

# Under The Microscope

Analysis of Human Trafficking  
Cases in Jordan





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## Introduction

The history of slavery spans many cultures, nationalities, and religions from ancient times to the present day. Overtime, new forms of slavery gradually began to appear where the victims no longer become the property of the owner but are exploited through other types of relationships. Modern forms of slavery vary from child exploitation, forced labour, sexual exploitation of men, women and children; as well as organ removal, begging and other forms that are evolving each day and benefiting from recent technological advancements, including Social Media.

Currently, the crime of human trafficking is a threat that affects societies globally, regionally and locally. The ease of migration and movement has facilitated the occurrence of the crime, as people moved from one place to another looking for job opportunities that would provide them with a decent standard of living.

Other reasons that aided the spread of the crime include civil wars that ravaged several countries, as well as the state of economic and political instability in others. Other countries were hit with famine or struggled with high poverty levels, which ultimately made people vulnerable to the schemes or lies presented to them by traffickers.

Research indicates that human trafficking is now ranked third amongst the largest forms of organized crime in the world after the drug and arms trade, as

its activities generate huge profits estimated at billions of dollars. Human trafficking is considered one of the most important activities of transnational organized crime as it is of a special nature – that is, its basic commodity is people coming from background of insecurity, such as those with poor social, economic and political conditions in their countries of origin, or those who have fled their homes due to conflict and war. They leave in hopes of leading better lives only to fall victim to organized gangs of human trafficking that provide material temptations and the false promise of better living conditions.

Because of this, international organizations and governments around the world have begun developing response plans to combat and eliminate this crime, as well as protect the rights of its victims through treaties and conventions specialized in identifying and criminalizing acts pertaining to it. These conventions oblige ratified states to adopt national laws and policies to combat human trafficking, as well as guarantee the rights of its victims.

One of the most important agreements of such nature is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000. The conditions for trafficking are defined in Article 3:

“(a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving

of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

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

(d) "Child" shall mean any person under 18 years of age<sup>1</sup>."

The United Nations Office on Drugs and Crime (UNODC) as the secretariat of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and its protocols, defines three basic elements of trafficking: first, the process; second, the means; and third, the purpose. Thus, the combination of all three must be considered, as opposed to each individual

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<sup>1</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, General Assembly resolution 55/25, annex II, p.32. [http://www.unodc.org/pdf/crime/a\\_res\\_55/res5525e.pdf](http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf). Since December 25, 2003 when the Protocol entered into force, 117 countries have signed and 132 countries have ratified the Protocol as of September 10, 2009.

component, noting that the individual elements can still constitute criminal offenses independently in some cases as well.<sup>2</sup>

It should also be noted that the individual elements, such as sexual exploitation, forced labour, slavery-like practice, are not further defined in the Protocol, and signatory states are obligated to further define these terms under their domestic legislation.<sup>3</sup>

Similarly, the Arab region has been combatting human trafficking. Many countries in the region are a potential source, destination or transit countries for women and children who are subjected to forced labour or sex trafficking. Human trafficking is committed at both the local and international levels. It also takes endless forms depending on the ideas and methods used by its perpetrators. On the ground, the most common forms of this crime constitute trafficking in women and children for the purpose of prostitution or sexual exploitation; organ trafficking and forced labour. Other forms include the exploitation of domestic workers, sale of children for the purposes of adoption, forced marriage, sexual tourism, exploitation of children in armed conflict and the sexual exploitation of children for commercial purposes, as well as the exploitation of street children, including employing them in begging.

All Arab countries enacted legislation to combat this crime. Among these countries, Jordan was the third country in the region to issue legislation to

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<sup>2</sup> UNODC (2009), Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 1, p.4.

<sup>3</sup> The United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25. [http://www.unodc.org/pdf/crime/a\\_res\\_55/res5525e.pdf](http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf)

combat human trafficking. After its accession to the International Convention against Transnational Crime of 2000 and the protocols attached to it, including the Protocol to Prevent and Punish Human Trafficking, especially women and children, Jordan issued the Prevention of Human Trafficking Law No. (9) of 2009 as one of the protocol's requirements.

Ten years after the issuance of this law, Tamkeen for Legal Aid and Human Rights decided to monitor human trafficking cases and help persons who became victims of this crime within the framework of its competence. It conducted an evaluation study and analysis of the judicial decisions issued during the last decade related to the crime of human trafficking and attempted to find out the details of these decisions to shed light on its strengths and weaknesses.

## **The Importance of the Study**

The study's importance stems from its topic, as it highlights an important issue both at the national and international levels. It is also the first study of its kind in Jordan that provides a statistical and legal analysis of human trafficking cases of Jordanian courts. The study also sheds light on the procedures followed by such cases, its perpetrators and potential victims.

## **The Study Problem**

Although Jordan fulfilled its international obligations regarding the criminalisation of human trafficking and issued the necessary laws to do so, there are numerous questions regarding the extent of implementation of these laws in reality. This study's central question is regarding the efficacy of the measures taken to combat human trafficking, ensuring that it does not recur, and protect potential victims.

## **Study Goals**

The study aims to analyse human trafficking cases that occurred in the past ten years, in order to shed light on how they were dealt with, including procedures related to its follow-ups, investigation and protection.

## **Study Methodology**

The analysis relied on the use of a descriptive and analytical approach to look at the national legislation, policies and practices in light of Jordan's obligations under international conventions and national laws and legislations related to combating the crime of human trafficking through:

1. Provide a short presentation of the national law, legislations and international standards related to the issue of human trafficking

2. Collecting and analysing official statistics, as well as available cases on Qustas, the Anti-Human Trafficking Unit, in addition to Tamkeen's caseload.
3. Analyse some human trafficking cases and their judicial rulings.

## **First Chapter: International and National Legislations to combat Human Trafficking**

It is imperative to begin first by reviewing the Jordanian legal system, including its legislation concerned with combatting Human Trafficking. Thus, this chapter will provide an overview of these laws, bearing in mind that they were discussed in detail in previous studies.<sup>4</sup>

### **First: Jordanian Constitution**

The Jordanian constitution stipulated in article 13 that “compulsory labour shall not be imposed on any person, but pursuant to law, work or service may be imposed on any person.” Moreover, article 7 states that: “personal freedom shall be guaranteed and every infringement on rights and public freedoms or the inviolability of the private life of Jordanians is a crime punishable by law.”

Its article 23 enshrined the standards of decent labour, as it affirmed that:

“The State shall protect labour and enact legislation therefore based on the following principles:

- A. Every worker shall receive wages commensurate with the quantity and quality of his work.
- B. The number of hours of work per week shall be defined.

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<sup>4</sup> Tamkeen Fields for Aid, An Analytic Review of Jordanian Legislation Related to Anti-Trafficking

- C. Workers shall be given weekly and annual days of paid rest.
- D. Special compensation shall be given to workers supporting families and on dismissal, illness, old age and emergencies arising out of the nature of their work.
- E. Special conditions shall be made for the employment of women and juveniles.

## **Second: International Conventions and Treaties**

The Jordanian judiciary emphasized the necessity of ratifying international agreements according to Article (2/33) of the Jordanian constitution, which distinguished between two types of agreements. The first type is those that entail charging the state treasury sums of money, and affects the public or private rights of Jordanians. Such agreements cannot become enforceable unless approved by the Parliament.

The second type is those that do not result in such effects, and these do not need the approval of the National Parliament and become enforceable following its publication in the Official Gazette.<sup>5</sup>

Despite these clear regulations, many international treaties were signed by the Jordanian government, but were not ratified according to constitutional standards. As a result, the judiciary does not consider them applicable at the national level.

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<sup>5</sup> Jordanian Constitution, 1952

While the constitution did not address the legal value of these international treaties, the judiciary did so on multiple occasions. Indeed, it could be argued that the Jordanian judiciary in its decisions has given the duly ratified international conventions higher value than domestic laws.

The Court of Cassation issued a resolution on the supremacy of international law over national laws, meaning that in the case of conflict between an international treaty and an internal law, the judiciary should take whatever is stipulated upon in the international treaty.<sup>6</sup>

In another ruling, the court stated that, "the judiciary and the jurisprudence of countries around the world, including Jordan, agreed that the international conventions and treaties take precedence over domestic law. It is not permissible to apply the provisions of any domestic law that is inconsistent with international conventions and treaties. The domestic law is taken into account merely when it does not contradict with these conventions and treaties, so both can be jointly enforced. This is the adoption of our judiciary without disagreement."<sup>7</sup>

Based on the above, it can be undoubtedly said that the Jordanian judiciary has consecrated the principle of supremacy of international conventions above domestic law, as endorsed by the Jordanian jurisprudence. However, and while

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<sup>6</sup> The Magistrate Court of Cassation, Decree No. 599/1999, Judgment dated 16th October, 1999 , the Bar Association Journal of 2000, P.3258

<sup>7</sup> The Magistrate Court of Cassation, Decree No. 3965/2003, Judgment dated 29th February, 2004, Adaleh Center Publications, the electronic version of 2007. For the same meaning, see also the Magistrate Court of Cassation, Decree No. 12/1970; the Magistrate Court of Cassation, Decree No. 38/1991; and the Magistrate Court of Cassation, Decree No. 768/1991

such decisions should grant an upper rank to international treaties within the Jordanian legal system, this position is in fact interchangeable at any legal or practical moment as the Court could retract its position at any time. Furthermore, the Jordanian legal system is not based on judicial precedents, resulting in Jordanian courts not being bound to follow the Court's position in this regard<sup>8</sup>.

A careful reading of the judicial decisions<sup>9</sup> makes this quite evident as they show that in practice courts tend to confer a higher rank for an international treaty compared to domestic laws, but at the same time maintains that its rank remains below any constitutional laws, in keeping with the doctrine of the Supremacy of the Constitution<sup>10</sup>. This doctrine confers the highest authority in a legal system on the constitution.

Therefore, many jurists have insisted the necessity of strengthening the enforcement of the convention over domestic law in order to maintain the stability of the conventions, fulfil international obligation and protect individual rights stipulated by international conventions and treaties, that were signed by countries on their own free will.<sup>11</sup>

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<sup>8</sup> Omar Saleh Ali Al-Akor, Mamdouh Hassan Mana Al-Adwan and Maysaa Baydoun "The Order of the International Treaty in the National Legislation and the Jordanian Constitution", Shariah and Law Sciences, Volume 40, No. 12013

<sup>9</sup> The Jordanian Court of Cassation, Decision No. 29/1986 of 1 January 1986 and Decision No. 936 \ 1993 of 13 November 1993

<http://www.cojss.com/article.php?a=171> International Treaties in the Jordanian Internal Legal System

<sup>10</sup> Mohamed Khalil Al-Mousa, "The Implementation of Human Rights Treaties in the Jordanian Judiciary: Th Current Reality and Available Means", 2009

<sup>11</sup> Salem Alksouani, Principles of Constitutional Law with an Analytical Study of the Constitutional System of Jordan, Alksouani Printing press, 1983, P.247

Furthermore, an interpretative decision of the Constitutional Court affirmed that it is not permissible to issue a law that is completely inconsistent with the obligations established by the parties to a treaty that the Kingdom had ratified according to a law.<sup>12</sup>

Jordan joined many international conventions and treaties, except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990. As a result, the legal framework of protection for migrant workers has lost one of its most important foundations, as this convention is considered fundamental in the protection of their rights.

In the field of combatting human trafficking, Jordan acceded to the International Convention against Transnational Organized Crime (CTOC) of 2000 and its protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Combined with other conventions ratified by Jordan, they form an integrated system to prevent and punish human trafficking, as they constitute an explicit international commitment in this regard. The ICCPR in article 8 guaranteed the right of protection from forced labour and slavery, as it stated:

“No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

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<sup>12</sup> Decision of the General Authority of the Constitutional Court, interpretative decision No. 1 of 2020

3. (a) No one shall be required to perform forced or compulsory labour.

In the same context, Article 13 of the Covenant stipulated that: "An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

Jordan is also bound to the Declaration of Principles as a member of the ILO as one of its state parties. The Kingdom has also ratified 24 ILO conventions, 14 of which were published in the Official Gazette.

These conventions include the Forced Labour Convention, 1930 (No. 29); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958; Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labour Convention, 1999 (No. 182).

It should be noted though that Jordan has not ratified a number of important international labour conventions in the field of migrant workers' protection. Namely, these are Convention number 87 on the Freedom of Association and

Protection of the Right to Organize of 1948; Convention number 129 on Labour Inspection (Agriculture) of 1969; Convention 181 on Private Employment Agencies; and Convention 97 on Migration for Employment. Additionally, Jordan did not join Convention 189 on Decent Work for Domestic Workers passed in 2011.

### **Third: Laws**

1. **Abolition of Slavery Law of 1929:**

The Abolition of the Slavery Act came into effect on 3/18/1929. It stipulated that every contract that include a condition or an undertaking to buy, sell, enslave or give any person to another as a mortgage or insurance for a debt and in any other way should be cancelled. It added that the court in any procedures under this law must inspect the conditions of each case. It also should not comply with the terms of any contract or agreement that the plaintiff has concluded, or what he has concluded on his or her behalf, whether for marriage or service or otherwise, if the court is convinced that this contract or agreement, in its entirety or some parts of it, were made with the objective to hide the true nature of the transaction.

## **Anti-Human Trafficking Law No. 9 of 2009:**

As previously mentioned, Jordan joined the International Convention Against Transnational Organized Crime (2000) and the Protocols on the Prevention of Human Trafficking, especially women and children, and on Combatting the Smuggling of Migrants. Jordan issued the Anti-Trafficking Law 9 of 2009 as one of the protocol's requirements. The law defines the crime of human trafficking in article 3 as:

A. "For the purposes of this Law "Human Trafficking Crimes" shall mean:

1. Transporting, moving, lodging, or receiving of people for the purpose of abusing them, whether through using or threatening of use of force, or through any form of coercion, abduction, fraud, deceit, abuse of power, abuse of vulnerability, or through giving or receiving financial gifts or any other privileges to secure the consent of a person who has control over those people; or
2. Transporting, moving, lodging, or receiving of people who are under the age of 18 for the purpose of abusing them, whether through using or threatening of 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, "Abuse" shall mean; abusing people by forcing them to work without charge and under coercion, slavery, servitude, removal of organs, prostitution or any other form of sexual abuse.

c. A crime shall be deemed "transnational" in any the following cases:

1. Committed in more than one country.
2. Committed in a country but the preparation, planning and direction take place in another country.
3. Committed in any country by an organized gang that has criminal activities in more than one country.
4. Committed in a country and its effect extends to another country.”

### **Observations on the definition of human trafficking in Jordanian law**

We note that the Jordanian legislators used the same wording in the protocol despite some of these phrases having different meanings and connotations in Public International Law, which do not exist at the national level. For instance, the term ‘forced labour’ used in the protocol, has its definition in Article 2 of the ILO Labour Convention number 29 of 1930, as follows: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

Meanwhile slavery was defined in article 1 of the Convention on the Abolition of Slavery of 1926, as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” Therefore, when the terminology of this crime was transferred to national law it was

characterized by a broad and vague nature, thus lacking in precision due to the absence of clarification of its terms.

The reason behind the abovementioned discrepancies is that while the protocol was set in the context of international law as it was built on several international conventions related to international standards for labour and rights approved by the international community, some countries have not mended their legislations to be on the same level or contain the same definitions.

While many states have adopted these conventions and amended their legislation as part of the ratification process, thus adopting the same definition of the protocol into their national legislations, other countries have not done so; one of these countries is Jordan. This inaction has caused many acts that must be criminalized based on international conventions and treaties previously ratified by Jordan, not to be included in the national legislation including forced labour, servitude, slavery, and compulsory labour, despite these acts having clear definitions and implications in international law.

Based on the above, it can be said that the legislative environment in Jordan is not compatible with the definition of the protocol. Thus, transferring the definition from the international convention to the national law without amending it has caused many problems in its interpretation and application together, which will be evident through the analysis of judicial decisions later on.

It is notable here that the definition of human trafficking is almost copied verbatim from the protocol with only slight differences, which might cause confusion in its application. The Jordanian legislator also neglected the slavery-like practices even though they are clearly defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It stated that "states must take legislative and non-legislative measures that are practically implementable and necessary to gradually reach and as quickly as possible to abolish the customs and practices specified in this convention, wherever it continues to exist, and whether or not it is covered by the definition of slavery."

**Even though the definition that exists in Jordanian law is similar to the definition in the protocol, the Jordanian legislator has limited exploitation to certain forms.**

These limitations occurred even though the protocol mentioned the phrase at a minimum, meaning that more forms could be added, if needed. In terms of national laws, the Egyptian Law No. (64) of 2010 regarding Combating Human Trafficking might be the best in the region.

## **Article 2 defines the crime as follows:**

“A person who commits the crime of human trafficking shall be considered one who deals in any manner in a natural person, including: the sale, offer for sale, purchase , or promise thereof; or the use, transport, delivery, harbouring, reception, or receipt , whether within the country or across its national borders; if this occurred through the use of force, violence, or threat thereof; or through abduction, fraud, deception, abuse of power , or exploitation of a position of vulnerability or need; or through a promise to give or receive payments or benefits in exchange for obtaining the consent of a person to traffic another having control over him; or if the purpose of the transaction was exploitation in any of its forms, including: exploitation of acts of prostitution and all forms of sexual exploitation, exploitation of children in such acts and in pornography, forced labour or services, slavery or practices similar to slavery or servitude, or begging or removal of human organs, tissues or a part thereof.”<sup>13</sup>

**In Article 3**, it criminalised the following forms of Human Trafficking; “For the purposes of paragraph (a) of this article, the word exploitation means the exploitation of people in forced labour, slavery, servitude, or the removal of organs.”<sup>14</sup>

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<sup>13</sup> Egypt Law No. (64) of 2010 regarding Combating Human Trafficking  
<https://www.warnathgroup.com/wp-content/uploads/2015/03/Egypt-TIP-Law-2010.pdf>

<sup>14</sup> Ibid

It should be mentioned that some acts mentioned in the definition constitute separate offences under the Penal Code such as kidnapping, fraud, and forcing women into prostitution, thus encouraging the judiciary to legally characterize the complaint as human trafficking based on more evident or prosecuted crimes such as molestation, deprivation of liberty and other crimes.

Due to these legal loopholes previously mentioned, whether in the Anti-Trafficking law or other laws, and because of the many gaps in applying it, especially when referring such cases to the judiciary, an amended version of the law was prepared. However, the law amendment is still awaiting the necessary approvals. Additionally, the amendment still contains several loopholes, the most important of which is that it still does not comprehensively cover the forms of the crime. There is also a defect in the formulation of some texts and expressions that may be an entry point to circumvent the provisions of the law when applied.

## **The Amended Anti-Human Trafficking Law**

In 2018 and 2019, a panel of legal experts reviewed the current Anti-Human Trafficking Law No.9 of 2009. Following the review, a new amended version of the law was prepared and submitted to the parliament.

The amendment contained a number of positives in terms of protection, like the formation of a Fund to Compensate Victims, as well as providing victims with

temporary residence in the Kingdom, and having a specialised prosecutor for human trafficking cases. However, the amended draft law did not holistically cover all the dimensions related to the crime of Human Trafficking. Moreover, there are distinct flaws related to the drafting of some phrases that may facilitate attempts to circumvent the provisions of the law when it is applied.

### 3. **The Penal Code No. 16 of 1960 and its amendments**

The Penal code criminalised a number of crimes that could befall victims of human trafficking but in the eyes of the law are looked at as separate crimes, without noticing that they might constitute elements of Human Trafficking.

These crimes include:

#### **A. Deprivation of Freedom:**

Article 346 of the Penal Code states the following:

“Whoever unlawfully detains and deprives a person of his/her liberty, he/she shall be punished by imprisonment for a period not to exceed one year or by a fine not to exceed fifty dinars, if the perpetrator does so by falsely claiming that he/she is a public official and has a legal detention warrant, then the punishment shall be from six months to two years. If these acts were directed against a public official while in the course of executing the duties of his/her office or if he/she is killed as a consequence of such duty.”

## **B. Abduction:**

Article 302 stipulates:

“Whoever abducts a person – whether a male or a female- through deception or force and fled to a place, he/she shall be punished by the following:

1. Imprisonment of two to three years if the abducted person is a male below the age of fifteen.
2. Temporary imprisonment with hard labour if the abducted person is a female.
3. Temporary imprisonment with hard labour for a period not less than five years if the abducted female is a married one or below fifteen years of age.
4. Temporary imprisonment with hard labour for a period not less than ten years if the abducted person, whether male or female, was assaulted by either rape or indecent acts
5. Temporary imprisonment with hard labour for a period not less than ten years if the abducted female was married and below fifteen years of age and was sexually assaulted.
6. Temporary imprisonment with hard labour for a period not less than seven years if the abducted female was married and above fifteen years of age and was sexually assaulted.”

### **C. Deception:**

Article 417 states: "Whoever makes another person deliver to him/her any moveable or immovable property or any documents which includes an undertaking or a remission from debt and he/she takes control of it through deception. The perpetrator shall be punished by imprisonment from three months to three years and by a fine from one hundred to two hundred dinars (JD100-200). The penalty shall be doubled if the crime is committed based on the promise to secure an employment or work in a public administration."

### **D. Confiscation of Passports:**

Article 222 of the Penal Code states that:

- A. Any person who intentionally conceals or destroys a document or any other paper regardless of its type; or marred it to the extent it is rendered illegible or made knowledge of truth not possible through it, and if he/she did so knowing that such document is necessary in any judicial proceeding aiming at banning the use of such document as an evidence, he/she shall be punished by imprisonment not to exceed one year or a fine not to exceed fifty dinars (JD50) or both penalties.
- B. The penalty shall be imprisonment for a period of no less than six months and a fine from thirty dinars to two hundred dinars if the document is in the possession of the Public Prosecution, the court, or any governmental department or official or public institution.

## E. Harming Persons

Article (333) of the law states that:

“Whoever intentionally assaults a person through beating or injuring or harming him/her by any significant act of violence, and the assault resulted in an illness or that the victim is prevented from carrying out the duties of his/her work for a period more than twenty days, he/she shall be punished by imprisonment from three months to three years.”

### 4. **Passport Law No.2 of 1969 of its amendments:**

Article (23) of the Law stipulates:

“The punishment of imprisonment for a period of no less than six months and not exceeding three years, or a fine of not less than five hundred dinars and not more than one thousand dinars, or with both of these penalties for those who commit each of the following:

- 1- He was found in possession of a passport or travel document illegally.
- 2 - Gives his passport or travel document to another person to use either of them illegally, or he has delivered any of them to anyone illegally.
- 3 - He falsely claimed the loss of the passport or travel document, or intentionally destroyed any of them.”

## 5. **Residence and Foreigners' Affairs Law No. 24 of 1973**

It is noted that the Jordanian Residency and Foreigners Affairs Law No. (24) of 1973 does not include any text that provides facilities or exemptions for a foreigner who has fallen victim to human trafficking, and therefore s/he is treated as violating the residency law.

Article 29 of the law enumerated a group that are exempt of its provisions, including "Persons exempted by the Minister on account of special considerations connected with international or humanitarian courtesy or of the right to political asylum or yet in application of the principle of reciprocity."

The law also specified the procedures that should be taken by the executive authority towards workers, as Article (18) stipulated that: "Any foreigner staying or wishing to stay in the country must obtain a residence permit in accordance with the provisions of this Law and shall leave the territory of the Kingdom on expiry of his residence permit unless it is renewed."

Meanwhile, Article 32 gave the authority to the administrative authority to deport foreigners from the Kingdom, following the passing of a court judgement on them.

Article 35 penalised any company or employer employing a foreigner not holding a residence permit, as they shall be liable to a fine of not less than 50 dinars and not more than 75 dinars for each illegal worker thus employed. Article 37 allowed the Minister to expel a foreigner or order the temporary suspension of expulsion procedures in respect of a foreigner whose expulsion has been decided.

6. **Crime Prevention Law No.7 of 1954 and its amendments:**

It may seem at first glance that there is no relation between the Crime Prevention Law and forced labour. However, many reports that monitored violations committed on Migrant Workers noted that employers resort to the administrative governor to report that the migrant worker left his/her employment, or expressed the interest to work for another employer. The governor then arrests the worker based on the Crime Prevention Law.

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

The law grants the administrative governor the right to receive a Pledge of Good Conduct and to impose house arrest or administrative detention against any of the following categories:

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

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

National and international reports however, pointed out that the law has been applied to broader categories not included in the law, and they include:

1. People with security restrictions; to clarify the security restrictions, having judicial rulings issued against the person does not necessarily mean that

he/she committed a specific crime. He/she might be subject of a complaint or accusation, even if the judiciary declared his innocence or lack of responsibility for the alleged offense.

2. Women whose lives are in danger from their relative due to honour matters; here the administrative detention is used with the purpose of protection and it may last for many years. One of them remained in administrative detention for 17 years.
3. Foreign workers whose employers submitted a complaint against them and foreigners who do not have identity documents or whose residency and/or work permits have expired.

**Article 8 of the law also stipulates that:**

“If the person in respect of whom a resolution of giving a pledge by virtue of paragraph (2) of article (5) has failed to provide such pledge in 2 the specified date, then he shall be imprisoned and if he has been already imprisoned, he shall remain imprisoned until he provides the required pledge or if the period mentioned in the resolution of giving the pledge has passed.”

The Supreme Court confirmed the above article when it stated in a decision that: “if the District Administrator is convinced that the evidence he has heard from

the summoned indicates that he/she was about to commit a crime, the administrator has the right of recourse to law enforcement.”<sup>15</sup>

What concerns us here is that some employers to force migrant workers into employment use this law. Consequently, this law is used as a means of threat of punishment, which is rejected by the Forced Labour Convention. In other words, the Crime Prevention Law promotes the practice of forced labour through the powers of the Administrative Governor, which falls within the concept of administrative control.<sup>16</sup> These powers are represented by the restrictions and controls on the action and freedoms of individuals in order to protect public order.

## 7. **The Labour Law**

Due to the close connection between human trafficking and labour in Jordan, especially in terms of Migrant Workers, the law and its related systems and regulations shall be highlighted below.

The Jordanian Labour Law No. 8 of 1996 and its amendments stipulated the minimum rights that workers should enjoy, as well as their obligations. Thus, it clearly regulates issues that relate to: wage protection, holidays, working hours,

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<sup>15</sup> Supreme Court Decree No. 119/1956, as well as the following decrees; 378/1999, 480/2003, 175/2005 and 66/1995

<sup>16</sup> Confirmed by the Supreme Court of Justice Decree No. 4320/2002

recruiting and employing of migrant workers, as well as inspection. It also criminalised Forced Labour in article 77.

However, it should be pointed out that workers, especially migrants, remain the most targeted group to be subjected to the crime of trafficking. Traffickers tend to exploit the weaknesses of these workers and their lack of support.

Under the provisions of the law, a number of regulations and systems were issued. We highlight the most relevant below:

#### **Fourth: Regulations and Instructions:**

##### **1. Amendment Regulation No. 64 of 2020 (Amending Regulation for the System of Home Workers, Chefs, Gardeners, and Similar Categories of 2020):**

In August 2008, Article (3) of the Labour Law was amended. According to this amendment, agricultural workers, domestic workers, cooks and gardeners were subjected to the labour law and those in similar categories, provided that the provisions to which they are subject are defined in accordance with a system to be issued. The system would include regulations related to their work contracts, working hours, holidays and daily rests, inspection, and any other matters related to their employment.

In October 2009, the regulation for domestic workers, cooks, gardeners, and those of similar categories was issued in No. 90 for 2009. The system for

Agricultural Workers, on the other hand, has not been issued until the date of this study.

On the 16<sup>th</sup> of July, 2020, an amendment to the regulations was published in the Official Gazette. These amendments focused on some of the definitions contained therein, such as the definition of the office and the definition of the worker, as well as an amendment to the definition of the term Domestic work. The new definition is as follows:

*“Domestic work: work related to household tasks that include: cleaning, cooking, ironing clothes, preparing food, taking care of family members, buying household needs, accompanying patients and people with disabilities, gardening and the like.”*

We note on the new definition added "accompanying patients and people with disabilities and gardening", to the previous definition, which expands the tasks of the domestic worker. However, such tasks in addition to gardening are by their nature different to the usual domestic work, and thus there is no justification that they should be added to the definition.

An amendment was also made to Article (4) of the same system by adding a phrase within a period not exceeding seven days from the date of its entitlement after the phrase "the employee's monthly salary". Thus, the new article is now as follows:

“Workers’ monthly wage shall be paid in Jordanian dinars or its equivalent in foreign currencies by the means and methods specified by the Minister for this purpose; provided that the owner of the house and the worker keep a document proving the payment of the monthly wage.”

**Meanwhile**, Article (11) was amended by adding the phrase (provided that the worker is heard separately from the owner of the house and taking into account the confidentiality of the meeting). The previous one was as follows:

“In case the Ministry receives any complaint or information regarding the violation of workers’ rights or the obligations of either party, the Ministry shall take the following action:

- a. Summon the householder and the worker to the Ministry to reach an amicable settlement of the complaint.
- b. Whenever the complaint is about the accommodation of the worker, the accommodation shall be inspected for compliance with the present Regulation by two labour inspectors, male and female, with the consent of the householder.
- c. The Minister may take any measures he deems appropriate in case the householder does not consent to the inspection visit referred to in section 11 (b).
- d. The householder shall be admonished to correct the violation, if any, within one week from being notified thereof. Otherwise, the householder

shall be fined and the measures set forth under the Labour Code in force shall apply.

The phrase “prevent him from recruiting or transferring a worker to work for him for the period specified by the Minister” was also added to the abovementioned article and shall be applied to any employer who violates the rights of his workers.

**Furthermore**, paragraphs (e), (f) and (g) were added to the same article and it gave the worker the right to leave the work directly in the event of a physical or sexual assault on him or her or any violation of one of their basic rights. A fine was also added to any employer who falsely reports that a worker has left their work without notice.

