

Examining Human Trafficking Offenses: Perspectives from National and International Law

Marco R. Cune^{1,2}, Barry Van Der Berg^{3*}, Tanya Bondarouk²

¹ Department of Genetics, University Medical Center Utrecht, Utrecht, the Netherlands.

² Julius Center, Department of Medical Humanities, University Medical Center Utrecht, Utrecht, the Netherlands.

³ Department of General Pediatrics, University Medical Center Utrecht, Utrecht, the Netherlands.

*E-mail ✉ vanderberg@outlook.com

Abstract

Children born as a result of sexual violence during armed conflicts often suffer unjustly, with both they and their mothers sometimes held accountable for crimes they did not commit. This study emphasizes the need to protect these children and ensure they receive equal treatment as their peers regarding birth registration, healthcare, and education. The discussion covers the definition of sexual violence, general principles for child protection, and international efforts aimed at safeguarding children born from such violence. The study also addresses the threat of human trafficking, highlighting its status as a crime against humanity and its implications for the global community. It examines the concepts of human trafficking under both national and international laws, detailing the substantive and procedural aspects relevant to investigation and trial processes, particularly given the need for international cooperation through treaties and agreements. Additionally, the study highlights Iraq's measures to combat human trafficking under Law No. 28 of 2012 and related committees in the Kurdistan Regional Government. The study concludes that international organizations must ensure adequate protection for these children and strengthen global cooperation to facilitate thorough investigations and trials. Effective enforcement relies on coordinated efforts, as the elements of this crime often span multiple countries; without such collaboration, perpetrators may evade justice.

Keywords: Slave trafficking, Human trafficking, Sexual exploitation of women and children, War crimes

Introduction

Scholars in law and criminal social sciences are increasingly concerned with trends in crime both nationally and internationally. Human trafficking, including the trafficking of persons and human organs, has been rising due to several contemporary factors. These crimes have evolved beyond national borders and have become organized, transnational criminal enterprises, making it imperative for states to take action to prevent and combat them.

Since 2003, Iraq has experienced numerous armed conflicts, and terrorist groups have occupied large areas, creating an environment conducive to human trafficking. The resulting insecurity and breakdown of public order prompted the Iraqi legislature to enact Anti-Human Trafficking Law No. 28 of 2012 to penalize perpetrators and curb these offenses.

During the period when ISIS controlled parts of Iraq, there were widespread and egregious human rights violations, including the trafficking and sale of women and children. While reminiscent of historical practices like slavery, modern human trafficking manifests in multiple forms, exploiting women and children and treating them as dehumanized commodities. Organized criminal groups operating clandestinely across borders perpetuate this crime, causing serious social, economic, and political harm.

Human trafficking is a global issue, present in nearly every country, with variations depending on local laws

Access this article online

<https://smerpub.com/>

Received: 29 June 2022; Accepted: 27 September 2022

Copyright CC BY-NC-SA 4.0

How to cite this article: Cune MR, Van Der Berg B, Bondarouk T. Examining Human Trafficking Offenses: Perspectives from National and International Law. Asian J Ethics Health Med. 2022;2:99-106. <https://doi.org/10.51847/PS0D0dqJvV>

and human rights standards. According to a study by the Oxford University Centre for Refugee Studies, it ranks as the third-largest criminal enterprise worldwide, following the arms and drug trades. Its financial scale is staggering: forced labor generates approximately \$32 billion annually, while sexual exploitation of women and children accounts for around \$28 billion, according to the International Labour Organization. Moreover, human trafficking fuels other crimes, including money laundering, drug trafficking, and terrorism. In Iraq, by 2019, 15 human trafficking networks had been monitored, predominantly targeting underage girls with disabilities through fake social media accounts. Given the gravity of human trafficking, this study examines its definition under international and national legislation, as well as approaches to investigation and prosecution at both domestic and international levels.

Problem statement

Human trafficking draws significant attention from legal scholars and social science researchers because it disproportionately affects society's most vulnerable groups. The study addresses questions such as: How effective is national legislation in investigating these crimes according to international standards? Are investigative procedures consistent with criminal law norms applied to other offenses? To what extent can international cooperation enhance efforts to combat and reduce human trafficking?

