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September 2010

Human Trafficking: Iraq - A Case Study

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HUMAN TRAFFICKING: IRAQ – A CASE STUDY

Ali Allawi

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Summary/Abstract

This paper explores the issue of human trafficking and sexual exploitation in postwar Iraq. I will attempt, in three steps to firstly identify the issue of human trafficking and how it pertains to Iraq, secondly to examine Iraq's international legal obligations to address the human rights violations and human trafficking issues, and lastly, recommend implementable solutions that the Iraqi government can take to meet its international obligations and remedy the problem at hand.

Iraq faces a growing problem with human trafficking to other Middle Eastern countries for sexual and labor exploitation of women, minors, and males. Some women and even under aged girls are reportedly trafficked from rural areas to cities within Iraq itself. There are reportedly thousands of Iraqi women trafficked and working in prostitution industries in surrounding Arab countries like Syria and Jordan and other countries like Yemen.¹

The Iraqi Constitution prohibits forced labor, kidnapping, slavery, slave trade, trafficking in women or children, and sex trade.² The Government of Iraq (GOI) has ratified a host of United Nations Conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") but has not done much beyond that. Iraq has not passed anti-trafficking legislation, allowing traffickers to continue to operate with impunity. Primarily, Iraqi women and girls are being subjected to four primary types of trafficking: 1) exploitation of prostitution or other forms of sexual exploitation; 2) forced labor or services; 3) slavery or practices similar to slavery; and 4) servitude.³ In Iraq, measuring the scope of trafficking is far more difficult. However, there is ample evidence of established patterns and practices of trafficking, leading to a strong likelihood that hundreds of women have been

¹ United States Department of State, Trafficking in Persons Report 162, 2009.

² Iraqi Constitution, art. 22-44 (Iraq).

³ Trafficking in Persons Report, *supra* note 1.

trafficked over the last five years in the Kurdistan region, and thousands elsewhere in Iraq and in neighboring regions.

Once the problem is diagnosed and the scope has been determined, the problem in Iraq does not end at legislation, in fact that is where it actually begins. I will attempt to demonstrate how legislation is often times ineffective without proper will by the government to enforce such legislation. I will show Iraq's track record of progressive legislation that, in its attempt to meet international obligation, has not been enforced beyond the publishing of the law in the government's Official Gazette. From this point, it will be important to understand the Iraqi history, legal system, social structure, and cultural standards that all play a role not only in legislation, but also in enforcement of any progressive legislation. It will thus be imperative that in order to have a chance at enforcement, legislation will need to take into account all the aforementioned factors in order for it to succeed post publication in the Gazette.

I. Human Trafficking:

a. History

The history of human trafficking has its roots in ancient slavery and slave trade where affluent people kept slaves for physical pleasure or manual labor.⁴ The British, for example, started the African slave trade.⁵ Although in 1807 the British parliament banned slave trade and slavery was banished from the colonies thereafter, human trafficking and slave trade had made many people rich and economies of certain colonies and nations were built by these slaves.⁶

⁴ Free Legal Advice, *The History of Human Trafficking and Slavery*, <http://www.freelegaladvicehelp.com/criminal-lawyer/trafficking/History-Of-Human-Trafficking-And-Slavery.html> (Last visited Apr. 20, 2010).

⁵ Id.

⁶ Id.

This paved the way for white slavery, which was commonly used to describe all forms of prostitution, both licensed and coerced.⁷

White slavery targeted women and children who were sexually exploited and abused.⁸ This became an international problem with women and children being trafficked and sold as sex slaves to rich owners, who invariably used them and then relegated them as bonded slaves to work for them.⁹ Post WWII countries started making a renewed effort to curb trafficking. Countries started taking human trafficking seriously and efforts were made to control sex tourism in Southeast Asia for example, and prevent the trafficking of women and girls from poor countries to North America and Western Europe.¹⁰ With the fall of the Iron Curtain, girls, women and children from Eastern Europe were trafficked into Western Europe forcing countries to once again renew their efforts to stop the slave trade.¹¹

b. Human Trafficking: Today

The global problem of human trafficking spans slavery and servitude and has become one of the most lucrative transnational crimes after the illicit trade in drugs and arms.¹² The United States Department of State estimates the global problem of human trafficking affects 800,000 persons.¹³ Victims of trafficking are often vulnerable and are targeted due to their gender, poverty, and lack of social and political power.¹⁴ Trafficking comes in many different forms,

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Free Legal Advice, *supra* note 5.

