

# otoritas

Jurnal Ilmu Pemerintahan

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## Legislative policy to criminalizing human trafficking in anti-trafficking law in Saudi Arabia

Islam Mahrous Ali Naggi <sup>\*)</sup>

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### Abstract

*This research discusses one of the most important crimes against humanity, where national and international statistics and reports revealed that the bad living conditions or bad troubled situations have forced thousands of women, children and men in their countries to be susceptible to the trafficking and exploitation. The study has been divided into two main sections. The first section presents concept of the trafficking in persons in international charters and conventions, reasons, seriousness and elements of the crime in general. The second section studies the Saudi lawmaker's addressing the crime in terms of definition, forms, prescribed penalty and reasons for augmentation of penalty. The study has concluded to a set of results and recommendations, the most important of which is that the Saudi lawmaker adopted position of the international conventions in defining crime and determining its forms. Moreover, the Kingdom has also made great strides in combating this type of crime at both international and local levels. The study recommended the need to impose harsh penalties on employers, who practice patterns of forced slavery to their workers, as well as the need to intensify efforts in order to take adequate measures to prevent smuggling the illegal labor.*

**Keywords:** legislative policy, enslavement, human trafficking, protection, slavery

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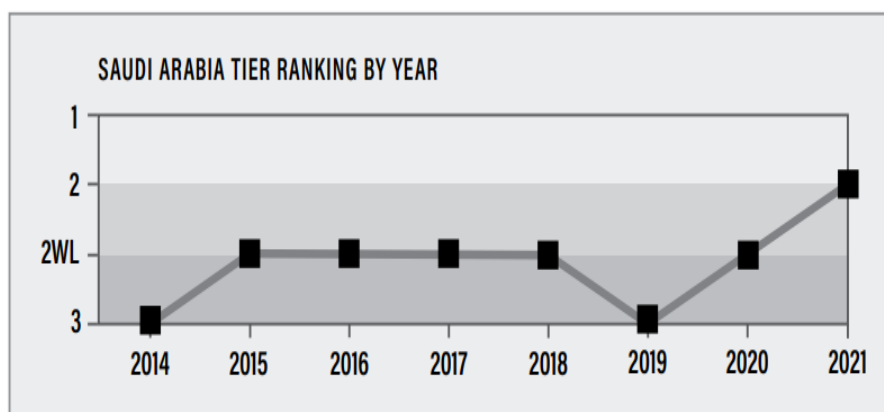
### Introduction

The phenomenon of trafficking in persons is considered a scourge that various countries of the world suffer from (Aronowitz, 2010; Aryana, 2021; Maluku & Maluku, 2020). The trafficking of persons occurs through a group of forms, including "recruiting, transferring, harboring, or receiving persons using the threat or by use of the force, or other forms of coercion, kidnapping, fraud, deception, abuse of power, exploitation of a state of vulnerability or giving or receiving sums of money or benefits to gain the consent of a person, who has control over another person for the exploitation. Countries of the world have made, through major international organizations, great efforts to combat crimes of trafficking in persons in all its forms and attempt to provide the required care to victims of trafficking in persons through the agencies of the different countries and the bodies operating therein, and in integration with major institutions in the private sector in order for spreading and raising community awareness about human trafficking crimes, their dangers, the importance of combating them and caring for their victims, the most important of which are the Human Rights Commission, International Labor Organization, United Nations, and others (Omer, 2015).

The Human Rights Commission was established in the Kingdom of Saudi Arabia under the "Regulation of Human Rights Commission" issued by Resolution of Council of Ministers No. (207) dated 8/8/1426 AH. The Commission aims to protect and enhance human rights by following international human rights standards in all fields, spreading awareness of them, and contributing to ensuring that these rights are applied in light of provisions of Islamic Law (Sharia). This Commission is the authority competent in expressing opinions and advice regarding human rights issues. Its mission is "to protect and enhance human rights in all fields by international standards, spread awareness of them, and contribute to ensuring application of human rights in light of the provisions of Islamic Law.

Human rights are moral principles or social standards describing a model for human behavior generally understood as a set of basic rights that may not be infringed (Martin, 2003; Prabhakaran et al., 2022). Human rights are due and inherent to every person simply because he is a human being. They are inherent to the person regardless of his identity, gender, place of presence, language, religion, ethnic origin, or any other status. The Trafficking in Persons Report issued by the US Department of State in June 2021 indicates that the different agencies in the Kingdom make strenuous efforts to reduce trafficking crimes, taking many measures and activities to eliminate the phenomenon of trafficking in persons and attaching great importance to doing so.

The Kingdom's government has shown a general increase in the efforts compared to the period included in the previous report, taking into consideration the impact of the COVID-19 pandemic on combating trafficking in persons. Therefore, as shown in Figure (1) about the Trafficking in Persons Report of June 2021, the Kingdom of Saudi Arabia has been promoted to the better (second) level in efforts to combat crimes of trafficking in persons (Uduji et al., 2019).