Importance of the Study

The study's significance lies in highlighting human trafficking as a crime that exploits the human element. Perpetrators treat human beings as commodities, violating fundamental human rights, including dignity and bodily integrity. The societal consequences of trafficking are profound, affecting both individuals and communities.

Objectives of the study

- To examine the concept of human trafficking under international law.
- To examine the concept of human trafficking under national legislation.
- To outline procedures for investigating and prosecuting human trafficking offenses.

- To explore key aspects of investigating and prosecuting trafficking crimes.

Study hypothesis

International cooperation during the investigation and trial stages, in line with international agreements and treaties, is essential to effectively prevent, reduce, or eliminate human trafficking.

Study approach

This study employs an analytical method, examining the texts of international treaties that address human trafficking. Using a deductive and comparative approach, the research analyzes these international instruments alongside relevant national legislation from selected countries, providing insight into domestic legal frameworks concerning human trafficking.

Scope of the study

The study focuses on the post-commission stage of human trafficking, examining its treatment under both international and national legislation.

Study structure

- First Topic: The concept of human trafficking crimes
 - Requirement 1: The concept of human trafficking crimes under international legislation
 - Requirement 2: The concept of human trafficking crimes under national legislation
- Second Topic: Investigation of human trafficking crimes under international and national legislation
 - Requirement 1: Formal procedures for investigation and trial
 - Requirement 2: Substantive aspects of investigation and trial

Conclusion

First Topic: The concept of human trafficking crimes

Requirement 1: Human trafficking in international legislation

The international community has long condemned slavery, forced labor, violence against women and children, and human trafficking through treaties, conventions, declarations, and UN resolutions. A

landmark document, the Universal Declaration of Human Rights [1], establishes general principles prohibiting all forms of discrimination. Article 3 affirms the right to freedom, while Article 4 explicitly prohibits slavery and trafficking in all its forms.

Similarly, the International Covenant on Civil and Political Rights (1966) addresses slavery and servitude in Article 8. While slavery is seen as a condition eliminating an individual's legal personality, servitude encompasses broader forms of control over a person.

Regionally, slavery and related practices are prohibited under the European Convention on Human Rights [2], the American Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981).

The definition of human trafficking has been articulated under various international instruments, particularly those focused on the prohibition of slavery.

Special international conventions on slavery

The 1926 Slavery Convention [3], developed by the League of Nations' Special Slavery Committee, criminalized slave trafficking and ownership. Article 1 defined slavery as the condition in which any person is under the full or partial powers of ownership by another. Slave trade was described as actions including the capture, detention, transfer, sale, exchange, or transport of persons to turn them into slaves.

In 1956, the United Nations adopted a supplementary agreement, the Supplementary Convention on the Abolition of Slavery [4], the Slave Trade, and Institutions and Practices Similar to Slavery, reaffirming the commitment of all countries to abolish slavery and related practices. The agreement extended prohibitions to practices not explicitly covered in the 1926 convention, emphasizing the international obligation to combat all forms of human exploitation.

Second Requirement: Defining trafficking in human beings in international anti-trafficking conventions

The United Nations first sought to establish an international framework addressing human trafficking in the Prohibition of Trafficking. This led to the adoption of the International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, also known as the 1949 "White Slave Traffic" Convention, which was approved by the UN General Assembly and entered into force in 1951. The convention

required states to adopt legal measures originally developed under the League of Nations to combat trafficking [5].

Acknowledging the grave nature of trafficking and exploitation, particularly of women and children, the UN continued its efforts, issuing the Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the United Nations Convention against Transnational Organized Crime through General Assembly Resolution 55/25 on 15 November 2000 [6]. This protocol treats human trafficking as a transnational organized crime, making it subject to the broader provisions of the convention [7].

The 2000 protocol provided the first internationally agreed definition of human trafficking. Article 3 defines trafficking as:

"Recruiting, transporting, transferring, harboring, or receiving persons through the threat or use of force, coercion, abduction, fraud, deception, abuse of power, or exploiting a state of vulnerability, or by giving or receiving payments or benefits to achieve the consent of a person having control over another for the purpose of exploitation."