## **2. The System on the Role of Human Trafficking Victims Shelter of 2012**

The shelter for Victims of Trafficking Victims “Dar Al Karama” provides victims with temporary shelter and protection until their case is closed, and they voluntarily return to their home countries. During their stay, they are provided with social, psychological, cultural and educational services. In Article 4 of the System on the Role of Human Trafficking Victims Shelter, these services are stipulated upon.

The shelter receives these victims based on the regulations and conditions provided for in the system. It provides them with accommodation, training

programs, rehabilitation, physical and psychological recovery, awareness, health, counselling and legal aid.

According to this system, the shelter must also secure the availability of suitable job opportunities for the victims through employment programs and small projects.

### **3. Instructions on the Conditions and Procedures to Recruit Non-Jordanian Workers of 2012**

The instructions stipulated the conditions for the employment and recruitment of non-Jordanian workers. They include the conditions for the workers' transfer from one employer to another through labour directorates. Thus, Article 12 stipulates the following:

1- It is not permissible for the worker to transfer from one employer to another except after six months have passed from the work permit with the same employer, subject to the ministry's approval, and the former and new employers. The old work permit shall also be cancelled and a new one issued for 1 year with the payment of the fees.

2- It is permissible for the employed worker to move from inside the Kingdom from one employer to another, provided that s/he receives a disclaimer from the original employer, the cancelation of the old permit and the issuance of a new one."

However, in practice, the Ministry of Labour requires the disclaimer and clearance even after the first work contract has ended when s/he wants to move to a new employer. Such a practice results in some employers exploiting their workers, as some refuse to grant their workers with these documents before receiving a sum of money or forcing them to work for them for some time.

## **Chapter Two: The Role of the Executive Branch in Combating Human Trafficking**

The executive branch of the government plays an essential role in combating human trafficking. The Anti-Human Trafficking Law affirms this in Article 4 where it stipulates for the formation of a national committee for the prevention of human trafficking headed by the Minister of Justice and membered by senior employees from all relevant authorities, in addition to launching a national strategy to prevent human trafficking for the years 2019-2022.

Among the national measures to prevent trafficking is also the establishment of a joint anti-trafficking unit between the Public Security Directorate and the Ministry of Labour. In addition, the Dar Karama shelter was established in 2015 (based on Article 7 of the Anti-Human Trafficking Law No. 9 of 2009), which accommodates potential victims of human trafficking and provides them with physical, psychological and social recovery programs in cooperation with partner agencies.

Furthermore, a national referral mechanism has been prepared for victims and individuals affected by human trafficking cases which defines the roles of governmental and non-governmental agencies in order to establish a general framework and foundation for dealing with victims and affected individuals of human trafficking. Note that this is done in a participatory approach from the

moment of knowledge of the crime, until the return integration of the victim into society, or the voluntary repatriation to the country of origin.

In the following section, these measures will be highlighted separately, alongside the most prominent characteristics of each party and their role in combating human trafficking.

## **First: The Ministry of Interior**

### **A. Directorate of General Security**

The Public Security Directorate in the Hashemite Kingdom of Jordan falls under the authority of the Ministry of Interior. The Security Directorate has a unit specialized in combating human trafficking crimes, called the “Anti-Human Trafficking Unit”. It was established in 2009 based on a memorandum of understanding. It was signed between the Ministry of Labour and Public Security Directorate for the purposes of implementing the Anti-Human Trafficking Law. The unit is affiliated with the Criminal Investigation Department in the Public Security Directorate and is located in the capital, Amman. It includes a labour inspection department, a studies and statistics department, an investigation department, and an administrative and human resources department.

The unit aims to initiate legal procedures related to combating human trafficking, tracking it down, apprehending its perpetrators and presenting them to the competent judicial authorities. The legal authorities then conduct the

requirements, study international, regional and local reports related to human trafficking and take the necessary measures in the framework of addressing human trafficking. They also coordinate with the concerned authorities regarding the protection and support of victims of trafficking. Additionally, the unit conducts inspection visits to private establishments and institutions, such as recruitment offices, factories, or others, and monitors any abuses found, as well as spreads awareness and knowledge about the dangers of human trafficking and methods of combating it. Lastly, they maintain databases, records and statistics that reflect their work inputs and outputs<sup>17</sup>.

The next chapter will discuss in detail the measures taken by the Anti Human Trafficking Unit with regard to human trafficking issues in Jordan.

## **B: Administrative governor and administrative detention**

Administrative detention in Jordan is based on the Crime Prevention Law of 1954, which authorizes this ongoing practice despite facing numerous human rights criticisms for its unconstitutionality. The practice also violates the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as it grants judicial power to the executive authority.

The law allows governors of the thirteen governorates of Jordan and district administrators to detain a person's freedom without a judicial order or any legal

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<sup>17</sup> Combating human trafficking in Jordan, gaps between legislation and implementation, 2016

charges being brought against him. This occurs through a decision made against persons who are "about to commit any crime or assist in committing it," and who are "accustomed" to thievery, harbouring thieves, or concealing stolen money, or anyone who is allowed to remain free without bail and "represents a danger to people." The law does not provide for an independent judicial authority to review the legality of law enforcement, nor does it contain any mechanism by which detainees can appeal the decision.

At first glance, it may seem that there is no relationship between the Crime Prevention Law and human trafficking. However, practical experience has shown that migrant workers have been arrested for long periods of time based on administrative decisions only, without being charged with any crimes or prior verification whether they are victims of human trafficking or not. Consequently, the Anti-Human Trafficking Unit began regularly visiting detention centres and meeting with workers to verify whether they are indeed victims of trafficking or not.

## **Second: The Ministry of Social Development:**

The Protocol to Prevent Human Trafficking does not just include the definition of the crime, but also guarantees victims a number of rights and benefits; whether during the investigation or court processes. This is because victims of human

trafficking are not regular victims as they were exposed to the most horrific types of exploitation and violations of their basic rights.

For that reason, Article (7) of the Anti-Human Trafficking Law stipulated the establishment or approval of a home for victims and individuals affected of human trafficking, defining the basis of entry and exit, recovery programs, etc. This was followed by the issuance of the system of shelters for victims of human trafficking in 2012, followed by the establishment of a shelter called Dar Al Karama. The shelter opened its doors to receive persons who became victims of human trafficking on 14/07/2015, and is affiliated with the Ministry of Social Development. **Figures from Dar Al-Karama indicate that it received 365 cases between September 2015 and 12/2019. 322 of the victims were women and 43 were males.**

The shelter for victims of human trafficking represented by Dar Al-Karama aims to secure protection and temporary accommodation for them until their problem is solved or they are voluntarily repatriated to their country of origin. It provides them with the necessary psychological, social, legal and health care through their living facilities and the provision of counselling, and this was mentioned in Article (4) of the 2012 Law of the Role of Victims and Those Affected by Human Trafficking Crimes<sup>18</sup>.

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<sup>18</sup> Of the Law on the Role of Victims and Victims of Human Trafficking Crimes 2012, Article (4):

The house aims to achieve the following: -

A - Providing protection and temporary accommodation for the victim and aggrieved person until his problem is resolved or returned to his country of origin or any country that chooses it and agrees to receive it.

The shelter receives victims and affected individuals and houses them according to the conditions and principles stipulated in the system. This includes providing them with food and drink, training programs, rehabilitation, physical and psychological recovery, awareness, health, counselling, and legal aid. These were stipulated in Article (5) of the same system, which states:

“In order to achieve its objectives, the house shall assume the following tasks and powers:

A - Receiving and harbouring the victim and the affected according to the principles and conditions stipulated in this system.

B - Providing adequate food, clothing, and support services for the received victim and affected, including the library and the gymnasium.

C - Providing training programs, rehabilitation, physical and psychological recovery, awareness, health, counselling and legal assistance to help the victim and the affected, and solve their problems according to instructions laid down by the Ministry in coordination with the relevant authorities.

D - Providing suitable job opportunities for the victim and the affected through employment programs and small projects within the home, according to the available capabilities.

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B - Providing the necessary social care, living, psychological, health, advisory, cultural and legal services for the victim or aggrieved person.

C - Building an information base for the victim and the victim.

E - Providing entertainment programs for the victim and the affected if they are a minor.

F - Collecting information related to the victim and the affected, including the date of entry and exit from the shelter.

G - Ensuring the necessary information for the victim and the affected and enabling them to communicate and request the assistance of representatives or consuls of the countries of their nationality.”

According to this system, the shelter must also ensure the availability of suitable job opportunities for the victims and the affected. This takes place through employment programs, special workshops and small projects that select professions for the victims, allowing them to generate income and an ability to produce. Services such as these are intended to help victims reintegrate into their communities after they leave the shelter.

### **Third: Ministry of Justice:**

The Ministry of Justice heads the National Committee for the Prevention of Human Trafficking, which was formed under Article 4 of the Prevention of Human Trafficking Law No. 9 of 2009. The committee includes in its membership representatives of official and non-official bodies concerned with combating human trafficking, including the general secretaries of the Ministries of Justice, Interior and Labour, the Commissioner General of the National Centre for Human

Rights, one of the senior public security officers, the Secretary General of the National Council for Family Affairs and the bodies related to combating human trafficking. It is noticeable that the committee's formation did not include the membership of any civil society organization interested in preventing human trafficking.

**According to Article (5) of the law, the National Committee for the Prevention of Human Trafficking undertakes a number of tasks, which are as follows:**

1. Drawing up the general policy to prevent human trafficking; developing the necessary plans for their implementation and supervising their implementation; reviewing the relevant legislation to prevent human trafficking; and submitting the necessary proposals and recommendations regarding them.
2. Coordination between all official and non-official bodies concerned with preventing human trafficking crimes, including taking the necessary measures to facilitate the return of the victims and those affected by these crimes to their homelands or any other country that they choose.
3. Issuing and publishing a national guide that includes instructions and educational materials related to its work.
4. Raising awareness among employers and dealers on the recruitment of workers and employees on matters related to preventing and combating human trafficking in Jordan through conferences, seminars, training and educational programs, and other means.

5. Cooperating with all official and non-official bodies to implement the necessary physical, psychological and social recovery programs for victims and those affected by human trafficking crimes and to supervising their accommodation in places established or approved for this purpose.

It is imperative to add new tasks to the committee related to prevention to reduce the occurrence of the crime, search for victims, and determine whom the definition of victim applies to. This can be done through continuous monitoring, permanent programs, and the issuance of preventive reports and annual reports. For that reason, there must also be a monitoring team to combat human trafficking in cooperation with civil society institutions, and it must be given a status of judicial police to enable it to identify the victims and set standards to eliminate the spread of victims of this crime. Furthermore, there must be efforts to monitor victims of human trafficking proactively and train public prosecutors and judges to become more aware of forced labour and human trafficking crimes to enhance the powers of investigation and prosecution<sup>19</sup>.

Last year, the committee announced the National Strategy for the Prevention of Human Trafficking for the years 2019-2022, which was prepared in implementation of the fifth article mentioned above. This strategy aims to define a common vision and basis for the Jordanian response to combating human

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<sup>19</sup> Combating Human Trafficking in Jordan, Gaps Between Legislation and Implementation 2016.

trafficking, and includes the parties related to combating human trafficking. The strategy was formulated based on four axes:

1. Prevention
2. Protection
3. Prosecution
4. Partnership and international cooperation

Within its framework, the strategy was based on the Anti Human Trafficking Law No. (9) of 2009, but this affected the strategy as the Jordanian view of trafficking still mainly focuses on the exploitation of non-Jordanians at work, with little attention paid to other forms of trafficking, including trafficking for sexual purposes, begging and organ transplantation. These forms of trafficking do not just target migrants, as their victims might include Jordanians, refugees and asylum seekers. Additionally, the strategy did not focus on children exposed to forced labour and other forms of trafficking, including sex.

It is also noted that the stated prevention component is still in an early stage and does not target all people at risk, including refugees and asylum seekers outside the camps, domestic workers, employers or employment agencies.

This is evident after looking at the objectives related to this axis, as the strategic goal stipulated to strengthen the prevention of human trafficking nationally,

regionally and internationally, but the numbers in recent years have shown a general increase in the levels of this crime and a lack of awareness about it, as well as its provisions and risks.

As for the protection axis, it focused on improving early detection mechanisms and faster access to potential victims and victims of human trafficking crimes, and enhancing the capacities of new front-line law enforcement officers in order to identify all forms of victims and those affected by human trafficking and forced labour crimes. However, a number of activities designed to achieve these goals were not implemented.

As for the axis of prosecution, the draft for amending the Law on Preventing Human Trafficking is still not approved despite its importance because it includes many texts that guarantee more protection and care for the victims and those affected and it also includes texts that are more deterrent to the perpetrators of this crime.

#### **Fourth: The Ministry of Labour**

The Ministry of Labour inspects both facilities and workers to ensure compliance with the application of decent work standards, and contains several departments specialized in following up with certain groups. These include a department dealing with migrant workers, a department dealing with women's work, and a department dealing with child labour.

Furthermore, the Ministry of Labour plays a major role in preventing the crime of human trafficking and identifying potential victims. Through its inspections and received complaints, it can identify the trafficked victims and the nature of the exploitation they were exposed to.

### **The Third Chapter: Procedures followed in cases of Human Trafficking**

The case of Human Trafficking undergoes several stages, starting with identifying the victim either through governmental stakeholders, civil society organisations, or through anyone who notices someone committing a crime. Then, relevant governmental authorities are informed by either directly notifying the prosecutor or through the Anti-Human Trafficking Unit. These authorities launch their investigations and implement procedures to protect the victims before the case is moved into litigation.

This chapter will provide an overview of these procedures by providing a step-by-step analysis of these steps. Therefore, the chapter begins with the notices sent to the Anti Human Trafficking Unit and then moves on to the other phases.



### **First Phase: Notification**

After the identification of the victims through the known indicator for human trafficking, a notification is sent to the Anti-Human Trafficking Unit. Prior to that, the potential victim is informed of the upcoming procedures. In cases where potential victims are identified through a phone call or a message on social media, the information is sent to the Unit to verify the correctness of the case.

This phase is characterised as being extremely sensitive due to the socio-economic and cultural status of the potential victims. Moreover, the circumstances surrounding the victims has an impact on their situation. As a result, the needs of each victim differ from the other, as migrant workers need different protective services compared to nationals or refugees. The type of protective services also varies based on the form of exploitation the victim was subjected to, whether it was forced labour or sexual.

## **Second Phase: Initial Investigation at the Anti-Human Trafficking Unit**

The Anti-Human Trafficking Unit is divided into various departments, the most notable are: Investigations, Statistics, Studies and Inspection that collaboratively works with the Ministry of Labour.

The criminal investigation personnel is law enforcement officers who are required to seek information and conduct the preliminary investigation of the crimes. In addition, they collect pieces of evidence and arrest the perpetrators of such crimes to refer them to the competent courts, which have the authority to punish them based on Article 8 of the Code of Criminal Procedure No. 9 of 1961 and its amendments. The public prosecutor is the head of the judicial police in his/her area of jurisdiction, and all the judicial police members shall be under his/her supervision and control based on Article 15/1.

50 law enforcement personnel work in the Studies and Investigation Departments on a rotating basis throughout the week. One translator who holds a military ID card also works in the Investigation Department. The translator is only fluent in Arabic and English; and there are no other translators available who are familiar with other languages, especially Asian or African which are spoken by migrant workers. A nurse from the Ministry of Health is also present in the

unit to meet the victims' urgent medical needs. If the victim needs further health services, s/he is referred to Al-Bashir Governmental Hospital.

Moreover, 3 labour investigators work in the Unit, who are affiliated to the Ministry of Labour and work only from 8 am to 3 pm. Their tasks include conducting investigative visits to the places of work and recruitment offices, as well as conducting mediations between employers and workers.

When the potential victim arrives to the unit, s/he is welcomed and referred to the Investigation Department or to the nurse in case s/he was subjected to physical abuse. The victim is then questioned, in the presence of the translator if the victim speaks English. In cases where the victims speak neither Arabic nor English, a translator is called in from outside.

Indeed, issues related to translation are considered one of the biggest obstacles that hinder investigations of human trafficking cases. These issues do not just affect the initial stage but carry weight across all stages. These obstacles include:

- a) Workers completely lacking proficiency in Arabic or only knowing simple words and phrases
- b) Workers having a good proficiency in Arabic but unable to fully express themselves due to not knowing the correct terminology or how to use it

- c) Workers proficient in their native tongue with an available interpreter for that language but the resulting interpretation is not accurate or does not cover all aspects of the testimony
- d) The need to conduct a three-way interpretation first from the worker's native language then to another and finally to Arabic which would affect the final testimony heard by the other party.

**Furthermore**, misunderstandings sometimes arise when the detective assumes that the worker understands Arabic due to her knowledge of some phrases. Similar issues occur when the interpreter mistakenly uses another meaning than that meant by the worker. Both cases affect how the case is identified and the assignment of the correct violation to the crime that happened.

This issue is connected to another one that relates to the legal position of migrant workers. The majority of these workers feel that their position is weaker than that of the employer or the complainant at the beginning of an investigation, except in a rare number of cases. Such fears are usually connected to a number of issues, including their status in the country, their working conditions or lack of knowledge of their rights. Therefore, many workers find themselves becoming suspects in a case or even detained despite being the victims. These situations result due to numerous reasons including the existence of a runaway complaint filed against them; the expiration of either their work or residency permits or both; not having a copy of their passports or permits; or employers filing a

complaint against them (often theft). Often, cases have not just one of the above reasons but a number of them combined, and they are usually the fault of the complainant himself.

All of these conditions lead to a series of actions taken by Police Departments, which in turn increase the vulnerability of the worker. These actions have led to an augmented sense of fear to spread among workers that later leads in a lack of confidence in the authorities and an unwillingness to file a complaint. This series of actions first begins with the arrest and detention of the worker at the Department followed by the department calling the employee, whose complaint resulted in the arrest of the worker, to come for the continuation of the investigation. This procedure is usually followed by workers getting referred to the Administrative Governor who in turn usually takes the decision to administratively detain the worker or release the workers, but the latter decision is extremely rare and only happens if the worker has a Jordanian willing to sponsor him/her.

Arresting workers results in both seen and unforeseen consequences. For starters, such a decision increases the fear level amongst workers, especially those that were threatened with arrest or deportation by employers as a consequence of them filing a complaint against them. Thus, when these results actually come true, they increase feelings of disempowerment among workers,

and later could lead to workers issuing conflicting statements or even in their desire to drop the case altogether.

It was also noted through Tamkeen's experience that the pattern of questions typically raised by investigators to workers tend to further confuse them and increase their uncertainty. Questions like:

"Are you sure you want to file a complaint?"

"Do you want to go to court?"

"What took you so long to lodge your complaint?"

Even though such questions are justified in any investigation, the manner in which they are posed, which sometimes carry a tone of doubt or accusation of the victim, could lead to workers fearing the process and pushing them to abandon the case.

Returning to the procedures, after the workers' testimonies are taken, the unit communicates with the defendant to take their own statements. Initially, inspectors might attempt to mediate between the two parties. In the event that these attempts fail, the two parties are transferred to the security centre, which then transfers them to the public prosecutor.

It should be noted that there is an issue that is often faced with the Anti-Human Trafficking Unit relating to the constant change in their personnel in short periods. These changes affect the procedures that are followed in such cases as new personnel needs to be trained on the mechanisms of dealing with victims. Since the unit deals with complex cases, such training is important before the personnel properly do their jobs since previous personnel does not seem to transfer their knowledge to the new ones before they leave.

### **The Third Phase: The Procedures with the Public Prosecutor**

Following the initial investigation by the unit, the parties are transferred to the Public Prosecutor. The public prosecutor is the head of the judicial police in his/her area of jurisdiction. Therefore, s/he might receive notifications directly about crimes without passing by the previous steps. The role of the prosecutor includes initiating public criminal proceedings regarding crimes that reach him and enforcing the criminal judgments. The prosecutor also monitors the prisons and detention places in addition to the enforcement of laws. He/she is the representative of the Executive Branch before the courts and the other judicial bodies.

The Prosecutor begins the procedure by first listening to the testimony of the potential victim. In cases where the victim does not speak Arabic, the prosecutor

appoints an interpreter based on Article 72/4 of the Code of Criminal Procedures. The Article states that:

"If the witness is deaf or mute or does not know how to write, or if s/he does not speak Arabic well, the public prosecutor shall assign him a translator."

The investigations of the public prosecutor are supposed to be confidential. Accordingly, the complainant should testify alone in front of the prosecutor, without the presence of their lawyer unless the public prosecutor agrees to this. Meanwhile, the defendant has the right to seek legal assistance before the public prosecutor, which puts the victim at a confusing position and makes them feel as though they are in a weaker position than the defendant. Thus, it may be more appropriate to explicitly stipulate that in cases of trafficking, the victim has the right to have their lawyer present during all stages of the investigation as well as during the trial.

**Due to the unclarity of the Anti-Human Trafficking Law, as well as the similarities between its forms and other crimes, the legal characterisation of the case varies from one public prosecutor to another, as shown in the two cases below**

## Case Number (1):<sup>20</sup>

I worked for my employer for 23 years. My salary was 70 USD a month. However, I did not receive wages for the full duration of my stay with him even though I cleaned his house, cooked his meals and took care of his elderly mother. Ever since I came to Jordan, he confiscated my passport and he still has it until now. I have frequently asked my employer for my salary but he said he is keeping it with him for safekeeping. After 3 years of working for him, I asked to return to my home country but he refused. He issued me neither a work permit nor residency since I first came to Jordan.

**Based on the Worker's testimony, the Prosecutor decided to charge the employer with the following crimes on the 23rd of January, 2019:**

1. Misdemeanour of illegal possession of a passport based on Article 23/B/1 of the Jordanian Passport law.
2. Violation of the provisions of Article 46, Paragraph A of the Jordanian Labour Law No. 8 of 1996, by not providing the worker with her due wages.

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<sup>20</sup> Case No. 107/2019 in the Muaqar Magistrate Court

## Case Number 2<sup>21</sup>

The worker, who is a Filipina, was recruited to work as a domestic worker. She was exploited due to her weak position as a migrant and was not paid for 9 years. The employer neither issued her a residency nor a work permit, which resulted in her incurring overstay fines. The employer also did not allow her to leave the house, and he confiscated her passport.

### **The prosecutor in Ramtha decided:**

“Pursuant to the provisions of Article (133/1) of the Code of Criminal Procedure, the defendant is charged with the felony of human trafficking in contravention of the provisions of Article (9 /b/ 2) of the Anti-Human Trafficking Law. He will thus be tried for this crime before the Ramtha Criminal Court which has jurisdiction over this matter.”

After the completion of the investigation process, the public prosecutor refers the case to the court directly if it appears that the act constitutes a misdemeanour (human trafficking without an aggravating circumstance) and there is sufficient evidence to do so. However, if the act is a criminal offense in the presence of one of the aggravating circumstances stipulated in Article 9 of the Anti-Human Trafficking Law of 2009, and there is available and sufficient

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<sup>21</sup> Decision No. 114/2018, The Criminal Court in Ramtha

evidence to refer the defendant to the court, then he refers the defendant to the competent criminal court.

As for cases that are determined to be characterised as not trafficking, but other crimes like fraud, confiscation of a travel document, or non-payment of wages, these cases are referred according to the nature of the crime, whether it is a felony or a misdemeanour.

In all cases, except for the last one, the potential victim is returned first to the police station then to the Anti-Human Trafficking Unit, which refers them to the Dar Al Karama shelter. As for victims whose case was not characterised as human trafficking, these workers are returned to the police station. If the victim is a migrant worker, they are usually given a choice to either return to their employer against whom they lodged a complaint or be administratively detained by the governor until they are probably deported.

## **The Fourth Stage: The Court Procedures**

### **First: Conflict in Jurisdictions between Courts**

Initially, we need to point out that the Kingdom witnessed numerous legislative amendments in recent years. These amendments led to a change in courts' jurisdictions. However, jurisdiction in human trafficking cases remains a heatedly debated issue. The law seems clear on some issues, like cases which were classified as trafficking with aggravated circumstances, where the victim is female, as it is stated that they must be referred to the Criminal Court. However, some of these cases are still being reviewed by the Court of Magistrates. Interestingly, similar cases were referred to the Criminal Court by the same Prosecution. When the decision was then appealed, some of the cases were returned to the Criminal Court, while in some other cases, the appeal kept the case at the Court of Magistrates.

Articles 21 and 22 of the Penal Code No.16 for 1960 ascribed a misdemeanour with the punishment of a prison sentence of one week to three years and a fine from 5 to 200 JODs. Felonies, on the other hand, have ascribed a sentence in Article 18 of the same law. Those convicted of such crimes are sentenced with hard labour suitable to their state of health and age.

Prior to the amendment of the laws, the cases of human trafficking were distributed among the different courts as follows:

Before the amendments made to the Court Formation Law, the Magistrate Courts Law, and the Code of Criminal Procedure:

<b>Magistrate courts</b>	<b>If the maximum limit of the punishment does not exceed 2 years</b>
<b>Courts of First Instance — Misdemeanour</b>	<b>If the maximum prison sentence is more than two years and up to 3 years</b>
<b>Minor Felonies Court</b>	<b>If the maximum penalty is more than 3 years, but its jurisdiction is not under the Major Felonies Court</b>

**Article (3) of the Magistrate Courts Law states:**

“The Magistrate’s Court shall have jurisdiction over all violations and misdemeanours, which the law has not designated to other courts to consider.”

Article (140) of the Code of Criminal Procedure, Law No. 9 of 1961, stipulated the jurisdiction of courts as follows:

1. “The Magistrate Courts, according to their jurisdiction, hear all offenses and misdemeanours that the law has not designated another court to look into.
2. The Courts of First Instance consider each of:
  - a. Misdemeanours fall within its jurisdiction by virtue of a text in the law and to which the public prosecutor or his representative refers to.

- b. All types of felony for which the law has not designated another court to look into.
- c. Misdemeanour crimes that are committed with a felony and are referred together in the indictment.”

**As for the Anti-Human Trafficking Law No 9 of 2009, its articles 8 and 9 stipulate that:**

#### **“Article 8**

Whoever commits human trafficking crimes as stipulated in Clause (1) of Paragraph (A) of Article (3) of this law shall be punished by imprisonment for a period of no less than six months or a fine of not less than one thousand dinars and not exceeding five thousand dinars, or with both of these penalties. Law.

#### **Article 9**

Notwithstanding what is stated in Article (8) of this law, temporary hard labour shall be punished for a period not exceeding ten years and a fine of no less than five thousand Jordanian dinars and not exceeding twenty thousand dinars:

- a) He committed one of the human trafficking crimes stipulated in Clause (2) of Paragraph (A) of Article (3) of this Law.
- b) He committed any of the crimes of human trafficking in one of the following cases:

1. If the perpetrator has established, organized or managed a criminal group organized for human trafficking, joined or participated in it.
2. If the victim includes a female or a person with a disability.
3. If the crime was committed through exploitation in prostitution or any form of sexual exploitation or removal of organs.
4. If the crime was committed with the use of a weapon or the threat to use it.
5. If the victim is injured as a result of committing one of the crimes stipulated in this law with a terminal illness, he will not be cured.
6. If the perpetrator was the spouse of the victim, one of the assets, branches, guardian or trustees.
7. If the perpetrator was a public official or charged with a public service, and committed it through the exploitation of his position or public service.
8. If the crime is of a "transnational" character."

**Following these amendments, the jurisdiction of these cases became the following:**

<b>Magistrate courts</b>	<b>All misdemeanours, with the exception of those explicitly stated to be considered before the Courts of First Instance.</b>
<b>Courts of First Instance — Misdemeanour</b>	<b>Cases that the law explicitly stipulates to be under its consideration.</b>
<b>Minor Felonies Court</b>	<b>Felonies punishable by temporary or life imprisonment with hard labour that fall outside the jurisdiction of the Major Felonies Court.</b>

Based on the above, the legislator expanded the jurisdiction of the Magistrate Court, as it now reviews all misdemeanours, regardless of the length of the prison sentence except those that were explicitly excluded in a clear text. In such a case, provision is made in a specific law that the jurisdiction to consider these misdemeanours belongs to the Court of First Instance, as for example stated in the Press and Publication Law of 1998 in Article 2. The article stipulates that the competent court to look into contravention of its provisions is the Court of First Instance.

The application of the above on cases of human trafficking would indicate that human trafficking cases that are defined as misdemeanours based on Article 8 of the Anti-Human Trafficking law should be reviewed by the Magistrate Court.

Meanwhile, those that are defined as felonies based on article 9 of the same law shall be reviewed by the Minor Felonies Court.

As for jurisdiction disputes that could arise between two courts, the legislator stipulated in Articles (326 - 327) of the Code of Criminal Procedure and its amendments No. 9 of 1961 the following:

**Article 326**

If the dispute regarding competency and jurisdiction was between two courts or two judges where each of them decided that he/she has the right to hear the case, they both have to stop the issuance of the judgment immediately after seeing the request of appointing a reference in order to solve the dispute between them (the judges or the courts).

**Article 327:**

1. The Cassation Court shall review the request of appointing the reference through the written briefs submitted to it and after consultations with the Head of the Public Prosecution. In its decision the court shall appoint the competent judicial body from the two disputing ones, which is competent to investigate or hear the case. It shall also announce the validity of the procedures taken by the court or investigator which the court ruled as lacking the needed jurisdiction.

2. The court of appeals shall review the request submitted to it according to the previously stated rules and its decision in this regard shall be final.”

The below two cases provide an example of this issue:

### Case Number 1<sup>22</sup>

A Filipina worker was recruited to as a domestic worker in Jordan in 2012. After working for 9 days, she received a call from the recruitment office owner who convinced her to leave the house where she worked and work somewhere else. The recruiter continuously moved her from one house to another for 3 months, and never issued her the necessary permits.

The worker's first employer submitted a complaint about both the worker and the recruitment office owner. On 1/2/2015, the worker was arrested, where she stated that it was the owner of the office who made her escape and then moved her from one house to another.

