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Research Article

COMBATTING HUMAN TRAFFICKING IN SAUDI ARABIA

Samah Al Agha

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Keywords: Crime; trafficking in persons; criminal responsibility; law; imprisonment; fine; discretion; victim; legal protection.

Samah Al Agha

Associate professor at law department, Dar Al Hekma University, Jeddah, Saudi Arabia sagha@dah.edu.sa
<https://orcid.org/0009-0006-9984-6576>

Corresponding author, responsible for conceptualization, investigation, formal analysis and writing.

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ABSTRACT

Background: *Trafficking in human beings is a crime that violates human rights. Recent years have witnessed an increase in human trafficking for the purpose of commercial sex exploitation, forced labour, and beggary, to name but a few. Globalisation and advanced technology have been exploited by perpetrators of trafficking in human beings. This phenomenon is becoming more difficult to discover and investigate due to its nature and complexity. The purpose of this research is to explore the legal response to the crime of trafficking in human beings in the Kingdom of Saudi Arabia.*

Methods: *This research uses a combination of primary and secondary resources such as the assigned laws, caselaw, academic books, journal articles, and reliable websites.*

Results and Conclusions: *After working out that this crime falls within the scope of Ta'zer Crimes but not Hudud and Qisas crimes, the paper examines the efficiency of the Saudi Anti-Trafficking in Persons Law 2009 from two aspects, the effectiveness of penalties imposed on the human traffickers and the feasibility of protective measures provided in the law for safeguarding the trafficked person (victims). Finally, the study concludes with some findings and recommendations.*

1 INTRODUCTION

The crime of trafficking in persons or human beings¹ represents a clear flagrant violation of human rights and human dignity. Usually, in the trade of things, the person is the owner of the commodity (buyer or seller), but for the crime of human trafficking, the human being is the commodity itself, which all religions, constitutions, and legislations have forbidden.

Trafficking in human beings is a revival of the phenomenon of slavery. Indeed, it is also identified as 'modern slavery'² today. This appalling crime is considered the third largest criminal activity and breeds billions of dollars after drug and arms trafficking. It is increasing in all parts of the world because of different factors, such as the prevalent poverty, the lack of employment in countries which have low economic conditions, the growing number of people displaced by wars in many regions, and the demands for cheap labour and services.³ Given that globalisation has virtually rendered the world borderless and new technology has advanced the transportation system, business criminals have exploited these to make trafficking in human beings a lucrative profession. Preventing this crime seems to be impossible, but it is achievable to lessen the severity of the problem significantly by taking several measures, including but not limited to strengthening the laws, toughening penalties against traffickers in the countries of origin and destination, and enhancing protection for the victims and above all securing cooperation between governments since trafficking in human beings is mostly a global problem that needs a global solution. Therefore, all governments must pay attention to this dangerous phenomenon. Countries around the world

1 "The two terms are used interchangeably. In the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol) (UN Treaty Series 2237/39574), the term "trafficking in persons" is used, while in the Council of Europe Convention on Action against Trafficking in Human Beings (CoE Treaty Series 197) the term 'human trafficking' is used'. See: Riikka Puttonen, Martin Fowke and Marika McAdam, *Combating Trafficking in Persons in Accordance with the Principles of Islamic Law* (UNODC 2010) 1 <https://www.unodc.org/documents/human-trafficking/islamic_Law_TIP_E_ebook_18_March_2010_V0985841.pdf> accessed 22 March 2023.

2 A Yasmine Rassam, 'International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach' (2005) 23 (4) Penn State International Law Review 826.

3 Puttonen, Fowke and McAdam (n 2) 5-6.

and international organisations specialised in combatting human trafficking have sought to develop mechanisms and issue laws to deter crime and reduce its economic, psychological, and economic effects. Therefore, during the last few decades, the world has witnessed an important legislative movement in the field of combating trafficking in persons. Given that Saudi Arabia has not been immune to human trafficking, this paper addresses the country's position on combatting trafficking in persons in compliance with international norms and standards.

In doing so, the paper examines the legal response to the crime of trafficking in human beings in Saudi Arabia. It first clarifies the nature and the elements of this crime; then it moves on to examine the effectiveness of the Saudi legal response to deterring the perpetrators and protecting the victims.

