).

However, the MSA stipulates defence for slavery or trafficking victims who commit an offence in Section 45; it stipulates the elements of defence in cases of adults in Section 45(1): “A person is not guilty of an offence if:

(a) the person is aged 18 or over when the person does the act which constitutes the offence,

(b) the person does that act because the person is compelled to do it,

(c) the compulsion is attributable to slavery or to relevant exploitation, and
(d) a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act'.

It also stipulates the elements of defence in cases of minors in Section 45(4): ‘A person is not guilty of an offence if:

(a) the person is under the age of 18 when the person does the act which constitutes the offence,

(b) the person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and

(c) a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act'.

Section 45(5) defines “relevant characteristics” as “age, sex and any physical or mental illness or disability”, and defines “relevant exploitation” as “the exploitation (within the meaning of section 3) that is attributable to the exploited person being, or having been, a victim of human trafficking”.

According to the MSA, a person is not guilty of the crime if he or she was under 18 years of age at the time of the act that constituted the crime, if he or she committed the act as a direct result of being or having been a victim of slavery or related exploitation, and if a reasonable person, with the same characteristics and the same circumstance, would commit the act as well.

The MSA has been criticised for requiring that the person be already subjected to exploitation of any form mentioned in the law in Section 3 in order for victims to take advantage of the application of defence. This includes an omission, according to the law, of persons who have been trafficked but have not yet been exploited (Jovanovic, 2017).

The law excludes the crimes listed in Schedule 4, including, for example, false imprisonment, kidnapping, manslaughter, and murder, from the provisions relating to the non-punishment principle. It is clear from this that the intention of the British legislator is to prevent the application of defence for the most serious crimes. However, this legislative trend is criticised for not considering that some of the crimes that have been excluded from the law may be committed during or because of the trafficking or exploitation of a person. Specifically, the aforementioned Schedule 4 excludes human trafficking crimes, although it has been documented that victims of trafficking are often involved in the recruitment and abuse of new victims (Jovanovic, 2017).

Given the length of Schedule 4 and the crimes it contains, in many cases, the defence clause will not be applicable. In addition, the relevant characteristics according to Section 45, namely, age, sex, and any physical or mental illness, or disability, are criticised, as they do not include all the vulnerabilities that traffickers exploit in order to compel the victim to commit crimes. For example, the migration status of the victim is not mentioned (Muraszkiewicz, 2019).

The “Independent Review of the (Modern Slavery Act, c. 30, 2015): Final Report” underlined the lack of quantitative data to assess the scope and impact of statutory defence. Law enforcement participants reported their concerns about the misuse of defence by criminals. On the other hand, other stakeholders provided evidence that victims were still being prosecuted for crimes they were forced to commit (Secretary of State, 2019). In some cases, victims were prosecuted because of the police’s failure to recognise the vulnerability of victims; therefore, work must be done to ensure the police and Crown Prosecution Service understand the statutory defence for victims of trafficking (Sands, 2019).

A study conducted by the Independent Anti-Slavery Commissioner Office showed that in some cases, victims of human trafficking did not benefit from statutory defence, and there were cases in
which an abuse of the statutory defence occurred. Therefore, this study proposes a set of recommendations, the most prominent of which is that statutory defence training must be conducted for the police, CPS, defence lawyers, magistrates, and the judiciary (Bristow & Lomas, 2020).

One researcher recommends amending the MSA law because it does not provide adequate protection for many victims, who are held accountable by the law for crimes they have committed; the researcher recommends drafting texts relating to this principle in a clearer manner, and shows the necessity of providing guidance for prosecutors, other judicial officers, and lawyers (Muraszkiewicz, 2019).

It is worth noting that the British judiciary provides more protection for victims of human trafficking, as the British Court of Appeal has ruled that the defendant does not bear the burden of proving that he or she is a victim of human trafficking and that he or she only has to prove the applicability of the components of Section 45 of the MSA before the prosecution to prove ‘beyond reasonable doubt “that the defendant is not a victim of human trafficking”’ (R v MK, 2018, EWCA Crime 667, 28 March 2018).

Comparing the provisions of the Jordanian Law with the MSA shows that the MSA includes provisions that activate the non-punishment principle, which provides adequate protection for victims of human trafficking, although some parts of it have been criticised, as explained earlier. The Jordanian legislator, on the other hand, has granted the public prosecutor the discretion to stop the prosecution of any of those injured/affected by human trafficking crimes. Therefore, the Jordanian Law does not provide the necessary protection for victims of human trafficking, which causes them to hesitate to resort to the courts for fear of prosecution.