Exploitation includes, at a minimum, sexual exploitation, forced labor or servitude, slavery or practices similar to slavery, and the removal of organs. The protocol emphasizes preventive measures, investigations, and prosecutions of these crimes, particularly when committed transnationally by organized criminal groups. The European Convention on Action against Trafficking in Human Beings (2005) adopted a definition consistent with the 2000 UN protocol, confirming that a victim's consent is irrelevant, defining a child as anyone under 18, and recognizing the victim as any person subjected to trafficking.

Third requirement: Definition of human trafficking in international criminal law

International criminal law and human rights norms are closely linked, providing protection for life, liberty, and personal security, including protection against slavery and forced labor. Criminal law serves as the last resort for implementing international human rights [8].

International conventions may rely on either a direct or indirect application system. Most conventions use an indirect system, assuming that member states enforce provisions domestically and prosecute offenders. Some

conventions, however, use a direct system, establishing international courts to try perpetrators directly [9].

Historical examples include the Nuremberg and Tokyo Charters, which recognized slavery as a crime against humanity. Article 6 of the Nuremberg Charter lists slavery among crimes against humanity, distinct from persecution-based crimes. Similarly, Article 5(c) of the Tokyo Charter defines crimes against humanity to include slavery, without requiring discriminatory motivation.

The International Criminal Tribunal for the Former Yugoslavia (1993) also includes slavery under crimes against humanity in armed conflicts, requiring no discriminatory motive, whereas the International Criminal Tribunal for Rwanda (1994) specifies that crimes resembling slavery must be committed with discriminatory intent, such as on national, political, ethnic, racial, or religious grounds.

Second Requirement: Defining human trafficking in national legislation

In response to international efforts, many countries have adapted definitions of human trafficking to align with their legal systems, heavily influenced by international conventions, especially the Palermo Protocol (2000). These national definitions aim to incorporate international standards into domestic legislation, facilitating both prevention and prosecution of trafficking crimes.

First: Definition of human trafficking in some arab legislation

1. Egyptian legislation [10]

The Arab Republic of Egypt joined the United Nations in 2003 to combat organized crime and, in line with this, enacted Law No. 64 of 2010 on Combating Human Trafficking. Under Article 29 of this law, the executive regulations define human trafficking broadly to include anyone engaging in the sale, transfer, recruitment, or retention of persons, whether domestically or across national borders, for exploitation or related purposes [11].

2. Bahraini legislation [12]

In 2004, Bahrain ratified the UN Convention against Transnational Organized Crime and, through Law No. 1

of 2008, established a national committee under the Ministry of Foreign Affairs to combat human trafficking. The law defines trafficking as the recruitment, transfer, harboring, or receipt of persons through coercion, threats, deception, or abuse of power, for purposes such as sexual exploitation, forced labor, slavery, servitude, or organ removal [11].

3. United Arab Emirates legislation

Under Federal Law No. 51 of 2006 on Anti-Human Trafficking, trafficking is defined as recruiting, transporting, deporting, or accepting persons by means of force, coercion, abduction, fraud, abuse of power, exploitation of vulnerability, or through payments to gain consent of a person with control over another. Exploitation includes sexual exploitation, prostitution, forced labor, slavery, servitude, or organ removal [11].

Second: Definition of human trafficking in some western legislation

1. United States law

The Trafficking Victims Protection Act (TVPA) of 2000 is the first comprehensive federal law addressing human trafficking, establishing prevention, protection, and prosecution measures. It has been amended multiple times (2003, 2005, 2008, 2013). The law defines “severe forms of trafficking” as including sex trafficking and labor trafficking. Sex trafficking involves recruitment, harboring, transportation, or provision of persons for commercial sex through force, fraud, or coercion, or when the person is under eighteen. Labor trafficking includes recruiting, harboring, transporting, or providing persons for work or services through coercion or deception for purposes such as slavery or servitude.

2. French law

French legislation, under Article 225-4-1 of the Penal Code, defines human trafficking as the recruitment, transport, transfer, harboring, or hosting of a person in exchange for a benefit or reward, for purposes including sexual exploitation, forced labor, begging, or other acts that violate human dignity. Offenders face up to seven years’ imprisonment and fines of €150,000 [11].