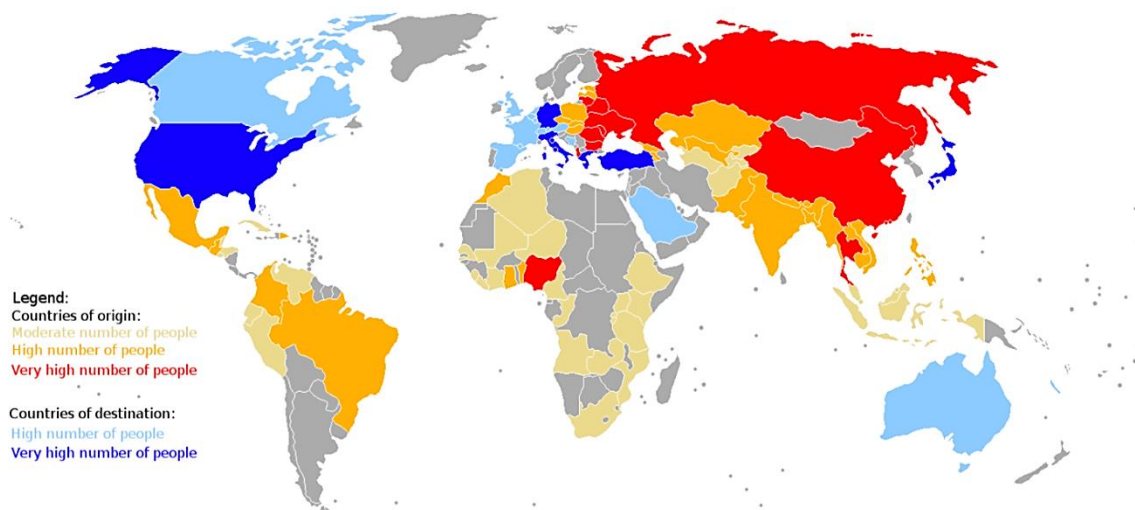


**Figure 1.** Order of the Kinging in Trafficking in Persons Report of June 2021 AD  
*Source: 2021 trafficking in persons report*

The study problem is that Human trafficking crimes constitute the third criminal problem, which worries the world after problems of trafficking in narcotic drugs and psychotropic substances and trafficking in weapons, as crimes of trafficking in persons represent one of the forms of the organized and complex cross-border crime because they consist of a series of criminal acts, leaving hundreds of thousands of victims or more. In addition, cries of trafficking in persons have a great impact on all countries, including the source countries and corridor countries as well as destination countries. The countries make strenuous efforts to combat trafficking in persons and provide victims with care and attention, especially at the national level. The study problem is

evident in the need to shed more light on these crimes and Kingdom's legislative efforts to confront them, as the Kingdom is classified within a group of countries receiving them from many less developed countries, as well as to increase the level of local community awareness regarding crimes of trafficking in persons, and to draw attention to role of the social responsibility and role of the Human Rights Commission in Kingdom of Saudi Arabia in combating crimes of trafficking in persons, and in caring for the victims of these crimes.

The reports indicate that the trafficking of persons often occurs across countries from less developed countries to more developed countries, and poverty is one of the most important reasons that make people vulnerable to being trafficked. The Global Trafficking in Persons Report was issued in 2020 AD. As shown in Figure (2), the report helped to determine 127 countries of origin and 98 corridor countries, in addition to defining 137 major destination countries for trafficking in persons. The report also clarifies that the countries of the Middle East and the GCC countries are destinations for victims of trafficking in persons from Asia, Sub-Saharan Africa, Eastern Europe, and Central Asia (Abu-Taieh et al., 2018)



**Figure 2.** Map showing the trafficking of persons in the world among the source and destination countries.

*Source: the international trafficking in persons report 2020 AD*

The Combating Human Trafficking Report of 2023 was also issued, where this report stated, "Government of Kingdom of Saudi Arabia has shown increased efforts in general compared to the previous period, but it still has not met the minimum standards for eliminating human trafficking, taking into consideration impact of the COVID-19 on its ability to combat trafficking. Therefore, the Kingdom of Saudi Arabia remained within Category 2. These efforts included many pivots, including continuance of the investigation with the traffickers and litigating and convicting them and increase of the training on examination protocols in detention centers and border areas in order to improve the ability to identify victims among vulnerable migrants (Al-Minshawy, 2022)

Given that international reports are still including the Kingdom among the Gulf countries, which are considered a source of this crime, because the Kingdom is a



country attracting significant international expatriate workers, especially in the field of domestic service, the study tried to find out the legislative efforts of Kingdom of Saudi Arabia in combating the human trafficking crime and the forms of criminal behavior under the law and considering the extent, to which these forms are sufficient, to reduce crime and the extent, to which the texts of international conventions and charters are reflected in the Kingdom's internal legislation.

To achieve the objectives of the study, the researcher used the analytical approach by studying provisions of international conventions and internal rules and regulations to find out forms and elements of crime and the Kingdom's efforts to combat this crime to reach adequacy provisions of the law in order to reduce the crime.

The study sets out to address a series of inquiries concerning the intricate issue of crimes of trafficking in persons.

Firstly, it aims to explore the international endeavors aimed at combating this reprehensible crime, shedding light on the collaborative efforts across borders. Secondly, it delves into the most significant manifestations and underlying reasons behind the occurrence of trafficking in persons, seeking to uncover the multifaceted nature of this criminal activity. Furthermore, the study seeks to elucidate the alignment between the perspective of Saudi lawmakers on various forms of criminal behavior related to trafficking in persons and the standards set forth in international agreements. It also endeavors to dissect the specific forms of criminal behavior delineated in Saudi legislation pertaining to trafficking in persons and elucidate the physical and moral elements that underpin this crime. Moreover, the study seeks to ascertain the prescribed penalties for such offenses, both domestically and internationally, and evaluate their adequacy in addressing the severity of the crime. The significance of this study lies in its exploration of a crucial topic that pertains to the scourge of trafficking in persons, a form of organized crime that poses a grave threat to societal stability and the rule of law. By shedding light on Saudi Arabia's efforts in combating trafficking in persons and dissecting the various aspects of this crime, the study contributes to the broader discourse on combating human trafficking and underscores the importance of aligning legislative frameworks with international conventions to effectively address this global challenge.

### **Research Method**

This study investigated the problem of human trafficking and its various behavioral expressions using a basic analytical approach. This approach facilitated a comprehensive examination of the offense and its various components, enabling a thorough review of the laws aimed at addressing and mitigating its consequences. To gather data for the study, the researcher relied on secondary sources, including publications authored by experts in the field, scientific studies, and research specifically focused on human trafficking. These secondary sources served as invaluable tools in elucidating the core concepts central to the study and in providing insights into reports published by international organizations. Through the utilization of these secondary sources, the researcher aimed to uncover the primary factors contributing to the proliferation of human trafficking and to deepen understanding of the intricate dynamics surrounding this criminal activity.