A notification was thus sent to the Anti-Human Trafficking Unit, which conducted its initial investigation before transferring the case to the prosecutor who decided to charge three employees in the office with a human trafficking misdemeanour based on Article 8 of the Anti-Human Trafficking law and article 76 of the Penal Code.

When the case was then referred to the court, the jurisdiction dispute occurred as follows:

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<sup>22</sup> Court of First Instance in North Amman, Case No. 260/2015.

**First: the case was reviewed by the Court of First Instance in North Amman:**

“Following inspection, the court finds the complainant is a female whose state of weakness was exploited. Thus, and based on Article 9 of the Anti-Human Trafficking Law, which states that notwithstanding what is stated in Article (8), temporary hard labour shall be given for a period not exceeding ten years and a fine of no less than five thousand dinars and not exceeding twenty thousand JOD if the victim is a female or a person with a disability. Since the complainant is a female, then the crime that should be charged to the defendants is the recruitment of the worker and the exploitation of her state of weakness based on Articles 3 and 9/A/2 of the Anti-Human Trafficking Law. Since this crime is outside the jurisdiction of the First Instance Court, but under the jurisdiction of the Felonies Court; the court declares the case falls outside of its jurisdiction and refers the case back to the prosecutor.”

An appealable decision that was declared under the name of his Majesty King Abdullah Ibn Al Hussein the Second on 27/4/2016

**Second: The decision was appealed by the Prosecutor in the Court of Appeal**

“Based on Article 269 of the Code of Criminal Procedures, we decide to resend the appealed decision and return the papers to its source.”

### **Third: The case returned to the Court of First Instance**

“Following inspection, the court finds that the case was previously reviewed by the court and it decided that it falls outside its jurisdiction and is under the jurisdiction of the Felonies Court. However, the prosecutor did not accept the decision and appealed it where the Court of Appeals decided that the prosecution’s witnesses should be heard prior to the correct legal characterisation of the case is applied. Therefore, the witnesses’ testimonies were heard, except those of the complainant who left the Kingdom on 9/4/2015 via the airport as proven by the document submitted by the Residency and Borders Department.

Article 9/A/2 of the Anti-Human Trafficking Law states that notwithstanding what is stated in Article (8), temporary hard labour shall be given for a period not exceeding ten years and a fine of no less than five thousand dinars and not exceeding twenty thousand dinars if the victim is a female or a person with a disability. Since the complainant is a female, then the crime that should be charged to the defendants is the recruitment of the worker and the exploitation of her state of weakness based on Articles 3 and 9/A/2 of the Anti-Human Trafficking Law. Since this crime is outside the jurisdiction of the First Instance Court, it is under the jurisdiction of the Felonies Court. Thus, the court declares the case falls outside of its jurisdiction and refers the case

back to the prosecutor. An appealable decision that was declared under the name of his Majesty King Abdullah Ibn Al Hussein the Second on 15/5/2018.

#### **Fourth: The decision was appealed by the Prosecutor in the Court of Appeal**

“Based on Article 269 of the Code of Criminal Procedures, we decide to resend the appealed decision and return the papers to its source to the Court of First Instance as the court that is specialised in looking at the case. The decision was made on 30/9/2018.”

#### **Fifth: The case returned to the Court of First Instance**

“Applying Article 177 of the Code of Criminal Procedures, we find the defendant guilty of recruiting workers and exploiting their state of weakness contrary to the provisions of Article 8 of the Anti-Human Trafficking Law and article 76 of the Penal Code, they are sentenced to six months imprisonment, and the fees for each one of them.

2 - Pursuant to Article 178 of the Code of Criminal Procedure, the suspects are declared not responsible for the offense of attracting workers and exploiting their state of vulnerability jointly, contrary to the provisions of Article 8 of the Anti-Human Trafficking Law and article 76 of the Penal Code, since his actions do not constitute any offense. ”

## **Sixth: The decision was appealed by the Prosecutor in the Court of Appeal**

“The court decides that based on article 178 of the Code of Criminal Procedures, we declare the defendant not responsible for the offense of attracting workers and exploiting their state of vulnerability based on Article 8 of the Anti-Human Trafficking Law and article 76 of the Penal Code, since his actions do not constitute any offense.”

The jurisdiction dispute between the courts lasted from 1/2/2015 till 3/9/2018. This means that the dispute lasted for almost three years and a half. During that period, the worker left the country and evidence was lost.

The previous case occurred prior to the amendment of the laws previously mentioned. The following case occurred after and yet it was also appealed several times due to the dispute of jurisdictions between the courts.

### **Case 2:<sup>23</sup>**

The Sri Lankan worker came to Jordan on 18/8/2006, where she worked for the defendant for almost 5 years. She only received her wages for one year and a half. After her first contract of 2 years was concluded, she asked to return to her country but the employer refused and forced her to continue working. The worker took care of an elderly woman besides her household chores. She was

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<sup>23</sup> Decision No. 1162/2012 at the Court of First Instance- Misdemeanors in North Amman

not allowed to leave the house as the doors were kept locked. No work or residency permits were issued for her.

The case was referred to court on 12/7/2012 and a decision was made on 20/4/2016:

“The court decides to charge the two defendants with the crime of jointly exploiting people in Forced Labour based on the provision of Article 3/A/1 and paragraph B of the same article of the Anti-Human Trafficking Law. As stated in Article 8 of the same law, we declare that the defendant shall be given a punishment of temporary hard labour for a period not exceeding ten years and a fine of no less than five thousand dinars and not exceeding twenty thousand dinars if the victim is a female. Since the complainant is a female, then the defendant is charged with exploiting the victim in forced labour based on Article 3/A/1 and Article 9/B/2 of the Anti-Human Trafficking. Since this crime is outside the jurisdiction of the Court of First Instance and within the jurisdiction of the Felonies Court, the esteemed court decides to refer the case back to the prosecutor. An appealable decision that was declared under the name of his Majesty King Abdullah Ibn Al Hussein the Second on 20/4/2016.”

In other words, the court took a period of approximately 4 years to announce that it is incompetent to review the case.

## **Second: Procedures related to Translation**

As stated above, prosecutors are supposed to assign an interpreter in cases where the victim or the witness is not fluent in Arabic. However, our experience shows that there are numerous issues related to translation, especially in cases where the victim speaks neither Arabic nor English. The problem begins when a worker speaks a few words in Arabic but is considered to be competent enough to testify in Arabic despite their inability to fully express themselves due to not knowing the correct terminology or how to use it. This lack of knowledge impacts their testimony and leads to the victim using expressions that could change the criminal description of the act. On other occasions, an unqualified interpreter is selected, which leads to the loss of the case as well as changing its criminal description.

As for the interpreter himself, it is necessary that s/he possess an accredited certificate in the vocabulary, grammar and etiquette of the language that s/he is translating. Therefore, the Ministry of Justice must form a committee to study the appointment of translators with accredited translation certificates. These translators must also possess a great degree of competence and mastery of the language they are translating too.

Indeed, Tamkeen noted in one of the cases it worked on that when the court could not find a translator, it elected a lawyer to fulfil the role after asking him

whether he spoke English. The lawyer then proceeded to translate without any further checks whether he is indeed qualified to conduct legal translation or not.

Issues of translation could be summed up as follows:

1. There are no full-time translators assigned by the Ministry of Justice available in the court.
2. The investigations are delayed until an interpreter is assigned and is present.
3. Interpreters who attend the sessions do so without undergoing any eligibility tests for legal translation or checking their qualification certificates.
4. Different interpreters could attend the investigations and then the court proceedings, which results in changes in the details of the testimony. Such a change could benefit the defendant, or the complainant might be accused of providing a false testimony as a result of the change in translations.

**The implications for these issues include:**

1. Slow court proceedings
2. Loss of rights and the absence of truth.
3. Some workers return to their country before their testimony is heard in court

4. The course of the case or the charge for the defendant could be changed due to discrepancy or unclarity of the translation

### **Third: Litigation Fees**

Article 6/1 of the Code of Criminal Procedures state that:

“The civil action (compensation for harm caused) proceedings related to the criminal proceedings can be brought before the same judicial body presiding over the criminal case or it could be brought separately before the civil courts. In such case (bringing the civil action before a civil court) the proceedings shall be stopped until the criminal court issues its final judgment in the criminal case.”

Thus, victims could lodge a civil action in the same time as the criminal case is going, or even register a different suit at a civil court after a decision is issued by the criminal court. However, there are difficulties related to such procedures or with those related to claims of compensation for material and moral damage.

The issue relates to litigation fees as victims are unable to lodge a civil suit to claim material or moral damages for what s/he went through. These fees are calculated at a rate of 3% on the first 10,000, 2% on the second 10,000 and 1% on the third 10,000, and any 10,000 after that provided that it does not exceed the amount of 5,000 JODs. Victims must also appoint a lawyer to pursue the compensation claim, as well as an expert to estimate the value for this damage.

This expert is summoned to court in order to understand the task entrusted to him according to the law and is held accountable before the court for the assessment that he presents. Unfortunately, victims are usually unable to cover such expenses and thus, do not lodge these cases.

An example of that is a case that Tamkeen was working on, No. 44/2017, at the Court of First Instance where a civil case was lodged for two victims of sexual exploitation. During the case, it was estimated that the experience fee<sup>24</sup> was 150 JODs. When the value of the personal compensation claim was determined, it was also decided that a fee of approximately 650 JODs was needed be paid the expert, which is extremely expensive.

#### **Fourth: Delegated Prosecutor**

The Delegated Prosecutor is a police officer who is selected by the General Prosecutor based on Article 15/B of the Formation of Courts Law. The law allows for the Public Prosecutor, each within his jurisdiction, to request the assignment of any police officer in their capacity as a judicial officer, to exercise the functions of the Public Prosecution in the Courts of First Instance Conciliation in general or temporarily as required. The Delegated Prosecutor shall be the representative of the general right and the rights of the community against the defendant.

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<sup>24</sup> The experience fees and experts are defined in the Experience before the Court System No. 35 for the year 2018. These fees arise when a court assigns experts to a case to assess and then confirm whether a crime actually occurred or to estimate the amount of the compensation that the complainant should be awarded.

Tamkeen noted from its experience that the Delegated Prosecutor in criminal cases, where he is required by law to be the representative of the Public Prosecution, did not perform any of the roles assigned to him. He never discussed any of the evidence that was presented, did not object on any of the decisions, present any legal memorandum or support the Public Prosecutor in any other way. Furthermore, the analysis showed that the delegated prosecutor did not fulfil any of his formal roles either, like requesting more evidence or questioning witnesses. Instead, it is the court that makes these requests on his behalf by questioning witnesses to compensate for his role.

These Delegated Prosecutors are police officers who often lack legal and practical experience in terms of public prosecution work. Moreover, the Public Prosecution does not train that person before he takes over his duties, which makes his presence limited to being just a spectator without any actual role in the court proceedings. Sometimes, he is not even given the files to the case he is attending to review and learn any details about the cases.

**For example**, in the case no. 1162/2012 in the Court of First Instance in North Amman, 21 Delegated Prosecutors attended the same case. None of them filed any objections or presented a legal memorandum as their role was limited to simply attending the session of the day. In two other cases, no. 937/2018 in the

Minor Felonies Case and 272/2016 in the Court of First Instance, 5 Delegated Prosecutors attended the same case, respectively.

### **Fifth: Impunity or Reduced Sentences for Perpetrators**

Article 13 of the Anti-Human Trafficking Law of 2009 states that: “the consent of the victims or those affected by human trafficking crimes shall not be taken into consideration for the purpose of reducing any of the penalties stipulated in this law”.

Article 15 of the same law stipulates that: “Notwithstanding what is stated in this law, the court must apply any more severe punishment, as stipulated in any other law.”

Based on the abovementioned articles, the dropping of personal rights claims should not to be taken into account for the purpose of reducing any of the penalties stipulated in this law. Thus, the court must apply the most stringent punishment, even those that are stipulated upon in any other law. However, observations in reality show that there is a clear impact for waiving personal rights on the court proceedings in terms of lowering the punishment of the defendant, even in crimes of human trafficking despite what is stated in the articles above.

## **Case 1<sup>25</sup>**

Two people exploited two workers, one Filipina and one Sri Lankan, who were recruited to work in Jordan. They claimed that they can offer them better jobs with higher salaries and convinced them to escape their current jobs. After the workers escaped, they were detained and their passports were confiscated. They were then forced to work in several houses without getting any salary. A complaint was then lodged and the workers and two people were apprehended.

### **The court decided the following:**

“Our court finds that the actions that the accused has committed where he exploited the complainant, incited them to leave their workplace and then confiscated their passports and forced them to work constitute all elements for the crime of Human Trafficking as it was defined in Article 3 of the Anti-Human Trafficking Law.

Based on the above and pursuant to article 236/2 of the Code of Criminal Procedures charges the defendant with the felony of Human Trafficking in contravention of Articles 9 /b/2 and 3 of the Anti-Human Trafficking Law No.6 of 2009, repeated 4 times. Therefore, the court criminalizes the defendant with the felony of Human Trafficking based on Article 9 of the

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<sup>25</sup> Decision No. 676 of 2014 in the Criminal Court (Minor Felonies) Amman.

law and sentences them with temporary hard labour for 3 years and a fine of 5000 JODs, as well as the fees. Due to the waiver of personal rights by the complainants, the court decides pursuant to Article 72 of the Penal Code to consider one of the sentences served. Thus, the sentence now becomes imprisonment for 1 year and a fine of 5000 JODs. As for the fees, they are calculated for his detention period.”

## Case 2: <sup>26</sup>

On 13/3/2002, the complainant was recruited to Jordan to work as a domestic worker under the sponsorship of the defendant. The complainant worked at the defendant’s house. The worker’s passport was also confiscated. The defendant forced the worker to work in her house for 5 years without giving her any wages. During that period, the defendant mistreated the worker; she physically abused her and only allowed her to have one meal a day. She also locked the worker inside the house.

### **The Punishment**

#### **Based on the charge, the court decides the following:**

“Pursuant to Article 9 of the Anti-Human Trafficking law, the defendant is charged with temporary hard labour for 3 years and a fine of 5000 JODs, as well as the fees.

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<sup>26</sup> Decision No. 816/2015 in the Criminal Court (Minor Felonies), Amman.

Since the defendant is a young housewife, which the court considers as a mitigating circumstance, the court decides to extend her a chance to rectify her behaviour and to apply Article 99/4 of the Penal Code. Thus, the punishment against her is transferred so that the adjudged penalty becomes imprisonment for a period of one year, fees and a fine of 1,000 JODs."

### **Sixth: The Impact of the Amnesty on Human Trafficking cases**

Between 2009 and 2019, two amnesty laws were announced. The first of which was Law No.15 for the year 2011 which became effective on 2/10/2011. Article 3 of the amnesty excluded a number of crimes from its application:

"The Amnesty stipulated upon in Paragraph A of Article (2) of this law does not include the following crimes: Perpetrator, Partner, Accomplices, or instigators of any crimes related to Slavery as stipulated in Article (5) of The Abolition of Slavery Act of 1929, and the crimes of Human Trafficking as stipulated in Article (3) of the Anti-Human Trafficking Law No. (9) of 2009."

The second law was No.5 of 2019 that became effective on 5/2/2019. Article 3/A of the law stated that:

"The Amnesty stipulated upon in Paragraph A of Article (2) of this law does not include the following crimes: Perpetrator, Partner, Accomplices, or

instigators of any crimes related to Slavery as stipulated in Article (5) of The Abolition of Slavery Act of 1929, and the crimes of Human Trafficking as stipulated in Article (3) of the Anti-Human Trafficking Law No. (9) of 2009, except of exploitative crimes concerning the removal of organs if it is for the benefit of one of the family members of the defendant.”

It is clear from the two above laws that the crime of human trafficking is excluded from the Amnesty law. However, 11 cases of trafficking not involving organs removal were pardoned.

### Case 1:<sup>27</sup>

#### **Case Facts:**

The 9 Egyptian workers were recruited to come to work in Jordan in the Agriculture sector. Even though they signed contracts that state that their salary is 250 JODs, they were paid 150 JODs, which they received following a delay of 12 days. The workers did not get any days off, and the employer constantly threatened them that he would lodge a theft charge against them if they leave the farm.

#### **The following decision was issued:**

#### **Based on what was presented, the court decides the following:**

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<sup>27</sup> Case No.818/2018 in Ghour Al Safi Court

- a) "Pursuant to Articles 335 and 337/1 of the Code of Criminal Procedures, the public right case shall be dropped of the crime of Human Trafficking as defined in Article 3 and 8 of the Anti-Human Trafficking Law repeated 9 times. The accomplice charge for one of the defendants as defined by Article 8 and 3/A/1 of the same law shall also be dropped as a result of the Amnesty Law No.5 for the year 2019.
- b) Pursuant to Article 6 of the Amnesty Law, the defendants should no longer be pursued, as long as they are not wanted or arrested on another charge.
- c) Pursuant to Article 5 of the Amnesty Law and Article 31 of the Penal Code, the material evidence that was collected shall remain confiscated and a record of it kept at the Criminal Court Log."

An appealable decision that was announced in the name of his Majesty the King Abdullah Ibn Al Hussein the Second on 17/12/2019.

### Case 228

In February 2017, the 19-year-old victim left her parents' house and met with the defendant. He then took her to an apartment in Amman, where they had sex. In the 5 months she stayed in that apartment, they had sex 35 times. In May 2017, the defendant was arrested and the victim was returned to her parents in July of the same year. The victim escaped again and went to the house of the 2<sup>nd</sup>

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<sup>28</sup> Decision No. 523/2018 Major Criminal Court

defendant. The 2<sup>nd</sup> defendant and her husband began exploiting the victim in sexual prostitution as they brought her different men to have sex with. After 2 months, she was caught and it turned out that she was pregnant.

### **The Decision:**

“Pursuant to Article 337/1 of the Code of Criminal Procedures, the case is dropped on the defendant who is accused of Human Trafficking felony as defined in Article 9/A of the Anti-Human Trafficking Law and Article 101 of the Penal Code as it was included in the Amnesty Law No.5 of 2019.”

An analysis of the above shows that the courts explained the Amnesty Law to include Article 3 of the Anti-Human Trafficking Law in its entirety in the Amnesty Law. The explanation was made even though the law only included one form of the crime, which is the removal of organs if it is for the benefit of one of the family members of the defendant. Yet, the above cases were included even though they concern other forms and fall outside the scope of the Amnesty.

### **Seventh: The Repetition of the crime by Perpetrators**

One of the loopholes that was noted in the efforts to combat human trafficking is related to recruitment offices and their exploitation of migrant workers, especially domestic workers. Despite committing such crimes, the same people

are allowed to work again in other office, which constitutes a risk of them becoming repeat offenders for the crime of human trafficking again.

The System for Regularizing the Recruitment Office of Non-Jordanian Domestic Workers was issued in accordance with Article (10) of the Labour Law of 1996 and its amendments for 2020, Article (4) of it stipulates:

“B: The conditions of opening a recruitment office or becoming a partner in one include:

1. S/he must be Jordanian
2. S/he should not have been convicted of a felony or misdemeanour that violates honour or public morals, and that this is proven by virtue of a non-conviction certificate that was issued no more than one month from the date of submitting the application; as well as having a certificate of good conduct, to be renewed annually.
3. That s/he, his/her spouse or one of his/her first-degree relatives is not the owner or partner in the ownership of a nightclub, disco, or bar.
4. S/he must not have previously been the owner or partner of an office that has been closed and is still closed or whose license has been revoked.”

The same conditions were also stipulated for personnel who are appointed to become representative of the office in submitting applications to governmental entities on behalf of the office. However, our experience in the Jordanian labour market shows that there are recruitment offices that employ people who commit

human trafficking crimes, even those who were accused of such crimes on multiple occasions. Upon the closure of their offices, these employees usually find work at another office. Thus, the law must be amended to include all workers in recruitment offices. Additionally, the Ministry of Labour needs to conduct inspection campaigns to monitor this matter and arrange for any office that violates this law to be fined.

A related matter that we noted is that investigations do not seek to connect between the criminal history of perpetrators and those who are involved or have close relationships with them. The investigation does not even extend to previous crimes where the perpetrator received a verdict of innocence. Yet, we believe that such procedures must be included for the perpetrators and their acquaintances as well, especially those that were previously charged with crimes of Human Trafficking or similar crimes.

It was also noted that there are a number of perpetrators who were previously charged with human trafficking or related crimes, sometimes on multiple occasions, but received a verdict of innocence. However, the repeated indictment of these perpetrators seemed to have no effect with regard to the investigation or trial procedures later on. Such acts bear a clear indication of the absence of deterrent penalties taken against these perpetrators on the one hand, and the ineffectiveness of prosecution and prevention measures on the other.

**Likewise**, it was noted that another group of repeat offenders were only convicted once of human trafficking after several accusations were made against them. Here, it must be emphasised that this crime is extremely complicated. Thus, both prosecutors and judges must be aware of its characteristics as they investigate the crime. Therefore, it is imperative that the full criminal history of potential perpetrators is examined. Moreover, repeated offenders need to be given a stringent sentence that would deter them to commit this crime again.

**Another aspect that deserves fleshing out relates to unlicensed recruitment offices that exploit domestic workers.**

Examples of what was described above include a case of an employee in a recruitment office who was charged 3 times of committing a crime of Human Trafficking, as well as two cases of indecent acts, two cases of false oath, five cases of fraud, four cases of credit abuse and one case of violating the labour law.

Another example is an owner of a recruitment office who was accused 4 times of human trafficking. He was convicted for one, one was dropped due to the amnesty, one found him innocent and one is still pending. The defendant is still working at a recruitment office that is owned by his brother after his own office was closed. It should be noted that his brother is also accused of two crimes of human trafficking that are also still pending.

Also, there is an owner of an unlicensed recruitment office who was accused 5 times of human trafficking, he was found guilty 3 times and innocent in two instances.

Such repeated offences violate the Palermo Protocol and the Anti-Human Trafficking Law, since both stress the necessity to have guarantees for non-recurrence of human trafficking in order to address impunity and avoid future violations. Article 17 of the Basic principles on the right to an effective remedy for victims of trafficking in persons<sup>29</sup> as announced by the Human Rights Council states that:

10. “States shall provide guarantees of non-repetition of trafficking in persons to combat impunity and prevent future violations. Such measures include, where applicable, any or all of the following:
  - (a) Ensuring the effective investigation, prosecution and sanctioning of traffickers;
  - (b) All measures necessary to protect the victim of trafficking in persons from re-trafficking, including through safe return, temporary or permanent residence status where applicable, and integration support;

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<sup>29</sup> Human Rights Council, *Basic principles on the right to an effective remedy for victims of trafficking in persons*, 2014

<https://digitallibrary.un.org/record/773339?ln=en#record-files-collapse-header>

- (c) Providing or strengthening the training of law enforcement, immigration and other relevant officials in the prevention of trafficking in persons;
- (d) Strengthening the independence of the judiciary;
- (e) Modifying legal, social and cultural practices that cause, sustain or promote tolerance to trafficking in persons, including gender-based discrimination and situations of conflict and post-conflict;
- (f) Effectively addressing the root causes of trafficking, such as poverty, gender inequality and discrimination;
- (g) Promoting codes of conduct and ethical norms, in particular international standards, for public and private actors, including to promote public-private partnerships against trafficking in persons;
- (h) Protecting legal, medical, health-care and other related professionals and human rights defenders who assist victims of trafficking in persons.”

The same guarantees were mentioned either directly or indirectly in the Anti-Human Trafficking Law, as Article 5 stipulates that:

**“The committee has the following tasks and powers:**

- a) Drawing up the general policy to prevent human trafficking, setting the necessary plans for its implementation, and supervising its implementation.
- b) Reviewing legislation related to preventing human trafficking and submitting the necessary proposals and recommendations in this regard.
- c) Coordination between all official and unofficial bodies concerned with the prevention of human trafficking crimes, including the necessary measures to facilitate the return of victims and those affected by these crimes to their home countries or any other country of their choice and agree to receive them.
- d) Issuing and publishing a national guide that includes instructions and educational materials related to its work.
- e) Spreading awareness among employers and dealers by recruiting workers and employees on matters related to preventing human trafficking through holding conferences, seminars, training and educational programs and other means.
- f) Study international, regional and local reports related to the prevention of human trafficking, and take the necessary measures and measures in this regard.

- g) Cooperate with all official and unofficial bodies to implement the physical, psychological and social recovery programs necessary for victims and those affected by human trafficking crimes, and supervise their accommodation in established or accredited places for this purpose.
- h) Forming one or more sub-committees with the aim of assisting the committee to carry out its tasks and present recommendations to it.
- i) Any tasks related to its work are presented to it by the Chairman of the Committee.”

### **Eight: Reintegration of Victims following the Verdicts**

Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime stated that:

#### **“Assistance to and protection of victims of trafficking in persons**

- 1) In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
- 2) Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

- a) Information on relevant court and administrative proceedings;
  - b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
- 3) Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
  - I. Appropriate housing;
  - II. Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
  - III. Medical, psychological and material assistance; and
  - IV. Employment, educational and training opportunities.
- 4) 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.
- 5) Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6) Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”

Article 5 of the Anti-Human Trafficking Law No.9 of 2006 states that the Anti-Human Trafficking Committee has a number of tasks including the coordination between all official and non-official bodies concerned with preventing human trafficking crimes, including the necessary procedures to facilitate the return of the victims and those affected by these crimes to their homelands or any other country of their choice and agree to receive them and cooperate with all official and non-official bodies to implement the physical, psychological and social recovery programs.

**Article 7 of the same law states that:**

“The Council of Ministers, based on the recommendation of the committee, may establish or approve one or more houses to house the victims and those affected by human trafficking crimes, provided that the foundations for entry and exit from them are determined, the physical, psychological and social recovery programs presented to their inmates, the way they are managed, and the conditions related to their employees under a system issued for this purpose.”

Pursuant to this article, the Regulation for Shelter Homes for victims of human trafficking and those affected No. (30) of 2012, which stipulates in Article (4):

**“The house aims to achieve the following: -**

1. Secure protection and temporary accommodation for the victim until the problem is resolved or s/he is returned to his/her country of origin or any country s/he chooses that agrees to receive them.
2. Provide social care, living, psychological, health, counselling, cultural and legal services necessary for the victim or those affected.
3. Building an information base for the victim and those affected.”

**As for Article (5), it states:**

" In order to achieve its goals. the house shall assume the following tasks and powers:

1. Receive and shelter the victim and those affected according to the principles and conditions stipulated in this system.
2. Provide food, appropriate clothes, and support services for the victim and those affected that are received by the home, including the library and the gymnasium.
3. Provide training programs, rehabilitation, physical and psychological recovery, awareness, health, counselling and legal assistance to help the victim and those affected and solve their problems, according to the instructions stipulated by the Ministry in coordination with the relevant authorities.

4. Provide entertainment programs for those affected and the victim if they are a minor.
5. Collect information related to the victim and those affected, including the date of entry into and exit from the shelter.
6. Provide necessary information to the victim and those affected and enable them to contact and seek assistance from their countries' embassies."

The above texts show that the duties of the Anti-Human Trafficking Committee and the role of shelters in protecting victims and those affected by human trafficking are clear. We note that the legislator has given victims of the crime of human trafficking several options, perhaps the most important as follows:

1. Procedures to facilitate the return of the victims and those affected by these crimes to their home countries or any other country of their choice that agrees to receive them. This option is designed for migrant victims.
2. Provide training programs, rehabilitation, physical and psychological recovery, awareness, health, counselling and legal aid services to help the victim and those affected and solve their problems.
3. Provide suitable job opportunities for the victim and those affected, through employment programs or small projects inside the shelter, according to the available capabilities.

As for the extent of applications of the above roles, each one will be highlighted below and linked to cases of human trafficking:

**First: Procedures to facilitate the return of the victims and those affected by these crimes to their home countries or any other country of their choice that agrees to receive them.**

First it should be noted that the majority of migrant workers wish to voluntarily return to their home countries as soon as they are provided with a ticket and are exempt from their accumulated overstay fines. Usually, following the exemption, these workers are deported and are not allowed to return to Jordan for several years. Problems arise in cases where the victim wishes to stay in Jordan as s/he can only stay in the shelter for 2 months per the Regulation for Shelter Homes for victims of human trafficking and those affected No. (30) of 2012, which states in Article 12 that:

**“Shelters are offered for victims and those affected for a period not extending 2 months. The Minister may extend this period based on a justified reason from the Director of the Shelter.”**

Moreover, these victims would have to pay the overstay fines that were accumulated on them due to the non-issuance of a work permit or residency permit by their employers. The majority of these victims though are unable to pay these huge sums, since they came to Jordan in the first place looking for good

paying jobs to support themselves and their families. Consequently, these victims are forced to return to their home countries.

**Through our work with human trafficking cases, we noted the following as well:**

1. These procedures are contrary to the principle of voluntary return, because victims who wish to remain are forced to return to their countries of origin.
2. The time period allowed for victims to stay in Dar Al Karama is insufficient due to the lengthy litigation period. These victims thus usually leave before their case is done and are prevented from receiving any dues that they might have been awarded from the case. This means that these workers leave Jordan without either receiving their salary for their work or any compensation for the crime that they were victims of.

An example for these procedures is a story of a worker who was a victim of human trafficking that wished to stay in Jordan but was forced to return.

A Filipina worker was recruited in 2006. She worked for her employer for 9 years without receiving any wage. She was not provided with her own room, and she worked for 16 hours a day in addition to being physically and verbally abused. The employer also did not issue her a work permit.

The employer was charged with human trafficking after Tamkeen referred the case to the Anti-Human Trafficking Unit.

The worker wished to stay in Jordan after the case was over, because she wanted to earn some money after not receiving her wage for 9 years. Prior to leaving the Philippines, she promised her extremely poor family that she would transfer them money. She also had debts that she had to pay to the recruitment office in the Philippines which constantly sent her threats that they would kill her once she returns home if she did without their money.