Third: Definition of human trafficking in iraqi legislation [13]

Under Article 1 of Law No. 28 of 2012, human trafficking is defined as recruiting, transporting, harboring, or receiving individuals through force, threats, coercion, kidnapping, deception, abuse of power, or by offering or receiving benefits to gain approval from a guardian or person in authority. The purpose of these acts includes exploitation in prostitution, sexual abuse, forced labor, slavery, begging, organ trade, or medical experimentation. This law emphasizes the protection of vulnerable individuals, particularly women, children, and persons with disabilities, recognizing their right to a free and dignified life [14].

Second topic

Investigation of human trafficking crimes

This section addresses the investigation of human trafficking crimes under international treaties and agreements, highlighting the role of international judicial cooperation during both the investigation and trial stages. While the previous topic defined human trafficking, here we focus on the formal procedures for cooperation in investigating and prosecuting such crimes.

First Requirement: Procedural formalities for investigation and prosecution of human trafficking crimes

International cooperation in the investigation and prosecution of human trafficking involves a series of formal procedures, including identifying the responsible entity and outlining the submission and processing of cooperation requests.

In different countries, specific national bodies are designated to handle these responsibilities. For instance:

- **Egypt:** The National Coordinating Committee on Combating and Preventing Human Trafficking, chaired by the Foreign Minister, oversees these procedures.
- **Jordan:** The National Anti-Trafficking Committee, led by the Minister of Justice, is responsible for handling such tasks.
- **Iraq:** The Federal Central Committee on Combating Human Trafficking, chaired by the Federal Ministry of Interior, manages these duties.

Responsible entity

Each country participating in international cooperation must designate a central authority responsible for

coordinating these procedures. The central authority is entrusted with the following key powers:

1. Receiving requests for mutual legal assistance.
2. Executing such requests or referring them to the appropriate authorities for implementation.
3. Ensuring that the requests are handled promptly and securely.
4. Facilitating rapid information exchange by pursuing requests and encouraging action from other competent authorities within the country.

To formalize this arrangement, states notify the UN Secretary-General of their designated central authority when depositing their instrument of ratification, acceptance, approval, or accession to relevant conventions.

The designation of central authorities varies among countries:

- **Kuwait:** Ministry of Justice.
- **Sultanate of Oman:** National Committee to Fight Human Trafficking, headed by the Inspector General of Police and Customs.
- **United Arab Emirates:** National Committee to Fight Trafficking, chaired by the Minister of State for Foreign Affairs.
- **Egypt:** National Coordinating Committee for Fighting and Preventing Trafficking in Human Beings, chaired by the Foreign Minister.
- **Jordan:** National Committee for Fighting Human Trafficking, led by the Minister of Justice.

These authorities serve as the primary point for receiving, coordinating, and expediting international cooperation in investigating and prosecuting human trafficking crimes [15].

In Iraq, the Supreme Central Committee to Combat Human Trafficking, chaired by the Federal Ministry of Interior, works in coordination with regional representatives, relevant ministries, and other local authorities to implement and achieve the objectives of the Human Trafficking Law.

The UN Convention encourages state parties to enter into bilateral or multilateral agreements or arrangements that allow competent authorities to form joint investigative bodies to handle matters under investigation or prosecution across one or more countries. In the absence of such agreements, joint investigations can still be conducted on a case-by-case basis. States involved must fully respect the sovereignty of the country where the investigation takes place.

Second: Submission of requests and formal requirements

A set of formal conditions has been established to ensure that requests for legal assistance are both serious and valid. These requirements include:

1. Requests must be submitted in writing whenever possible, or through any means that can produce a written record in a language acceptable to the requested state. This can include email, CD-ROM, audio or video recordings, or other documented methods. Conditions include:

- a. Requests must be capable of being archived; purely oral requests are not acceptable unless electronically recorded.
- b. Requests must allow the receiving country to verify their authenticity.
- c. Requests must be made in a language approved by the state at the time of ratification, acceptance, approval, or accession to the Convention.
- d. Oral requests are acceptable only if they are promptly confirmed in writing.