## Result And Discussion

The different reports about crimes of trafficking in persons issued by the concerned international organizations show that the exploitation of children has doubled in the last fifteen years and that one out of every three victims is a child. They also have revealed that the victims of these crimes are exploited for sexual purposes, where 50% of those children were reported in this regard, and 38% of them are engaged in forced labor. Therefore, the Kingdom of Saudi Arabia prohibits trafficking in any person in any way, including coercing, threatening, defrauding, deceiving, or kidnapping him, or exploiting of position or influence, abuse of any power over him/her, exploiting a person's vulnerability, giving or receiving payments or benefits to obtain consent of someone having control over another person, for sexual abuse, forced labor or service, begging, slavery or practices similar to slavery, servitude, removal of the organs, or conducting medical experiments over the person. Accordingly, Saudi Law punishes whoever commits the crime of trafficking in persons with imprisonment for a period not exceeding (fifteen) years, or with a fine not exceeding (one million) riyals, or with both penalties (Saudi Anti Trafficking in Persons Law).

The efforts made by the Kingdom to prevent human trafficking include distributing information to embassies abroad, licensing and regulating the activities of recruitment agencies, monitoring immigration patterns, issuing visas, promoting awareness through the media and religious authorities, and frequent awareness in mosque sermons. The government has also begun working with UNICEF and the Yemeni government to prevent the trafficking of children for the purpose of begging; a plan is being completed to distribute information to the expatriate workers at Saudi airports upon arrival and to tighten border control in order to prevent illegal migrations.



**Figure 3.** Important facts and figures on the trafficking of persons

Source: <https://www.unodc.org> – The researcher designed the figure, and the data were derived from the United Nations Organization website.

## **The concept of human trafficking in the international conventions**

International efforts have been combined to announce the desire to combat this painful phenomenon. There are multiple international definitions and successive legislative and jurisprudential efforts to search for an optimal formula that expresses the content of the human trafficking crime. There are many definitions, each of which is distinguished from the other by focusing on a certain element of the human trafficking crime to find effective ways to convict and punish perpetrators of this crime and protect victims of human trafficking (Maree, 2016).

The Slavery Convention of 1926 AD has defined, in Article 1, paragraphs 1 and 2, the oldest form of human trafficking as "slavery, which is the state or status of any person, over whom the powers resulting from the ownership right are exercised, in whole or in part."

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 AD defined in Article 7/C the slave trade as all the acts that involve capturing, detaining, or abandoning someone to others with the intent of turning him into an enslaved person, and all the acts, which involve the passage of an enslaved person to sell or exchange him/her, and generally any slave trade or slave transport, whatever the used transportation means (Al-Zaghalil, 2000).

Article 4/1 of the Council of Europe Convention on Action against Trafficking of 2005 also defined human trafficking crimes as recruiting, transporting, harboring, or receiving persons using the threat or use of force or otherwise. Forms of coercion include kidnapping, fraud or deception, abuse of power, exploitation of a position of weakness, or the giving or receiving of sums of money or benefits to gain the consent of a person who has control over another person. The purpose of exploitation includes - as a minimum - the exploitation of the prostitution of others or all forms of sexual exploitation, forced labor, forced service, enslavement, or the practices similar to slavery, enslavement, or the removal of organs." Moreover, human trafficking is incompatible with the most basic human rules and with the values and morals of people. These criminal forms take different images, and the most important of these forms are the following:

1. Women and children trafficking for exploitation of women mainly through prostitution, exploitation of children for adoption and killing in order to traffic their organs, and to use them to engage in some criminal activities such as transport of weapons.
2. Smuggling the immigrants illegally. The Chinese Triad Association is one of the most prominent organizations practicing this phenomenon, especially the smuggling of immigrants to the United States of America.

Article 3/A of the Protocol to Combat and Prevent these crimes of Convention Against Transnational Organized Crime held in Palermo in 2000 AD also defined human trafficking as the recruitment, transport, harboring, or receiving of persons by the threat or use of force or any other form of coercion, kidnapping, fraud, deception, abuse of power, vulnerability of the victim, or offering, accepting or paying financial matters or benefits to obtain satisfaction of the person, who has authority over the person intended to be exploited. Exploitation includes, as a minimum, exploitation of the prostitution of others and other forms of sexual exploitation, forced labor or services,

and enslavement or practices similar to it, or taking organs of the human body." (Alsayid, 2008).

Article 3/B stipulates that the victim's satisfaction shall not be considered in this crime. Paragraph (C) states that recruiting, transporting, harboring, or receiving a child for exploiting him is considered a human trafficking crime, even if no means of those stipulated in paragraph (A) of this Article are used in it. The child means anyone who has not reached the age of eighteen years.

Article (5) of the same Protocol obliged the parties to take the necessary legislative measures to criminalize the acts stipulated in Article 3, including the attempt to commit these crimes and criminal contribution to these crimes.

Thus, the concept of human trafficking in international covenants and treaties is related to the sale of certain commodities for material consideration, and this is done at a commercial market according to its economic expression. As for human trafficking, this crime is trafficking of the human being himself so that his dignity, which God Almighty has honored, is sold, and this illegal behavior is surrounded with or without intermediaries. This crime, with its different forms, occurs within or outside the country's borders, whether by the will of the victim or otherwise (Maree, 2016).

The rate of crimes involving the illegal trafficking of human organs has increased due to technological progress, which enables organized crime gangs to remove, keep, and market human organs for those who wish to buy them. These gangs are usually active in war zones and natural disasters, where it is easy to remove organs from the bodies of the dead, and they are also active in poor countries, where some of their citizens are forced to sell their organs to secure the livelihood for themselves and their families.

### **The most important forms of trafficking in persons**

Human trafficking crimes are persons-directed crimes against the individual and society. During this crime, the victims' rights are violated, as they are forcibly transferred from one place to another within the scope of a specific country, or it extends to include more than one country. In this case, this crime is (a transnational crime). The victims are susceptible to exploitation for commercial purposes (Global Report on Trafficking in Persons, 2018). Many forms fall under the heading of trafficking in persons, the most famous and important of which are forced labor, slavery or new enslavement, child labor, provision of women forcibly, the extraction of and trafficking in human organs and tissues, and smuggling immigrants, etc (Omer, 2015).