2 THE NATURE AND THE ELEMENTS OF THE CRIME OF TRAFFICKING IN PERSONS

2.1 Nature of the Crime of Trafficking in Human Beings:

The primary source of laws in Saudi Arabia is Islamic Law (Shariah). According to the gravity of a crime in Islamic law, there are three categories of crimes. Huddud crimes that are specified by the text of the Holy Quran and Sunnah (sayings and practices of Prophet Muhammed peace upon him), such as theft and adultery.⁴ Qisas crimes are crimes against persons, such as murder and bodily injuries, which either require retribution (qisas) or financial compensation (diya).⁵

Ta'zir crimes are the new crimes that were not mentioned in Quran or Sunnah, such as Cybercrime. Ta'zir crimes also refer to the acts that were found and prohibited in the time of the Quran and Sunnah, but there were no specified punishments for them in both Quran and Sunnah, leaving this task to the discretion of the ruler who is in charge of safeguarding the public order, public morality and safety, and tranquillity.⁶ In fact, there was a prohibition for all kinds of exploitation of human beings in Islam, but there were no punishments mentioned for such kinds. This made the crime of trafficking in persons fall within the scope of Ta'zir Crimes and led to the enactment of anti-trafficking legislation in 2009, which fulfilled both the corresponding essentials⁷ of Islamic law, as well as international law.⁸

2.2 The Elements of Trafficking in Persons

The crime of trafficking in persons consists of *Actus reus* (guilty act or guilty omission) accompanied by *Mens rea* (guilty mind).⁹

4 'As for female and male fornicators, give each of them one hundred lashes, and do not let pity for them make you lenient in 'enforcing' the law of Allah, if you 'truly' believe in Allah and the Last Day. And let a number of believers witness their punishment', see: Holy Quran, Verse 24:2 <<https://quran.com/24?startingVerse=2>> accessed 22 March 2023. 'As for male and female thieves, cut off their hands for what they have done—a deterrent from Allah. And Allah is Almighty, All-Wise', also see: Holy Quran, Verse 5:38 <<https://quran.com/en/al-maidah/38>> accessed 22 March 2023.

5 Holy Quran, Qisas, Verse 2:178 on Qisas <<https://quran.com/en/2:178/tafsirs/en-tafsir-maarif-ul-quran>> accessed 22 March 2023.

6 Puttonen, Fowke and McAdam (n 2) 45.

7 Ibid 44. There are five essentials in Islamic Law (1) The practice of religion; (2) The development of the mind; (3) The right to procreation; (4) The right to personal security; and (5) The right to possess property and wealth.

8 Ibid 45.

9 Nicola Padfield, *Criminal Law* (9th edn, OUP 2014) 22.

2.2.1 *Actus Reus (Physical Element)*

2.2.1.1 *The Acts of Trafficking in Persons*

There are many acts of trafficking in persons. These acts are listed in Art. 2 of the Anti-Trafficking in Persons 2009, which states that:

The acts of trafficking in persons, include: coercion, threat, fraud, deceit or abduction of a person, abuse of position or power or any authority thereon, taking advantage of the person's vulnerability, giving or receiving payments or benefits to achieve the consent of a person having control over another person for the purpose of: sexual assault, forced labour or services, mendicancy (beggary), slavery or servitude, or the removal of organs or for conducting medical experiments thereon.

The different acts mentioned in the article must be for different purposes, such as sexual exploitation, forced labour, mendicancy, servitude, removal of human organs, or for conducting medical experiments. In comparison with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2003,¹⁰ it can be noted that the Saudi Anti-Trafficking Law of 2009 has outperformed the Protocol when it expanded the purposes of human trafficking to include begging and conducting medical experiments as a step to reduce the crime of human trafficking.

2.2.1.2 *Culpable Omission*

A person who – by their omission to act – contributes to the commission of a crime will be criminally responsible.¹¹ This can be justified if this person is under a legal duty to act but knowingly and wilfully failed to act. To explain, a person may work as a public officer whose duty is to verify and scrutinise the documents and credentials of travellers at a certain port; this person closed the eye on some paper's illegality and did not report (omitted to report) this illegality and let the travellers pass into the country.¹² Those travellers have been apprehended by the competent authorities because of committing trafficking in human organs, which constitutes one of the most dangerous acts of trafficking in persons crime.

Far more seriously, reading Art. 7¹³ of the Anti-Trafficking in Person Law 2009 leads to the fact that if a person knows about committing or trying to commit any act of trafficking in human beings and does not inform the competent authorities, such a person would be subject of maximal imprisonment for two years and a fine of 100,000 riyals or both.