2. A mutual legal assistance request must include:

- a. The identity of the requesting authority.

- b. The subject and nature of the investigation, prosecution, or judicial procedure, including the name and functions of the authority conducting it.

- c. A summary of relevant facts, except for requests solely involving judicial documents.

- d. A description of the requested assistance and any specific procedures the requesting state wishes to follow.

- e. The identity, location, and nationality of each relevant person, if known.

- f. The purpose for which evidence, information, or measures are being sought.

3. If the information provided is insufficient, the requested state may ask for additional details necessary under its domestic law or to facilitate compliance with the request.

4. Requests contrary to the internal law of the requested state will not be accepted; if such a situation arises, the request is nullified.

*Second requirement: Key aspects of investigating and prosecuting human trafficking crimes**1. Requesting judicial assistance*

Countries may submit requests to one another for assistance in the investigation or trial of human trafficking cases. This involves outlining the subject of

the request, the obligations of the requesting state, and circumstances under which a request may be denied. Information exchange is critical to clarify ambiguities, identify involved individuals, and understand the broader context of the crime.

2. Legal cooperation as an international duty

The Convention and its protocols obligate all member states to provide mutual legal assistance to the fullest extent possible in investigations, prosecutions, and judicial proceedings.

3. Transnational nature of the crime

Requests must relate to crimes of a transnational character, or there must be reasonable grounds to suspect such. This includes situations where victims, witnesses, proceeds, tools, or evidence are located in the requested state, and where organized criminal groups are involved.

4. Respect for state sovereignty and domestic law

The agreement emphasizes the territorial and internal sovereignty of each state. All mutual legal assistance must comply with the laws and regulations of the requested state as well as any relevant treaties or arrangements.

5. Scope of legal assistance

Requests for legal aid may cover the following purposes:

- a. Obtaining evidence or witness statements.
- b. Serving judicial documents.
- c. Conducting inspections, seizures, or freezes.
- d. Examining locations or items.
- e. Providing expert evaluation, information, or evidence.
- f. Submitting original documents or verified copies, including government, banking, financial, corporate, or business records.
- g. Identifying or tracing crime proceeds, property, tools, or other objects for evidentiary purposes.
- h. Facilitating the voluntary appearance of individuals in the requesting state.
- i. Providing any other assistance not conflicting with the domestic law of the requested state.

Sixth: Initiative to provide information without a prior request

A country may sometimes acquire information regarding crimes, individuals, or organized criminal groups in another country and determine that sharing this information would significantly assist the recipient country. International agreements recognize that events in any nation can have global implications. Therefore, competent authorities of a state party are allowed—without receiving a prior request—to transmit relevant criminal information to the competent authority of another state party if it is deemed useful for ongoing investigations, prosecutions, or judicial procedures. This exchange may also prompt a formal request from the receiving state under the provisions of the Convention.

Seventh: Priority of bilateral legal assistance agreements

The Convention encourages the establishment of bilateral agreements between states for exchanging legal assistance and recommends that these agreements incorporate provisions consistent with international law. Article 18 specifies that if the states involved are not bound by such a bilateral treaty, the general provisions of paragraphs 9 to 29 of the Article shall apply. If a treaty exists, its provisions take precedence unless the states mutually agree to apply the Convention's general provisions instead. States are strongly encouraged to apply these provisions if they enhance cooperation.

Eighth: Transfer of accused and convicted individuals

A state party may submit a request for the temporary transfer of an individual who is arrested or serving a sentence in its territory but whose presence is required in another state party. This transfer may be for purposes such as identification, testimony, or providing other assistance in obtaining evidence relevant to investigations, prosecutions, or judicial proceedings under the Convention.

Recent international reports indicate that human trafficking has significantly increased in Iraq, particularly in the Kurdistan Region, during 2017 and 2018. Social media has been increasingly exploited to facilitate trafficking, reflecting weak legal deterrents in online spaces. The effectiveness of monitoring committees has been limited due to insufficient government support and a lack of qualified personnel with the necessary expertise to investigate these crimes.