Forced labor. The persons are transported for forced labor through threats, violence, or other means of coercion. According to the International Labor Organization, forced labor is a type of trafficking in persons, which brings an estimated amount of \$150 billion in profits annually, starting from 2014 AD.

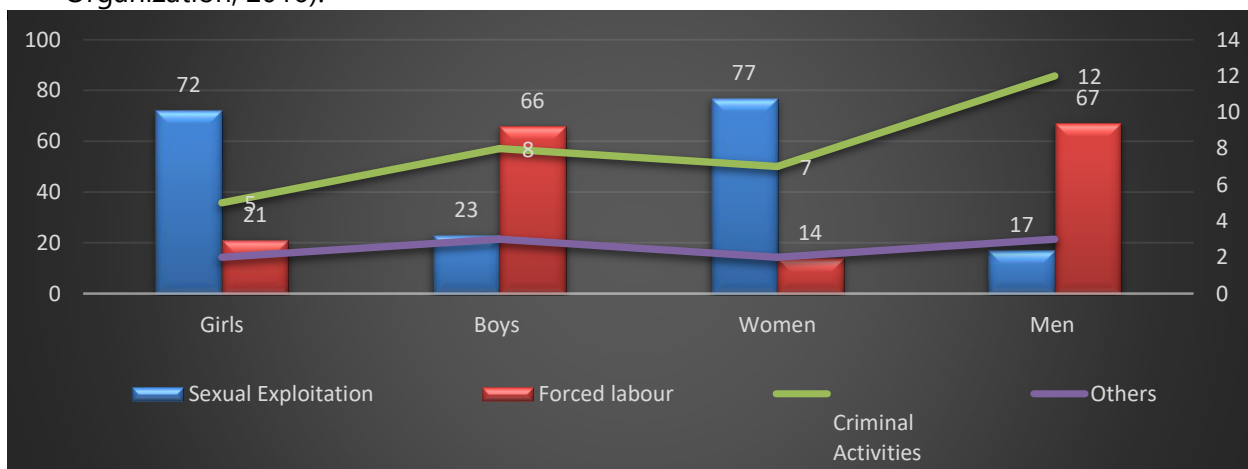
This forced labor generated the idea of slavery or new enslavement, where the International Labor Organization estimated in 2010 that there were approximately 21 million victims of the new enslavement. About 14.2 million people (68%) were exploited in forced labor, while we find that 4.5 million people (22%) were sexually exploited. In addition, 2.2 million people (10%) were subject to forced labor imposed by the State (Gromek- Broc, 2011).

Child labor, especially in begging in particular is one of the forms of trafficking in persons. The new edition of the Global Report on Trafficking in Persons of 2020 has shown that 30% of victims of trafficking in persons in the world within the period from 2016 to 2018 were children, compared to 3% only within the period from 2007 AD until

2010 AD. Countries in Africa and Asia witness the most cases of forced labor. Child trafficking includes recruiting, transferring, and harboring those who are under the age of eighteen for sexual exploitation with the aim of profit, forced labor or order for organ trade, marriage, military conscription or begging, etc., which may affect the normal development of the child's body and mind. Statistics from the International Organization regarding the migration of 2011 indicate that 35% of people who have been trafficked are under 18 years old (Li et al., 2016).

Forms of this crime include providing the women forcibly for forced marriage by marrying one or both parties without their/her free will, without having the right to refuse, in exchange for financial or in-kind compensation to be paid to the family or any other person, or in order to use them for surrogate pregnancy and ovum transfer, or to force them to engage in prostitution or otherwise. The sexual exploitation is more common in Europe and the Americas. The Global Report on Trafficking in Persons 2020 showed that sex trafficking affects the lives of about 4.5 million people in the world, as victims find themselves in situations of coercion and abuse, from which they cannot escape.

Furthermore, one type of human trafficking crime is the extraction and trafficking of human organs and tissues. One type of human trafficking that can take many different forms is organ trafficking. In certain situations, the victim consents to sell one of his organs in return for monetary or in-kind recompense, while in other situations, the victim is coerced into giving up an organ. However, he is not paid according to the agreement, and there are cases in which the person loses one of his body organs without his knowledge during another therapeutic surgery. The groups that are more susceptible to this type of trafficking are migrant workers, homeless persons, and illiterate persons. Organ trafficking is one of the types of organized crime, in which several parties are involved, and it is very profitable due to the long waiting list for organ transplant surgery patients because of the unavailability of the donors. The Global Report on Trafficking in Persons in 2020 indicated that sixteen countries around the world were identified, and in these countries, the organ trade is practiced. Figure No. (4) shows percentages of the most common forms of trafficking in persons, including sexual exploitation, forced labor, criminal activities, and other activities, which include forced marriage, organ removal, sale of infants, etc. (International Labor Organization, 2016).



**Figure 4.** percentages of months of types of exploitation through the trafficking in persons. Source: <https://www.unodc.org> – The researcher designs the figure, and the data is derived from the international report issued by the United Nations Office on Drugs and Crime 2020.