¹¹ Id.

¹² Sherizaan Minwalla & Scott Portman, *Human Trafficking in Iraq: Patterns and Practices in Forced Labor and Sexual Exploitation*, 5, (Heartland Alliance Heartland Alliance)

¹³ Trafficking in Persons Report, *supra* note 3. Estimates however widely vary. For example, the UNICEF and IOM estimate approximately 2.5 million persons trafficked annually in 2003.

¹⁴ Minwalla & Portman, *supra* note 12, at 6. (Stating that those living in conflict and post conflict situations find themselves especially vulnerable to human trafficking due to the rise in crime and the breakdown in law and order resulting in impunity for perpetrators.)

affects individuals from around the world, and occurs in diverse sectors of the labor market, including within the institution of marriage.¹⁵ Some traditional and long recognized forms of trafficking include Chattel slavery, debt bondage and forced labor.¹⁶ As organized crime gangs have begun operating sophisticated transnational trafficking operations, and the international community has become more sensitized to special risks and vulnerabilities of women and children, the definition of trafficking has expanded to include many forms of gender violence which were not initially recognized by mainstream policy makers as “slavery” or “trafficking.”¹⁷

In Iraq today, a great majority of victims of trafficking were initially forced into labor or prostitution by family members and then fell under third party criminals.¹⁸ Others are kidnapped by criminals or forced into marriage to someone in a foreign country and then legally sent to be with him, only to be forced into labor and illegal activities.

c. Definition of Human Trafficking

The most recent and concrete definition is that advocated by the Palermo Protocol, a trafficking protocol adopted by the United Nations in 2000. The Palermo Protocol defines human trafficking as the:

“recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power of a position of vulnerability or of the giving and receiving of payments or benefits to achieve the consent of a person having control over another person, for purpose of exploitation.”¹⁹

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 5 (the recent paradigm shift includes forced marriage, prostitution and domestic servitude within the definition of trafficking.)

¹⁸ Rania Abouzeid, *Iraq's Unspeakable Crime: Mothers Pimping Daughters*, <http://www.time.com/time/world/article/0,8599,1883696,00.html> (Last visited Apr. 20, 2010)

¹⁹ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: Supplementing the UN Convention against Transnational Organized Crime, art. 3, Dec. 25, 2003.

Thousands of women, men and children fall under the control of traffickers in countries where they visit, countries they are smuggled to, or in their own countries.²⁰ Every country in the world is affected by trafficking, whether as a country of origin, transit, or destination for victims.²¹ Article 3 of the Protocol further defines exploitation to include, at minimum, prostitution or other forms of sexual exploitation of others, forced labor, or services, slavery or practices similar to slavery, servitude or the removal of organs.²²

The United Nations identifies basic principal elements of the protocol's definition that constitute trafficking in persons. Those are the act, the means, and the purpose. The act focuses on what is done, such as recruitment, transfer, transportation, or harboring or receipt of persons.²³ The means focuses on how it is done, such as threat or use of force, coercion, abduction, fraud, or giving benefits to a person in control of the victim.²⁴ And lastly, the purpose focuses on why the act is done, such as the purpose of exploitations, which includes forced labor, slavery, prostitution, and other practices such as removal of organs.²⁵ Thus in defining whether trafficking has taken place, these core elements must be established in classifying the activity as trafficking.

d. Country Classification

The United States State Department (DoS) issues a Trafficking in Persons Report which creates a study of the current situation of trafficking activities around the world and classifies countries by a tier system. The tier system includes an assessment of a government's compliance

²⁰ United Nations Office on Drugs and Crimes, UNODC, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menu> (last visited Apr. 20, 2010)

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

with the minimum standards for the elimination of trafficking and includes suggestions for additional government actions.²⁶ The report also includes an assessment of each government's efforts to enforce laws against trafficking, to protect victims, and to prevent trafficking.²⁷ The tier system is divided into four main tier categories: Tier 1, Tier 2, Tier 2 Watch List, and Tier 3.