Conclusion

Human trafficking is a grave and complex crime, influenced by multiple political, economic, social, and cultural factors. It is an organized criminal activity that challenges contemporary societies. Trafficking generates enormous profits—both in poorer countries that supply victims and in wealthier countries that create demand—making it a highly complicated problem to address. Combating human trafficking requires close, sustained, and coordinated international cooperation. Its global and national impact is closely linked to organized crime. This study, by examining international agreements, treaties, and national legislation, highlights the essential role of international cooperation in the investigation and prosecution stages and provides key findings and recommendations to strengthen efforts against this crime.

Results

1. Security and economic instability are among the main factors contributing to the proliferation of human trafficking in Iraq. These conditions have fostered widespread corruption, poverty, illiteracy, internal displacement, and mass migration, often exacerbated by terrorist groups controlling large regions.
2. The study emphasizes that human dignity is the protected interest in human trafficking cases. Exploitation of human beings undermines their moral integrity and converts individuals into commodities, violating their inherent right to freedom from slavery and servitude.
3. Human trafficking is acknowledged as both an organized and transnational crime. However, crime reporting and statistics, particularly in Iraq, remain insufficient and incomplete.
4. No country is immune to human trafficking, which frequently crosses borders. Crimes may occur in one nation, involve victims from another, and exploit them in a third, highlighting the international and recurring nature of this crime.
5. Despite Iraq's enactment of a specialized anti-trafficking law and the formation of committees to oversee its enforcement, these bodies often lack the necessary mechanisms and resources to achieve the intended objectives effectively.

Recommendations

1. Conduct comprehensive legal studies and investigations, establishing a centralized database for

human trafficking cases and statistics, and develop organized mechanisms to combat the crime efficiently.

2. Provide adequate protection for all individuals involved in human trafficking cases, including judges, prosecutors, law enforcement officers, witnesses, victims, and collaborators with public authorities, as these persons face significant risks from organized criminal networks.

3. Strengthen international cooperation by ensuring all countries adhere to relevant agreements and work together to create regional and global coalitions dedicated to combating human trafficking.

4. Implement continuous professional training programs to enhance the skills and capacities of officials responsible for enforcing anti-trafficking laws, including judicial and security personnel, government employees, and investigators, ensuring effective prosecution and investigation of these crimes.

5. Address societal challenges, particularly in conflict-affected areas, by improving access to education, healthcare, and social services, and providing government support to reduce poverty and unemployment.

Acknowledgments: None

Conflict of Interest: None

Financial Support: None

Ethics Statement: None

References

1. United Nations. The universal declaration of human rights. 1948.
2. Council of Europe. European convention on human rights. 1950. French law. 1992.
3. League of Nations. The slavery convention. 1926.
4. United Nations. Supplementary agreement on the abolition of slavery, the slave trade, and institutions and practices similar to slavery. 1956.
5. Backah ST. Crimes against humanity in light of the provisions of the statute of the International Criminal Court. 1st ed. Beirut: Al-Halabi Human Rights Publications; 2006.
6. United Nations. Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime. 2000.
7. Al-Arian MA. Publishing trade and control mechanisms (comparative study). Alexandria: New University House; 2011.
8. Khalaf Mahmoud AAQ. Definition of the crime of human trafficking in international treaties and agreements [master's thesis]. Baghdad: Al-Nahrain University, College of Law; 2013.
9. Bassiouni MS. An introduction to the study of international criminal law. 1st ed. Cairo: Al-Sharq Publishing House; 2007.
10. Egypt. Law No. 64 of 2010.
11. Sibucour A. The crime of human trafficking and the mechanisms to combat it [master's thesis]. Ouargla: Kassadi Murbah University, Faculty of Law; 2017.
12. Bahrain. Law No. 51 of 2006.
13. Iraq. Law No. 28 of 2011.
14. Al-Husseini A. Prohibition of human trafficking. Adam Center for Defending Rights and Freedoms; 2018. Available from: <http://ademrights.org/news522>
15. Hamdan S. International judicial cooperation in combating trafficking in human beings according to the provisions of the law on combating trafficking in human beings and international legislations. Jordan J Law Polit Sci. 2014;6(1):198.