Omission – by someone who is not under a duty – to inform the competent authorities about a commission of a crime is not culpable in principle. Such omission is culpable in very few

10 UNGA Res 55/25 'Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime' (15 November 2000) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>> accessed 22 March 2023.

11 Michael Allen, *Textbook on Criminal Law* (12th edn, OUP 2013) 28.

12 Ilias Chatzis and Silke Albert, *Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal* (UNODC 2015) <https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf> accessed 22 March 2023.

13 Kingdom of Saudi Arabia, Royal Decree No M/40 'Anti-Trafficking in Persons Law' of 21/7/1430H (14 July 2009) <https://sherloc.unodc.org/cld/document/sau/2009/anti-trafficking_in_persons_law_2009.html> accessed 22 March 2023. Art. 7 states: 'Any person who becomes aware that any of the crimes provided for in this Law is committed or attempted to be committed, even if bound by professional confidentiality, or who receives information or leads related directly or indirectly to such crimes; and does not immediately notify the competent authorities thereof; shall be punished by imprisonment for a period not exceeding two years or a fine not exceeding 100,000 riyals, or by both penalties. The competent court may exclude parents, children, spouses, and siblings from the provisions of this Article.'

serious crimes; the trafficking in persons' crime is one of them. This constitutes a concrete step in the fight against trafficking in person.

2.2.2 *Mens Rea (Mental Element)*

The crime of trafficking human beings requires intention as *mens rea*. To explain, the previous prohibited acts must be compounded with a culpable state of mind¹⁴ that constitutes the reason for the act, which is always exploitation of the victim, like sexual exploitation, forced labour, removal of the organs, etc.¹⁵

Mens rea is achieved by a general criminal intent and a specific criminal intent.¹⁶ The general criminal intent is achieved by two elements; the first element is 'knowledge', where the accused knows that the act is culpable and focused on a living person. The second element is 'intent', which can be described as a psychological force and desire aimed at achieving an illegitimate purpose such as violation of honour through sexual assault, violation of contempt of liberty through begging, slavery, or practices like slavery, violation of one's physical integrity through the removal of organs or conducting medical experiments, etc., whereas the specific criminal intent is to exploit the victim.¹⁷

In some trafficking cases, in which the trafficked person gives their consent for the trafficking activities, the traffickers may defend themselves by the victim's acceptance of the trafficking activity. Nevertheless, the acceptance of the victim is irrelevant to the criminal liability of the traffickers, and this is clear in Art. 5 of the Anti-Trafficking in Persons Law 2009, which states: 'Consent of victims shall be deemed irrelevant in any of the crimes provided for in this Law'.

Accordingly, if the trafficked person (victim) agrees to any trafficking activity provided for in the Saudi Anti-Trafficking Law 2009, such as agreeing to work in the sex industry in return for money, the trafficker will still be subject to criminal liability.

3 THE ROLE OF ANTI-TRAFFICKING IN PERSONS LAW 2009 IN MINIMISING TRAFFICKING IN PERSONS

Legal systems in Saudi Arabia rely primarily on Islamic Law. There has been a great emphasis on disrupting the traffic of human beings to maintain human rights and human dignity protected as per Islamic law, the Basic Law of Governance, and international law.

Islamic Law calls for the welfare and well-being of all mankind according to the principles of justice and mercy which are consistent with international human rights standards since Islam forbids subjugating any person to any trafficking activity for any purposes.¹⁸

The Saudi Basic Law of Governance clearly stresses the protection of human rights in several articles. Art. 8 states that: 'Governance in the Kingdom of Saudi Arabia is based on justice,

14 M Varn and Anoop Chandola, 'A Cognitive Framework for Mens Rea and Actus Reus: The Application of Contact Theory to Criminal Law' (2013) 35 (2) *Tulsa Law Review* 385.

15 Ministry of Human Resources and Social Development of Saudi Arabia, 'Anti-Human Trafficking: Guide' (*Human Resources and Social Development*, November 2021) <<https://www.hrsd.gov.sa/en/knowledge-centre/decisions-and-regulations/regulation-and-procedures/999875>> accessed 22 March 2023.