The placement is based more on the extent of government action to combat trafficking than on the size of the problem. Thus this is more of a government action classification than that of an on-the-ground existing situation. Governments that fully comply with minimum standards for the elimination of trafficking are placed in Tier 1 group.²⁸ Governments that are making significant efforts to meet the minimum standards are placed on Tier 2.²⁹ Governments that do not comply with minimum standards and are not making significant efforts to do so are placed on Tier 3.³⁰ DoS also considers a special watch list criteria, the Tier 2 Watch List. The Department looks at three factors in determining whether a country is a Tier 2 Watch List or a Tier 3 country. Those are (1) the extent of which the country is a country of origin, transit, or destination, (2) the extent to which the country's government does not comply with minimum trafficking standards, and (3) the government's resources and capabilities to address and eliminate severe forms of trafficking.³¹ This is important for the current analysis because it assists in determining what destination countries for trafficked Iraqi persons have done, if anything, to reduce the trafficking problem.

Human trafficking is an international problem with a flourishing and profitable industry. The International Labor Organization (ILO) estimates that the total illicit profits produced in one

²⁶ Trafficking in Persons Report, supra note 3, at 11.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 48.

³¹ *Id.*

year by trafficked forced laborers are estimated to be around \$32 billion.³² Globally, this represents an average of approximately \$13,000 per year for each forced laborer. It is thus a highly lucrative business that can further flourish in the absence of legal infrastructure to prevent, suppress and prosecute such illegal activity. Although Iraq has signed on to many international treaties that may indirectly address this issue, it has yet to develop the legal framework to address the trafficking problem within its borders and prevent spillage into destination countries.

II. International Law

In an overarching crystallization of international norms, the Universal Declaration of Human Rights (UDHR), the founding document of international human rights law, has come to be considered as an authoritative interpretation of fundamental human rights.³³ UDHR was adopted by the UN General assembly in December 1948. The Declaration strives to achieve a common standard of recognition and understanding of human rights issues for all people and all nations.³⁴ It entitles everyone to all of the rights and freedoms set out in the declarations and without discrimination.³⁵ This umbrella set out by UDHR helped create the foundation for which many future conventions, treaties and protocols relied upon in their addressing of human rights. Such issues include, inter alia, social and cultural rights, civil and political rights, the elimination of all forms of discrimination, racial and against women, and rights of children.

³² ILO Global Alliance Against Forced Labor; http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf, (last visited 4/18/2010).

³³ The UDHR's provisions have been almost universally applied through state practice through the embodiment of its provisions in national laws, constitutions and international and regional conventions. It is broadly, although not universally, accepted that the UDHR has assumed the status of customary international law. A customary norm is considered binding on all states except those who have expressly disavowed it during the course of its development.

³⁴ Universal Declaration of Human Rights, <http://www.ohchr.org/en/udhr/pages/introduction.aspx> (last visited Apr. 20, 2010).

³⁵ *Id.*

There is a wide array of conventions, treaties and protocols that address human trafficking and its variations. The most direct convention that focuses on trafficking is the UN Convention against Transnational Organized Crime that produced the Palermo Protocol (Trafficking Protocol). Other conventions include Convention on the Elimination of All forms of Discrimination against Women (CEDAW), Convention against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment (CAT) as well as the Convention on the Rights of the Child (CRC).

- a. UN Convention against Transnational Organized Crime: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol)³⁶

The Convention is the main international instrument in the fight against transnational organized crim.³⁷ The Trafficking Protocol, one of the conventions supplements, is the first global legally binding instrument with an agreed definition on trafficking in persons.³⁸ The intention behind the definition is to facilitate convergence in national approaches regarding the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases.³⁹

³⁶ UNODC – Human Trafficking and Migrant Smuggling, <http://www.unodc.org/unodc/en/human-trafficking/index.html> (last visited Apr. 20, 2010)

³⁷ UN Convention Against Transnational Organized Crimes, <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>, (Adopted by Resolution 55/25, it opened for signature by Member States in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003. The convention is supplemented by three protocols that target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (entered into force 25 December, 2003); the Protocol against the Smuggling of Migrants by Land, Sea, and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in firearms, their Parts and Components and Ammunition) (last visited Apr. 20, 2010)