The worker stayed in Dar Al Karama for 2 months. Her stay was extended for another month but after that period ended, she was not allowed to remain there any longer. Even though the worker found a new job, she could not pay her overstay fines and thus she was forced to return to the Philippines.

**Second: Provide training programs, rehabilitation, physical and psychological recovery, awareness, health, counselling and legal aid services to help the victim and those affected and solve their problems.**

Dar Al Karama, the shelter for victims of human trafficking, provides its residents with accommodation, as well as rehabilitation, psychological and physical recovery programs. The shelter also provides these victims with counselling, while civil society offers them legal aid services.

However, we noted that some victims, especially those that were victims of sexual exploitation, are re-exploited after they leave the shelter. In some cases, these victims even turn into perpetrators themselves.

A Jordanian girl used to live with her poor family who used to abuse her and forbid her from continuing her education. The girl worked as a seamstress. One day while returning from her job, she met a man who promised her marriage. Following a beating from her father, the girl left home and met with the man. The man then raped her and locked her inside an apartment for 3 months. During that period, he continuously raped her; she couldn't escape and tried committing suicide several times. In the same period, her family reported her missing. The police were able to locate her whereabouts and she was placed in Juweida Women Prison after a decision by the governor to administratively detain her. The father convinced her to leave with him and return home. The man then came and asked to marry her but the father refused.

Later on, the father resumed his old habits and began hitting his daughter again. The girl escaped the house for a second time. She sought a woman that she was previously introduced to by the man. There, the woman used threats and forced the girl into prostitution. One day, the woman sent the girl to meet a customer. The girl was accompanied by a body guard and a driver. When they arrived to their destination, the girl saw police and cried for help. After her testimony was taken, she was referred to the Anti-Human Trafficking Unit. The prosecutor then charged the man with rape, while the woman was charged with human trafficking. Meanwhile, the girl was referred to Dar Al Karama.

At the time, Article 308 of the Penal Code was still in effect, which meant that if the man marries the girl for a period of 5 years, he would be pardoned from his crime of rape. The head of the girl's family agreed to the marriage since the girl was pregnant. They were indeed married and later on, the girl became herself a perpetrator as she was accused of running a prostitution house.

After investigations, it was revealed that the prostitution house was opened a short period after the marriage and that the man was sexually exploiting the girl again. Even though the girl was offered rehabilitation and support programs in the shelter, she could not reintegrate in society. The failure to reintegrate was due to numerous factors including the insufficient period she was offered these programs, and getting married to her rapist.

**Third: Provide suitable job opportunities for the victim and those affected, through employment programs or small projects inside the shelter, according to the available capabilities.**

Prior to discussing this part, a case of organ trafficking will be laid out below, where the donor/victim was accused of the crime of using organs in exchange for material benefit within the limits of Article (4) of the Organ Use Law, as well as being a victim of human trafficking.

The story involves 3 people who sold their kidneys because they were so poor and needed the money since they did not have a job.<sup>30</sup>

While looking at social media websites, the victim learned that people sell their organs in Turkey. He began looking into the matter and found a number of people who wanted to buy kidneys. He was later contacted by someone from outside Jordan who asked whether he was willing to sell his kidney. A week later, the same man contacted him through the application IMO and told him that there is someone in Palestine looking for a kidney. He then asked the victim to undergo blood tests to see whether they are a match or not, promising him that the fees for these tests will be covered by him. He also gave him the number of another person who would arrange for the tests. The tests revealed the victim was not a match. The victim was then contacted by a Saudi woman who also needed a

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<sup>30</sup> Case No. 2388/2018 at the Minor Felonies Court in Amman

kidney. They arranged to have the surgery in Turkey. The broker told the Saudi woman that the operation and the private doctor fees will cost 50,000 JODs, which she thought was expensive. Two days later though, the broker called the victim and asked for his passport. He called him again the following day and told him to go to an office to pick up his ticket. The flight was indeed scheduled for 3/7/2019 at 9. The victim arrived to Turkey where he met another man. They arranged for the victim to stay in Turkey for 10 days and receive 15,000 JODs for his kidney. On the 10<sup>th</sup> day, the victim met with the patient and he was trained on how to respond to the committee's questions before they approve the operation. He was then admitted to the hospital and was informed that the operation would take around 3 hours. He remained in the hospital for one week to recover after the operation. The victim only received 5500 JODs of the agreed sum and he could not reach the broker he made the agreement with. Two weeks after he returned to Jordan, he was contacted by the police and told that there was a case lodged against him in the Abu Nsair Police Station in Amman. There, he was arrested and referred to the Anti-Human Trafficking Unit where his testimony was taken.

**The victim/donor and 3 others were referred to the Prosecutor, in addition to 8 additional people, where they were charged as follows:**

- 4 were considered witnesses
- 4 were charged with Human Trafficking
- 3 were charged with selling their organ for material gain per Article 4 of the Organ Use Law.
- One was charged with being an accomplice in Human Trafficking per Article 3 of the Anti-Human Trafficking law.

An analysis of the Prosecutor's decision noted that those who were charged with selling their organs were also considered victims of Human Trafficking. These victims were thus referred to Dar Al Karama and later they reached to Tamkeen to be provided with legal aid services.

Conversations with the victims revealed that the justification for their actions is them being poor, not having jobs, and facing psychological and societal ramifications which impacted their situation and their families. One of the victims asserted that he is willing to do anything, regardless of the consequences, that would enable him to secure any sum of money. He added that he is the only breadwinner for his family, and that he is currently unable to even pay his rent since he remains unemployed; as he was not offered any job or assistance even after everything he went through. He even admitted that he is willing to sell

another organ due to his current dire situation, as otherwise, he would be kicked out of his house and his children would die of starvation.

The case was then referred to the Minor Felonies Court in Amman, where it was being reviewed until the Amnesty Law of 2019 was announced.

**Article 3/17 of the law states:**

“The Amnesty stipulated upon in Paragraph A of Article (2) of this law does not include the following crimes: Perpetrator, Partner, Accomplices, or instigators of any crimes related to Slavery as stipulated in Article (5) of The Abolition of Slavery Act of 1929, and the crimes of Human Trafficking as stipulated in Article (3) of the Anti-Human Trafficking Law No. (9) of 2009, except of exploitative crimes concerning the removal of organs if it is for the benefit of one of the family members of the defendant.”

**Thus**, the charges were dropped against the victims, as well as the accomplice since he bought the kidney for this daughter. As for those charged with human trafficking, the decision was as follows:

Based on the charges, the court decided the following:

1. "Pursuant to Articles 3 and 9 of the Anti-Human Trafficking Law, the charged are sentenced to temporary hard labour for 3 years and a fine of 5,000 JODs, plus the fees. The prison sentence is calculated starting from the detention period.
2. Since one of the accused is young, the court would like to give him a chance to rectify the course of his life. It thus decides that pursuant to Article 99/4 of the Penal Code, his sentence shall be lowered to imprisonment for 1 year and a half and a fine of 1,000 JODs, plus the fees."

The appealable verdict for the other two is made in absentia.

Following the conclusion of the case, one of the victims was accused again in another case, although, this time he was the broker.

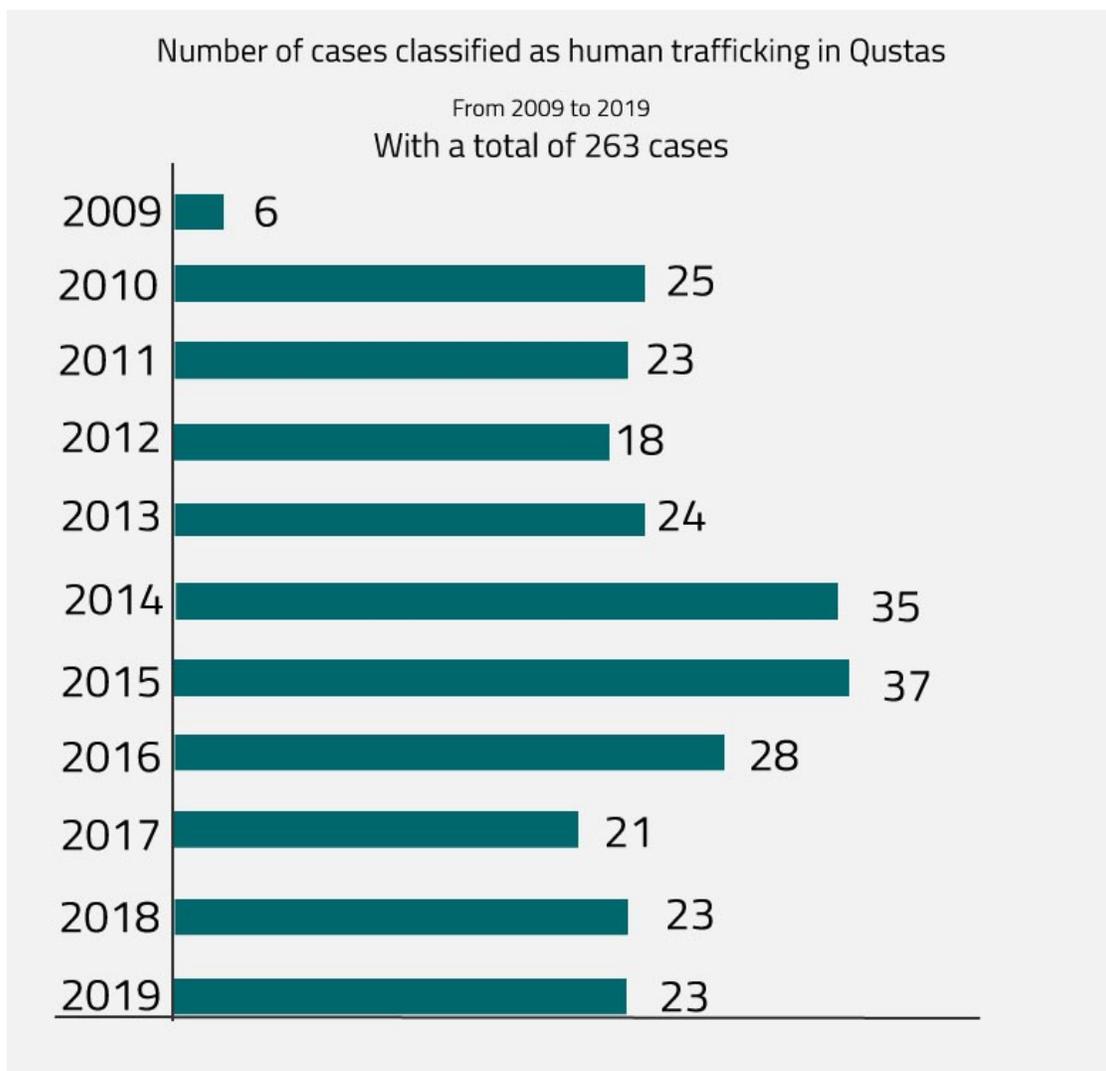
## **Chapter 4: Judicial Applications**

This chapter of the study will present the judicial applications. It will quantitatively display the number of judicial decisions related to human trafficking in terms of number, type of exploitations and the results of the decisions. The study will also review what the anti-trafficking unit has dealt with and then review eighteen judicial decisions that take into account the diversity in terms of decisions and type of exploitation.

## First: Statistics of Human Trafficking cases

The information presented was obtained by searching Qustas<sup>31</sup>

- 1- In the following chart is the number of human trafficking cases as reported on Qustas:



<sup>31</sup> Qustas Information Technology Company: The Qustas Information Technology Company was established in 2010 with the aim of employing software to support the sector's mission, raise the efficiency of the profession, and enhance justice and the rule of law, as it acts as a legislative knowledge base that combines comprehensiveness and ease of use to be the most comprehensive legal search engine, easily available to the researcher through the Internet. The initial version launched in 2014, and then it was developed and became a solid base for keeping up with the developments of artificial intelligence in the field of legal research.

By looking at Table No. (1), the indicator shows the development of performance in the prosecution of perpetrators and the protection of victims, thus reducing the crime of human trafficking. However, at the same time, it is shown that with the establishment of the Anti-Trafficking Unit in 2013, there was a noticeable increase in the number of cases pending from 18 cases in the year 2012 to 24 cases in 2013, followed by a further increase in 2014 and 2015 to 35 and 37 cases respectively, which would have heralded the development of prosecution and investigation methods.

**However, in 2016 the number decreased to 28 cases, to continue to decrease in the years 2017, 2018 and 2019, to range from 21 to 23 cases.**

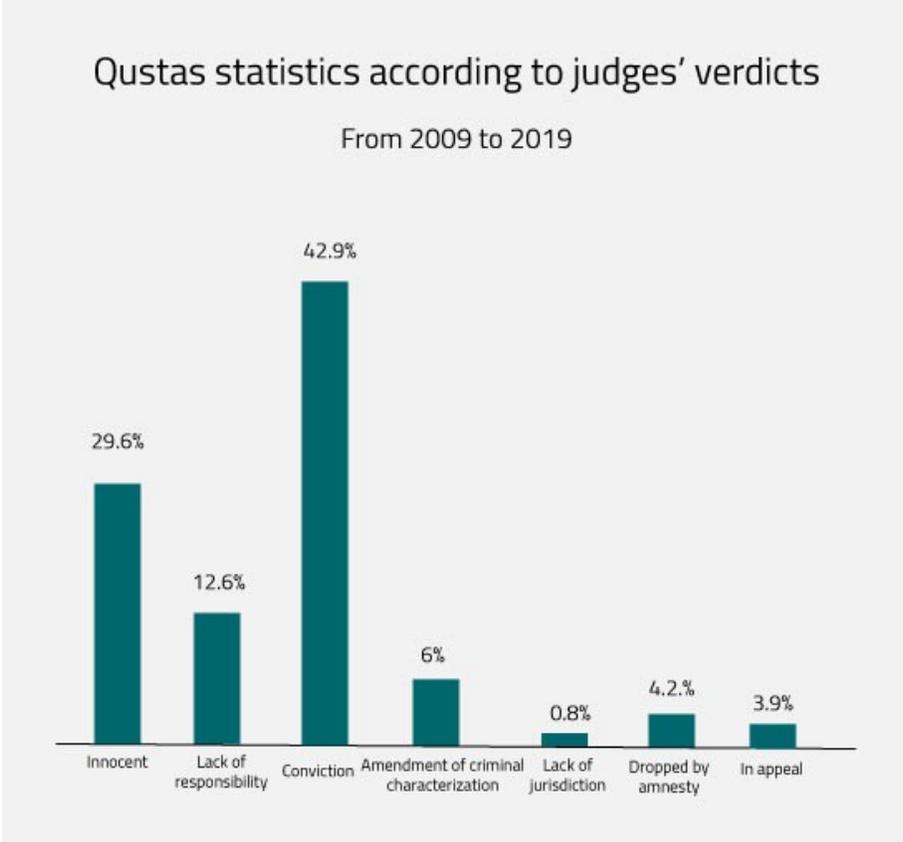
If the year 2009 were to be excluded from the census shown in the table below (as it is the year during which the law on human trafficking was enacted), then the number of cases during the ten years from 2010 to 2019 is 257 cases at a rate of 25.7 cases per year. This number is close to the amount of actual cases in each year, with the exception of the years 2014 and 2015 where the number of cases exceeds that, and this means, graphically, that the level of prosecution registered as human trafficking cases has remained stable over the past ten years.

**Table No. (1) Statistics of human trafficking cases, from Qustas, the Anti-Human Trafficking Unit, and Tamkeen**

<b>Year</b>	<b>Statistics of cases that were recognised as Human Trafficking by the Anti-Human Trafficking Unit</b>	<b>Qustas</b>	<b>The number of notifications sent to the Anti-Human Trafficking Unit</b>	<b>Cases followed up by Tamkeen</b>
2009	-	6	-	-
2010	-	25	-	2
2011	-	23	-	1
2012	-	18	-	1
2013	27	24	3	1
2014	58	35	33	6
2015	28	37	86	6
2016	31	28	159	10
2017	23	21	85	13
2018	20	23	56	10
2019	13	23	34	7
<b>Total</b>	<b>200</b>	<b>263</b>	<b>456</b>	<b>57</b>

The previous table shows the role of civil society organizations represented by Tamkeen for Legal Aid and Human Rights in the aspects of monitoring and reporting human trafficking crimes, in addition to the dozens of notifications that were sent through but not identified as human trafficking. Tamkeen followed up with 57 cases out of a total of 257 from 2010 and 2019, with more than 22% of the cases pending before the various courts in the Kingdom. Legal, moral, and social support was provided to the victims wherever possible. Furthermore, Tamkeen contributed significantly, in cooperation with the unit, to raising the awareness of workers in the related sectors with regard to the crime of human trafficking. Through the existing cooperation between Tamkeen and the Anti-Human Trafficking Unit, support provided to victims was greatly enhanced.

The following figure shows the nature of the judicial decision in cases of human trafficking, as mentioned on Qustas



First: It must be noted that the issuance of judgments does not necessarily take place in the year in which the case was referred to the court, as the previous table depends on the year of the commencement of the trial and not the year of the issuance of the judgment, and that this has no significant effect on the factors that influenced the issuance of the judgment, except for the issuance of the General Amnesty Law, where the evidence provided by the prosecution is the evidence that was presented when the case was initiated before the court.

Looking at the above diagram, it is clear that the judgments convicting the perpetrators did not take the shape of a regular curve, whether by constant increase, decrease or stability, although it has been fixed as a percentage from the year 2011.

In 2010, 16 convictions were issued out of the 25 cases that were heard, representing 64% of the cases, while in the year 2011 it became 10 out of 23, representing 43.4% of cases. In 2012, 8 out of 18, with 44%; in 2013, 11 out of 24, with 44.8%; in 2014, 17 out of 35, with 48.5%; and in 2015, 17 out of 37, with 46%. Then in 2016, it decreased again to 8 out of 28 rulings issued, with a rate of 28.5%. And in 2017, 6 of 21 convictions were issued, at a rate of 28.5% as well. The number rose in 2018 to 11 convictions out of 23 cases, at a rate of 48.5%, and decreased to 8 convictions out of 23, or 34.7%.

In total, the verdict was imposed in 112 of the 257 cases that were heard during the period from 2010 to 2016, at a rate of 43.5%.

In terms of numbers, we find that the prosecution system succeeded in convicting 112 cases over ten years – a number that is, in relation to the expected numbers of victims of human trafficking crime in Jordan, very small. Furthermore, the Public Prosecution's success in convicting only 43.5% of the perpetrators is a limited success indicative of a large defect.

On the other hand, 11 cases were dropped under the general amnesty law, at a rate of 4.2%, including one case for the use of members. Two general amnesty laws were issued in 2009 and 2019. The first Law No. 15 of 2011 came into effect on 10/2/2011, which stipulated in Article 3 the exclusion of a group of crimes from that amnesty:

"The exemption stipulated in Paragraph A of Article (2) of this law does not include the following crimes, whether with regard to the original perpetrator, partner, interference, or instigator, and the exemption does not include the complete initiation of any of them: Slavery offenses stipulated in Article (5) of The Abolition of Slavery Act of 1929 and the crimes of human trafficking stipulated in Article (3) of the Prevention of Human Trafficking Law No. (9) of 2009."

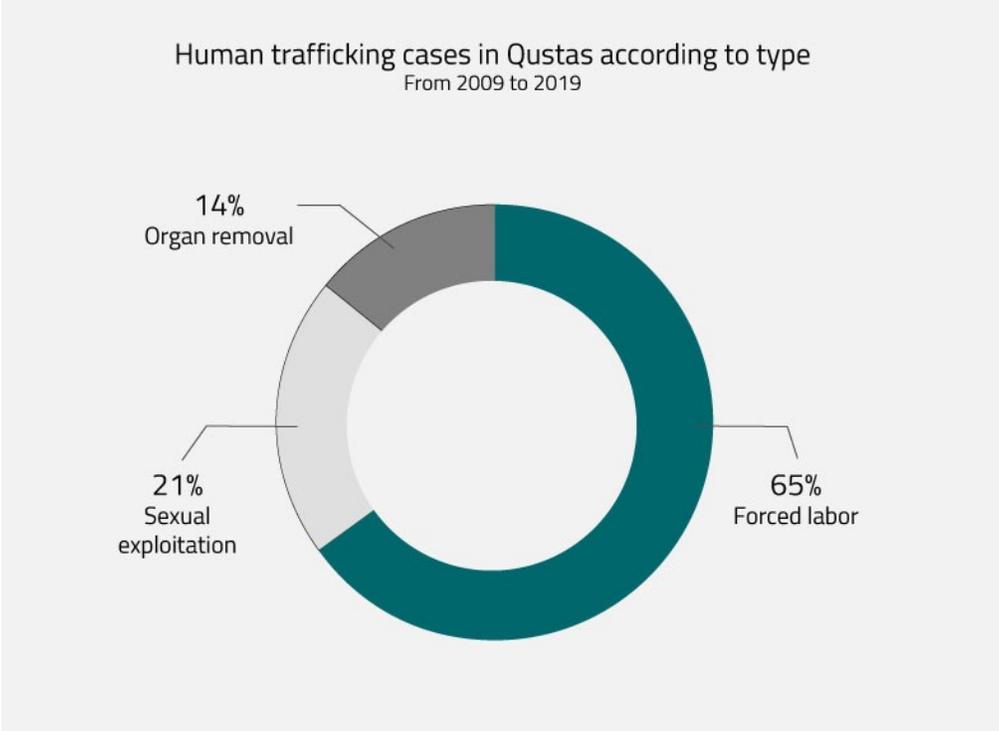
As for the second law, Law No. (5) of 2019 (General Amnesty Law of 2019) which came into effect on 5/2/2019, Article (3/A) of it stipulated that: "The exemption provided for in paragraph (a) of Article (2) of this law does not include the following crimes, whether with regard to the original perpetrator, partner, interference or instigator, and the exemption does not include the complete initiation of any of them: 17- Slavery offenses stipulated in Article (5) From the Abolition of Slavery Law of 1929 and the crimes of human trafficking stipulated in Article (3) of the Prevention of Human Trafficking Law No. (9) of 2009, with the

exception of exploitation crimes related to the removal of organs if it is for the benefit of one of the assets or branches of the defendant.”

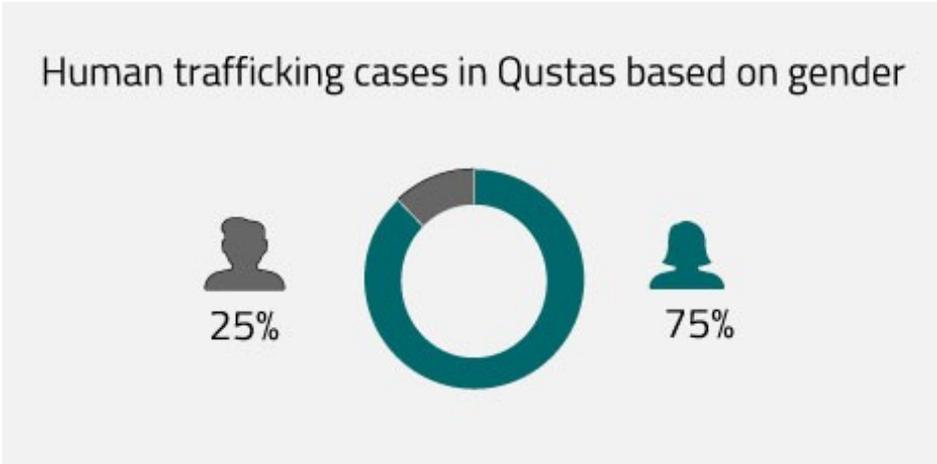
According to the judicial decisions, no human trafficking case was dropped under the General Amnesty Law No. 15 of 2011, and 11 human trafficking cases were dropped under the General Amnesty Law No. 5 of 2019, including one case of removing human organs.

We have to clarify here from the outset, when we say that there is a defect that leads to impunity for the perpetrators, this is not tainted by any doubt about the integrity and fairness of the Jordanian judiciary. However, the ambiguousness of the law enables perpetrators to exploit loopholes in the judiciary to reach impunity, and it is difficult to obtain evidence of the specificity of the crime and its location.

The following diagram shows the type of exploitation according to the analysis of the cases received on the Qistas website

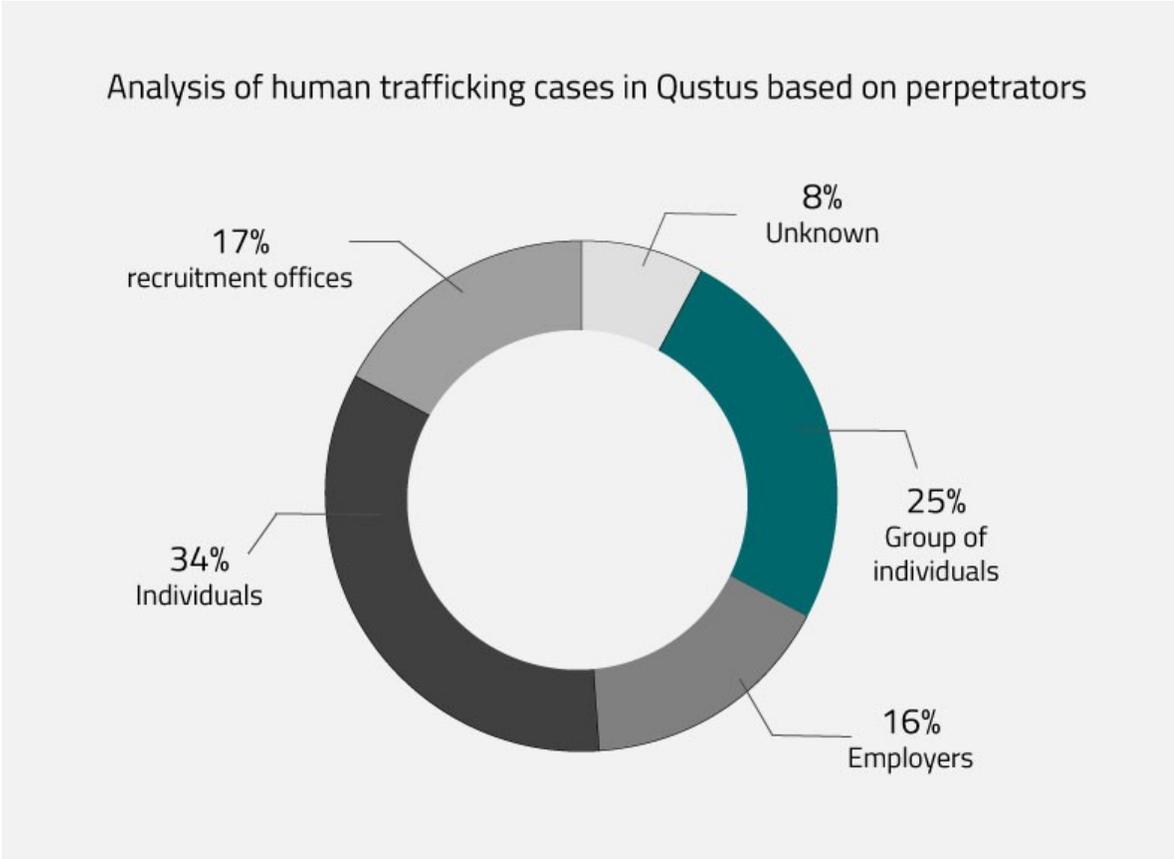


The above figure shows that exploitation in forced labour ranked first in terms of the number of cases, with a rate of 65%. This was followed by sexual exploitation with 21%, and organ removal, with the lowest percentage of 14%.

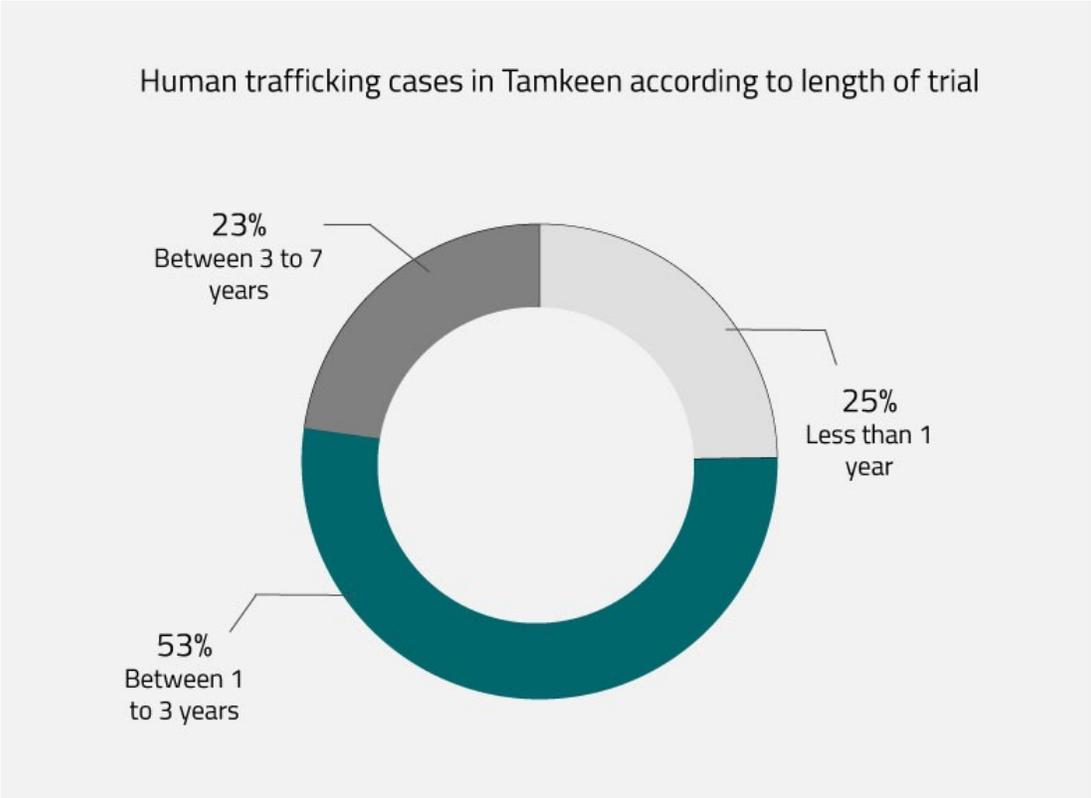


With regard to the distribution of cases according to gender, their percentage was as follows: 25% males, and 75% females, as women are considered the weakest and most vulnerable to exploitation. The number of domestic workers who have been subjected to exploitation was 201 domestic workers.