16 Daryna Byelikova, 'The Notion of Criminal Intent: The Evolution of Mens Rea in Criminal Law' (Bachelor of Arts – Criminal Justice (Honours) thesis, Mount Royal University 2019) <<https://core.ac.uk/download/pdf/322804681.pdf>> accessed 22 March 2023.

17 Ministry of Human Resources and Social Development (n 16).

18 Puttonen, Fowke and McAdam (n 2) 6-7.

shura (consultation) and equality according to Islamic Sharia.¹⁹ Art. 26 also states that: ‘The State shall protect human rights in accordance with the Sharia.’²⁰

In addition, in 2005, the Kingdom of Saudi Arabia ratified the United Nations Convention against Transnational Organized Crime 2000.²¹

In 2007, it ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime 2000.²²

Finally, due to the sincere desire to eliminate human trafficking activities, Saudi Anti-Trafficking in Persons law was promulgated by Royal Decree number M/40, and it became effective in October 2009.²³ This law consists of 17 articles. Reviewing the articles of this law, several concrete aspects can be addressed as follows.

3.1 Wider Scale of Criminalisation

Art. 2 of the law details all acts of trafficking in persons that were mentioned earlier in this paper under the title ‘Acts of Trafficking in Person’. This Article comes in alignment with Art. 3 of the ‘protocol to prevent, suppress and punish trafficking in persons, especially Women and Children.’²⁴ However, the Saudi Law outperformed the protocol when it added to the purposes the ‘begging’ and the ‘medical experiment’ as mentioned earlier.

3.2 Discretionary Punishments

The United Nations Convention against Organized Crime 2000 requires state members to impose penalties that are proportionate to the gravity of the trafficking in persons crime and to give due regard to deterrence.²⁵

In response, Art. 3 of Anti Trafficking in Persons Law 2009 says: ‘Any person who commits an act of trafficking in persons shall be punished by imprisonment for a period not exceeding 15 years or a fine not exceeding 1,000,000 riyals, or by both penalties.’

Although Art. 3 of the Saudi law contains a maximum imprisonment which is 15 years, it does not determine the minimum imprisonment. In addition, the article determines a maximum fine which is one million riyals but does not put any minimum fine leaving this task to the discretion of the court. This evokes in one’s mind the question, ‘What is the minimum imprisonment year and the fine?’ Reviewing the provisions of this law refers to the fact that not only Art. 3 does not have a minimum penalty, but all articles that include penalties do not have a minimum penalty too.

19 Kingdom of Saudi Arabia, Royal Decree No A/90 ‘The Saudi Basic Law of Governance’ of 27/08/1412H (1 March 1992) <<https://www.saudiembassy.net/basic-law-governance>> accessed 22 March 2023.

20 Ibid.

21 UNGA Res 55/25 ‘United Nations Convention against Transnational Organized Crime’ (15 November 2000) <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> accessed 22 March 2023.

22 UNGA Res 55/25 Protocol (n 11).

23 Royal Decree No M/40 (14).

24 UNGA Res 55/25 Protocol (n 11).

25 Anne T Gallagher and Nicole J Karlebach, ‘Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice’ (*United Nations Human Rights*, July 2011) <https://www2.ohchr.org/english/issues/trafficking/docs/BP_GallagherAndKarlebach.pdf> accessed 22 March 2023.

However, the fact that the Saudi legislator avoided putting a mandatory minimum penalty could be justified by the legislative insistence on meeting the required human rights and criminal justice standards in all cases. To explain, when a judge has the flexibility to choose the duration of imprisonment and the amount of fine, he will be able to use his discretion to make a fair decision.

For example, if the judge takes the motive of the offender into consideration, then he may reduce or intensify the punishment; he does so within the scope of his rights and does not go beyond the limits of his authority. Given the above-mentioned justification for not specifying a minimum penalty for a trafficking crime, it is still important to put a minimum limit for a penalty and to make such a limit as minimum as possible to maintain the flexibility and the discretion given to judges to choose the relevant dissuasive punishment on a trafficking crime. This is clear in the following case, which constitutes an example of how the court can impose a penalty according to their discretion.