## **Reasons and gravity of human trafficking**

### **A. Reasons for human trafficking**

There are several reasons resulting in human trafficking crimes, which have contributed to the spread of this trade and the expansion of its geographical scope. Through dividing the reasons, the most important of these reasons are highlighted as follows: -

1. The material motive: The material motive behind this type of trafficking and the spread of this phenomenon is evidenced by the size of the merchandising, as it represents the third largest source of profit in the world of organized crime at the international level after the drug trafficking and arms trade (Alqahtani, 2022).
2. Unemployment: Unemployment results in poverty and the inability to secure the income necessary to provide the needed family requirements, which puts pressure on families, so their children are forced to go out to the street in search of work and traffic, especially in illegal businesses.
3. illiteracy: It contributes to a lack of appropriate work, which leads to the employment and trafficking of children, the absence of educational foundations in socialization, and the physical abuse of children.
4. The migration from the countryside to the city: The migration from the countryside to the city is one reason for the deviation. These migrants often encounter high work requirements and competition in the city, which they do not have due to their low education, so it is difficult for them to return as failures. Therefore, they live on the margins of the city, and since most of them are not married, this contributes to their sexual deviation and exploitation by others.
5. Absence of the legislation in some countries, or lack of activating them (Pratt & Treacher, 2002).
6. Gender inequality: the responsibilities lying on the shoulders of children in helping their families, as well as economic openness and increase in consumerism resulting from it.
7. The increase in the number of homeless children and the death of the head of the family, which results in forcing the children to enter into the sex trade, as well as the desire to make a quick profit through self-employment and obtain cash in order to secure the needs.
8. Disintegration and weakness of social ties and relationships: This results in a deficiency and weak role of the family in providing security and care for its children, in addition to the weakness of the religious restraint in the countries exporting this trade, whether they are Islamic or Christian countries, which have an important role in the spread of this illicit trade.

### **B. Gravity of human trafficking**

Human trafficking crimes have a great place in the free world of crime, like the other phenomena and their forms. We mention the most important aspects of the gravity and implications of this type of crime as follows:

#### ***The human trafficking represents a violation of human rights.***

Perpetrators of human trafficking crimes practice illegal methods aiming to make money without regard for the humanity of the victims, exploiting the material and economic conditions the international community and poor countries face, where

they use many means which enable them to practice their criminal operations, and they also violate many rights guaranteed to individuals (Shams-AIDin, 1995).

Human trafficking crimes result in the destruction of social structures, depriving children of their families and relatives, and preventing their natural and moral development. These crimes impede the transmission of cultural values and knowledge from parents to children and from one generation to another, weakening a major pillar of society. Moreover, the victims who return to their communities find themselves stigmatized and outcasts. Therefore, all the state institutions are required to provide continuous social services to them so that they do not tend to commit crimes, indulge in drug abuse, and engage in other criminal activities (Gilani et al., 2022).

### ***Human trafficking supports organized crime and deprives the countries of human resources***

Human trafficking crimes are the third largest criminal enterprise in the world, after drug and weapons crimes. They also have close ties to terrorism. Where organized crime flourishes, the government and its ability to enforce the law are weakened. Moreover, these crimes deprive society of the workforce, which is the primary and influential support for the growth of any industrial, commercial, agricultural, or human society, as the presence of human trafficking operations negatively affects labor markets, which results in a huge and irrecoverable loss of human resources. The most prominent of these effects are low wages and a reduction in the number of individuals available to care for the elderly, the creation of a generation of people with little culture, loss of the ability to earn a livelihood in the future, and depriving the children of education, which reinforces and perpetuates the cycle of poverty and illiteracy affecting the national development in any international community (Eid, 2006).

It must be noted that while the crime of human trafficking occurs on the international stage, it may also occur within the domestic arena of any country. This means that in the international sphere, human trafficking is related to the movement of the victims from their home country to another country or several other countries, regardless of the means used, in order to exploit them illegally. This matter is also related to organized criminal gangs, which may exist in multiple countries. There is a trafficking mafia in countries of supply, i.e., countries exporting victims, and there is a trafficking mafia in countries of demand, i.e., countries importing victims. Between these two types of countries, there may also be a trafficking mafia in transit countries as a communication link between exporting and importing countries.

There may be collaborators of the trafficking mafia in the destination country or intermediaries belonging to them who receive trafficking victims from their home countries (i.e., exporting countries) to facilitate the transporting, harboring, and exploiting the victims in return for obtaining huge profits. (Mattar, 2017).

As for the internal sphere, human trafficking crime may also occur, and there may be multiple forms and patterns of it, which develop very quickly in an upward direction. The victim may be moved from one governorate to another to stay away and hide from the eyes of law enforcement officials to exploit him/her in practicing illegal activities in such governorate. Young children can be kidnapped while they are in early

childhood and transferred to a criminal environment within a single country to exploit them sexually or exploit them in begging activities. (Khadour, 2006).

### **Elements of the human trafficking crimes**

Human trafficking, as defined, comprises three main elements. Firstly, there is the "act," which involves the use, transfer, harboring, or receiving of a person. Secondly, there is the "means," which encompasses threats by force, coercion, kidnapping, fraud, deception, exploitation of vulnerability, or the giving or receiving of money or benefits to gain control over another person. Lastly, there is the "purpose of the act," which pertains to exploitation. This includes various forms such as the exploitation of prostitution, sexual exploitation, forced labor, coercive services, slavery or practices akin to slavery, enslavement, or the removal of organs. These elements delineate the intricate nature of human trafficking and underscore the importance of addressing each component in efforts to combat this egregious crime (Khadour, 2006).

We must take into consideration that the human trafficking crime should be understood as a series of criminal acts so that each of these acts (using, attaching, transporting, harboring, or receiving a person for abuse) constitutes an independent crime; if this act is associated with the abuse, regardless of the means used in committing it. (Al-Minshawy, 2022).