8. Special protection for women and children victims of human trafficking
Human trafficking is a crime of a special nature, considering that its subject matter is a mobile and renewable commodity—human beings, especially those who suffer from poverty, unemployment, and social insecurity—in most cases, they are women and children (Nashed, 2005).

Therefore, women and children are among the vulnerable groups that require strict legal protection. Women are at a greater risk of human trafficking, especially in the event of regional or civil conflicts and economic crises, in addition to poverty, illiteracy, and low social status (Hylandt, 2001). Children are also vulnerable to human trafficking because they are easily deceived, subject to fraud and kidnapping, and because of their obedient nature (Maqableh, 2016).

The Global Report on Trafficking in Persons 2020 emphasised that in the past 15 years, the number of detected victims of human trafficking has increased for both females and males, although the number of discovered men, boys, and girls has increased more than the number of women. By comparing the figures presented in this report and the victims of human trafficking in 2004, we notice that the percentage of trafficked women reached 74%, while the percentage was 10%, 13%, and 3% for girls, men, and boys, respectively; in 2018, the percentage of trafficked women was 46%, while the percentage was 19%, 20%, and 15% for girls, men, and boys, respectively. This report also shows a difference in percentage in terms of the type of exploitation, as the percentage of women reached 67% in sexual exploitation, compared to 5%, 25%, and 3% for men, girls, and boys, respectively, while in the case of forced labour, the percentage of women equalled 26%, compared to 38%, 15%, and 21% for men, girls, and boys, respectively (United Nations Office on Drugs and Crime, 2020). The final report of the study on the gender dimension of trafficking in human beings showed that in 2012, the proportion of women among registered victims of trafficking across EU-28 was 75.4% in all aspects of exploitation, while the percentage of sexual exploitation and forced labour was 97.4% and 26.4%, respectively (Walby et al., 2016).
The researcher notes that the previous statistics indicate a decline in the percentage of women who are victims of human trafficking and an increase in the number of children and men. This is due to the difference in the rates of victims according to the types of exploitation; there has been an increase in trafficking in men and children for forced labour.

The Palermo Protocol requires every State Party to take into account the age and gender of victims of human trafficking and their special needs to assist and protect victims of human trafficking, and this particularly applies to the special needs of children, such as adequate housing, care, and education.

The protocols have been criticised for lacking many provisions to protect child victims of human trafficking as well as provisions regarding the treatment provided to them. The Council of Europe Convention on Action against Trafficking in Human Beings, on the other hand, includes many important provisions relating to child victims, most notably, the assumption that the victim is a child if his or her age is unconfirmed and there are reasons to believe that he or she is a child. It also includes provisions regarding the appointment of a representative for an unaccompanied child, and the protection of his or her right to privacy, education, healthcare, and accommodation. The EU Directive on preventing and combating trafficking in human beings and protecting its victims also protects children who are victims of human trafficking. One of the most prominent provisions thereof is providing assistance and support so that the child’s views, needs, and concerns are taken into account, and the extent of the European instruments’ interest in protecting victims of human trafficking is evident (Cepeda et al., 2014).

The Convention on the Elimination of All Forms of Discrimination against Women, which was adopted by the United Nations General Assembly Resolution 180/34 of 18 December 1979 in Article 6, stipulated that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women” (United Nations, 2005).

General Recommendation No. 19 on Violence against Women stated that wars, armed conflicts, poverty, and unemployment increased trafficking in women. It also stated that new forms of sexual exploitation, such as sex tourism and arranged marriages between women from developing countries and foreigners, contradict what women should have in terms of equal rights and respect for their dignity, and expose them in particular to violence and mistreatment. The UN Committee on the Elimination of Discrimination against Women (CEDAW) has called on State Parties to take preventive and punitive measures to combat human trafficking (Committee on the Elimination of Discrimination against Women, 1992).

The Convention on the Rights of the Child also stipulates that States Parties shall take appropriate national and international measures, whether bilaterally or multilaterally, to prevent trafficking in children in any form and for any purpose (United Nations, 1999).

This convention is important because it is the highest-ranking international instrument in terms of the number of ratifications and because it is the main reference regarding the situation of trafficked children. It is also worth mentioning that the Committee on the Rights of the Child has stressed the need to combat child trafficking in its recommendations and observations on States Parties’ reports (Scarpa, 2006).