Caselaw on Commercial Sexual Exploitation

In the city of Jeddah,²⁶ one resident (non-Saudi) prepared a house for receiving women and men for the purpose of commercial sexual exploitation. He also was sheltering a woman and procuring her in return for money. He was charged by the prosecution with committing the trafficking of persons according to Art. 2 of the Anti-Trafficking in Person Law 2009. The public prosecutor requested the Court of the First Instance to apply Art. 3.4.11 of the same law to him. The defendant admitted his guilt and acknowledged the validity of the case. The court found him guilty of what he was charged with and sentenced him to five years in prison, five hundred floggings, confiscating the mobile phone and the sums of money seized in his possession and deporting him to his country after the end of his five years' imprisonment. This verdict was upheld by the court of appeal.²⁷

3.3 Harsher Penalties for Committing Trafficking in Persons with Aggravating Factors

Art. 4 of the law states that the punishment would be harsher in case of committing the crime in the existence of one or more of the aggravating factors, such as committing the crime against women and children, through an organised crime, or through using/threatening of usage of weapon, or the perpetrator is a law enforcement officer, or if the crime is committed by more than one person, etc.²⁸

Given Art. 4 lists the aggravating factors and stresses imposing harsher punishments, yet it does not specify the maximum and the minimum of such harsh punishments leaving it again to the discretion of the judge who has the choice to impose a penalty in proportion to

26 Case No 3354123 (Court of the First Instance, 1433 Hijri) Code of Judicial Judgments 10/482.

27 Ibid.

28 Art. 3 of the Anti-Trafficking in Persons Law states: 'Any person who commits an act of trafficking in persons shall be punished by imprisonment for a period not exceeding fifteen years or a fine not exceeding one million riyals, or by both'. Article 4: 'Penalties provided for in this Law shall be made harsher in the following cases: 1) If the crime is committed by an organized crime group. 2) If the crime is committed against women or people with special needs. 3) If the crime is committed against a child, even if the perpetrator is not aware of the fact that the victim is a child. 4) If the perpetrator uses or threatens to use a weapon; 5) If the perpetrator is the spouse, or guardian of, or has authority over the victim. 6) If the perpetrator is a law enforcement officer. 7) If the crime is committed by more than one person. 8) If the crime is transnational; 9) If the crime inflicts severe harm on or results in permanent disability of the victim'. See: Royal Decree No M/40 (n 14).

the gravity of the crime compound with the aggravating factors. It can be interpreted that punishments mentioned in Art. 3 can be applied to Art. 4.

Caselaw on Beggary (Mendicancy)

A woman was arrested in the city of Al Jouf in Saudi Arabia while she was practicing beggary with her children. Her husband was arrested in the city of Tabuk while he was begging too. The husband admitted – upon interrogation – that he came with his wife and children to Saudi Arabia for the purpose of doing Omrah and begging. The husband was charged with committing beggary (mendicancy). In addition, the public prosecutor of the Court of the First Instance requested the court to apply the maximum imprisonment and fine on the defendant.²⁹

Reviewing the indictment of the prosecution, it should be noted that the man was charged with committing trafficking in persons (he controls his family, taking advantage of the vulnerability of his wife and children), for the purpose of begging, according to Art. 2.

It should also be noted that two aggravating factors are provided in this case according to Art. 5 para. 2, the victim is a woman (the wife) and para. 5 that the husband is the guardian and has authority over all of them (wife and children). For these reasons, the prosecution requested the maximum imprisonment and maximum fine, according to Arts. 3 and 4³⁰ of the Saudi Anti-Trafficking in Persons Law 2009. However, at the Court of First Instance, the accused denied his statement before the Public Prosecution and claimed that he came to Saudi Arabia for Omrah only and that he was working in the vegetable market, but people used to help him because they knew that he had a big family and that his wife and children were doing shopping but not begging. The court found not enough evidence in his case and decided that it was sufficient to imprison him for twenty days.

Analysing the verdict, it can be noted that the court, to achieve justice, used discretion and conscience, taking into consideration the human situation of the accused along with the fact that there was not enough proof to convict him of the crime of trafficking in persons.