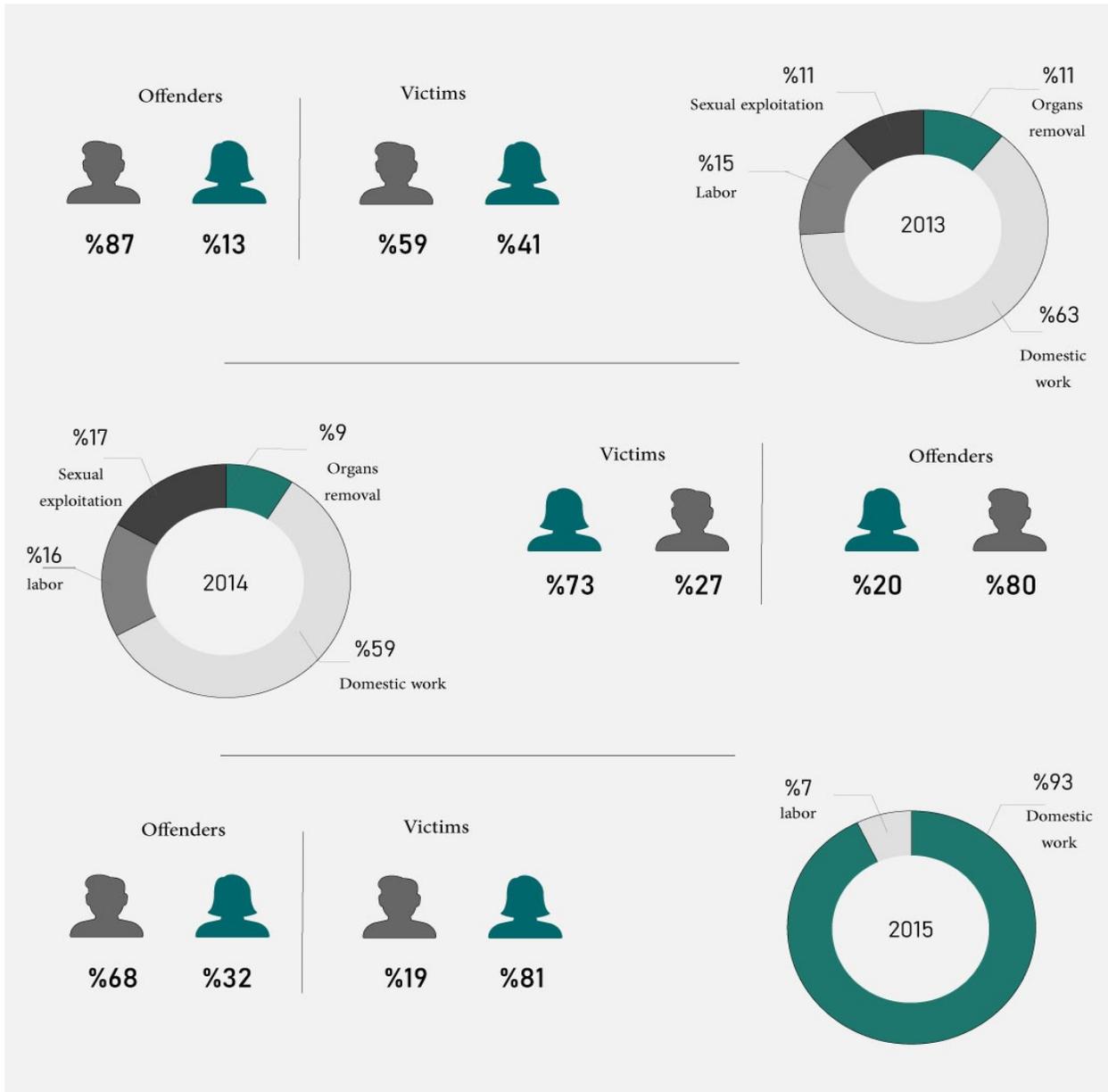
Furthermore, the cases distributed according to the traffickers were as follows: 34% of those who perpetrated the crime were individuals; 25% were in groups; 17% were recruitment agencies; 16% were employers; and 8% were unspecified in their nature and place of work.

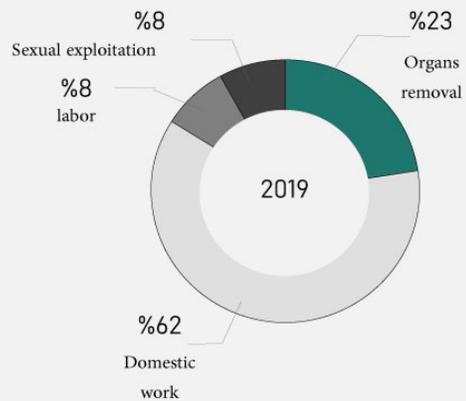
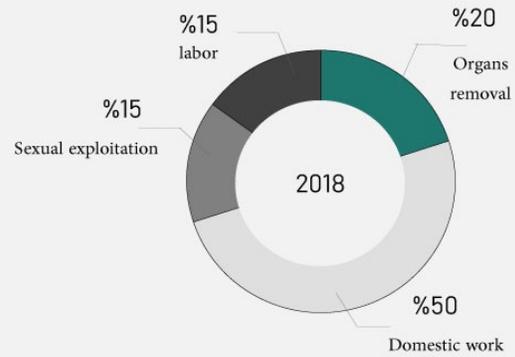
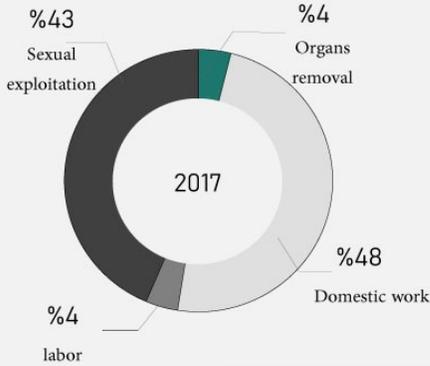
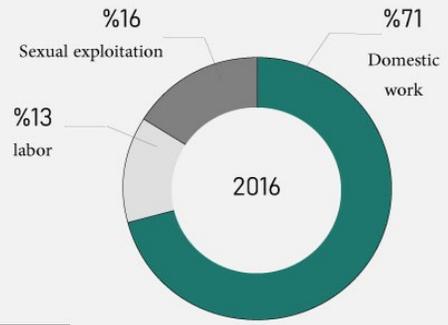


As for the cases that Tamkeen for Legal Aid and Human Rights followed, they were distributed according to the length of the trial: 25% of the cases took less than 1 year; 23% took between 3 to 7 years, and 53%, the majority, took between 1 to 3 years.



## Statistics of the Anti-Human Trafficking Unit on the number of cases that have adapted trafficking in Jordan from 2013 until 2019





**6%** of the cases dealt with in 2019 by the Anti-Human Trafficking Unit were classified as human trafficking

## Second: Cases of Human Trafficking in Jordanian Courts

It should be noted that the cases below are actual cases that were reviewed at Jordanian courts. Thus, the complainants are referred by either a letter or pronoun to maintain their confidentiality. Furthermore, it is important to point out that court decisions are taken in verbatim from court records.

### The First Case<sup>32</sup>

The worker A.Z arrived from the Philippines to Jordan in March, 2006 through a recruitment Office. She was taken to Ramtha and began working for her employer.

She worked for the employer for 9, during which she did not receive any salary except in 2009 when she was given 1,100 JODs. The working conditions of the worker were extremely difficult, she slept in the balcony and she was not allowed to leave the house except to go to the nearby supermarket. She was never given any days off; her passport was confiscated and neither a work permit nor a residency permit were issued for her. She was also physically abused by her employer.

On 25/1/2015, A.Z left the house where she worked. She was scared and afraid and did not know where to go. She was afraid to go to the police due to her

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<sup>32</sup> Case No. 114/2018 at the Minor Felonies Court in Ramtha

irregular status since she had no documents with her and her employer did not issue her a permit.

The worker came to Tamkeen, which in turn sent a notification to the Anti-Human Trafficking Unit on 12/3/2017.

### **The Anti-Human Trafficking Unit**

The employer did not appear in front of the Anti-Human Trafficking Unit as he was wanted by authorities for another crime. Therefore, the testimony of the worker was taken before she was transferred to the shelter.

### **The Prosecutor**

#### **Procedures at the Prosecutor:**

On 24/7/2017, the Prosecutor decided to charge the employer with the felony of Human Trafficking pursuant to Article 9/B/2 in the Anti-Human Trafficking Law. The employer's presence was required to answer to the charges he was accused of.

A letter was sent from the Judicial Enforcement Department that stated that the defendant is requested to appear for a number of cases. On 10/10/2018 the prosecutor decided to close the case and to consider the defendant a fugitive.

On 10/10/2018, the Prosecutor decided the following:

“Pursuant to the provisions of Article (133/1) of the Code of Criminal Procedure, the defendant is charged with the felony of human trafficking in contravention of the provisions of Article (9 /b/ 2) of the Anti-Human Trafficking Law. He will thus be tried for this crime before the Ramtha Criminal Court which has jurisdiction over this matter.”

**Procedures at the Court:<sup>33</sup>**

“The facts of the case could be summarised as follows based on the report by the Prosecutor: The worker arrived to Jordan on 1/3/2006 to work for the employer. She signed a 2-year contract , stating a salary of 200 USD per month. She worked for her employer for 9 years. She was not given her wages, and only received 1100 USD throughout her entire working period which lasted till 2015.

On 12/3/2017, Tamkeen sent a notification to the Anti-Human Trafficking Unit of a possible human trafficking crime. The Ramtha Police Directorate was then informed, which then found out that the worker has left the house of the employer who refuses to give her neither her passport nor her wages. The worker was then contacted by the embassy who arranged the return to her country on 5/9/2017.

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<sup>33</sup> This section is taken from court documents

The public court sessions were attended by the Prosecutor, the Delegated Prosecutor and the defendant and his lawyer. Since the defendant was considered a fugitive, he was questioned by the Ramtha Prosecutor about the charge he was accused of. The defendant was notified about the documents that were then read to him, including the indictment, the charges and the list of evidence collected by the Prosecutor. The Prosecutor then confirmed that the details of the case are clear and he does not wish to add anything to them.

The defendant was then asked about his response to the charge, where he said that he was not guilty. The Prosecutor then called the witnesses. Since the worker could not testify herself, her testimony was read to the court as the Prosecutor considered it as an evidence in the case. The court then listened to the testimony of the witness G.W who spoke in English. After an interpreter was selected, the testimony was heard. Then, the prosecutor asked to review the investigative file with all its contents be reviewed. He concluded his remarks by asking that the defendant be charged with the crime as per the corresponding articles of the law.

The witness G said in her testimony that the worker is her niece. The witness was not aware that the worker was in Jordan till 2013, when she learned that through social media. She then called her niece, who told about the difficulties she was

facing with her employer, including that she slept on the balcony. Her aunt advised her to file a complaint at the police, but she did not.

On 25/5/2015, the complainant called her aunt, who again advised her to file a complaint. The two women later met at the Ramtha Police Station, where the complainant filed a complaint. Then, both women went to the Philippines Embassy in Amman. There, she was examined by a doctor because she had severe headaches due to the defendant slamming her head to a door. The Embassy then allowed the worker to remain at her aunt's house in Irbid.

The worker stayed at her aunt's house for one year and one month. In 2016, her aunt sent her to work for one of her Filipina friends in Amman. She worked for that woman for 2 months. The friend then referred the worker to a legal aid organization. The organisation identified the violations that the worker was subjected to including: non-payment of wages, long working hours, working in more than one profession, deprivation of vacations and holidays, as well as not having her own personal space.

**An analysis of Article 9 of the Anti-Human Trafficking Law shows that the crime's components include:**

**First:** The Victim of the crime, whether male or female, where there should be a group of victims and not one person.

**Second:** the physical component and its elements:

The Act: either the recruitment, transportation, harbouring or receiving of victims

The Mean: through use of force, deception, coercion, abduction, fraud, abuse of power, abuse of a position of vulnerability or paying or receiving of money or benefits to gain the approval or control of these people

The Purpose: the objective of the crime where the victim is exploited in various forms.

**Third:** The moral element: the intent and knowledge of the act, and the mean which makes the crime intentional.

**The analysis shows that the victim of the crime of human trafficking must be (several persons), meaning that the victims of the crime of human trafficking must be several people, not one person as stipulated in Article (3 / A / 1) of the Anti-Human Trafficking Law. The article stated "the attracting of people" and not "one person", which denotes that multiplicity of victims. Article 9 / B / 2 also required the same thing, as it stated: "if the victims include a female or a person with a disability"; which shows that the victim of the crime must be a**

**group and not a single person since this is an organized crime that is practiced by organized criminal groups and gangs. It is thus not considered an individual crime practiced by individuals on occasions. Therefore, the Jordanian Anti-Human Trafficking Law does not confer penal protection on attracting, recruiting, or soliciting one person (such as forced domestic labour. (General Provisions for Human Trafficking Crimes, Dar Al Thaqafa, First Edition 2014, pg. 177).**

A legal application on the case facts show that the defendant recruited the complainant to work as a maid in his house through a recruitment office. She worked for him in the period 2006 till 2015. He forced her to work for long hours, and he did not pay her any wages (Forced Labour). He also forced her to work in the houses of his children, and confiscated her passport. However, the crime was committed on one person, which is against what is conditioned upon in Articles 3/A/1 and 9/B/2 of the Anti-Human Trafficking that state that the victims of the crime need to be several people and not one person. Thus, the court declares that the defendant's actions do not constitute a crime and he is declared non-labile for any crime.

Therefore, and based on the foregoing, the court decides, pursuant to the provisions of Article (2/236) of the Code of Criminal Procedure to declare that the accused is not liable for the human trafficking felony he is charged with, because his act does not constitute a crime.

## **The Appeal**

The Appeal was submitted by the Ramtha Prosecutor that the crime was included in the Amnesty Law. The decision was issued by the Court of Appeal that on 1/5/2019 the appellant submitted an appeal against the decision issued by the Ramtha Criminal Court on 4/28/2019 in the criminal case No. 114/2018. The decision concerned the non-liability of the defendant. The Prosecutor asked that his appeal is accepted since it was submitted within the legal period in the matter related to annulling the appealed decision.

The Prosecutor in his appeal said that the court was mistaken to declare the defendant not liable. The Assistant Prosecutor thus asked in his written application that the appeal is accepted in form and substance.

### **The Appeal Court issued the following decision:**

“After close scrutiny, we find that an appeal was submitted by the Ramtha Prosecutor on 1/5/2019 on a decision No. 114/2018 issued by the Ramtha Criminal Court on 4/28/2019, where the judge declared that the defendant is not liable for the felony of human trafficking pursuant to the provisions Article (9/B/2) of the Anti-Human Trafficking No. 9 of 2009.

For his violations of the provisions of Articles 344 and 445 of the Penal Code, as well as Article 38 of the Traffic Law, and without looking into the reasons for the appeal, **we find that the crimes that the defendant is**

**charged with occurred 12/12/2018. Thus, the court find that these crimes are covered by the Amnesty Law No.5 of 2019.**

Therefore, pursuant to the provisions of Article (2) of the Amnesty Law, Article (50) of the Penal Code, and Article (337/1) of the Code of Criminal Procedure, the court decides to drop the charges on the defendant and return the documents to its source.

The decision is issued in the name of His Majesty King Abdullah II bin Al-Hussein, on June 11, 2019.”

The previous decision was then sent by the Assistant Prosecutor to the Court of Cassation which upheld the decision, considering that the crime is covered by the Amnesty Law.

**Notes:**

1. The First Court decided that the defendant is not liable for the charge he was accused of since the victim was only one person. However, there are doubts that the interpretation of the legal text was in favour of the defendant. Since there is no crime or punishment without a clear text for them, the Jordanian Judiciary decided in many decisions that the term persons or victims used in the law could be used to mean one victim as well and that the judiciary should not look at the verbatim meaning of the text. It is inconceivable to take away

protection from the victim because there was only an individual one, and there is no doubt that this is not the intention of the legislator.

2. The Prosecutor was not satisfied with the previous decision and appealed it because he believed that it was covered by the Amnesty Law. Both the Court of Appeal and the Court of Cassation supported that. We note that between 2009 and 2019, two amnesty laws were announced. The first of which was Law No.15 for the year 2011 which became effective on 2/10/2011. Article 3 of the amnesty excluded a number of crimes from its application:

"The Amnesty stipulated upon in Paragraph A of Article (2) of this law does not include the following crimes: Perpetrator, Partner, Accomplices, or instigators of any crimes related to Slavery as stipulated in Article (5) of The Abolition of Slavery Act of 1929, and the crimes of Human Trafficking as stipulated in Article (3) of the Anti-Human Trafficking Law No. (9) of 2009."

The second law was No.5 of 2019 that became effective on 5/2/2019. Article 3/A of the law stated that:

"The Amnesty stipulated upon in Paragraph A of Article (2) of this law does not include the following crimes: Perpetrator, Partner, Accomplices, or instigators of any crimes related to Slavery as stipulated in Article (5) of The Abolition of Slavery Act of 1929, and the crimes of Human Trafficking as stipulated in Article (3) of the Anti-Human Trafficking Law No. (9) of 2009, except of exploitative crimes concerning the removal of organs if it is for the benefit of one of the family members of the defendant."

The act of withholding a passport is crime of itself. Even if the crime was included in the Amnesty Law, we note that passport remained confiscated even after 12/12/2018, which is the end date of the period included in the Amnesty.

## **The Second Case<sup>34</sup>**

In 2015, the Bangladeshi worker was recruited and was sent to work at a house in Amman. The employer though sent her back because she said the worker was sick.

The Recruitment Office did not believe that she was sick and accused the worker of lying. The employer at the office then beat her on her back and her face. He beat her again and threatened that he would throw her out of the window if she does not work.

A video of the worker being beaten was posted. As a result, the Prosecutor in North Amman charged him with the crime of Human Trafficking pursuant to Article 9/B/2 of the Anti-Human Trafficking Law, as well as the misdemeanours of defamation, contempt, deprivation of freedom and threat. The case was then referred to the Criminal Court.

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<sup>34</sup> Court of First Instance- Criminal Court of North Amman No.90/2016

## **Court Procedures:**

A claim for personal right was submitted by the worker's attorney for material and moral damage due to the actions of the defendants. Their testimonies were then heard and the defendants declared that they are innocent of the charge they are accused of.

### **The expert report which is based on the video, stated the following**

"Summary: the actions of the man who appears in the video are: violently hitting the girl on her face multiple times, throwing her to the ground, stomping on her body with his foot multiple times and attempting to strangle her twice, once using his hands and the second by wrapping the carpet on her neck. He then dragged her by the shoulders and asked the person who was shooting the video to open the video. Throughout the video and while hitting the girl, he repeated the phrases: "You want to die here, shut your mouth, damn your father, die here, and I will kill you."

After the court proceedings, the following decision was reached:

North Amman Criminal Court decision in Case No. 90/2016:

#### **"Therefore, and based on the foregoing, the court decides the following: -**

1. Pursuant to the provisions of Article 234 of the Code of Criminal Procedure, it amends the characterisation of the crime that the defendants were charged with the felony of Human Trafficking pursuant

to the provisions of Article 9/B/ 2 of the Anti-Human Trafficking Law to a misdemeanour in pursuant of the provisions of Article 334 of the Penal Code in view of the complainant dropping her personal right. Per the provisions of Article 334/2 of the same law, the court decides to drop the public right lawsuit and charge the complainant with the fees of dropping the case.

2. Pursuant to the provisions of Article 178 of the Code of Criminal Procedure, the defendant is declared not liable of the crime he was charged of, as they do not constitute a crime punished by law.
3. Pursuant to the provisions of Article 364 of the Penal Code, and since the complainant does not wish to proceed with the defamation and contempt lawsuit against the defendant.
4. Pursuant to the provisions of Article 178 of the Code of Criminal Procedure, the defendant is found not liable in the crime of deprivation of liberty, since their act does not constitute a crime punishable by law.
5. Pursuant to the provisions of Article 52 of the Penal Code, the public right case is dropped after the complainant dropped her personal right case<sup>35</sup>.
6. The claim for personal right is rejected and she is incurred the fees and expenses of the case. No fees shall be charged to the lawyers since an

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<sup>35</sup> Personal Right Claims are also called Civil Suits which is a court-based process through which the complainant can seek to hold the defendant liable for some type of harm or wrongful act. Usually, if the former is successful, he or she will usually be awarded compensation for the harm that resulted from the latter's **action** or inaction.

act was modified in the case in accordance with the provisions of the law.”

### **The Decision following the Appeal:**

“Pursuant to Article 267 of the Code of Criminal Procedures, the court decides that the appeal is rejected and that the previous decision is upheld and the papers shall be returned to its source.”

The decision was made on 15/4/2019.

### **Notes:**

1. The criminal characterization was amended in the court’s decision from the crime of human trafficking to the misdemeanour of harm. The case was then dropped due to the Amnesty Law
2. Despite the existence of a video clip showing the abuse that the worker was subjected to, and its publication on Social Media, the worker did not receive any compensation for that. All of the abuse she suffered from was the result of her being ill and unable to work.
3. Duration of the trial:

The trial began on 24/3/2016 and ended on 15/4/2019, which means that it lasted for almost 3 years. During that period, the worker left the country without receiving any compensation for what she has been through in Jordan.

## The Third Case:<sup>36</sup>

In 1996, the worker arrived in Jordan and she worked for the employer till 2019. During the entire time, she did not receive any wages. Moreover, her employer deceived her by saying that her family died in the civil war that was raging in Sri Lanka. The employer also confiscated her passport and did issue neither a work nor a residency permit for her. Even though she asked for her wages and her passport, the employer did not respond to her demands. On 22/1/2019, the worker called Tamkeen and asked for their help, adding that she cannot leave the house. Tamkeen then submitted a notification to the Anti-Human Trafficking Unit with the available information.

### **At the Anti-Human Trafficking Unit**

On 23/1/2019, the Anti-Human Trafficking Unit summoned the worker and the employer. The worker confirmed that she did not receive any wages, was denied contact with her family and was banned from travelling. It is worth noting that the worker, Raison, gave her testimony in Arabic, as she forgot her mother tongue due to the long period she spent with her employer.

Then, the employer was questioned who confirmed the contractual relationship between him and the worker and admitted that he did not pay the worker's wage for the last 23 years. He also admitted to neither have issued a work nor

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<sup>36</sup> The Muaqar Magistrate court (107/2019)

residency permit for the worker. He added that he is willing to pay the wages in instalments as well as to cover the overstay fines that the worker has accumulated over the years. The Anti-Human Trafficking Unit then referred both parties to the Police Station which in turn referred them to the Prosecutor Office at the Muaqar Court in Amman.

The Unit also contacted the Sri Lankan Embassy, which decided to keep Raison in a special shelter for Sri Lankan workers, while awaiting the court decision. The Sri Lankan Embassy also began its own investigations. Upon inquiring about the worker's family, the embassy discovered that her family was They found out that what the employer said about the family's death was only said to prevent the worker from asking if she could communicate with her family or questions about her return.

### **Court Procedures till reaching the Final Decision**

On 23/1/2019, the Prosecutor listened to the Worker's testimony where she stated the following: "I have been working for the past 23 years for the employer, taking care of his family and doing house chores. Even though I was supposed to receive a monthly wage of 70 USD, I haven't received anything. After 3 years of working, I asked to return to my country but he refused. I do not want him to be imprisoned or punished. I just want my financial dues from him and to return to

my country.” When the employer was asked whether he was guilty, he replied that he was not.

Based on the Worker's testimony, the Prosecutor decided to charge the employer with the following crimes on the 23/1/2019:

1. Misdemeanour of illegal possession of a passport based on Article 23/B/1 of the Jordanian Passport law.
2. Violation of the provisions of Article 46, Paragraph A of the Jordanian Labour Law No. 8 of 1996, by not providing the worker with her due wages.

Thus, the Prosecutor referred the case to the Muaqar Magistrate Court in Amman as the case is under its jurisdiction.

The court procedures were limited to two court sessions. The testimony of the worker and employer were heard again during these sessions. Raison reiterated her wish not to lodge a complaint and her wish to receive her salaries.

Consequently, a decision was issued on the 26/2/2019. It stated:

“Pursuant to Article 177 of the Code of Criminal Procedure, we find the defendant guilty of:

1. A misdemeanour of illegal possession of a passport. He is thus fined with 500 JOD, in addition to the fees. However, since the defendant admitted his crime and the worker has dropped her personal claim,

which is considered as a mitigating circumstance by the court, the penalty is reduced to a fine of 50 JOD and the fees.

2. In Violation of the Jordanian Labour Law No.8 of 1996 by not providing the worker with her due wages. He is thus fined with 50 JOD, in addition to the fees<sup>37</sup>.
3. Pursuant to Article 72 of the Penal Code, the employer is fined in total with 100 JOD and the fees."

### **Notes:**

1. The Court did not take into account what the worker went through as she was forced to work, as well as being exploited by her employer who used his authority as a "sponsor", seized her passport and then did neither issue her a work permit nor a residency permit. Thus, he placed the worker in a precarious position as she was in violation of the law, and could have possibly been subjected to administrative detention or deportation.
2. The employer violated the labour law by not paying the worker's wages for 23 years. Due to the statute of limitation for hearing such cases that only covers the period of two years, the worker was only able to claim her wages for the last two years of work, based on the provisions of Article 138 of the Jordanian Labour Law No. 8 of 1996, which states:

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<sup>37</sup> Litigation Fees are any fees that arise due to the case, whether related to the personal right claim, translation, expert witness or witnesses.

“No lawsuit to claim any rights granted by this law including the wages of overtime hours irrespective of its source or origin shall be heard upon the elapse of two years on the rise of the reason of claim of such rights and wages.”

#### **Fourth Case<sup>38</sup>:**

(T) and (R) are two Indian workers who arrived to Jordan on 14/1/2014 after being recruited to work in Sahab, Jordan. None of them signed a contract, neither in India nor in Jordan. To secure his job, one of them paid 7,000 rupees (equivalent to 1,000 USD) to the wife of one of the Indian supervisors in the factory. The other one paid 30,000 rupees to come to Jordan and agreed to have 100 JODs deducted monthly from his salary.

Both worked every day from 8 am to 5 pm, and had 3 hours of overtime each day. They stayed in an accommodation provided by the factory; which they described as very bad and uninhabitable, as 10 workers slept in small rooms, which were infested by bugs.

None of them received the full wage, because there were always deductions. One of them suffered an eye injury as a result of not being provided with the

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<sup>38</sup> Case No 2014/2018 South Amman Criminal Court of First Instance

necessary protection equipment at work. He was then brought to the doctor but the expenses of his treatment were deducted from his salary.

On 7/5/2014, the supervisor asked the second worker to pay his monthly fees of 100 JOD as usual. However, the worker refused because his wife was sick back in India and he needed to send her his full salary. So, his supervisor threatened him and said he would not see his family again if he does not pay the money. Then the supervisor hit him with a tool and injured both the worker's shoulder and face. This made the worker pay the 100 JODs to the supervisor.

Later, the workers headed to Tamkeen and reported what happened.

### **At the Anti-Human Trafficking Unit**

Tamkeen sent a notification to the Anti-Human Trafficking Unit on 26/5/2014 informing them of the incidence described above. The notification stated that such conditions could constitute a crime of human trafficking.

Thus, the Unit listened to the testimony of the workers as well as to the Manager of the Factory and the Supervisor. An investigative visit was made to the factory on 27/5/2014, which reported the following:

- The passports of the workers are confiscated by the employer
- Lack of suitable work gear and safety equipment, as workers are not provided with suitable uniforms, helmets, gloves or shoes.

The parties were then referred to the Prosecutor on 1/6/2014.

## **The Prosecutor:**

On 2/6/2014, the Prosecutor received the case and initiated his investigations. He discovered that the workers do not speak Arabic. Therefore, he postponed the hearing until translators were selected. On 24/6/2014, the Prosecutor decided to hear two witnesses of the workers in this case and charged the Supervisor and the Manager with the crime of Human Trafficking pursuant to Articles 3/A/1 and Article 8 of the Anti-Human Trafficking Law. He also sent a letter to the Indian Embassy asking for an interpreter so he could listen to the testimonies of the workers.

On 1/7/2015, the Prosecutor confirmed that an interpreter must be present to hear the testimonies of the workers.

On 24/8/2014, the interpreter was present and the testimonies of the workers were heard. The Prosecutor then asked the defendants regarding the charges that they are accused of.

### **On 28/10, the prosecutor closed the file and declared that:**

1. Pursuant to the provisions of Article 132 of the Code of Criminal Procedure, the supervisor is charged with a misdemeanour of human trafficking, as stipulated in Articles 3/A/ 1 and 8 of the Anti-Human Trafficking Law.
2. Pursuant to Article 30 /A of the Code of Criminal Procedures, the Manager shall not be charged for lack of evidence.

It is noted that the Prosecutor's procedures lasted for a period of four months from the time the case was reported to the Unit on 2/6/2014 until the time the file was closed on 28/10/2014. The workers had to wait until the end of the trial and were not allowed to travel or work.

## **Court Procedures**

The Court of First Instance in South Amman reviewed the case no. 2078/2014.

On 2/9/2015, the interpreter came and was told about his task in the presence of the Delegated Prosecutor. When the defendant was asked about the charge of human trafficking, as stipulated in Articles 3/A/ 1 and 8 of the Anti-Human Trafficking Law, he replied that he is not guilty.

The testimony of the two workers were heard, and then, the court sessions were postponed until after the Judicial Break which ended on 9/9/2015.