The Jordanian Law provides strict protection for those under the age of 18 by criminalising their attraction, transportation, harbouring, or reception for the purpose of exploitation, even if unaccompanied by the threat or use of force or other forms of coercion, deception, fraud, abuse of power, exploitation of the state of weakness, kidnapping, or giving or receiving benefits or money to obtain the approval of a person who has control over them. This indicates disregarding and influencing the child’s will because it does not constitute informed free will.
The Jordanian Law imposes more intense penalties for offenders of human trafficking if the victims are aged under 18 years, women, or disabled, or if the perpetrator is the spouse, one of the ascendants or descendants, custodian, or guardian of the victim. This penalty reaches temporary hard labour for a period not exceeding ten years, a fine of not less than five thousand dinars, and not more than twenty thousand dinars. This is notable because in this law, the punishment for human trafficking is imprisonment for a period of no less than six months, a fine of not less than one thousand dinars and not more than five thousand dinars, or both of these penalties.

A judgment was issued by Zarqa Criminal Court that convicted the accused of a felony of recruiting people aged under 18 years for the purpose of exploiting them in violation of the provisions of Articles 3/a/2 and 9/a of Law No. 9 of 2009 on the Prevention of Human Trafficking. The Court decided to sentence the accused to a penalty of temporary hard labour for a period of three years and a fine of five thousand Jordanian dinars. The Court took the estimated mitigating reasons into account because the convicted accused was a young man and in order to provide him the opportunity to reform himself. Therefore, according to the provisions of Article 99/4 of the Penal Code, it decided to reduce his penalty to imprisonment for a period of one year and a fine of one thousand Jordanian dinars—the fees were calculated for the period of detention (The judgment of Zarqa Criminal Court, No. 780/2009, dated 12 May 2010). The researcher believes that the introduction of discretionary mitigating reasons by the court has wasted legislative wisdom in providing strict protection for children.

This is because the aim of intensifying the penalty if the victim is a child is to achieve general and special deterrence to protect children from exposure to this heinous crime; therefore, using mitigating reasons in the court will prevent this deterrence from being achieved and will lead to more child trafficking crimes. A study by Tamkeen regarding the analysis of some judicial rulings on human trafficking showed a clear impact of waiving personal right on the course of the trial in terms of reducing penalties for defendants in cases of human trafficking (Tamkeen, 2020).

The Jordanian Law is not keen in stipulating provisions that take into account the special situation of children, as it does not distinguish between them and adult victims in terms of their rights as victims of human trafficking crimes. Provisions to ensure the speeding up of the procedures of identifying child victims of trafficking have not been put in place, nor have specialised policies and programs to protect and support child victims and provide all kinds of assistance related to psychological, physical, legal, or educational aspects been adopted, violating the Palermo Protocol (Al Talbani, 2016).

Article 6(4) of the Palermo Protocol stipulates that “Each State Party shall take into account, in applying the provisions of this article, the age, gender, and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education, and care”. The Jordanian Law is criticised for not imposing special measures for children and women. Therefore, general rules are applied for the primary investigation, taking into account the Juvenile Law with regard to children (Maqableh, 2016).

The researcher believes that the Jordanian Human Trafficking Prevention Law and the Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking does not stipulate crucial rights for child victims of human trafficking crimes, such as the right to education and the right to be reunited with the family.

Victims of human trafficking with disabilities should also receive attention that is commensurate with their needs (Al-Suwailmyin, 2019).

It is worth noting that there are measures that take into account women and children in victims’ shelters, according to the Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking. This regulation obligates the shelter to adopt the principle of separation between men...
and women among injured/affected persons and separation between adults and children, unless otherwise necessary. Entry to the places designated for women inside the shelter is not allowed, except with the approval of the director or whomever he or she authorises in writing. This person must be accompanied by a competent female employee. This regulation also obligates the injured/affected persons to take care of their children if they reside with them in the shelter.

The MSA stipulates that the victim's consent to travel, regardless of whether an adult or a child, is irrelevant according to Section 2(2), and it does not require coercive means as an element of trafficking. However, its definition of exploitation is differentiated between adults and children, as observed in Sections 3(5) and (6):

‘(5) The person is subjected to force, threats or deception designed to induce him or her:

(a) to provide services of any kind,

(b) to provide another person with benefits of any kind, or

(c) to enable another person to acquire benefits of any kind.