Caselaw on Forced Labour

In the city of Abha in 2013, a criminal investigation was conducted on seven non-Saudi residents suspected of trafficking in persons for the labour exploitation of ten women. An order was issued from the head of the Bureau of Investigation and Public Prosecution (currently called Public Prosecution) with permission No. (17842) dated 17/06/2013 in order to raid their residence. Upon raiding the residence, it was found that it consisted of two apartments, one of them on the second floor where the men lived and another on the third floor where the ten women lived.³¹ Upon interrogation, the men admitted that they brought a group of non-Saudi women to work as domestic maids, a service that is in high demand, especially with the advent of the holy month of Ramadan, in exchange for money given by the women. The investigation concluded that the aforementioned seven men were charged with trafficking ten women to exploit their vulnerability to work as domestic servants. At the Court of First Instance, the public prosecutor requested the court to impose on the men penalties stipulated in Art. 3 of the law and paras. 2 and 7 stipulated in Art. 4 of the law. The

29 Case No 34159840 (Criminal Court in Sakaka, 1434 Hijri) Code of Judicial Judgments 13/41.

30 Royal Decree No M/40 (n 14).

31 Case No 34437444 (Criminal Court in Abha, 1434 Hijri) Code of Judicial Judgments 13/50.

public prosecutor also requested the court to impose the penalty of confiscation of the car they used to convey the women from one place to another as stipulated in Art. 11 of the same law. The court interrogated the seven accused men in the presence of a translator, but they denied the statements they gave in the public prosecution. They claimed that they did live in the same building in a different apartment from the women's one, but they had not arranged for them to work as domestic servants, and they did not receive any money from them. The ten women were also interrogated by the court, and they confirmed their statements in the public prosecution, stressing that they worked as domestic servants but had no relations with the accused men. The court freed all of them based on the fact that they did not have a history of imprisonment and based on the principle that states, 'the original is innocence'. This principle does not budge except with strong evidence, and it is non-existent in this case.

Reflecting on this case, it can be noted that although preventing trafficking in humans by imposing a dissuasive penalty is a priority, it is also a priority to avoid convicting people without hard incriminating evidence in criminal matters. It also shows that cross-investigation, such as hearing the accused again in court after being interrogated in the public prosecution, is extremely important in order to achieve justice through safeguarding the legal principle: 'the presumption of innocence until proven guilty'.³²

3.4 The Same Punishment for The Perpetrators and Participants (Accessories, Accomplices) in Trafficking in Persons Crime

As mentioned earlier, the primary source of Saudi criminal law is Islamic law which differentiates between the main perpetrator (principal), the accessories and the accomplices.³³ The principal in a crime is the person who commits the crime alone. However, in many serious crimes, there may be more than one person who contributes to the execution of the crime. Those contributors could be one of two kinds. The first kind is called 'accomplices', and the second kind is called 'accessories'. Accomplices are the participants who are present at the crime scene and actively take part in committing the crime. Whereas accessories are the participants who are not present at the crime scene but knowingly and intentionally incite, assist, or agree with the principals on committing a crime. This accrues to the consequence that the punishment for the participants (accessories and accomplices) is less than the one for the principal.³⁴

However, after analysing Art. 8³⁵ of the Saudi Anti-Trafficking in Persons Law 2009, it shows that this law treats all principals, accomplices, and accessories equally; it does not differentiate between them in regard to legal liability, and therefore, both receive the same punishments. Given that trafficking in persons is a complicated crime and it is difficult to be committed completely without the assistance of other parties, the Saudi legislator seeks to impose effective and dissuasive sanctions to deter all participants.

32 Puttonen, Fowke and McAdam (n 2).

33 Abdel Qader Odeh, *Islamic Criminal Legislation Compared to Positive Law* (2nd edn, Dar Al-Kateb Al-Arabi 2018).

34 Ibid.

35 Art. 8 of the Anti-Trafficking in Persons Law states: 'Any person who participates in trafficking in persons or takes part in any of the crimes provided for in this Law shall receive the same penalty as the perpetrator'. See: Royal Decree No M/40 (n 14).

3.5 The Same Punishment for Completed Crime and Attempted Crime

More importantly, the Anti-Trafficking of Persons Law 2009 seeks to also achieve deterrence of offenders and potential offenders when it equates, in a penalty, the complete trafficking in persons with the attempted crime of trafficking in persons, which is emphasised in Article 10, that states: 'Attempts to commit any of the crimes provided for in Articles 2, 4, and 6 of this Law shall receive the penalties prescribed for completed crimes'. Criminalisation and penalisation of attempted trafficking in persons is a step forward in deterring the persons who attempt to commit the crime and in deterring the public, who will think many times before committing or attempting to commit such a crime to end the impunity for traffickers and attempted traffickers.