### **On 29/10/2015, the court decided the following:**

"Accordingly, and because the crime of human trafficking with its legally recognised elements has not been proven, we declare the defendant as innocent due to the lack of evidence pursuant to the provisions of Article 178 of the Criminal Procedure Code."

It should be noted that the Judicial Break could sometimes extend the length of litigation for a longer period, especially since this is a criminal case and a speedy decision is very important for both parties.

The details of the decision show that the court based the acquittal on the following reasons:

**“Looking at the facts of the case, the court finds that the Public Prosecution has charged the suspects with the crime of human trafficking and issued its indictment in light of:**

1. The suspects received money from the complainants in exchange for their recruitment to work in Jordan. The money was then deposited in the bank account of the supervisor’s wife in India.
2. The living conditions for the workers were not healthy.

In terms of the first reason, depositing cash in exchange for recruitment is not considered an indication for the crime of human trafficking since the United Nations 2000 Protocol, which is the original source of the Jordanian Law, stipulated that the crime would need be carried out by a criminal organization that aims to targets a group of victims. Thus, the law does not apply to individual cases that happen infrequently; unless it is proven that it is commonly done by the perpetrator. In this case, the suspect is not a member of a criminal organisation within the meaning of the national law or international conventions. Therefore, this element of the crime is not applicable in the case.

Regarding the second element, it was proven in the Defence Statement of Evidence that the complainants were recruited and hired according to the terms of the contract. This however, is contrary to the notification that was sent to the Anti-Human Trafficking Unit in the Public Security Directorate. Moreover, forced or compulsory work as defined in the International Labour Convention was not proven in this case as the complainants confirmed in their testimonies saying they were working voluntarily.

In regards of the third element, which is the commodity whereby the complainants are subject to sales and purchase deals on an international level, it is noted that the recruitment of the workers happened through a company in India that specialises in labour. This was proven by the defence and testimonies. The company where the defendant works is an organised company, yet the defendant is neither its owner nor is he authorised on the company's behalf."

## **The Appeal**

On 22/11/2015, the Prosecutor filed an appeal against the above-mentioned decision issued on 29/10/2014, which declared the defendant innocent of all charges.

The reasons for the appeal included:

1. "The court was wrong in its conclusion where it considered that the actions of the defendant do not constitute the elements of the crimes that he was charged in.
2. The court was mistaken in its conclusion, as it did not accurately weigh the testimonies of the complainants."

**The response of the Court of Appeal to the appeal was:**

"Our court finds that the testimonies of the Prosecution witnesses prove that the defendant charged each of the worker 100 JODs per month for the period of 3 months during their employment in the same factory. The money was then deposited in the bank account of the defendant's wife. The money was used to secure the workers' jobs at the factory. The evidence presented by the Prosecutor prove the above, and thus the court should have discussed these facts. Thus, the failure of the Court of First Instance to discuss these facts and to properly review the elements of the charges against the defendant and the extent of the applicability of the crime constitutes a failure of reasoning and causation. Thus, the decision shall be appealed pursuant to Articles 182 and 237 of the Code of Criminal Procedure due to the above and the previous decision shall be revoked."

Issued on 3/15/2016

## **The Decision after the Appeal**

The South Amman Court of First Instance considered case No. 1153/2016 after the decision was appealed by the Court of Appeal and issued the following decision:

“Through an application of law on the case, we find that the elements of the crime are as follows:

### **First: The Legal Element**

Second: The material element, which is evidenced by the case papers and evidence of the activities carried out by the defendant who exploited the complainants and considered them as a commodity in which he traded and expressed himself as a broker and seller of this commodity. This activity thus constitutes trafficking in persons. While there is a paper trail of the correspondence and the recruitment process of the workers through a company, the defendant exploited the state of weakness of the complainants and their dire need to work, as well as their ignorance, and lack of knowledge of the language and work regulations in Jordan.

Third: the moral element represented by the intention, which was represented by the exploitation of the weakness of the complainants and then deluding them that he was the one who secured their jobs in return of paying him the sums of money that they in turn paid; which was proven

through the aforementioned evidence that proves that he committed these acts willingly.

Therefore, the court decides pursuant to the provisions of Article 177 of the Code of Criminal Procedure that the defendant is guilty of Human Trafficking and pursuant to Article 8 of the Anti-Human Trafficking Law. He is sentenced with a fine of 1,000 JODs and fees.”<sup>39</sup>

The decision was issued on 15/8/2016.

**Notes:**

- The unavailability of an interpreter extended the litigation period, where the workers’ right could have been lost as they could leave the country before their testimony was heard at the Prosecutor, which would ultimately lead to the loss of the case and the complainants not receiving their due compensation
- The importance of the appeal in such cases, as it could lead to a change in the outcome of the case.
- The first court considered that the crime of trafficking should be committed by a criminal organisation, which was later looked at by the Court of Appeal.

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<sup>39</sup> Litigation Fees are any fees that arise due to the case, whether related to the personal right claim, translation, expert witness or witnesses.

## The Fifth Case<sup>40</sup>

The recruitment office detained 5 workers of both Bangladeshi and Ugandan nationalities in an unlicensed house. The office employee also beat them, forced them to work in several houses, took their money and deprived them of food and their freedom, as well as seizing their passports.

### **Anti-Human Trafficking Unit**

On 13/11/2017, and based on the information received by the Anti-Human Trafficking Unit, they found the house and the 5 workers in it. The detained workers were 4 Bangladeshi workers and 1 Ugandan worker. The Unit also discovered that the house belonged to a recruitment office. The workers were then referred to the hospital where they underwent a medical check-up. The exam results revealed that they were beaten. The workers were then referred to Dar Al Karama shelter, while the recruitment office was first referred to the Police Station and then the Prosecutor.

### **Investigation Procedures at the Prosecutor**

On 15/11/2017, the Prosecutor discovered that the workers do not speak Arabic, so he asked for an interpreter. As a result, the Prosecutor decided on 23/11/2017 to consider the two defendants charged with:

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<sup>40</sup> The Court of First Instance, Misdemeanour of West Amman, Case No. (1791/2017)

- Misdemeanour of Human Trafficking pursuant to Articles 3/A/1 and 8 of the Anti-Human Trafficking Law, repeated 5 times.
- Misdemeanour of inflicting harm pursuant to Article 334 of the Penal Code, repeated 4 times.

## **Court Procedures**

On 5/12/2017, the court proceedings for the case started. The court summarised the case facts as follows:

“The facts of the case are summarised as follows was according to what was reported by the Prosecutor: The first defendant is an owner of a recruitment office for domestic workers. The second defendant is an employee of the first defendant. Almost a year ago, the first defendant recruited the witness (S.A) who is Bangladeshi to work in the house of (W.G), the worker who is Bangladeshi to work in the house of (A.E), the Bangladeshi witness (A.M) to work in the house of (N.R) and the Bangladeshi witness (A.P) to work for (S.E), as well as the Ugandan worker (N.F) to work for (A.Z). After a short while, the workers were returned to the first defendant to be deported back to their countries. However, the first defendant rented an apartment from the witness (M.Q) in Um Al Summaq, where he detained the workers against their will, beat them, and forced them to work as domestic workers. Therefore, a complaint was submitted and the perusal started.”

**Based on these facts and the presented evidence, the court decided the following:**

1. "In regards to the Misdemeanour of inflicting harm pursuant to Article 334 of the Penal Code, repeated 4 times, the complainants dropped their personal rights on the two suspects and each of the complainants mentioned that they did not wish to submit any complaints. Since it is not permissible to pursue the case without the complaint by the victim, the court decided in accordance with the provisions of Article (334/2) of the Penal Code, to drop the public right lawsuit on behalf of the two suspects on all 4 counts, following the dropping of the personal right and incurring the complainants the dropping fees.
2. Pursuant to Article 177 of the Code of Criminal Procedures, the two suspects are found guilty of the misdemeanour of Human Trafficking as stipulated in Articles 3/A/1 and 8 of the Anti-Human Trafficking Law No.9 for 2009. Pursuant to Article 8 of the same law, they are sentenced with a fine of 1,000 JODs and the fees for each one of the defendants, calculated for the period of arrest.
3. Pursuant to Articles 77, 181/1 and 239 of the Code of Criminal Procedures and Article 45/1 of the Penal Code, the two defendants shall equally incur the fees and expenses that arose due to the trial and were paid by the treasury, including the fees for the witnesses. These fees shall be paid in the same manner as the fines.

Decision made on 26/9/2018.”

### **Notes:**

1. The decision was based on Article 72/1 of the Penal Code, which states that: “If a number of felonies or misdemeanours are committed, the judgment has to include a penalty for each crime and only the greatest penalty shall be imposed.” Thus, the defendants were sentenced to pay a fine of 1,000 JOD each plus the fees.

However, we point out that Article 9 of the Anti-Human Trafficking of 2009 stipulates the aggravating circumstances of the crime which apply if the victim is a female. In such cases, the punishment should be temporary hard labour for a period not exceeding 10 years, and a fine no less than 5,000 JOD and no more than 20,000 JOD. Thus, both punishments should be imposed, the prison sentence and the fine.

### **The Sixth Case:<sup>41</sup>**

#### **The facts are summarised as follows:**

In March 2018, an employer recruited 9 Egyptian workers to work in the Agriculture sector. Every one of them signed a one-year contract with a promised wage of 250 JOD. However, 50 JOD of the wage would be deducted for food expenses, and another 50 JOD would be deducted for the fees of the work permit.

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<sup>41</sup> Case No. 818/2018, The Magistrate court in Ghour Al Safi

Although issuing a work permit and bearing the costs is the responsibility of the employer by law.

The employer seized the workers' passports and threatened them with murder if they would file a complaint. He also threatened that he would accuse them of theft if they would leave the farm. The workers worked more than 12 hours per day, they were not given any days off, and they suffered from very difficult living conditions and degrading treatment provided by the employer.

The workers contacted Tamkeen, expressed their fears and said that they need help. Subsequently, Tamkeen sent a notification to the Anti-Human Trafficking Unit on 23/10/2018.

### **The Anti-Human Trafficking**

Following its initial investigation at the farm where the workers were located, the parties were referred to the Police Station, while the workers were referred to Dar Al Karama shelter where they stayed for 2 months.

The workers wanted to return to their countries voluntarily, but the Ministry of Labour refused that. The Ministry requested to see a clearance from their employer although there is a human trafficking crime lodged against the employer in court.

Thus, the workers stayed for 6 months in Jordan. During this time, they were not allowed to travel or work for another employer.

### **Investigative Procedures at the Prosecutor:**

On 25/10/2018, the Prosecutor listened to the testimony of the 9 workers. He then decided to charge the defendant with the following on 31/10/2018:

1. Human Trafficking as stipulated in Article 8 of the Anti-Human Trafficking Law No.9 for 2009 per Article 3/A/1 of the law.
2. The seizure of a passport as stipulated in Article 24/B of the Passport Law, repeated 9 times.

### **Court Procedures:**

#### **The court summarised the case facts as follows:**

"The facts of the case are summarised per the investigative report sent by the Prosecutor no. 288/2018 as investigated by the Ghour Safi Prosecutor: On 24/10/2018, the Criminal Investigation Unit received a notification from Tamkeen no. 151/R/2018 that included the complaint by the complainants on the defendant who did not give them their wages, mistreated them, and forced them to work for long hours. The complaints thus lodged their complaint and the perusal started.

Through analysis, the court finds that the case facts are clear as submitted by the Prosecutor and it did not receive any contrary evidence. As such, the court issued the following decision:

**“Based on the above, the court decides that:**

1. Pursuant to the provisions of Articles 335 and 337/1 of the Code of Criminal Procedure, the charges of Human Trafficking as stipulated in the provisions of Articles 3/A/1 and 8 of the Anti-Human Trafficking Law repeated 9 times, as well as the charge of an accomplice in the crime of Human Trafficking pursuant to the provisions of Articles 3/A/1 and 8 of the Anti-Human Trafficking Law and Article 80 of the Penal Code are dropped due to their inclusion in the Amnesty Law No. (5) of 2019. Pursuant to the provisions of Article 6 of the Amnesty Law, the court asks that the Follow Up Office to cease the arrest request on the defendants, unless they are arrested or wanted for other crimes.
2. Pursuant to the provisions of Article 5 of the Amnesty Law and Article 31 of the Penal Code, the seized property shall be confiscated and kept in the Criminal Records Log.”

**Notes:**

1. The court dropped the charge of Human Trafficking due to its inclusion in the Amnesty Law.

The Amnesty Law No.5 for 2019 that became effective on 5/2/2019 stipulated in Article 3/A that: law was No.5 of 2019 that became effective on 5/2/2019. Article 3/A of the law stated that:

"The Amnesty stipulated upon in Paragraph A of Article (2) of this law does not include the following crimes: Perpetrator, Partner, Accomplices, or instigators of any crimes related to Slavery as stipulated in Article (5) of The Abolition of Slavery Act of 1929, and the crimes of Human Trafficking as stipulated in Article (3) of the Anti-Human Trafficking Law No. (9) of 2009, except of exploitative crimes concerning the removal of organs if it is for the benefit of one of the family members of the defendant."

2. As for the Clearance Ministry of Labour requested from the workers:

According to Article 11/C of the Conditions and Procedures for Employing and Recruiting non-Jordanian workers for the year 2012:

**"The employer must inform the Labour Directorate that issued the work permits immediately of the fact that a non-Jordanian worker has left work or fled during the work permit's validity period. Such reports will not be accepted if they occur during the last two months of the work permit period."**

The article gave the employer the right to submit a charge to the Ministry of Labour that accuses the workers with escape, without the need to prove it. These employers could just go to the Labour Directorate and fill out an application for so-called escapees, who, if granted would get arrested and deported without listening to their testimonies or asking for an explanation.

We refuse to call such workers escapees as the working relationship between workers and employers should be contractual. Thus, both sides can cancel it if they would like to, within the limits of the Labour Law. The term escapees indicate that the worker was subjected to violations from the employer and was thus forced to leave the workplace.

**Article 12/1 of the same system states that:**

- A. A worker is allowed to move from one employer to another in the same sector, with the agreement of the worker and the previous and new employers; subject to the approval of the Ministry, cancelling the original work permit, and issuing a new work permit with new fees for a period of one year.
- B. The worker may be employed by an employer other than the one who is authorized to work for him in the same sector and for a period without cancelling the work permit and without new fees, subject to obtaining a permission to do so from the Ministry. This is done according to an employment agreement that shows all the obligations of each side.

However, what is applied in labour directorates does not allow Egyptian workers from moving from one employer to another, even if the work contract expired except if the employer signed a clearance form. Workers are allowed neither to move to another employer nor to return to Egypt unless they can present the clearance form. Such practices leave the worker under

the mercy of the employer who might exploit the worker until he gives him their passports. In cases where the employers do not, workers become in an irregular status. Some of these employers even demand money from their workers, which is considered a waiver that transfers the ownership of the worker from one worker to another (commodity).

### **The Seventh Case:<sup>42</sup>**

The Filipina Worker (G.L) was recruited in January 2012 through a recruitment office. She was sent to work for an employer for 9 days. The worker was then called by the owner of the recruitment office who asked to meet her without the knowledge of her employer. The recruitment officer convinced her to leave and requested her to work for another employer for a week. She did not receive her wage. The owner of the office was paid 4000 JOD by a third employer, even though the workers' documents remained with the first employer.

After 3 months, the worker left the employer because he issued her neither a work permit nor a residency permit following the submission of a complaint by the first employer to the police. On 1/2/2015, the worker was arrested. He testified that the recruitment office requested her to leave the first house and then received the wages that she earned in the second house, as well as the sum of 4,000 JODs from the third employer.

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<sup>42</sup> Court of First Instance in North Amman, Case No. 260/2015.

The parties were then referred to the Anti-Human Trafficking Unit, which in turn sent them to the Prosecutor who investigated the case. The Prosecutor later charged three defendants who work in the recruitment office with recruiting the worker and exploiting her state of weakness pursuant to Article 8 of the Anti-Human Trafficking Law and Article 76 of the Penal Code.

Subsequently, the papers were referred to the First Instance Court in North Amman. However, a conflict of jurisdiction arose as follows:

**First: the case was reviewed by the Court of First Instance in North Amman:**

“An analysis to the facts, the court finds the complainant is a female whose state of weakness was exploited. Thus, and based on Article 9 of the Anti-Human Trafficking Law, which states that notwithstanding what is stated in Article (8), temporary hard labour shall be given for a period not exceeding ten years and a fine of no less than five thousand dinars and not exceeding twenty thousand dinars if the victim is a female or a person with a disability. Since the complainant is a female, then the crime that should be charged to the defendants is the recruitment of the worker and the exploitation of her state of weakness based on Articles 3 and 9/A/2 of the Anti-Human Trafficking Law. Since this crime is outside the jurisdiction of the First Instance Court, but under the jurisdiction of the Felonies Court; the court declares the case falls outside of its jurisdiction and refers the case back to the prosecutor.

An appealable decision that was declared under the name of his Majesty King Abdullah Ibn Al Hussein the Second on 27/4/2016”

### **Second: The decision was appealed by the Prosecutor in the Court of Appeal**

“Based on Article 269 of the Code of Criminal Procedures, we decide to resend the appealed decision and return the papers to its source.”

### **Third: The case returned to the Court of First Instance**

“Following inspection, the court finds that the case was previously reviewed by the court and it decided that it falls outside its jurisdiction and is under the jurisdiction of the Felonies Court. However, the prosecutor did not accept the decision and appealed it where the Court of Appeals decided that the prosecution’s witnesses should be heard prior to the correct legal characterisation of the case is applied. Therefore, the witnesses’ testimonies were heard, except those of the complainant who left the Kingdom on 9/4/2015 via the airport as proven by the document submitted by the Residency and Borders’ Department.

Article 9/A/2 of the Anti-Human Trafficking Law states that notwithstanding what is stated in Article (8), temporary hard labour shall be given for a period not exceeding ten years and a fine of no less than five thousand JOD and not exceeding twenty thousand JOD if the victim is a

female or a person with a disability. Since the complainant is a female, then the crime that should be charged to the defendants is the recruitment of the worker and the exploitation of her state of weakness based on Articles 3 and 9/A/2 of the Anti-Human Trafficking Law. Since this crime is outside the jurisdiction of the First Instance Court, it is under the jurisdiction of the Felonies Court. Thus, the court declares the case falls outside of its jurisdiction and refers the case back to the prosecutor. An appealable decision that was declared under the name of his Majesty King Abdullah Ibn Al Hussein the Second on 15/5/2018.”

#### **Fourth: The decision was appealed by the Prosecutor in the Court of Appeal**

“Based on Article 269 of the Code of Criminal Procedures, we decide to resend the appealed decision and return the papers to its source to the Court of First Instance as the court that is specialised in looking at the case.” The decision was made on 30/9/2018.

#### **Fifth: The case returned to the Court of First Instance**

“Applying Article 177 of the Code of Criminal Procedures, we find the defendant guilty of recruiting workers and exploiting their state of weakness contrary to the provisions of Article 8 of the Anti-Human Trafficking Law and article 76 of the Penal Code, they are sentenced to six months imprisonment and the fees for every one of them.

2 - Pursuant to Article 178 of the Code of Criminal Procedure, the suspects are declared not responsible for the offense of attracting workers and exploiting their state of vulnerability jointly, contrary to the provisions of Article 8 of the Anti-Human Trafficking Law and article 76 of the Penal Code, since his actions do not constitute any offense.”

### **Sixth: The decision was appealed by the Prosecutor in the Court of Appeal**

“The court decides that based on article 178 of the Code of Criminal Procedures, we declare the defendant is not responsible for the offense of attracting workers and exploiting their state of vulnerability based on Article 8 of the Anti-Human Trafficking Law and article 76 of the Penal Code, since his actions do not constitute any offense.”

### **Notes:**

1. The jurisdiction dispute between the courts lasted from 1/2/2015 till 3/9/2018. This means that the dispute lasted for almost three years and a half. During that period, the worker left the country and the evidence was lost.
2. The previous case occurred prior to the amendment of the Court Formation Law. Thus, the case should have been reviewed by the Minor Felonies Court based on the law at the time. However, a dispute on jurisdiction occurred when the case was referred to the First Instance Court in North Amman,

though it later referred the case back to the prosecutor, but the latter insisted that the case falls under the jurisdiction of the First Instance Court and not the Minor Felonies and the dispute lasted for 3 years.

## **The Eighth Case: <sup>43</sup>**

### **Summary of the Facts:**

The Anti-Human Trafficking Unit was informed that a number of Jordanian men became victims to Organ Trafficking.

### **Procedures at the Anti-Human Trafficking Unit**

The testimonies of the potential victims were heard, and one of the defendants got arrested. The parties were then transferred to the Prosecutor in Amman.

### **Procedures at the Prosecutor**

The parties that included 4 victims and 8 others were transferred to the Prosecutor who charged the defendants with the following:

- Misdemeanour of Human Trafficking pursuant to Article 9 of the Anti-Human Trafficking and as defined in Article 3 of the same law, repeated 5 times to the accused: M, L, and S.

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<sup>43</sup> Case No. 2388/2018 at the Minor Felonies Court in Amman

- Misdemeanour of Benefiting from Organs for Material Gain pursuant to Article 4 of the Benefiting of Organs Law for the accused: M, Q, L, R, S.

### **Procedures at the Court:**

The case was then referred to the Minor Felonies Court in Amman, where the following decision was announced:

“Seven months ago, in October 2018, the defendants contacted the witness (S.Z) who expressed his intent to sell his kidney on social media (Twitter). The witness was then contacted by a foreigner who asked him to connect on the application IMO<sup>44</sup>. The person then offered the witness to buy his kidney for 10-12,000 USD for a Saudi girl. The witness was informed that he will be contacted by the defendant (M.S) whom he later met and they went to undergo the lab tests needed for the operation in a lab near Ibn Al Haitham Hospital. M.S paid for these tests which revealed that the witnesses’ results do not match to the girls’ needs. A month later M.S contacted the witness S.Z and informed him that a Palestinian needed a kidney and asked him to prepare his documents. Later, the witness was contacted by the defendant (M.C) who informed him that a reservation was made for him at a tourism office. The following day, the witness S.Z met with M.S and they went to the airport, where S.Z boarded a flight to Turkey.

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<sup>44</sup> Imo is a free, simple and faster video calling & instant messaging app.  
<https://play.google.com/store/apps/details?id=com.imo.android.imoim&hl=en&gl=US>

He stayed in a hotel for 10 days, and was contacted there by M.C who told him to meet the defendant S.S to go to the hospital together. He was promised that he would receive 15,000 USD for his kidney.

The court also confirmed that the defendant M.C contacted the witness L.A in April, 2018 through WhatsApp and offered to buy his kidney. At the time, he claimed he is a doctor in Turkey. The following week, the defendant M arrived to Jordan and met with the witness (L) and he agreed with the defendant M.C to buy the kidney of L.A for 20,000 JOD. The witness was told that he would later meet M.S to undergo the necessary medical lab tests, which were paid for in full by M.S. At the hospital, they met with the father of the patient (M.G) and they arranged to travel to Turkey for the operation. L.A travelled to Turkey and met the defendant S.S there, where the kidney of L.A was taken and given to a girl and he received money in the amount of 5500 JODs.

Subsequently, the movements of the defendants M.C and M.K were put under surveillance for suspicion of Trafficking. They were later taken into custody by the Criminal Investigation Department/ the Anti-Human Trafficking Unit.

Based on the charges and the court proceedings and pursuant to Articles 3 and 9 of the Anti-Human Trafficking Law, M.L, M.S, and S.S are

sentenced to temporary hard labour for 3 years and a fine of 5,000 JOD plus the fees. The prison sentence is calculated starting from the detention period.”

## 2. Mitigating Circumstances:

“Since the accused M.S is young, which the court considers as a mitigating circumstance, and pursuant to Article 99/4 of the Penal Code the courts decides that his sentence shall be lowered to imprisonment for 1 year and a half and a fine of 1,000 JODs, plus the fees.

3. Pursuant to Article 72 of the Penal Code, the court decides to sentence M.L and S.S to temporary hard labour for 3 years and a fine of 5,000 JODs, plus the fees. The fees are calculated for M.L from his detention period, while M.S shall be imprisoned for one year and a half, plus a fine of 1,000 JODs.”

## Notes:

1. There was a conflict between the applicable laws, as the Anti-Human Trafficking Law criminalized the removal of human organs, as it constitutes a form of exploitation in the crime of trafficking as stipulated in Article 3/B of the law. The article states:

“For the purposes of Paragraph (a) of this Article, the word “exploitation” means the exploitation of persons in forced labour, forced labour, slavery,

servitude, removal of organs, prostitution, or any other form of sexual exploitation.”

As for the Benefiting of Organs Law No.23 of 1977, it stipulates the conditions and regulations for organ donations. Thus, in the case the victim was accused of benefiting from organs, pursuant to the provisions of Article (10) of the law, and at the same time they were considered victims of trafficking. Article 10 of the benefiting of Organs state that:

“Without prejudice to any penalty stipulated in any other legislation, whoever commits a violation of the provisions of this law shall be punished by imprisonment for a period of no less than one year or by a fine of not less than ten thousand dinars, or by both of these penalties.

2. In 2019, an Amnesty Law was issued where its Article 3/17 of the law states:

“The Amnesty stipulated upon in Paragraph A of Article (2) of this law does not include the following crimes: Perpetrator, Partner, Accomplices, or instigators of any crimes related to Slavery as stipulated in Article (5) of The Abolition of Slavery Act of 1929, and the crimes of Human Trafficking as stipulated in Article (3) of the Anti-Human Trafficking Law No. (9) of 2009, except of exploitative crimes concerning the removal of organs if it is for the benefit of one of the family members of the defendant.”

Thus, the charges were dropped on one of the defendants. Article 13 of the Anti-Human Trafficking states that:

“The consent of the victims or those affected by human trafficking crimes shall not be taken into consideration for the purpose of reducing any of the penalties stipulated in this law.”

## The Ninth Case

### The Case Facts

(W) was administratively detained for perjury. In Juweida, she met a woman (K) and told the woman her life story, including her difficult circumstances and the financial struggles of her family. After leaving Juweida, the woman got (W) out through a bail paid by one of her friends.

(K) then asked for the hand of (W) in marriage for one of her sons. Due to the difficult financial and psychological situation of the family, since she has a sick brother and her parents are separated, the family agreed to the marriage without conducting any prior check-ups on the man. (K) then forced W into prostitution, with the knowledge of her son.

(K) then asked for (W) sister's hand in marriage for her other son. Both girls were married on the same day. The woman then forced the two sisters into prostitution. Sometimes, these girls had 9 customers per day. The girls mentioned that their mother in law used to threaten them, saying she would tell their families that they are prostitutes even though she forced them to become ones. She to get paid 1500- 2000 JODs from the customers per day from the customers.

When one of the girls refused to work, the mother in law would put her head inside the toilet. The house was kept locked at all times and was surrounded by cameras. The mother in law also forced the girls to take pills to stay awake with the customers. The girls were not allowed to see their family except twice., On both occasions the mother in law accompanied the meetings.

At the time, the victims' brother worked as a taxi driver. One day, a customer showed him pictures of his sisters and identified them as prostitutes. The brother told his mother and they notified the Family Protection Department which referred the case to the Anti-Human Trafficking Unit.

Following the investigations, both girls were referred to Dar Al Karama shelter. At the shelter, the councillor noticed that the girls are in need of a psychiatrist. The psychiatrist assessed that the mental age of the victims is about 7-8 years and that they are illegible and unaware of their surroundings.

### **Procedures at the Prosecutor:**

Following the testimony of the victims, and the interrogation of the defendants, he decided to charge them as follows:

1. Felony of Human Trafficking pursuant to Article 9/B/2 of the Anti-Human Trafficking and as identified in Article 3 of the same law.
2. Felony of Human Trafficking pursuant to Article 9/B/3 of the Anti-Human Trafficking and as identified in Article 3 of the same law.
3. Misdemeanour of Deprivation of Liberty pursuant to Article 346 of the Penal Code.

4. Misdemeanour of unlawful harm pursuant of Article 354 of the Penal Code and Misdemeanour of Harm pursuant of Article 334 of the Penal Code.
5. Misdemeanour of Harm pursuant of Article 334 of the Penal Code.

The documents of the case were then referred to the Felonies Court in East Amman due to its jurisdiction over the case.

### **Court Procedures**

The lawyers of the victim demanded for a material and moral compensation for the victims by submission of a personal right claim. An expert was thus selected to estimate the value of the compensations. The priors of the defendants were also requested and it was noted that they have a long criminal record.

The Court summarized the facts of the case as follows:

**“At the end of 2014, (W) was administratively detained for perjury. In Juweida, she met a woman (K) who offered to help her to leave the prison.**

Afterwards, the defendant (N), who is a female friend of (K) went to the house of (W) and asked that (W) and her son (T) be married. They married in May of 2015. Then, (N) asked for her other son (A) to be married to (W) sister (S). They were also married. Following the marriage, both girls moved in with (K) who forced them to wear seductive clothes and then have sex with customers she used to bring to the house. The girls were not allowed to leave the house and were threatened if they refused to have sex with the customers. The defendant (K)

used to receive large sums of money from the customers, which reached up to 600 JODs if the customer wanted to spend the night with the girls. If the customer wanted to meet the girls in a hotel, he had to pay 500 JODs. In such occasions, the defendant (H) used to drop the girls off. Thus, a case was filed and the perusal started.”

**The following decision was issued:**

**Based on the charges and the conviction, the court decides the following:**

1. “Pursuant to Article 9/B/2 of the Anti-Human Trafficking Law, each defendant is sentenced for temporary hard labour for 3 years, and the fines of 5,000 JODs, as well as the fees
2. Pursuant to Article 9/B/3 of the Anti-Human Trafficking Law, each defendant is sentenced for temporary hard labour for 3 years, and the fines of 5,000 JODs, as well as the fees
3. Pursuant to Article 72/1 of the Penal Code, the harshest penalties shall be prescribed for each of the defendants by a sentence of temporary hard labour for a period of 3 years, and a fine of 5000 JODs, and the fees are calculated for each of the defendants. #
4. As for the personal right claim, and since the defendants were convicted of the crimes that were ascribed to them, and since the court confirmed the moral damage that befell the girls, the expert assigned by the court estimates that each victim shall be given a compensation of 15,000 JODs each. 10,000 shall be paid by the defendants (A), (T) and (K).