(6) Another person uses or attempts to use the person for a purpose within paragraph (a), (b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that:

(a) he or she is a child, is mentally or physically ill or disabled, or has a family relationship with a particular person, and

(b) an adult, or a person without the illness, disability, or family relationship, would be likely to refuse to be used for that purpose'.

One of the advantages of the MSA is that it has not put the burden of proving force, fraud, or coercion on children because they are vulnerable and usually do as they are told and are trained to deny. In some cases, they are unaware that they are victims of human trafficking. They only realise that after they their traffickers’ control on them is lifted. Therefore, the broad definition of human trafficking facilitates the identification of victims of human trafficking (Abdulkareem, 2019).

The MSA has many forms of protection for children; most prominently, the MSA has explained that among the forms of exploitation, one of the elements of the crime is the exploitation of the child in providing services and the sexual exploitation of the child through indecent photographs.

Technological advances, especially the Internet and smartphones, have facilitated sex trafficking and the emergence of new forms of that trafficking, such as the use of the Internet and social media sites to advertise, schedule, and purchase sexual encounters with minors. They have also facilitated the publication of child pornography by publishing pornographic images of them that constitute continuous exploitation of the child because of the difficulty of removing such photographs after posting them online (Movsisyan, 2019).

There is another form of child protection, such as in the crimes committed against children on which the MSA has stipulated not to apply Section 45. These crimes are related to the non-punishment principle, and by listing them in Schedule 4, it constitutes protection for children. Among these are abandoning children, child destruction, cruelty to children, child abduction, and the rape of a child.

The MSA has included an important provision related to presumption of age. This text means that if the public authority has reasonable grounds to believe that the person is a victim of human trafficking and is unsure of the person's age but has reasonable grounds to believe that he or she is aged under
18 years, then an assessment of the person’s age must be made by a local authority, or his or her age may be determined in another way. The public authority must assume that the person is aged under 18 years for the purposes of carrying out its functions under the relevant arrangements made under guidance issued by Section 49/1/b, and regulations made under Section 50/1.

The MSA is concerned with estimating the age of the victim because it enables the child to utilise support and services; hence, dispute over the victim’s age should not delay referral to the NRM (Abdulkareem, 2019).

The MSA has provided special protection for children through its provision of Independent Child Trafficking Advocates, which requires the Secretary of State to make appropriate arrangements to enable Independent Child Trafficking Advocates (ICTAs) to represent and support children who, on reasonable grounds, are likely to be victims of human trafficking. This is done while bearing in mind that child representation and support must be from a person independent of anyone responsible for making decisions about the child. ICTAs must act in a way that promotes the child’s well-being and is in his or her best interest. ICTAs have the right to assist the child in obtaining legal advice, assistance, and representation, including, when necessary, by appointing and directing legal representatives to act on behalf of the child.

The Independent Review of the Modern Slavery Act 2019 states that Section 48 of the MSA requires the UK Home Secretary to establish Independent Child Trafficking Advocates (ICTAs) in England and Wales to represent and support children who, on reasonable grounds, are most likely victims of human trafficking. However, this provision has not been activated, and therefore, it has been suggested that the government accelerate its activation and provide ICTA services to trafficked children who are not under responsible, effective parenting in the United Kingdom, especially foreign children. This shall be done while taking into account the needs of the child in each case separately, and removing the requirement of reasonable grounds as a condition for children to receive that service, because it is a term that creates confusion and ambiguity (Secretary of State, 2019).

The UK government has accepted the suggestion of the Independent Review of the (Modern Slavery Act, c. 30, 2015). Therefore, the government has committed to refer to Independent Child Trafficking Advocates as “ICTGs”, “Independent Child Trafficking Guardians”. It is worth noting that the implementation of ICTG services started gradually in January 2017 until it became inclusive of one-third of the local authorities in England and Wales (Kohli et al., 2020).

It becomes necessary to refer the victim to the NRM if the victim is or might be less than 18 years old, and child victims do not have to agree to their referral. First, they must be protected and then referred to the NRM, and the First Responder Organisation specified in the National Referral Mechanism guidance shall make the referral when it believes to have encountered a potential victim of human trafficking in England and Wales. Referrals are made available via the Internet (National Referral Mechanism Guidance: Adult (England and Wales)).

It should be noted that the MSA has no special provisions for protection for women. However, female genital mutilation is among the crimes stipulated in Schedule 4 that the MSA has excluded from the application of the provisions related to the non-punishment principle. The need to consider the use of maternity services to accept the placement of pregnant women under observation has also been mentioned in the guidance directed to the health staff for identification and support of victims of modern slavery (Identification and Supporting Victims of Modern Slavery: Guidance for Health Staff).