4 PROTECTIVE MEASURES FOR VICTIMS (THE TRAFFICKED PERSONS)

While prosecuting traffickers, sometimes the competent authority focuses on victims in order to obtain information that they can provide in the criminal justice system. Thus, the victim may be treated as a mere pawn rather than human needing protection and assistance.³⁶ Accordingly, for the rule of law to be effective and holistic, some issues need to be challenged and addressed efficiently, such as the issue of protecting the victims of trafficking in persons. This fact has been realised by national law in accordance with international law. For example, Art. 15³⁷ of the Saudi Law puts measures to safeguard trafficked persons.

4.1 Enabling the trafficked persons to know about their legal rights:

Such protective measures include making the trafficked victims aware of their legal rights. In doing so, competent authorities should provide translators for the victims who speak a different language. In response to such an important requirement, the Unified Translation Centre Initiative was activated in 2020. This Centre provides interpretation and translation services to help the victims of trafficking in persons who do not speak the Arabic language during prosecution, court sessions or through any judicial procedures in understanding their legal rights. According to the initiative, the Centre has 22 employees who work as translators and interpreters of 20 languages. For example, in 2021, the Centre provided services in 23 trafficking cases.³⁸

Moreover, the Ministry of Human Resources and Social Development (MHRSD) established a Call Centre where its officials work 24 hours to receive calls in six major labour-source

36 United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings* (UN 2008) <https://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook%5B1%5D.pdf> accessed 22 March 2023.

37 Art. 15 of the Anti-Trafficking in Persons Law states: 'The following measures shall be adopted regarding victims of trafficking in persons during investigation or prosecution: 1. Informing the victim of his legal rights, using a language that he understands. 2. Availing the victim of the opportunity to set forth his status as a victim of trafficking in persons, as well as his legal, physical, psychological, and social status. 3. Referring the victim to the relevant physician if he appears to be in need of medical or psychological care, or if he requests such care. 4. Admitting the victim to a medical, psychological, or social rehabilitation center if so necessitated by his age, or his medical or psychological condition. 5. Admitting the victim to a specialized center if he needs shelter. 6. Providing police protection for the victim if necessary. 7. If the victim is non-Saudi and there is a need for him to stay or work in the Kingdom during investigation or prosecution, the Public Prosecution or competent court shall have the discretion to decide upon such need'. See: Royal Decree No M/40 (n 14).

38 Office to Monitor and Combat Trafficking in Persons, '2022 Trafficking in Persons Report: Saudi Arabia' (US Department of State, 2022) <<https://www.state.gov/reports/2022-trafficking-in-persons-report/saudi-arabia>> accessed 22 March 2023.

country languages: Arabic, English, Filipino, French, Hindi, and Indonesian. The MHRSD hotline was also included in a booklet given to all foreign workers who entered the Kingdom.³⁹ This, in return, resulted in it receiving around 280 calls every day in 2021-2022.⁴⁰ In addition, the Human Rights Committee (HRC) established a separate call centre staffed with operators experienced to recognise potential trafficked victims. They receive calls, text messages, and WhatsApp messages in Arabic and English languages.⁴¹

4.2 Referring the trafficked victims to shelters

In 2020 the National Referral Mechanism (NRM) was implemented. The mechanism 'specifies and coordinates the roles and responsibilities of all relevant Saudi authorities in the identification and protection of victims and the investigation and prosecution of trafficking-in-persons crimes.'⁴² NRM has many aspects of achieving its objective of reducing trafficking in persons. It has phone lines to receive calls. It has also data collection and training workshops for officials to spot and stop trafficking in persons.⁴³

In addition, the NRM is responsible for referring the victims of trafficking in persons to a shelter to receive care. In 2021, the NRM was amended and updated by the government, and a new procedure within the NRM has been initiated to require the police to allow the potentially trafficked person to stay a minimum of three days at a shelter before the start of a criminal investigation.⁴⁴

The MHRSD also provided shelters for the victims of trafficking in persons. In 2021, the government allocated around 6.67 million dollars to support the victims of forced begging in different areas of the Kingdom. Additionally, 'welfare centers for vulnerable female domestic workers and trafficking victims in 13 locations throughout the Kingdom. Each shelter provided accommodation, social services, health care, psychological counseling, education, and legal assistance.'⁴⁵ The government offered these services to all 173 victims it referred to care in 2021.