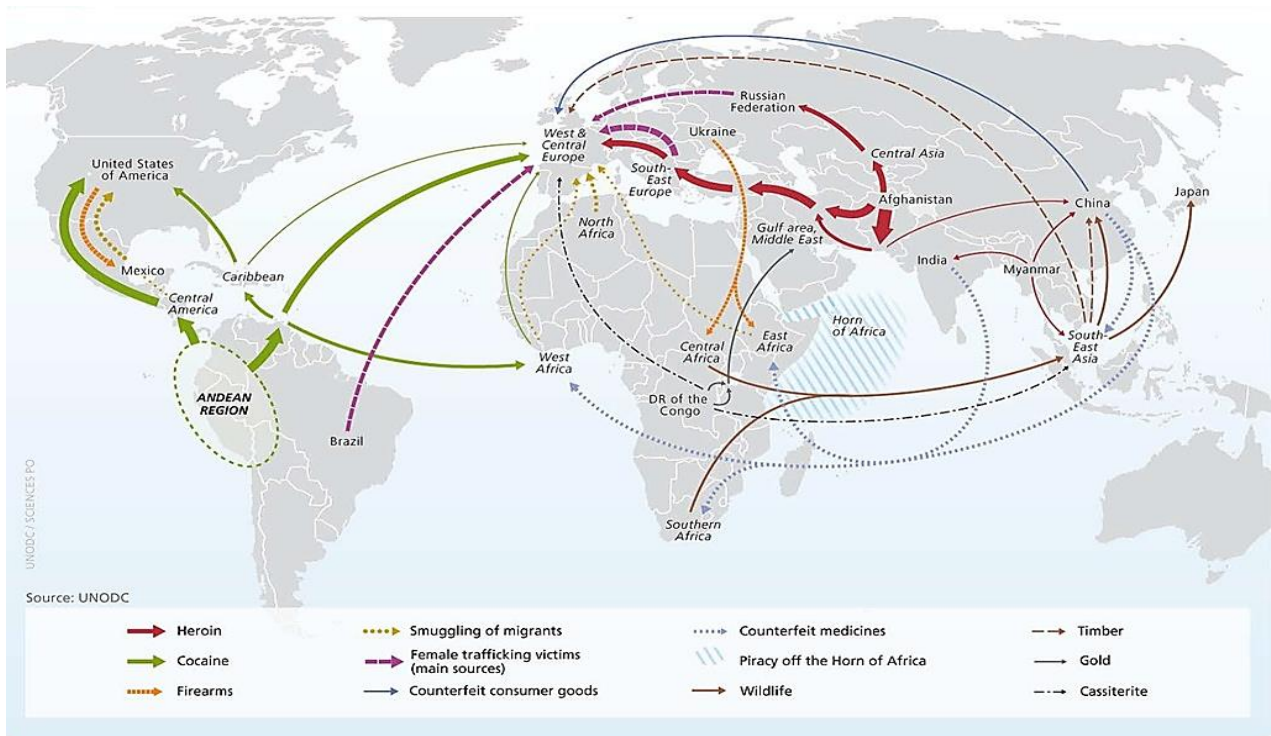
If we review the first element, which includes in its content set of acts representing using, adjoining, transferring, harboring, or receiving the persons, which raises the question, "What is meant by recruiting the persons?) The Saudi Anti-Human Trafficking Law does not include clarification of the meaning of these terminologies, and it does not also include a protocol to prevent, suppress, and punish human trafficking, especially women and children trafficking, supplementing the United Nations Convention against Transnational Organized Crime, in order to explain this term in its statutory aspect, which opens the way for criminal jurisprudence to seek the legal opinion regarding clarification of these terms in their legislative aspect in light of international conventions and their complementary protocols in this field (Al-Hawawsheh, 2016).

### **Saudi lawmakers addressing the crime of trafficking in persons**

The Kingdom's ongoing efforts to combat the crime of trafficking in persons, given that it is considered one of the countries strongly targeted to become a destination country for traffickers and victims of crimes of trafficking in persons. Figure (4) shows the main flows of trafficking in transnational persons, discovered in 2018, according to the General Report on Human Trafficking 2018. 2020 AD.

Based on its adherence to the provisions of Islamic Law (Sharia), which prohibits all forms of insult to human dignity, emphasizes respect for humans and the preservation of their rights, and works to create a supportive legal environment for this matter that helps the country to advance in international classifications of human rights, Committee for Combating Trafficking in Persons in The Human Rights Commission implements many training programs and activities directed to those charged with law enforcement, to discover and monitor cases and issues of trafficking in persons, and to deal optimally with them, and to develop the national capabilities in the field of combating trafficking in persons.





**Figure 5.** The main flows of trafficking in transnational persons

Source: *General Report on Trafficking on Persons 2020 AD - UNODC elaboration of national data*

### The concept of human trafficking in Saudi Law

Due to the seriousness of human trafficking in all its images and forms, Saudi lawmakers were keen to regulate this phenomenon, which occurred lately in Saudi and international societies, as it is one of the criminal phenomena threatening the security and safety of citizens. Consequently, we find that the Saudi lawmaker did not neglect this criminal phenomenon, which is no longer a new matter, but he took a strict stand to confront this phenomenon where Saudi lawmakers worked to regulate a law about it. The Anti-Human Trafficking Law issued by the Royal Decree No. ρ/4 dated 21/7/1430 AH was enacted, and through this Law, the Saudi Lawmaker explained the nature of the human trafficking crime and specific penalties for confronting it. In this light, the Saudi lawmaker enumerated the forms of human trafficking, where he prohibited trafficking in any person in any form. (Nashid, 2003).

### Forms and elements of the human trafficking crimes

Forms of the human trafficking crimes: Receiving the persons means subjugating and using them as a tradable commodity in violation of international laws and customs for exploitation and profit-making, whether the means used are legitimate or illegitimate, and whether committing the crime within the country or across its regional borders (Awad, 1995). This means that these persons, who are victims of the trafficking, are completely subject to the offender and voluntarily carry out the things that the offender asks them to do as a result of his control over them. The offender obtains material benefits in return for exploiting them, even if the offender legitimately brings these victims into the destination country. The recruitment is often made by offering a loan to the victim, the largest part of which is allocated for the victim's family, with the promise of a job that can generate sufficient income to repay the loan and save or start a business when returning home, but all of those hopes vanish when the victim arrives in the country of destination. (Al-Buraimi, 2022).

Consent of the victim of the trafficking in persons for the exploitation is not a matter of concern (Article 5 of the Law) in cases where the offender has used any of the illegal means mentioned in Article (2) of the Saudi Anti-Trafficking in Persons Law, because the role of will does not stop at triggering the criminal behavior, but it is heading towards achieving the result. This trend is supported by a jurisprudential opinion saying that the victim's consent is not important in all cases of human trafficking. This trend also believes that everyone who falls victim to trafficking is a victim and has no choice but to submit. This opinion also confirms that consent is continuously required. The victim may have consented when he was recruited, but this consent is denied and diminished during the subsequent stages of exploitation. (Al-Doghan, 2009).