**9. Findings and recommendations**

This study was conducted to address a very important problem, which is the extent of the adequacy of the protection provided by Jordanian Law No. 9 of 2009 on the Prevention of
Trafficking in Human Beings compared which the protection provided by the MSA and the extent to which it meets the obligations of Jordan under the Palermo Protocol. The main findings of this study are as follows.

9.1. Findings

(a) The regulation of the Jordanian Law for human trafficking is in accordance with the Palermo Protocol, except for the use of the word *attracting* instead of recruitment in the Jordanian Law, and the Jordanian Law does not provide for transferring among the criminal acts. The MSA regulation for that crime was criticised for its use of the word “travel” in the definition of the crime, which suggests the need to move the victim to carry out the crime.

However, the MSA Explanatory Notes have interpreted the definition of human trafficking in line with the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings. The Home Office, through the (Modern Slavery Act, c. 30, 2015) - Statutory Guidance for England and Wales, has also interpreted the MSA definition of human trafficking in line with the Palermo definition.

The MSA is right in not considering the consent of the victim to carry out the crime, regardless of whether the victim is a child or an adult, while the Jordanian Law does not take into account the consent of an adult to exploitation, provided specific means are used to confront him or her when committing the crime. According to the Jordanian Law, the consent of a child is not considered. Both laws are in line with the Palermo Protocol in this regard, although the MSA is superior because of its increased protection, which includes both adults and children. The MSA has defined exploitation as one of the elements of the crime with a flexible text that includes all emerging aspects of exploitation, unlike the Jordanian law, which has specifically defined forms of exploitation, and therefore does not expand to include new types of exploitation, namely, forced beggary, submission to medical experiments, securing services, etc.

(a) Both laws have specified penalties for the perpetrator of the crime of human trafficking. The Jordanian Law’s approach to imposing a punishment is considered insufficient for the crime of human trafficking, although it sets severe penalties for specific cases in the law, the most prominent of which is if the victim is a child or a female. The Jordanian Law is also unique in imposing a penalty on legal persons. Although the MSA has a more severe punishment for the crime of human trafficking, amounting to life imprisonment, it does not impose a penalty on legal persons.

Moreover, although the MSA has an updated provision on Transparency in Supply Chains, no penalty is imposed for violating it. The Jordanian Law does not include a text similar to the text in the MSA, requiring organisations to report annually on the measures they have taken to ensure that human trafficking does not occur in any of their supply chains or any part of their own business. Moreover, the Jordanian Law has not stipulated provisions similar to those of the MSA on the enforcement powers of ships in relation to preventing, detecting, investigating, or prosecuting human trafficking.

(a) Jordanian Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings does not use the term “victim”; rather, unlike the MSA and the Palermo Protocol, which use the term “victim” in their texts, it uses “injured/affected” by human trafficking crimes.

(b) The Jordanian Law has not adopted the non-punishment principle. Instead, it has granted discretionary power to the public prosecutor to stop prosecuting the injured/affected, with the approval of the Judicial Committee, if he or she has committed, participated in, interfered with, or incited any of the crimes of human trafficking. In the MSA, the non-punishment principle applies to any act that constitutes a crime if the perpetrator was compelled into it in accordance with the controls set by the Act. It should be noted that the Palermo Protocol does not stipulate this principle.
(c) The Jordanian Law does not explicitly stipulate the victim’s right to remain in the state’s territory, either temporarily or permanently. By doing so, it violates the Palermo Protocol. On the other hand, in the UK, the National Referral Mechanism (NRM) applied in England and Wales grants potential victims of human trafficking the right to a period of at least 45 days of specialised support.

The time-limited support was challenged in the NN and LP v Secretary of State for the Home Department case, and the ruling stated that the 45-day policy is illegal and incompatible with the Council of Europe Convention on Action against Trafficking in Human Beings. The Home Office developed the Recovery Needs Assessment (RNA) Guidance, and organised the Discretionary leave considerations for victims of modern slavery guidance to grant victims of modern slavery discretionary leave to remain (DL) after the Single Competent Authority (SCA) issues a positive conclusive grounds decision that the individual is a victim of modern slavery. Moreover, migrant domestic workers have been granted a longer period of residence and the right to change their employers by the amendments to the Immigration Law of 2016.