Therefore, the court decides, pursuant to the provisions of Articles (256, 266, 267 and 365) of the Civil Law, as well as Articles (161, 166 and 167) of the Code of Civil Procedures and Article (46/4) of the Law of the Bar Association to rule that the defendants must pay the personal right as follows: The defendants (k), (A), and (T) must each pay the complainant (W) an amount of 5,000 JODs, and the same sum must be paid by the defendants to complainant (S) in compensation for moral damage. The defendants must also pay the fees and expenses of the case, as well as the attorney's fees."

### **The Appeal**

"Pursuant to Article 267 of the Code of Criminal Procedures, the appeal confirms the previous decision.

A decision that was issued in the name of King Abdullah II Ibn Al Hussein on 1/6/2017."

### **Notes:**

1. The case is considered a precedence in terms of the value of compensation the victims were given for their material and moral damage, as each received 15,000 JODs.
2. The financial situation of these victims was extremely difficult. Thus, they could not hire an attorney to follow up with the personal right claim due to the fees associated with such cases. Thus, we recommend that these victims be exempted of such fees.

## The Tenth Case:<sup>45</sup>

15 workers from Kenyan, Sri Lankan and Bangladeshi nationalities worked as domestic workers after being recruited by a recruitment office. The owner of the office detained these workers in an apartment in Gardens, Amman. He employed these workers in various homes on a daily basis without paying their wages. The workers were not allowed to leave, unless they went to work. They were offered one meal per day and their passports were seized.

### **Procedures at the Anti-Human Trafficking Unit**

The Anti-Human Trafficking Unit was notified of a possible crime. After receiving approvals from the Prosecutor, they searched the house where the 15 girls were detained. They were investigated with the presence of an interpreter. Subsequently, the parties were referred to the Police Station first and then to the Prosecutor.

### **Procedures at the Prosecutor**

The Prosecutor listened to the testimonies of the workers, with the presence of an interpreter. Then, the defendants were interrogated. They were then charged with the felony of Human Trafficking pursuant to Article 9/B/2 of the Anti-Human Trafficking Law, and as identified in Article 3 of the same law. They were

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<sup>45</sup>

also charged with the misdemeanour of seizing the passports of the workers as stipulated in Article 23/B/1 of the Passport Law. The case was then referred to the Felonies Court in Amman due to its jurisdiction of the case.

## **Court Procedures**

The facts of the case are summed as follows, based on the documents submitted by the Prosecutor:

First: The defendant (S.A) who works for the company (MA), which registered with the Companies Control Department since May 11, 2000, recruited domestic workers in the name of the company with the defendant (T.A)

Second: The defendants (T.A.) and (S.A.) brought in a number of maids through the accused company (MA), including the complainants:

M.A of Kenyan nationality

- J.M of Kenyan nationality
- J.A of Kenyan nationality
- L.M of Kenyan nationality
- A.O of Kenyan nationality
- G.W who is a Filipina
- Y.K of Sri Lankan nationality
- R.M of Bengali nationality

- N.B of Bengali nationality
- K.B of Bengali nationality
- R.A of Bengali nationality
- S.A of Sri Lankan nationality
- S.L of Bengali nationality
- A.A of Bengali nationality
- J.R of Bengali nationality

The defendants (S, T, and Z) detained the complainants inside an apartment, forced them to work without their consent, and seized their wages unjustly. One of the defendants (Z) also locked the workers inside the apartment and did not allow them to leave. The workers were provided with one meal per day, they were beaten if they refused to work and the defendants confiscated their passports.

**The following decision was made by the court:**

“The court makes the following decision based on its authority in terms of accepting or disqualifying evidence according to its convictions and conscience.

Since the Prosecution has been unable to prove the accusation assigned to the defendants and even though the complainants asserted that they were beaten, the court does not feel comfortable accepting the testimony due to the workers saying that they wish to return to their home countries. The

court believes that the complaint was lodged as a mean to reach their goal of returning to their home countries after they escaped the homes of their sponsors. Thus, the prosecution did refute the presumption of innocence, which is the right to the person as he is innocent until proven guilty. The same also applies to the misdemeanour of seizing the workers' passports assigned to the defendants, as the prosecution did not present enough evidence as it should that the defendants have indeed seized the passports belonging to the complainants. Thus, we declare the defendants' innocent of all the charges against them because of the lack of legal evidence against them."

The Prosecutor appealed the decision, where the following decision was provided:

**"Based on the aforementioned, we decide to revoke the appealed decision and return the papers to their source to take the necessary action."**

The case returned to the Amman Felonies Court with the number 1096/2016. However, the court was insistent on its previous decision and repeated it.

## Notes:

1. It is difficult to obtain evidence in cases in which domestic workers are involved. This is because they are usually unable to leave the house, which makes it difficult to provide evidence of harm.
2. Article 13(2) of the Universal Declaration of Human Rights Every person has the right to leave any country, including their country of origin.

## Case Number 12<sup>46</sup>

The Filipina worker (R) arrived to Jordan in 2006. She worked for the employer for 6 years. In that period, the worker met another Filipina worker who was working for someone on a daily basis. The other woman convinced R that if she works with her employer, she will earn more money.

The man (A) called (R) a few days later and told her that he will take her to her new employer, whom she will be working for on a daily basis. The following day, he took her to an apartment where a number of other girls lived. R began working on a daily basis but A took her wages. He also constantly harassed her, refused to give her any money and ultimately fired her and she became homeless.

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<sup>46</sup> Court of First Instance- Misdemeanours in North Amman- 914/2014

## **Procedures at the Anti-Human Trafficking Unit**

Both the worker's and the defendant's testimonies were taken. Both of them were then referred to the Prosecutor.

## **Procedures with the Prosecutor**

After he took the testimony of the complainant, the Prosecutor decided the following:

“The Filipina worker (R) is considered a witness to the public right, while the defendant (A) is charged with indecent acts pursuant to Article 296/1 of the Penal Code, as well as the misdemeanour of recruiting and exploiting the weakness of the worker pursuant to Article 8 of the Anti-Human Trafficking Law. Since the crime of indecent acts falls under the jurisdiction of the Major Criminal Court pursuant to Article 60 of the Code of Criminal Procedures, then the case is referred to the Prosecutor at that court to pursue the defendant.”

When the defendant was asked about the charges, he replied that he is innocent and does not know the worker.

## **The indictment was thus issued as follows:**

“Pursuant to Article 132 of the Code of Criminal Procedures, the defendant is charged with the misdemeanour of recruiting and exploiting the weakness of the worker pursuant to Article 8 of the Anti-Human

Trafficking Law. The case shall be trialed at the Court of First Instance as this is the court with jurisdiction over the matter.”

**Court Procedures:** <sup>47</sup>

“The analysis of case facts show that the Prosecutor referred the defendant (A) to our court for the misdemeanour of Human Trafficking pursuant to Article 8 of the Anti-Human Trafficking Law based on the testimony of the worker who said: While working in her employer’s house, the complainant (R) met with another worker (S) who gave her the number of the defendant. She later called the defendant who convinced her to escape from her employer’s house and meet her at a specific location. The defendant then took the worker to an office where a number of workers were staying. He told her that she will begin working on a daily basis in Tabarbour, an area in Amman, for a period of 2 months for the wage of 400 JODs. She worked for the employer for a period of 2 months, but she later escaped after only receiving 250 JODs. During these 2 months, (A) sent her to numerous houses where he would take her wage and only give her a small share of it. (A) would also tell her to change her name each time she goes to a new employer and not mention her real name. After a while, the complainant felt that the defendant was exploiting her. She called one of her previous employers and told her what was happening. The woman then helped her to file a complaint at the Public Security Directorate.”

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<sup>47</sup> This decision is taken in its entirety from the Court records

These are the facts that were included in the Investigative File No. 1105/2014 as sent by the Prosecution to the court.

**In terms of the law, Article 3 of the Anti-Human Trafficking Law states that:**

- A. For the purposes of this law, the term "human trafficking crimes" means:
1. Attracting, transferring, harboring or receiving people for the purpose of exploiting them by threatening or using force or other forms of coercion, kidnapping, fraud, deception, abuse of power, or exploitation of a state of weakness, or by giving or receiving money or benefits to obtain the approval of a person Control of these persons, or.
  2. Attracting, transferring, harboring, or receiving those under the age of eighteen when that was for the purpose of exploiting them, even if this exploitation was not associated with the threat or use of force or other methods mentioned in Clause (1) of this paragraph.
- B. For the purposes of Paragraph (a) of this Article, the word "exploitation" means the exploitation of persons in forced labour, forced labour, slavery, servitude, removal of organs, prostitution, or any other form of sexual exploitation.
- C. A crime is of a "transnational" character in any of the following cases:
1. If it is committed in more than one country.
  2. If it was committed in a country and was prepared, prepared, planned or supervised in another country.

3. If it is committed in any country by an organized criminal group that practices criminal activities in more than one country.
4. If it is committed in one country and its effects extend to another country.

**As for Article 8**, it stipulated that: "Whoever commits the crime of Human Trafficking as stipulated in Paragraph (A) of Article (3) of this Law shall be punished with imprisonment for a period of no less than six months or a fine of not less than 1,000 JODs and not exceeding 5,000 JODs, or with both of these penalties."

While reading of Article 3 of the above-mentioned law, we can adhere that human trafficking is defined as: " Attracting, transferring, harboring or receiving people for the purpose of exploiting them by threatening or using force or other forms of coercion, kidnapping, fraud, deception, abuse of power, or exploitation of a state of weakness, or by giving or receiving money or benefits to obtain the approval of a person Control of these persons. The word "exploitation" means the exploitation of persons in forced labour, forced labour, slavery, servitude, removal of organs, prostitution, or any other form of sexual exploitation."

As stipulated in the definition, the court finds that the crime of Human Trafficking consists of 3 elements: The Act, The Mean and The Purpose. It also consists of other secondary elements: recruitment, transportation, accommodation, and

reception. The means that are used include: threats of force, use of force, coercion, kidnapping, fraud, deception, abuse of power, and exploitation of a state of vulnerability; or giving or receiving sums of money or benefits to obtain the consent of a person who has control over another person.

Regarding the definition of the victim, it was stated in Article 18 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power as:

**“Victims”** means 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 do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.”

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, defined the crime, its means and forms of exploitation in Article 3 as:

**For the purposes of this Protocol:**

- a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of

the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d) "Child" shall mean any person under eighteen years of age.

**Thus**, and based on the definition, the consent of the victim of trafficking shall be irrelevant and not taken into consideration, either when the means that were above-mentioned are used or when the victim is under 18 years of age.

The consequences of recognizing a victim of this crime shall also include the non-criminalization of their acts, as victims must be exempt from criminal responsibility for the any acts that were committed as a result of being a victim of trafficking.

Human trafficking is a complex crime. According to the United Nations, it could be committed through various types of acts. These acts include recruit, transport, transfer, harbour or receive people by force, or in any form of coercion, kidnapping, fraud or deception: or by misusing power or exploiting a situation of human weakness, or with money or temptations to obtain the consent of a person who has control over another person for the purpose of exploitation.

The crime itself has many forms too that include: employment exploitation, forced labour, slavery, servitude. The means to commit these crimes include: the employment, housing, and transportation of persons who are pushed into forced labour at times or by using fraudulent work contracts which ultimately subject victims to involuntary servitude and slavery by force, fraud or coercion.

**Often**, workers are pushed into trafficking through legal employment contracts that are then used by recruitment agencies or employers in means that lead to slavery. These means include: the change of employment conditions that were previously stipulated upon in the contracts that workers signed in their countries of origin; confiscation of passports or other documents; restrictions on freedom; or threats of force, or non-payment of wages.

Sexual exploitation, especially of women, is carried out in large networks around the world. Women working in sex trade are exploited through the use of force,

coercion, or fraud. Another form that ought to be highlighted is the exploitation of children, which is considered a transnational crime in international conventions and treaties; especially the United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. Cases of stealing and selling children are especially common in third world countries, especially in Asia and Africa, under the name of adoption for European or American families.

Children are recruited for armed conflicts and are used for the work of removing mines. According to UNICEF estimates, there are currently 300,000 children of both genders under the age of twelve who are being exploited around the world. Some of these children are sexually exploited. This includes rape and contracting sexually transmitted diseases.

Many girls are forced into marriages or sexual relationships with soldiers or others involved in armed conflicts. Often, these children are at risk of getting killed or injured. Those who survive suffer multiple traumas and psychological scars. Sometimes, their personal growth is damaged beyond repair. Also, there is the commercial sexual exploitation of children through "child sex tourism" which constitutes a flagrant assault and abuse of these children's dignity and

humanity, as well as its devastating consequences on their physical and psychological health.

The above-mentioned text emphasizes the importance of doing research on this relatively recent crime within the Jordanian legislation. In terms of judicial jurisprudence, the esteemed Court of Cassation has concluded that the judge's role is to assess the evidence presented to him in each case to investigate whether the crime took place or not and whether the defendant committed the crime or not.

**It is thus not permissible to argue with the judge following the issuance of his judgement because the judgement is issued objectively based on the evidence presented. These judgements are made pursuant to Article 147 of the Code of Criminal Procedures, which stipulate that:**

1. The defendant is innocent until proven guilty.
2. Proof in felonies, misdemeanours and infractions shall be established by all means of proof and the judge shall rule according to his personal conviction.
3. If the law provides for the use of a particular measure of proof, the court shall adhere to such measure.
4. If the proof that the indicted or the accused or the defendant had committed the crime was not established, the court has found him/her innocent of the crime he/she is accused of.

Through the application of the law on the facts of the case, the court finds that the actions of the defendant (A) of recruiting and employing the worker in homes of Jordanians for an agreed salary, which the defendant then took the majority for himself, constitute exploitation of her state of weakness and her legal status. These actions, which violate the law and lead to the worker losing her rights, constitute the elements of which the defendant is charged with of human trafficking. The defendant exploited the weakness of the worker, he recruited her and then exploited her efforts to earn himself financial gains.

**Based on the above**, the court decides and pursuant to Article 177 of the Code of Criminal Procedures to convict the defendant (A) with the crime of human trafficking as stipulated in Articles 3/A/1 and 8 of the Anti-Human Trafficking Law. He is thus sentenced with one year of imprisonment and a fine of 1,000 JODs, plus the fees.”

The decision was then appealed, where decision no. 36945/2014 was issued by the Court of Appeal in Amman:

**“The court was wrong in its conclusion as it should have declared its lack of jurisdiction over the case, since the defendant was charged with Human Trafficking pursuant to Article 9/B/2 of the Anti-Human Trafficking Law.”**

In details, the appealed decision was issued on 10/6/2014 and the appeal was submitted on 2/7/2014 within the legal period and it was thus accepted.

In terms of its topic, it was noted that the Prosecution referred the defendant (A) to the Court of First Instance in North Amman after being charged with recruiting a worker and exploiting her state of weakness pursuant to Article 8 of the Anti-Human Trafficking Law.

“The facts of the case were summed as follows in the file submitted by the prosecution: While working in her employer’s house, the complainant (R) met with another worker (S) who gave her the number of the defendant. She later called the defendant who convinced her to escape from her employer’s house and meet her at a specific location. The defendant then took the worker to an office where a number of workers were staying. He told her that she will begin working on a daily basis in Tabarbour for a period of 2 months for the wage of 400 JODs. She worked for the employer for a period of 2 months, but she later escaped after only receiving 250 JODs. During these 2 months, (A) sent her to numerous houses where he would take her wage and only give her a small sum from it. (A) would also tell her to change her name each time she goes to a new employer and not mention her real name. After a while, the complainant felt that the defendant was exploiting her. She called one of her previous employers and told her what was happening. The woman then helped her to file a complaint at the Public Security Directorate.”

The case no. 914/2014 was reviewed at the Court of First Instance in North Amman. On 10/6/2014, it issued its decision to convict the defendant and

sentenced him with one year of imprisonment and a fine of 1,000 JODs, plus the fees.

**The Court of Appeals' response based on the reasons for the appeal is as follows:**

"We find that Article (3) of the Human Trafficking Law defines the meaning of human trafficking crimes, and Article (9 / b / 2) of the same law stipulates a penalty of temporary hard labour for a period not exceeding 10 years and a fine of no less than 5,000 JODs and no more than 20,000 JODs if the victim was a female or someone with a disability. Since the complainant in this case is a female and since the act the defendant was charged with was proven, then the North Amman Court of First Instance is not competent to hear the case, as it is under the jurisdiction of the North Amman Criminal Court. Since the Court of First Instance proceeded with the case, the reason of the appeal is thus justified and the decision is annulled.

**Pursuant to Article 269 of the Code of Criminal Procedure, which states that:**

"If the judgment is revoked by the court of appeals because it contradicts with the law or for any other reason, the court shall try the case and decide upon its subject matter or send it back to the court which issued the appealed judgment accompanied with directions which the trial court has to follow."

The judgement is revoked and the case documents are to be sent back to its source to proceed with the procedures and issue the appropriate judgement.”

**The case was thus referred to the North Amman Minor Criminal Court, which issued the decision no. 122/2017:**

“Pursuant to Article 9/B of the Anti-Human Trafficking Law, the defendant (A) is sentenced to temporary hard labour for a period of 3 years and a fine of 5,000 JODs and the fees.”

**The decision was appealed again and the following decision no. 26177/2018 was issued:**

“Based on the above and pursuant to Article 269 of the Code of Criminal Procedures, the previous judgement shall be revoked and the defendant is declared not liable as his actions do not constitute a punishable crime.”

The decision was issued on 10/6/2018.

## Notes:

- The first decision was put in full because of its detailed explanation of the crimes of human trafficking and its reliance on international agreements that Jordan has ratified as an integral part of its legislation.
- Conflicts related to Jurisdiction prolongs litigation.
- A decision was issued that the defendant was not liable, as the act did not constitute a crime.
- The trial period lasted approximately 4 years, from 6/3/2014 until 6/10/2018

## Case Number 13<sup>48</sup>

The victim (S) used to live with her poor family who used to abuse her and forbid her from continuing her education. The girl worked as a tailor. One day while returning from her job, she met a man (Y.A) who promised her marriage. Following a beating from her father, the girl left home and met with the man. The man then raped her and locked her inside an apartment for 3 months. During that period, he continuously raped her; she couldn't escape and tried committing suicide for several times. In the same period, her family reported her missing. The police was able to locate her whereabouts. She was placed in Juweida Women Prison after a deciding by the governor to detain her administratively. The father

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<sup>48</sup> Case No. 523/2018 Major Felonies Court

convinced her to leave with him and return home. The man then came and asked to marry her but the father refused.

Later on, the father resumed his old habits and began hitting his daughter again. The girl escaped the house for a second time. She sought a woman (A) that she was previously introduced to by the man. There, the woman used threats and forced the girl into prostitution.

The victim proceeded to have sex with several customers, while she stayed with the defendant (A) for 2 months. The defendant then sent her to work for (Y.S) who ran a prostitution house, where she stayed for a month. One day, she was sent to a customer when she got arrested by the police who later discovered that she was pregnant.

### **At the Anti-Human Trafficking Unit and the Prosecutor**

The Anti-Human Trafficking Unit investigated the case and then referred it to the Prosecutor who charged the defendants with:

1. The felony of rape coupled with defloration (loss of virginity) pursuant to Article 292/1 of the Penal Code and Articles 301/1/b and 101 of the same law, repeated 35 times.
2. The felony of human trafficking pursuant to Article 9/1 of the Anti-Human Trafficking Law for all defendants.

3. The felony of rape with the use of threats pursuant to Articles 292/1 and 80/2 in the Penal Code for the defendants.

The case documents were then referred to the Major Felonies Court. Meanwhile, the victim was referred to Dar Al Karama. Following consultations with her family, she was married to her rapist based on Article 308 of the Penal Code before it was repealed.

**The following decision was issued:**

“Therefore, and based on the above, the court decides the following:

1. Pursuant to the provisions of Article (308) of the Penal Code, which was still in effect when the crime was committed, the charges of rape and defloration pursuant to Articles 292/1 and 101 of the Penal Code, repeated 35 times are dropped, provided that the Public Prosecution Office regains its right to prosecution if the husband divorces the complainant without a legitimate reason within five years from the date of the marriage contract.
2. Pursuant to the provisions of Article 337/1 of the Code of Criminal Procedures, the felony of Human Trafficking pursuant to Article 9 /A of the Anti-Human Trafficking Unit is dropped due to inclusion in the Amnesty Law No. 5 of 2019.
3. Pursuant to Article 234 of the Code of Criminal Procedure, the legal characterization of the crime is amended for the defendants (Y.S), (A.H) and

(A.G) from the felony of interference with rape in accordance with the provisions of Articles 292/1 and 80/2 of the Penal Code to a misdemeanour of inciting a female to become a prostitute pursuant to Article 310/2 of the Penal Code and 337/1 of the Code of Criminal Procedures. These charges are dropped due to their inclusion in the Amnesty Law No. 5 of 2019.

An appealable decision was issued in the name of King Abdullah II on 11/6/2020.”

**Notes:**

1. The victim was married to her rapists who benefited from Article 308 of the Penal Code before it was repealed. However, he did not just rape the victim but he also pushed her into prostitution by bringing her customers to have sex with.
2. The victim was later charged in two cases. Once for the possession of a brothel and once for theft.
4. The court decided to drop the charge of Human Trafficking pursuant to Article 9/1 of the Anti-Human Trafficking Law and Article 101 of the Penal Code due to its inclusion in the Amnesty Law No. 5 of 2019.

## Case Number 14:49

On 2013, the worker, who is a Bangladeshi, came to Jordan to work in a factory. After two months, she escaped the factory and met the defendant (Z) who took her to his house in Sahab. It later turned out that he ran a brothel with his wife.

Two days after she moved in with them, (Z) dragged the worker into the salon and asked her to have sex with him in the presence of his wife (G). The worker refused, so (Z) began beating her, ripped off her clothes and raped her.

(Z) raped her again 4 days later after getting beaten by (G) with the aid of (Z) to lessen her resistance.

The other worker (K) who is also Bangladeshi arrived to Jordan in 2013 where she worked in a factory. She left the factory a year later. Later, somebody took her to (Z) who then proceeded to rape her too.

The couple (Z and G) used their house for prostitution, as they continuously brought customers to the women and forced them to have sex with these men. The victim reported that she was raped by customers brought in by Z approximately 500 times during her stay.

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<sup>49</sup> Case No. 349/2015 in the Major Felonies Court

## **The Court Decision was as follows:<sup>50</sup>**

“Following the review of the evidence submitted by the Prosecutor and the Defence Lawyer, the Court views the claims presented by the complainant with doubt and lack of conviction. We find that their statements were contradictory and do not make sense; we thus find that the sexual acts that transpired between the complainants and the defendant to be consensual.

### **The court reached its conclusion based on the following:**

**First:** Concerning the complainant (J):

It is clear that it was the complainant (J) who agreed to stay in the house of (G) at her own free will, after she escaped from the factory where she worked. Her escape indicates to the court a lack of discipline in her work and behaviour, which led the court to question her testimony's accuracy.

The complainant also remained in the house of the defendant (Z) despite her knowledge that he is running a brothel. She also took a shower after the alleged raped.

The complainant also agreed to go with the defendant (Z) to the Bangladeshi Embassy to get married to him. Even though she could have run away or cry for help, she did neither of both. Instead, she rode with the

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<sup>50</sup> The decision below is taken verbatim from court records

defendant (Z) in his car to and from the embassy back to his house in Sahab.

The complainant returned to the Embassy for a second time, where again she could have escaped or reported to the Embassy staff what is happening, however, she did not.

The complainant claims that she was raped for the first time two days after she arrived to the house, and the second time 4 days later. During the interval period, she could have escaped or called the police or her Embassy, however, she did neither.

The complainant also claims that (Z) forcibly ripped her clothes in the presence of his wife (G) who then proceeded to rape the complainant and then have sex with his wife.

Such claims are contrary to logic, reason and human nature. How can the defendant have sex with his wife and in the presence of another woman or have sex with the complainant in the presence of his wife in the same place?!

**Second:** Concerning the complainant (K):

The complainant claims that she was initially raped by the defendant (Z), who, 10 days later, began to bring her customers to have sex with. He took

the money they paid. Why then did not the complainant escape or call the police of the Embassy in that period? Since she did not, the court is suspicious and doubtful of her story.

The complainant also mentioned that she remained in the house of the defendant for 6 months. During this long period, the defendant kept bringing her customers. Why did not she escape or tell anyone of what was happening?

The complainant claimed that there were other girls from various countries, and that the defendant forbade them to leave the house.

The court finds this statement inaccurate as it goes against common sense and reality. How could the defendant prevent a group of girls from leaving the house? Why did they neither scream nor call anybody nor ask the police of their Embassies for help?

Thus, we find that the claim does not fit with common sense and reality, and our court finds that the sexual acts performed by the complainant were consensual.

The medical examination, which the complainant underwent on 31/10/2014, proves that her genital area is free from injury as well as her anus, which is intact and free from injuries.

The complainant (K) mentioned that she does not know the wife of (Z) and never saw her.

This proves that the statement by the complainant (J) was false.

Due to the above, the court finds that the sexual relationship between the defendant and the complainants was consensual.

In terms of the felony of Human Trafficking, the court finds that pursuant to Article (9/B/3) of the Anti-Human Trafficking Law assigned for defendants (Z) and (G), our court finds that the based-on Article 3 of the same law which states that:

**“For the purposes of this law, the term "human trafficking crimes" means:**

1. Attracting, transferring, harbouring or receiving people for the purpose of exploiting them by threatening or using force or other forms of coercion, kidnapping, fraud, deception, abuse of power, or exploitation of a state of weakness, or by giving or receiving money or benefits to obtain the approval of a person Control of these persons, or.
2. Attracting, transferring, harbouring, or receiving those under the age of eighteen when that was for the purpose of exploiting them, even if this exploitation was not associated with the threat or use of force or other methods mentioned in Clause (1) of this paragraph.

B. For the purposes of Paragraph (a) of this Article, the word “exploitation” means the exploitation of persons in forced labour, slavery, servitude, removal of organs, prostitution, or any other form of sexual exploitation.

We thus reach the conclusion that the crime of human trafficking needs to have the elements violence, fraud, deception, abuse of power, or exploitation of a state of weakness for the victim to be exploited sexually or in any other form.

Applying the facts of the case, our court finds that the sexual relationship between the defendant and the complainants was consensual and thus we declare the defendants’ innocent.

**Accordingly**, and based on the foregoing, the court decides the following:

Pursuant to the provisions of Article (236) of the Code of Criminal Procedure, the court declares that each of the accused (Z) and (G) innocent of the felony of human trafficking in accordance with Article (9 / B / 3) of the Anti-Human Trafficking Law due to the lack of elements and of the crime.

Pursuant to the provisions of Article (236) of the Code of Criminal Procedure, we declare the defendant (G) innocent of the felony of interfering with rape, in accordance with Articles (1/292 / A and 80/2) twice repeated for failure of having any convincing legal evidence of the crime.

Pursuant to the provisions of Article (236) of the Code of Criminal Procedure, the court declares that the accused (Z) is not liable for the felony of rape, in accordance with Article (292/1 / A), repeated three times.

Pursuant to the provisions of Article (234) of the Code of Criminal Procedure, the characterization of the crime assigned to the accused (Z) is amended from the felony of intervention with rape in accordance with Articles (1/292 / A and 80/2) repeated five hundred times to a misdemeanour of enticing a female to become a prostitute in the Kingdom according to Article (2/310) repeated five hundred times.

Pursuant to the same article, the accused shall be sentenced to imprisonment for a period of three years, fees and expenses, a fine of 500 JODs and fees for each crime. Due to the ugliness of the acts committed by the accused, which negatively affects the country and society, the court decides to raise the penalty to the highest level.

Pursuant to the provisions of Article (72) of the Penal Code, one of the penalties shall be executed against the accused, which is imprisonment for a period of three years, fees and expenses, as well as a fine of 500 JODs, and fees for the duration of the arrest.”

## Notes

**The court reasoned that the issue of sexual exploitation does not exist because the complainant (K):**

- She was the one who got acquainted with the accused and stayed in his house with her consent after she ran away from her employer's house and then escaped from the police.
- The complainant was lax in filing the complaint, since she was detained.

The complainant claims that she was with many girls from several countries who lived in the house of the accused and that he was preventing them from leaving the house.

Why did they neither scream nor call anybody nor ask the police of their Embassies for help?

## Case 15:

In March 2013, the defendant, who works in a school, hacked a Facebook account with the name Khalid Abu Walid. He used the account to recruit and exploit young girls who were under the age of 18 to commit pornographic acts as well as homosexual acts. He connected with 10 minors, using messages filled with pornography as well as nude pictures. One of these accounts belonged to the minor (M.M) who was 10 years old. He also texted the minor (A.S) with messages that had the phrase:

“What do you think of this position?

How would you feel like sitting on my lap?

Would you not feel good if I hug you and touch your body?”

As well as other phrases and indecent pictures. As a result, the minor’s mother filed a complaint.

**The prosecutor charged the defendant with:**

- The felony of using the web with the intent to exploit a person who has not completed eighteen years of age in prostitution or pornographic activities in accordance with the provisions of Article (8 /c) of the Information Systems Crimes Act.
- The felony of attempting to fully initiate human trafficking in accordance with the provisions of Article (3/A /2) of the Anti-Human Trafficking Law, Article 9 of the same law and Article 70 of the Penal Code.
- Misdemeanour theft in accordance with the provisions of Article (407/1) of the Penal Code and Article (38) of the Electronic Transactions Law.