This first opinion is more worthy of being acceptable, as the trafficking mafia often uses solitude as a means of control or coercion. (Al-Buraimi, 2022). The control herein means the exercise of a restrictive or directive influence on victims of human trafficking, which results in their complete submission to the trafficking mafia. As for coercion, it means the compulsion by use of physical force or threatening to use it, or the use of psychological violence, which leads the victim to fall under the influence of a situation of severe fear, so he/she is motivated to commit illegal acts. (Shiha, 2016). Recruitment of persons: Recruitment is divided into several types, including forced recruitment, completely deceptive recruitment, and partially deceptive recruitment.

It is worth noting that the transfer of victims may take two basic types, namely spatial transfer and professional transfer, referred to as follows: (a) The spatial transfer means moving the victim from one place to another. (b) Professional transfer: It means that the offender transfers the victim from a legitimate profession to an illegitimate profession with the intent of exploitation. For example, the labor recruitment office in certain countries recruits some workers, often women, as domestic servants. After the procedures are completed and they enter the sponsor's home to assume work assigned to them, they may be contacted by intermediaries of the trafficking mafia in an attempt to tempt her with money and quick gain so that they escape from the home her employer and turn to earn money from illegal work. Such as the crime of prostitution. (Mirei, 2016). To sum up, the act may be legitimate at the beginning and meet the legal procedures, and once the victim arrives and enters the destination country legally, he/she may be professionally transferred within that country to practice the illegal acts.

### ***Transposition of the persons***

This means transferring ownership to another person. The basic principle is that humans, by nature, cannot be monopolized, owned, exploited, or sold because they are outside the circle of dealing, and real rights cannot be exercised over them. It should be noted that the personal right of acquisition does not belong to a human being. Therefore, it is unsuitable to be a subject of financial rights and to sell, utilize, or exploit this human being. (Al-Buraimi, 2022).

A jurisprudential trend deems that the term "Transposition of Persons" means the deportation of persons from one place to another within or across national borders, based on the linguistic meaning and because this term is contained in the Statute of the International Criminal Court. Despite this good opinion, and although I appreciate it, I am afraid I have to disagree with this opinion concerning the meaning intended by this term. (Sadiq, 2010).

### ***Receiving the persons***

It means receiving the persons who have been transported or transferred across or within the national borders of the country, where the offender or intermediaries belonging to the trafficking mafia meet and get to know the victims of trafficking in the host country and try to overcome the obstacles hindering their presence in the destination country in terms of residence, food, and drink, to exploit them. (Alsayid, 2008). Harboring is the act of providing a safe haven for the mafia or other connected middlemen to reside in while the victims of human trafficking are in the destination nation, overcoming all obstacles in their path to take advantage of them during that time. Following the preceding, we will briefly review the concept of illegal means associated with acts: coercion, threats, trickery, exploitation of the job or influence, and abuse of power over someone. (Shiha, 2016).

### ***Coercion***

Coercion, a crucial aspect in understanding human trafficking, is classified into two distinct types: physical coercion and moral coercion. Physical coercion involves the exertion of force upon an individual, resulting in the complete absence of the victim's will and compelling them to engage in criminal activities. This form of coercion often involves direct physical force inflicted by another individual, leaving the victim with no choice but to comply. For instance, in the context of human trafficking, a trafficked woman may be subjected to physical coercion, such as threats or violence, to coerce her into engaging in prostitution against her will, with the intention of exploiting her vulnerability.

On the other hand, moral coercion operates through the manipulation or pressure exerted by one individual upon the will of another, compelling them to commit a particular crime. Unlike physical coercion, moral coercion does not completely eliminate the victim's will but rather distorts it, limiting their range of choices and making it difficult for them to resist the pressure. In cases of human trafficking, moral coercion may involve psychological manipulation, emotional blackmail, or threats to coerce individuals into compliance with the trafficker's demands. By understanding the nuances of both physical and moral coercion, we gain insight into the complex mechanisms employed in human trafficking and the challenges faced by victims in resisting exploitation.

### ***Threat***

The threat is considered a means used to pressure the victim's will to force him/her to commit a specific crime. For example, we find that the person subject to the threat could have refrained from committing the criminal behavior, which he/she was ordered to do if he/she accepted to bear serious harm to himself or the soul of others. However, he/she committed the crime under duress because he/she loses the ability to choose, so he/she commits the crime to avoid grave danger (Sadiq, 2010).

The goal of the fraudulent methods was acceptable to the legislator, who did not define the fraudulent methods themselves, leaving that to the legal judgments of jurists and judges. "Every lie or false promise supported by external manifestations, which would mislead the trafficking victim with promise of help to fulfill his needs and requests legitimately" is how we might characterize fraudulent approaches.

The act of taking advantage of one's position or influence is regarded as a separate criminal offense. It is predicated on two elements: the actual or purported influence held by a public authority or an organization under its supervision; and two moral and physical requirements. By taking advantage of their position or influence,

they might inspire other powerful individuals to act in the stakeholder's best interests by showing them that they are appreciated by them. The reason for this admiration could stem from his standing in the community or from a bond or other interaction he has with powerful individuals. (Alsayid, 2008).

In cases of trafficking influence, the act of requesting or accepting a gift is sufficient to fulfill the physical element of the crime, even if the gift itself is not received. The mere solicitation or acceptance of the gift demonstrates the realization of this aspect, regardless of whether the gift is ultimately obtained. However, when it comes to offering a gift to an influential person who rejects it, such action is not considered criminal, as it is not explicitly prohibited by law. Nevertheless, if the intention behind offering the gift is to engage in trafficking influence, then the offense is still deemed to have been committed, even if the offer is declined.