(a) One of the deficiencies of the Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking is that it sets a short period of shelter (only two months), with the possibility of extending it by the decision of the Minister of Social Development. It also limits the right of admission of the injured/affected to shelter if he or she is a second-degree relative of the affected and is not yet 18 years of age. Therefore, the Jordanian law agrees with the Palermo Protocol in providing shelter, but unfortunately, the period of shelter is insufficient.

In the UK, however, if the potential victim has appropriate accommodation, such as local authority accommodation, asylum accommodation, or any other form of accommodation, they will continue to enjoy that housing according to Section 188(1) of the Housing Act (1996) and Section 95 of the Immigration and Asylum Act 1999, unless it becomes evident through needs-based assessment that the victim needs to obtain housing through Modern Slavery Victim Care Contract accommodation, as described by the Home Office in Modern Slavery: Statutory Guidance for England and Wales.

(a) Jordanian Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings provides special protection for women and children by not considering the consent of the child for human trafficking crimes, and intensifying the punishment for those who commit the crime of human trafficking against children and women. However, Jordanian courts go against this sometimes, as in some of their decisions, they grant discretionary mitigating reasons to decrease the level of punishment, and hence, justice and protection is not provided for children and women. The MSA, on the other hand, has taken care of children by not considering the child’s consent to travel in the crime of human trafficking. In the forms of exploitation, it has clarified some of the forms related to child exploitation, and the exclusion of the non-punishment principle in a number of crimes against children and the crime of female genital mutilation. The MSA has also included text related to estimating the age of the victim and the introduction of Independent Child Trafficking Advocates to promote the presence of guardians of trafficked children. No specific measures for women have been indicated in the MSA.

9.2. Recommendations
(a) There is a need to amend Jordanian Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings to expand the concept of exploitation as one of the elements of the crime of human trafficking to include modern forms of exploitation, such as forced begging, submission to medical experiments, and securing services. This amendment shall include the stipulation that the consent of the adult victim not be taken into consideration, regardless of whether the aforementioned means are used, to provide more protection to the victim, similar to the MSA.
(b) The minimum and maximum penalties for trafficking in human beings need to be increased under the Jordanian Law. It is important to prevent courts from granting discretionary mitigating reasons for human trafficking felonies in which penalties are more severe because specific cases are applicable, and it is important to prevent them from replacing imprisonment with fines. This is important because providing for deterrent penalties, not allowing mitigating reasons to be used to reduce the penalty, not allowing the replacement of the penalty, and aggravating the punishment in the event of a recurrence of the crime of human trafficking would protect the victims of human trafficking from being re-trafficked. It is necessary to stipulate the court’s right to issue trafficking prevention orders and trafficking risk orders, as in the MSA, since the role of trafficking prevention orders in supporting victim protection has been demonstrated.

The Jordanian Law should obligate organisations to report annually on the measures they have taken to ensure that human trafficking does not occur in any of their supply chains or any part of their own business. The Jordanian Law should also regulate enforcement powers in relation to ships, specifically, enforcement powers for preventing, detecting, investigating, or prosecuting human trafficking.

(a) There is a need to amend Jordanian Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings to use the word victim instead of injured/affected. The term victim must be explicitly known, and the concept that the Jordanian legislator uses for the victim should expand to include the spouses of the victims and their second-degree relatives. The necessity to expand the definition of a victim of human trafficking stems from the fact that one of the factors hindering victim identification is the victims’ fear of their personal safety or the safety of their families and loved ones. It is also recommended not to set a specific age to provide victims of trafficking crimes with protection and encourage the detection of human trafficking crimes.

(b) Jordanian Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings must explicitly state the non-punishment principle to encourage victims of human trafficking to seek recourse from law enforcement agencies without fear of prosecution and conviction.

(c) The Jordanian Law needs to provide explicitly the right to temporary or permanent residence for victims of human trafficking and the right to change their employers for foreign domestic servants if they are exposed to human trafficking. The Regulation of Shelters for Injured and Affected by Crimes of Human Trafficking needs to be amended to extend the residence period in shelters. It is also important that such shelters include even those over the age of 18 if they are affected by human trafficking crimes.

(d) Provide adequate protection for women and children by stipulating special measures for them in Jordanian Law No. 9 of 2009 on the Prevention of Trafficking in Human Beings, as they are the groups most vulnerable to human trafficking. This can be achieved by measures such as stipulating the speeding up of the procedures of identifying child victims of trafficking, as well as the adoption of specialised policies and programs to protect and support child victims.

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