**The court issued the following decision:**

**The court finds the following:**

“Article (8) of the Temporary Information Systems Crimes Law No. 30 of 2011 states:

- A. Whoever sends or publishes through an information system or the information network intentionally all that is audible, read, or visual that includes pornographic acts in which s/he participates or relates to sexual exploitation for those who have not completed eighteen years of age.
- B. Whoever intentionally uses the information system or the information network for the purposes of exploiting someone who has not completed twelve years of age or who is mentally disabled in prostitution or pornography, shall be punished with temporary hard labour and a fine of not less than 5,000 JODs and not more than 15,000 JODs."

**Article (38) of the Electronic Transactions Law No. 85 of the year 2001 states**

"Whoever commits an act that constitutes a crime under the legislation in force by using electronic means shall be punished with imprisonment for a period of no less than three months, and not exceeding a year or a fine not less than 3,000 JODs and no more than 10,000 JODs, or both of these penalties, and the heaviest penalty shall be imposed if the penalties prescribed in other legislation exceed the penalties prescribed in this law."

By applying the law to this case, the court finds that what the defendant did, which is to send electronic messages containing pornographic words and pornographic images, constitutes all the elements of the crime of using the information network with the intention of exploiting those who have not completed eighteen years of age in pornographic activities. Thus, the court finds the accused hacking the account with the name Khaled Abu Al-Walid and its use

constitutes all the pillars and elements of a misdemeanour of theft in accordance with the provisions of Article 407 and Article 38 of the Electronic Transactions Law.

As for the felony of human trafficking attributed to the accused, the Prosecution did not provide evidence that the accused has committed this crime through the actions that were committed online. Thus, the court finds that the crime does not contain all the elements of human trafficking.

Accordingly, and based on the foregoing, the court decides:

1. Pursuant to the provisions of Article 236/2 of the Code of Criminal Procedure, the court declares the accused innocent for the felony of human trafficking, due to lack of evidence.
2. Pursuant to the provisions of Article 177 of the Code of Criminal Procedure, the court declares finds the accused guilty for misdemeanour of theft in accordance with the provisions of Article 407/1 of the Penal Code and in terms of Article 38 of the Electronic Transactions Law. Thus, the accused is sentenced for a three-month prison term, and the fees for the period of detention.
3. Pursuant to the provisions of Article 236 of the Code of Criminal Procedure, the court declares the accused guilty of a felony of using the information network system with the intention of exploiting those who have not completed eighteen years of age in pornographic activities in accordance with the provisions of Article 8 /c of the Information Systems Crimes Act.

Pursuant to the Conviction Decision, and based on the aforementioned, the court decides, in accordance with the provisions of Article 8 /C of the Information Systems Crimes Law to sentence the accused with temporary hard labour for a period of three years, and the fees, and fine of 5,000 and the fees, which are calculated for the period of detention.

### **Mitigating Circumstances**

Given that the mother of the juvenile has dropped the personal right claim, and that the accused is the head of a family and has a sick child, the court decides to consider this as a mitigating reason. In accordance with the provisions of Article 99 of the Penal Code, the penalty is reduced to imprisonment for a period of one year, and fines, as well as fees that are calculated for the period of detention.

Pursuant to the provisions of Article 72 penalties, the court decides to implement one of the penalties, which is the most severe punishment, of one -year imprisonment, fees and a fine of 2,500 dinars calculated for the period of detention.

At a previous stage, the accused submitted non-conviction certificate stating that he has no previous convictions against him. This led the court to believe that he will not violate the law again, and pursuant to Article 54 of the Penal Code, the execution of the penalty imposed against him shall be deferred for a period of three years from the date when the judgment acquires the degree of finality.

Issued on 12/31/2015.

## Notes:

Provisions A and B of Article of the Anti-Human Trafficking Unit state that:

**“For the purposes of this law, the term “human trafficking crimes” means:**

1. Attracting, transferring, harbouring or receiving people for the purpose of exploiting them by threatening or using force or other forms of coercion, kidnapping, fraud, deception, abuse of power, or exploitation of a state of weakness, or by giving or receiving money or benefits to obtain the approval of a person Control of these persons, or.

2. Attracting, transferring, harbouring, or receiving those under the age of eighteen when that was for the purpose of exploiting them, even if this exploitation was not associated with the threat or use of force or other methods mentioned in Clause (1) of this paragraph.

B. For the purposes of Paragraph (a) of this Article, the word “exploitation” means the exploitation of persons in forced labour, slavery, servitude, removal of organs, prostitution, or any other form of sexual exploitation.”

## Case 16:

In July, 2015, the workers (H) and (G), a Bangladeshi and an Indian, were recruited to work in Jordan in a factory for the salary of 190 JODs. When the workers arrived, they were informed that the salary would be 110 JODs, and that working hours are from 7 am till 8 pm.

The workers were forced to work in the factory since they had no other choice. They were mistreated by the management, and were not paid for overtime in addition to having deductions made to their salary without any justification. Their living conditions were terrible in terms of the quality of the accommodation or the quantity of the food provided. The employer also seized their passports.

### **Procedures at the Anti-Human Trafficking Unit**

A notification was sent to the Unit, which then went to the factory and referred the workers and the owner to the court.

### **Procedures at the Prosecutor**

#### **The Prosecutor charged the defendant with the following:**

1. The felony of human trafficking as stipulated in Article 9/B/2 of the Anti-Human Trafficking Law as defined in Article (3) of the same law and Article 76 of the Penal Code for all accused.

2. Violation of the provisions of Article (11) of the Anti-Human Trafficking Law with regard to the accused company.
3. The seizure of passports as stipulated in the provisions of Article 23/ B/ 1 of the Passports Law and Article 76 of the Penal Code for all accused
4. Employing non-Jordanian workers without obtaining a work permit, in contravention of the provisions of Article 12/ F/1 of the Labour Law, with respect to the accused company

The Public Prosecution also charged a 34-year old resident of Irbid, who was not arrested, with the offense of withholding passports as stipulated in Articles 23/B/ 1 of the Passports Law and 76 of the Penal Code.

The case was then referred to the Felonies Court in Irbid as the court of jurisdiction.

### **Court Procedures:**

After hearing the testimonies of some of the workers, as some of them had already travelled, the court decided the following:

**“First:** With regard to the crime of withholding passports and employing non-Jordanian workers without obtaining a permit, and since the incident of this lawsuit took place before 12/12/2018, the public right lawsuit was dropped due to its inclusion in the Amnesty Law.

**Second:** With regard to the felony of human trafficking that the defendants are charged with pursuant to Articles 9/B /2 and Article 3 of the Anti-Human Trafficking Law, as well as Article 76 of the Penal Code, and the violation of Article 11 of the former that the company is charged with; by applying the provisions of the law to the facts established in this case, the court finds that:

The element of recruitment or harbouring as well as the means element are present in the acts committed by the accused.

**However,** the element of exploitation is not available in these acts, as these workers came to Jordan for the purposes of working with an agreed salary and benefits and they were paid these salaries. Therefore, the case of forced labour is not available, as these workers were employed with their consent. It was also not proven that the complainants were exploited to work in prostitution or in any form of sexual exploitation, or that they were exploited in terms of organ removal.

As for the fact that the complainants were given less wages than the wage it was agreed upon, in addition to their long hours of employment, the quality of the food provided to them and the housing conditions, the court finds that these conditions in which the complainants lived are not among the elements of the material component of the crime of human trafficking; especially that the

Jordanian Labour Law has defined their rights and their duties. The law also imposed penalties on the employer when violating the provisions of the Labour Law, including the payment of a wage which is less than the minimum wage. Accordingly, the workers could have asked for protection that is provided in the Labour Law.

Since the aforementioned element of exploitation was not applicable in the acts committed by the accused, and since if one of the criminal elements of the crime is missing then the crime is not considered trafficking as stipulated in the Anti-Human Trafficking Law, the defendants are declared not liable for the crime that they are charged with or of violating article 11 of the same law.

**Note:**

A number of workers left without presenting their testimonies, which led to the loss of evidence.

**Case 17**

The defendant (K) who is Ukrainian and is married to the defendant (M), met with the victim (W) through social media. She convinced her to come to Jordan to work as a waitress. The victim took the bait and arrived to Jordan on 26/2/2017. Following her arrival, the defendants took the victim to their house and forced

her to work as domestic worker and to take care of their children, without paying her any wages. They locked her inside the house and took away her phone.

Two months later, the defendant (M) sexually attacked the victim. The next day, the victim told the defendant (K), who did not believe her. Following a fight between the two defendants, the defendant (K) forced the victim to wear a seductive nightgown and left the house with her children as her way of asking her husband for forgiveness by allowing him to have sex with the victim. The husband arrived later that night and raped the victim. The defendant (M) raped her again a week later and began raping her twice or three times a day. The victim could not resist her attacker because he kept threatening her and she was extremely afraid of him. The victim said that she was raped more than 50 times. Later, the victim discovered she was pregnant. Following her discovery, she found a way to contact her brother back in Ukraine and told him where she was detained. He informed the Ukrainian Embassy in Jordan, which reported the case to the police. They went to the house, found the victim and arrested (K) but they did not arrest (M).

## **Procedures at the Prosecutor**

The Prosecutor charged the defendants with:

1. Rape pursuant to Article (292/1) of the Penal Code, repeated 50 times for the defendant (M).
2. Joint human trafficking pursuant to Articles 3 and (9/b) of the Anti-Human Trafficking Law and Article (76) of the Penal Code for both defendants.
3. Indecent Act pursuant to Article (296/1) of the Penal Code for the defendant (K).
4. Interference with rape pursuant to Articles (292 and 80) of the Penal Code, 49 times repeated for the defendant (K).

## **The court decided the following:**

First: With regard to the rape charge ascribed to the accused pursuant to the provisions of Article (292/1) of the Penal Code, repeated fifty times:

The court finds that the complainant testified that the accused had engaged in sexual activity with her against her will, exploiting his physical strength to overcome her resistance, and insert his penis into her vagina until he masturbated. These actions constitute all the elements of the felony of rape he is accused of, repeated for 50 times.

Second: With regard to the joint crime of human trafficking attributed to the defendants, pursuant to the provisions of Articles (3 / A) and (9 / b) of the Anti-Human Trafficking Law and Article (76) of the Penal Code:

**By referring to the text of Article (3 / A) of the Anti-Human Trafficking Law, the court finds that it states that:**

**"For the purposes of this law, the term "human trafficking crimes" means:**

1. Attracting, transferring, harbouring or receiving people for the purpose of exploiting them by threatening or using force or other forms of coercion, kidnapping, fraud, deception, abuse of power, or exploitation of a state of weakness, or by giving or receiving money or benefits to obtain the approval of a person Control of these persons, or.
2. Attracting, transferring, harbouring, or receiving those under the age of eighteen when that was for the purpose of exploiting them, even if this exploitation was not associated with the threat or use of force or other methods mentioned in Clause (1) of this paragraph.

It was proven to the court that the defendants brought the complainant from her country to Jordan and detained her against her will in their home and forced her to work in their house and to take care of their children against her will. They also

sexually exploited her. These acts have all the elements of the crime of human trafficking pursuant to the provisions of Article (9 /B/3) Article (3 / A) of the Anti-Human Trafficking Law.

Third: With regard to the offense of indecent assault that the defendant (K) is accused of pursuant to the provisions of Article (296/1) of the Penal Code and the offense of interference with rape pursuant to articles (292/1 and 80) of the Penal Code, repeated 49 times, the jurisprudence of the esteemed Court of Cassation has established that the crime of indecent assault as stipulated in Article (296) of the Law must be based on the following pillars:

The material pillar: It is an act of indecent assault, which is every act that violates the modesty of honour, extends to the body of the victim and his nakedness and breaks their sense of modesty.

The moral element: which is the criminal intent, and the public intent is sufficient for this crime, as the legislator did not require a special intention on the part of the perpetrator to want him to choose the act formed with knowledge of it.

The third pillar: It is the lack of satisfaction and it is equal if it occurs by force, threat, surprise, or during sleep. See Cassation Decision No. 957/2004, dated 8/22/2004, and Cassation Decision No. 1021/2004, dated September 27, 2004.

**Based on the Conviction Decision, the court decides the following:**

- Pursuant to the provisions of Article (292/1) of the Penal Code, the offender (M) shall be punished and sentenced to fifteen years of temporary hard labour and fees for each offense.
- Pursuant to the provisions of Articles (3 / A) and (9 / B) of the Anti-Human Trafficking Law, the defendants (M and K) are found guilty and sentenced each to hard labour for 10 years, as well as fine of 5,000 JODs for each, the detention period from 23/10/2017 till 11/2/2018 shall be calculated as part of the sentence for defendant (K).
- Pursuant to the provisions of Articles (1/292 and 81) of the Penal Code, the defendant (K) shall be sentenced to temporary hard labour for a period of ten years; the detention period from 23/10/2017 till 11/2/2018 shall be calculated as part of her sentence.
- Pursuant to the provisions of Article (72) of the Penal Code, the application of the most severe penalty against the offender (M), which is temporary hard labour for a period of fifteen years and fees.
- Pursuant to the provisions of Article (72) of the Penal Code, the application of the most severe penalty against the offender (K), which is temporary hard labour for a period of ten years, fees and a fine of 5,000 JODs.

## Notes:

It was noted that the court inflicted the defendants with the severest sentence for the crime of Human Trafficking as stipulated in Article 9 of the Anti-Human Trafficking Law, which states:

“Notwithstanding what is stated in Article (8) of this law, temporary hard labour shall be punished for a period not exceeding ten years and a fine of no less than five thousand dinars and not exceeding twenty thousand dinars:

B. He committed any of the crimes of human trafficking in one of the following cases:

2. If the victim includes a female or a person with a disability.
3. If the crime was committed through exploitation in prostitution or any form of sexual exploitation or removal of organs.

## Case 18

The facts of the case are summarized in the documents from the General Prosecution in their indictment submitted to the Major Felonies Court in investigative file no. 225/2015 that that victim, who was born on 2/1/1998, came to Jordan on 4/7/2013 with her mother from Syria. The first defendant, who is the victim’s mother and the second defendant agreed to exploit the victim

in prostitution, by deceiving her that they are looking for a groom for her since the mother was a widower without an income.

The other defendant (S) with her husband (N) issued an Mol card for the victim under a new name with wrong personal information that shows that she is older than her age to be used in the fake marriage contract. The card also showed that the victim is the niece of the defendant (N).

Later, the victim was married off to a Saudi man, using the fake ID, who consummated the marriage and then had sex with her several times in an apartment for two days. The victim was married off in the same manner for 18 times to Saudi men, except for one who was Jordanian. The victim was raped by these men for 220 times, and the defendants used threats and deception each time with the victim. Each of the defendants played a role in these fake marriages, either playing the officiator, the witness or the parent of the victim. The defendant (B) also used to perform reconstructive hem surgeries on the victim following each marriage to appear that she was a virgin for the next groom. The defendant was aware of what was happening due to the short period that each marriage would last, each followed by the same procedure.

The authorities later became aware of what was happening and agreed with a Saudi to pretend to be a groom who wanted to marry the girl. The defendants (S),

(A) and (W) posed as her family and later defendant (B) was contacted and they agreed concerning the new surgery. The police then arrested the defendants, and referred them to the investigative unit. They confessed that they were sexually exploiting the victim for financial benefits that were shared between them. Defendant (B) also confessed that he received 250 JODs for each surgery he performed.

### **The Prosecution charged the defendants with the following**

1. Accomplices to Rape as pursuant to Articles 292/B and 80/2 of the Penal Code, repeated 220 times for defendants (S) and (N), repeated 150 times for defendant (W), and repeated 4 times for (A).
2. Felony of Indecent Acts pursuant to Article 298/1 of the Penal Code, repeated 5 times for the defendant (A).
3. Accomplice to Indecent Acts pursuant to 298/1 and 80/2 of the Penal Code, repeated 5 times to defendant (S).
4. Felony of Human Trafficking pursuant to Articles 3/A/2 and 9 of the Anti-Human Trafficking Law for the defendants (S), (N), (A), (B), (G), and (N).
5. Misdemeanour of holding fake marriages that are incompatible with national legislations pursuant to Article 279 of the Penal Code for the defendants (S) and (A) and (W).
6. Misdemeanour of having a fake ID pursuant to Article 266/3, repeated 10 times for the defendants (S), (N), (A), and (W).

## **The court issued the following decision:**

### **“Based on the above, the court decides:**

First: Pursuant to the provisions of Article 236/2 of the Code of Criminal Procedure, the defendants are declared innocent of the felony of Human Trafficking pursuant to Article 3/A/2 of the Anti-Human Trafficking Law due to insufficient evidence presented against them. The court also declares the defendant (A) innocent of the felony of an accomplice in rape that he is charged with pursuant to Articles 292/B and 80/2 of the Penal Code, repeated four times ascribed to him due to insufficient evidence.

Second: Pursuant to the provisions of Article 236/2 of the Code of Criminal Procedure, the court declares the defendant (B) not liable for the felony of indecent act that he charged with pursuant to Article 298/1 of the Penal Code, repeated five times since the acts established against him do not form the pillars of the crime. The court also declares the defendant (S) not liable for the felony of accomplice to indecent acts pursuant to the provisions of Articles 298/1 and 80/2 of the Penal Code.

Third: Pursuant to the provisions of Article 177 of the Code of Criminal Procedure, the court declares the defendants are guilty of the misdemeanour of conducting marriage ceremonies in a manner inconsistent with national legislation within the limits of Article 279 of the Penal Code. Each are thus sentenced with 3 months in prison, plus the fees

and the detention period shall be calculated as part of their sentence. Pursuant to Article 177 of the Code of Criminal Procedures, the defendants are convicted with the crime of falsifying documents pursuant to Article 266/3 of the Penal Code, repeated twice for the accused (A), and ten times for the rest of the defendants. Pursuant to Article 266 of the Penal Code, each of them is sentenced to imprisonment for a period of three months for each of the repetitions, and the detention period shall be calculated as part of their sentence.

Pursuant to the provisions of Article 72 of the Penal Code, one penalty shall be applied on defendant (A), which is the imprisonment for a period of three months. Since, the defendant is out on bail, he shall remain free until the decision is finalised.

Fourth: Pursuant to the provisions of Article (234), the legal characterisation of the charge is changed to become having sexual intercourse with a female pursuant to Article (294). Pursuant to the provisions of Article 236/2 of the Code of Criminal Procedure, the defendants are found guilty of having sexual intercourse with female who is over the age of 15 but younger than 18 pursuant to Articles 294/1 and 80/2 of the Penal Code, two hundred and twenty times for the accused (S), (W) and (G), and a hundred and fifty times for accused (A).

The court also decides and pursuant to the provisions of Article 236/2 of the Code of Criminal Procedures Law to criminalize the accused (S), the accused (A), the accused (W), and the accused (G), and the accused (N) with the felony of human trafficking pursuant to Articles 3/A/2 and 9 of the Anti-Human Trafficking Law”

Decision issued on 10/16/2017

**The sentence:**

“Pursuant to the conviction above and pursuant to Articles 294/1 and 80/2 of the Penal Code, the court decides to sentence each of the criminals (S), (G), and (A) with temporary hard labour for a period of four years and eight months for each felony, and the detention period shall be calculated as part of their sentence.

Pursuant to the provisions of Article 9/A of the Anti-Human Trafficking Law, the court decides to sentence the accused (S), (A), (W), (G), and (N) to temporary hard labour for a period of three years and the fine is 5,000 JODs for each and for each time the crime is repeated.

Pursuant to the provisions of Article 72 of the Penal Code, the court shall impose the most stringent penalty on each of the defendants. Thus, everyone is sentenced to temporary hard labour for a period of four years

and eight months, and a fine of 5,000 JODs, fees and expenses, and the detention period shall be calculated as part of their sentence.”

## Concluding Remarks

1. The similarity between the elements of human trafficking and other crimes such as passport confiscation, fraud, indecent assault and abuse, as well as violations pertaining to labour rights such as non-payment of wages in addition to the cybercrime law, leads to the separate investigation of each element. However, not all the components of the crime of human trafficking crime are linked to each other due to variety of reasons.; about the main reason is the lack of prosecutors who are specialized in human trafficking crimes and the human trafficking law.
2. Conflict among different laws leads to confusion. This becomes evident when comparing the laws of the use of human organs with the law of the prevention of human trafficking regarding legal status of victims: whereas the first law criminalizes persons who sells an organ, the second law considers the person only as a victim if the elements of human trafficking are present.
3. The Amnesty Law No.15 issued in 2019 had substantial effects on cases during that year. Due to the amnesty, 11 cases were dropped, one of which was organ trafficking. The perpetrator was thus pardoned even though the Amnesty Law excluded human trafficking cases from its provisions except for

crimes that involve the removal of organs if it was for the benefit of a family member.

4. The Jordanian Human Trafficking Law does not guarantee the victim the right to compensation, like those insured in the Palermo Protocol. Moreover, the Jordanian Law does not stipulate any kind of compensation for the victim following the severity of the case except compensations that could be asked within the personal right claims framework. However, this mechanism is extremely complicated and costly, making it hard for victims of trafficking to access justice.
5. The act of the repetition of human trafficking crimes by perpetrators stems from the absence of deterrent provisions in the law.
6. Not taking any precautionary measures by any competent authorities (Anti-trafficking Unit / Ministry of Labour / Ministry of Health) to protect the victims during the investigation and trial phase, despite their remaining under the authority of the actual employer as they live in the factory's residence and work in the factory.
7. The shortage of competent labour inspectors leads to a lack of identification of the victims. Therefore, some workers might be prone to fall victims to the exploitation of their employers accordingly.
8. Restrictions enacted on Egyptian workers by the Ministry of Labour, whereby they must obtain a clearance form and a quittance form when they want to

travel or move to another employer, establishes the principle of sponsorship, and might result in them being exploited by the employer.

9. The Anti-Human Trafficking Unit played a major role in prosecuting the perpetrators, and this is evident in the noticeable increase in the number of cases in the courts starting from 2013. However, a decline has been observed in recent years in terms of referrals to the courts.
10. The referral of victims from the Anti-Human Trafficking Unit to the security centres raises anxiety and fear in the victims as it may expose them to arrest due to a notification of absence from the employer.
11. The so-called "escape circular", which employers can submit against workers, gives the employer the authority to threaten workers and use the means of reporting a missing person so that the worker becomes wanted by the competent authorities and is arrested without making sure of the complaint or whether or not he has been subjected to human trafficking.
12. The time period to stay in the shelter for persons who became victims to human trafficking is too short, as it cannot exceed two months according to the shelter's system. This results in victims either becoming victims again or turning them into criminals.
13. Although the a priori sign of verification indicates a question posed and an answer presented, the investigative records, whether before the public prosecutor or the esteemed courts, come in the context of the investigative

narrative more than an investigation. Therefore, we do not find a question and answer in the investigation work, but only an investigative story that leads those who wish to scrutinize the slide of literary works, so that the narrator varies according to the level of education and nationality of the author of the statement, the investigator's understanding, and the style and grace of the writer.

14. The employment of translators is a matter that cannot be left as it is in the current situation. This is especially for "East Asian languages" where workers of the nationality of the plaintiff or the defendant are elected to carry out the translation process. However, they often work for Jordanian employment agencies and employment offices, or have married a Jordanian and learned the language during their stay in Jordan or any other Arab country, without any certificate confirming and/or explaining the extent of their mastery in any of the languages from which they translate to and/or from. Languages have rules of use and degrees of skill levels, but there is no standard or certificate for translators who become employed before the judicial bodies. In addition to that, it must be emphasized that translation plays an important role and may lead to strange results as the translator - after taking the oath - begins to speak the tongue of the migrant worker when there is certainly no one who can verify the accuracy of the translation because the translator speaks verbally before the judicial references. The recording follows the said of the translator.

15. The individual evidence of migrant cases, which is often the basis and focus of the prosecution's evidence, has always been insufficient to form the court's decision for conviction. Therefore, in many judgments, the courts have based their judgments on the legal principle that criminal rulings are based on assertion and certainty and not on suspicion and speculation as the investigations were contained in the investigation file and at all stages were surrounded by inconsistencies. The aforementioned situation contributed to it by several factors, all of which came together to bring about the right of society and the personal right to exact punishment.
16. The use of pronouns in investigative reports makes it sometimes difficult to understand whom the pronoun belongs to.
17. The prolonged duration of court proceedings due to conflicts of jurisdiction or the absence of the translator interferes with the procedure of justice, causing the victim to travel to his or her country without receiving compensation, while the presence of the victim becomes irregular, leading to the accumulation of fines for exceeding the length of stay. During this period, if the victim would like to stay, the duration of their stay in Dar Al Karama cannot not exceed two months.
18. Some of the judgments of the esteemed courts contain some descriptions and expressions that do not correspond to the provisions of the law or the established human values, and certainly are inconsistent with the global trend

of respecting human dignity. This includes the words such as “maid”, “servant”, etc.

19. The conviction rate in human trafficking cases over a period of ten years was 42%, which is a good percentage for an ambiguous law to identify victims.
20. The lead public prosecutor did neither perform any role in the cases discussed nor submitted any legal warrants in the researched cases. Furthermore, it was noted that there are several lead public prosecutors in one case.

## Recommendations

1. Work on legislative coordination between the Anti-Human Trafficking Law and the Penal Code, as some of the acts mentioned in the former law constitute independent crimes under the latter; such as kidnapping, fraud and forcing women to commit fraud. Other legal descriptions should also be made clearer, such as exploitation, indecent assault, deprivation of liberty, or other crimes, as they are currently seen as individual crimes, without considering that they could constitute elements of a human trafficking crime. The Jordanian Penal Code and other penal laws must also explicitly criminalise forced labour which is prohibited by the Constitution.
2. Work on legislative coordination between the Anti-Human Trafficking Law and the Benefiting of Human Organs Law No. 23 of 1977.
3. Amend the shelters' system for victims and those affected by human trafficking crimes for the year 2012, to allow victims to be referred to it as soon as the victim is suspected directly. The stakeholders that could conduct such referrals should not be restricted as they are currently to the Anti-Human Trafficking Unit. Furthermore, the length of stay in the shelter shall not be limited to two months so that the victim can be physically and psychologically hospitalized and is given adequate time for rehabilitation and integration.

4. Amend the Residency and Foreign Affairs Law (24) of 1973 to stipulate providing facilities and exemptions to the foreigner who has been the victim of human trafficking, and not to be treated as a migrant in breach of the residency law. He/she should be included in the categories enumerated under Article 29 of the Residency Law who are subject to the provisions of the law.
5. Grant permanent or temporary residence to those persons who became victims of human trafficking to prevent the employer from using the violation of residency law as a means of blackmail the victim and providing the victim or suspected victim with temporary working permits.
6. Exempt victims of human trafficking from the fines imposed under the residency law and facilitating his/her return to his/her country. Article (5 / c) of the Anti-Human Trafficking Law states that this matter is one of the committee's tasks. This is insufficient; there must be an explicit legal provision in this regard.
7. The Crime Prevention Law should be reformed as its current version allows employers to use it against migrant workers and forces them to work, which is against the Convention of 1930 on Forced Labour. The new amended version of the suggested law should not instigate the practice of forced labour through the powers granted to the Administrative Governors, which falls under the concept of administrative detention represented by the restrictions and controls over individuals' activities and their freedoms to protect the public system.

8. Add an article to the Anti-Human Trafficking Law No. 9 of 2009, which exempts the victims from fees for claiming their personal right (civil suits).
9. Tighten penalties if the crime of human trafficking is accompanied by aggravating circumstances stipulated in Article 9 of the Law on the Anti-Human Trafficking Law.
10. Issue a regulation for workers in the agriculture sector based on Article 3 of Labour Law provisions to fill the legal vacuum enabling the employer to exploit them. Also, allow the multiplicity of jurisprudence whether they are subject to the labour law or not.
11. Amend the System on Organising of Recruitment offices operating in the recruitment of non-Jordanians working in Homes, which was issued per Article (10) of the Labour Law of 1996 and its amendments for the year 2020 Article (4) thereof, to include everyone who works in the recruitment offices, including partners and the representative designated by the Ministry of Labour, as it currently just provides the owner of the office.
12. Intensify inspections by the Ministry of Labour in recruitment offices to ensure there are no traffickers with previously closed offices working under the name of another office, which may be one of their relatives. Additionally, there must be a violation and a fine for recruitment offices that employ previous traffickers.

13. Cancel the procedures that regulate the leaves and vacations of Egyptian workers; cancelling the police circular and the sponsorship system; and cancelling the clearance and disclaimer forms that are currently requested by the Ministry of Labour.
14. Raise the capabilities of labour inspectors in terms of increasing the number of inspectors and providing them with knowledge and technical skills on victim identification and referrals.
15. Ensure an effective system at the Ministry of Labour to receive complaints from workers that would allow them to recognize human trafficking cases as early as possible.
16. Allow migrant workers in all sectors to work for any other employer as soon as their contract expires.
17. Search for legal solutions to prevent the worker's expulsion and deportation, secure translation, and limit the slow pace of litigation procedures in light of the existence of provisions stipulating the statute of limitations for labour rights for two years.
18. Refer victims from the Anti-Human Trafficking Unit to the Public Prosecutor directly without going through police stations first.
19. Work on continuous training programs for all workers regarding combating human trafficking in terms of prevention, protection and prosecution.

20. Ensure that police stations properly investigate every report about the absence of workers from their workplaces, and to set the worker free in case he/she gets arrested since there is no report of a violation or crime against them.
21. Conduct awareness-raising campaigns on the crime of human trafficking and how persons who became victims to human trafficking can be identified and reported.
22. Allocate a public prosecution office to investigate human trafficking cases.
23. Adopt qualified translators designated by the Ministry of Justice to carry out the tasks assigned to them by the judiciary.
24. Build the capacities of delegated prosecutors to hear witnesses and interrogate defendants; thus, enabling them to do their jobs instead of having the judges doing them on their behalf.

**November 2020**



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TAMKEEN

للمساعدة القانونية وحقوق الانسان

For legal aid and human rights