In addition to the option of referral of the trafficked victims to a shelter, there are two other options – during the judicial proceedings – that are offered to the victims, which are transferring them to a new employer that they can work for or issuing an immediate exit visa. These two options do not require the victims to wait until the prosecution process is finished and does not require interference from law enforcement personnel.⁴⁶

5 CONCLUSION

Trafficking in human beings is a heinous crime that is prevalent worldwide, but eliminating it is still a possible goal. This paper, after reviewing the nature and elements of the crime

39 Ibid.

40 Ibid.

41 Ibid.

42 National Committee to Combat Human Trafficking, 'National Referral Mechanism' (*National Committee to Combat Human Trafficking*, 2022) <<https://www.ncct.gov.sa/en/national-referral-mechanism>> accessed 22 March 2023.

43 Rachel Wolf, 'How Human Trafficking in Saudi Arabia Moved to the Online Black Market' (*The Borgen Project*, 12 July 2021) <<https://borgenproject.org/HUMAN-TRAFFICKING-IN-SAUDI-ARABIA>> accessed 22 March 2023.

44 Office to Monitor and Combat Trafficking in Persons (n 39).

45 Ibid.

46 Ibid. See also: 'Exploitation of children and women is human trafficking crime, says Saudi Public Security' (*Arab News*, 6 April 2022) <<https://www.arabnews.com/node/2057621/saudi-arabia>> accessed 22 March 2023.

of trafficking in persons in the Kingdom of Saudi Arabia, examined the legislative efforts that culminated in the Anti-Trafficking in Persons Law that was enacted in 2009. The study proved, through analysis of the law's provisions and court's case laws, that Saudi law is holistic and efficient in criminalising and penalising the perpetrators committing such a crime. Such efficiency is mostly represented in the following aspects:

1. The purposes of the trafficking in persons' acts prescribed in Art. 2 of the Saudi law are not confined to those mentioned in the protocol but extended to include other forms, namely mendicancy (begging) and conducting medical experiments.⁴⁷
2. The law applies the same penalty to the complete crime and the attempted crime.
3. There is criminal liability for any person even if he is not under a duty but knows about a commission or attempted commission of trafficking in persons' crime.
4. The same penalty is imposed on all the participants of trafficking in persons' crime, principal perpetrators, accomplices, and accessories.
5. There is protection for the victims of trafficking in human beings by providing them with shelters and legal, medical, and psychological assistance.

Undoubtedly, the enactment of Anti Trafficking in Persons Law 2009 is a step forward in the battle against trafficking in human beings, yet modifying it is of utmost importance in aligning with Vision 2030, of which legal reforms are one of the objectives. Therefore, some points need to be considered as follows:

1. All provisions in the Anti-Trafficking in Persons Law 2009 that contains the penalty of imprisonment and fine specify the maximum penalty but remain silent on the minimum penalty. This paper recommends modifying the law by adding a minimum penalty in all related provisions to avoid discrepancies in the sentences of similar cases in different courts.
2. All the provisions related to imposing penalties refer to imprisonment or fine or both as punishments. Looking at the purpose and heinousness of some crimes, such as trafficking in persons for the purpose of sexual exploitation, makes us suggest either abolishing the penalty of fines as an option and keeping imprisonment only or imposing both penalties, the imprisonment and the fine together.
3. There is no reference to the statutes of limitations in the current Anti-Trafficking in Persons Law 2009, so a provision on the statutes of limitations should be added. However, due to the heinousness and gravity of this crime, public prosecutions for trafficking persons' cases should not expire over time. This will send a deterrent message to the people who think of committing or trying to commit such a crime because they will know that there is no impunity. This idea is rooted in the Rome Statute of the International Criminal Court ICC, which says that all crimes within the jurisdiction of the ICC, including human trafficking, 'shall not be subject to any statute of limitations' (Art. 29).⁴⁸
4. Saudi Arabia is a party to many international and regional treaties in the fight against trafficking of human beings. Yet, the current Anti-Trafficking in Persons Law 2009 does not include any reference to any kind of cooperation with the

47 'Human Rights' (GOV.SA Unified National Platform, 2021) <<https://www.my.gov.sa/wps/portal/snnp/careaboutyou/humanright/?lang=en>> accessed 22 March 2023.

48 Puttonen, Fowke and McAdam (n 2).

international community. This paper recommends modifying the law to also add provisions that require the international exchange of information and cooperation with other countries in confronting the perpetrators of human trafficking crimes because most kinds of such crimes are conducted through more than one jurisdiction.

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