

Legal Opinion Paper Human Trafficking Prevention Act No. 9 of 2009

Introduction:

Based on the principles of justice and equality, and on the basis of our support and advocacy for all efforts to achieve and establish the highest principles of human rights, and seeking to ensure the correct application of the law and prevent the emergence of the challenges in the application of the law and believing that the crime of human trafficking is an explicit and clear violation of the principles of basic human rights and in the efforts to maintain the dignity of victims. The fight against this crime requires collaboration of all efforts to prevent, suppress and punish human trafficking in all its forms and manifestations and to keep Jordan free of all kinds of this global phenomenon. Through the discussion session that was held with the Combating Human Trafficking Unit, ARDD-Legal Aid makes some observations on the Prevention of Human Trafficking Act No. 9 of 2009 in accordance with international conventions, standards and principles of human rights, which are summarized in the following points:

Name of the Law:

The Name of the Law is not sufficient. The word **prevention** has been provided, however we suggest that it would be better to use the word **combating (Anti)**. This is because the concept of combating includes prevention, suppression and punishment. Importantly, the provisions of the Law, specifically Articles 9 and 10, indicate measures to **combat** human trafficking. To be more reflective of the purpose and aim of the Law and to be in line with international conventions, including Prevention, Suppression, and Punishment of trafficking in persons especially women and children, we propose that the name of the law be amended to become **Anti-Human Trafficking Act**. We further propose that the word **prevention** be deleted and replaced with **combating** wherever it appears.

Article 2 of the Law:

We find that this Article includes some important definitions, which were mentioned in the body of law. Among which is the concept of **forced labor**, and also the definition of **compulsory labor**. We suggest adding the definition of forced or compulsory labor within the provisions of Article 2. We propose setting the following

definition of forced labor as stated in Convention No. 29, namely, ILO Convention on forced labor, where forced labor or compulsory labor is defined as: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

Article 3 of the Law:

In the provisions of Article 3 / a / 1, the phrase " Polarizing people" appears. It can be inferred from the provisions that for a human trafficking crime to occur, and be considered a human trafficking crime under the provisions of the law, it must be committed against more than one person. This is understood from the word **people**, **indicating** two or more persons. Therefore human trafficking is not an individual crime under Jordanian law. In other words, if the crime of human trafficking was committed against one person by some means outlined in the Article itself, this is not considered a human trafficking crime under the Law. Therefore, the law enforcement agencies will encounter an obstacle in the event of a human trafficking crime that has been committed against an individual. Accordingly, we propose to amend the Article provisions and replace the word **people** with the word **one or more persons** so as to read::

"luring, transfer, harboring or receipt of one or more persons for the purpose of exploitation through the threat or use of force or other forms of coercion, abduction, fraud, deception or exploitation of a position of vulnerability or the giving or receiving of payments or benefits to obtain the consent of a person who has control over these people or this person or ...etc"

Article 13 of the Law:

Throughout the provisions of Article 13, it does not take the consent of the victims or those affected by the crime for approval for the purpose of reduction of sentence. However, in order to fulfill justice, it would be more appropriate that the phrase " **if the means set forth by Article 3 / a / 1 are present** " was added, thereby Article 13 of the Law would be in line with the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children**(Article 3 / B of the Protocol).

General observations on the law:

It must be expressly stipulated within the provisions of the Law, regarding the types of human trafficking and the fact that they may be accompanied by other crimes, such as sexual exploitation or threat or abuse, deprivation of liberty, that any provisions or laws that increase the punishment of the crime must be observed; particularly if the crime is associated with other crimes such as sexual exploitation. Therefore it must be linked to the prevention of human trafficking and the Penal Code, such as Article 304 of the Penal Code, which comes under Chapter VII - in crimes against public morality and ethical conduct, Section I- regarding honor, allurements, dissipation, violation of the sanctity of women's places as well as other relevant provisions.

-The crime of human trafficking can be a transnational one, and may be accompanied by smuggling of one or more persons, with the purpose of admitting them illegally into a particular country. However, by reviewing provisions of prevention of human trafficking Law and other related laws, such as the Penal Code Law, there is no provision or article that punishes those persons who undertake such acts with the purpose of trafficking and exploiting victims. Therefore, there must be present legal provisions that impose severe punishments if the offense of human trafficking is associated with illegal cross-border smuggling of victims at the same time as relieving the victims of any penalty for illegal entry, notwithstanding the provisions of any other law.

Within the provisions of the Law there is no mention of how to address attempts at committing the crime of human trafficking. Further, the Provisions of the Law do not provide for anything that indicates the application of any other legal provisions. To rectify this, it would be appropriate to clearly and expressly provide for attempted trafficking within the Law, as in the case of Article 5/2/a of the **Protocol for Prevention, Suppression and Punishment of trafficking in Persons Especially Women and Children.**

Prepared by lawyers of Legal Department