Another form of trafficking influence involves the abuse of power over someone, wherein an individual misuses their authority for purposes other than those specified by law. This occurs when an employee, entrusted with certain powers, utilizes them to pursue objectives that deviate from the public interest designated by the lawmaker. Essentially, this form of abuse occurs when an employee, granted autonomy in decision-making within their jurisdiction, utilizes their authority to further personal or private interests, rather than the broader public good intended by the lawmaker. Thus, when an employee exploits their authority for personal gain or to benefit others, they are considered to have abused their power, thereby committing a form of trafficking influence (Shiha, 2016).

### ***The moral element of the crime***

Human trafficking is classified as an intentional crime, wherein the moral element is rooted in both general and special criminal intents. Special intent is evidenced when the perpetrator seeks to attain a particular objective through their interactions with individuals. This specific intent materializes in any scenario where exploitation occurs, without any constraints or limitations. Whether the aim is to subject victims to forced labor, sexual exploitation, coercive services, or other forms of exploitation, the presence of special intent underscores the deliberate and calculated nature of human trafficking crimes (Al-Minshawy, 2022).

### **A penalty for human trafficking crime**

The law stipulates severe penalties for individuals convicted of trafficking in persons. According to Article 3 of the Law, perpetrators of this crime face imprisonment for up to fifteen years, a fine of up to one million riyals, or both penalties. Additionally, those found guilty of specific offenses outlined in Article 6 of the Law, such as using physical force or intimidation to interfere with judicial proceedings, may face imprisonment for a maximum of five years, a fine not exceeding two hundred thousand riyals, or both penalties. Furthermore, Article 7 of the Law imposes penalties on individuals who fail to report instances of trafficking, with possible consequences including imprisonment for up to two years, a fine of up to two hundred thousand riyals, or both. However, certain individuals, such as parents, children, spouses, siblings, may be exempted from this provision by the competent court. Additionally, the Law authorizes the confiscation of property, tools, and other assets associated with trafficking offenses, as outlined in Article 11. Moreover, the Law mandates the augmentation of penalties under specific circumstances, including when the crime is perpetrated by an organized criminal group, targets women, persons with special needs, or children, involves the use of weapons, or is committed by law enforcement

personnel. Furthermore, transnational crimes or those resulting in serious harm or permanent disability to the victim warrant enhanced penalties, emphasizing the gravity with which the legal system addresses trafficking in persons.

In considerations of personal circumstances within the legal framework addressing human trafficking, certain factors hold significant weight. These circumstances are directly tied to the offender's individual traits, shedding light on the severity of their criminal intent. Comparative legal systems often advocate for heightened penalties when specific capacities or relationships between the offender and victim are present. For instance, Saudi Law dictates that punishments for human trafficking offenses are augmented if the perpetrator holds a particular capacity, such as being a law enforcement employee. This augmentation is grounded in the principle of holding public servants accountable for exploiting their positions, thus potentially facilitating criminal activities (Fontes & Plummer, 2010). Similarly, penalties are increased when circumstances reveal a special relationship between the offender and victim, such as spousal, familial, or guardianship ties, or if the offender exercises authority over the victim. Moreover, the law recognizes circumstances where the victim is vulnerable, such as being a woman, child, or person with special needs, warranting augmented penalties. This approach reflects the lawmaker's intent to afford additional protection to marginalized groups within society, aligning with the broader objective of ensuring justice and safeguarding human rights (Nashid, 2003).

The circumstances that can lead to increased penalties in human trafficking cases can be categorized into concrete circumstances and legal provisions governing participation, attempts, and exemptions from punishment. Concrete circumstances are those directly linked to the act itself or reveal the severity of the crime, such as involving multiple perpetrators or the use of weapons, as outlined in Saudi Law. These aggravating factors are considered due to their potential to weaken the victim's resistance and lead to more severe outcomes. Additionally, if the crime has a transnational dimension, the punishment may also be increased (Eid, 2006).

Regarding legal provisions, the law stipulates that participants and contributors to the crime shall face the same penalties as the perpetrator. Possessing items obtained from the crime or attempting to commit the crime also incur punishment. However, individuals who report the crime before it occurs or assists in preventing it may be exempted from penalties. Furthermore, the law addresses the responsibility of legal entities, imposing fines and possible dissolution for involvement in trafficking crimes.

In the investigation and trial stages, the law ensures that victims are informed of their rights and provided with necessary support, including medical and psychological care. The Kingdom of Saudi Arabia has made significant efforts both domestically and internationally to combat human trafficking. This includes adopting specific laws, strategies, and forming committees to address these crimes effectively. Additionally, joining international conventions and protocols and implementing comprehensive national referral mechanisms demonstrate the commitment to combating human trafficking and protecting victims.

## Conclusion

The Kingdom of Saudi Arabia has made numerous efforts to combat human trafficking crime. The Kingdom was keen to join the conventions and protocols for combating the crime. The Saudi lawmaker developed a specific definition of human trafficking crime, and this definition was influenced by the definitions contained in international conventions. The Saudi lawmaker also determined criminal forms of behavior that represent trafficking in persons and are consistent with the conventions and protocols against the crime of human trafficking. The lawmakers imposed many harsh penalties on criminals and enumerated reasons for the augmentation of the penalty. In addition, lawmakers require that the national judiciary's jurisdiction extend abroad if two nationals are involved as criminals or victims.

We propose that Labour Law stipulates harsh penalties to be imposed on employers who practice forms of forced slavery on their workers. In addition, we propose developing a strict mechanism for monitoring labor recruitment companies. In addition, we propose intensifying efforts to take adequate measures to prevent the smuggling of illegal labor. We also propose launching a national program to make school and university students aware of the dangers and negative effects of this crime on society and forms of implementing it and devoting governmental and community efforts to prevent the smuggling of children across borders and exploiting them. Moreover, we propose making more efforts to combat the phenomenon of child begging, spreading community awareness about the dangers of this phenomenon, establishing a center for rehabilitating victims of human trafficking crimes because of the era of globalization and technology, and creating new forms of committing the crime. The Preventive measures aimed at eradicating this crime from its sources must be considered, including establishing a particular center or entity for receiving reports of human trafficking crimes while maintaining the confidentiality of the informant's information.

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