³⁸ *Id.*

³⁹ *Id.*

Article 5 of the Protocol requires that the conduct set out in Article 3 be criminalized in domestic legislation.⁴⁰ Domestic legislation does not need to follow the language of the Protocol precisely, but should be adapted in accordance with domestic legal systems to give effect to the concepts contained in the protocol.⁴¹ Additionally, the Protocol pushes for criminalizing behavior such as attempts to commit trafficking offenses, accomplice participation in trafficking offenses, and also attempts to reach those that mastermind, organize or direct such trafficking operations.⁴²

b. United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁴³

The CEDAW is an international convention adopted in 1979 by the UN General Assembly. It is described as an international bill of rights for women; it came into force on 3 September 1981. While not strictly concerned with trafficking of women, it helps establish a framework to understand and establish concrete women's rights in societies of ratifying countries. This is important in evaluating the track record of the legislative framework and mindset that Iraqi politicians and society at large have demonstrated towards women over the last few decades. The Convention is distinguished from other international treaties by its expansive and comprehensive definition of discrimination against women.⁴⁴

⁴⁰ Human Trafficking, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuaside> (last visited Apr. 20, 2010).

⁴¹ *Id.*

⁴² The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: Supplementing the UN Convention against Transnational Organized Crime, art. 5, Dec. 25, 2003.

⁴³ UN Convention on the Elimination of All Forms of Discrimination against Women, art. 1, Sep. 3, 1981, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1> (last visited Apr. 20, 2010).

⁴⁴ Iraq Legal Development Project, *The Status of Women in Iraq: Update to the Assessment of Iraq's De Jure and De Facto Compliance with International Legal Standards*, 56, Dec. 2006 (Article 1 of CEDAW defines discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field)

Iraq approved and acceded to CEDAW, with reservations, in August 1986.⁴⁵ Iraq's reservations stated that Iraq is not bound by the provisions of article 2, paragraphs (f) and (g) (which relate to the taking of all appropriate measures to abolish laws which constitute discrimination against women); of article 9, paragraphs 1 and 2 (which relate to nationality); and of article 16 (which relates to marriage and family relations).⁴⁶ Iraq's new Constitution has addressed the nationality issues and thus their reservations should be withdrawn.⁴⁷ The CEDAW Committee has expressed concern at the government's justification for the reservations of Article 2 and 16 as being based on its desire to apply those provisions of the Convention in a manner consistent with Islamic Sharia.⁴⁸ The committee pointed out that articles 2 and 16 are central to the object and purpose of the convention. Additionally, the Vienna Convention on the Law of Treaties dictates that a State Party cannot reserve to articles that are central to the object and purpose of an instrument.⁴⁹ CEDAW Committee has called on the Iraqi government to modify or withdraw the reservations as soon as possible to ensure full implementation of the convention.⁵⁰ The issue has not been resolved to this day.

⁴⁵Ratification Status of CEDAW, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en, (Iraq has not ratified the Optional Protocol to CEDAW which entered into force on December 22, 2000 as means for enforcing and strengthening the rights delineated in CEDAW. The optional protocol provides two optional mechanisms for holding State Parties accountable for CEDW obligations: a communications procedure, which provides individuals and groups with the right to lodge complaints with CEDAW Committee; and an inquiry procedure, which enables the CEDAW Committee to conduct investigations into serious and systematic abuses of women's rights) (last visited Apr. 20, 2010).

⁴⁶ Id.

⁴⁷ The reservations remain on the UN website as of Apr. 20, 2010.

⁴⁸ Committee on the Elimination of Discrimination Against Women, Concluding Observations: Iraq (2000), paragraph 186.

⁴⁹ Vienna Convention on the Law of Treaties, Art. 19(c). May 23, 1969, U.N. Doc. A/CONF/39/27.

⁵⁰ Committee on the Elimination of Discrimination Against Women, Concluding Observations: Iraq (2000), paragraph 188.

c. Other International Conventions

- United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.⁵¹

The CAT Convention is an International Human rights instrument, under the review of the UN HCHR which aims to prevent torture around the world. CAT effectively requires states to take measures to prevent torture within their borders. According to the UN General Assembly's National Report on Human Rights, Iraq has completed the domestic formalities for ratification of CAT and is in the process of depositing the instruments for ratification.⁵² This is another example of Iraq's willingness to rise up to international obligations. While CAT's definition of torture has elements that could fit elements under trafficking, the definition includes "inflicted by or at the instigation or ... of a public official" which primarily concerns state actors.⁵³ There is no reported evidence that the Iraqi government has participated in any capacity to assist in trafficking of persons. Given that Iraq is not bound by CAT and lack of connection to trafficking at this time, CAT will not be addressed as part of this report.

- United Nations Convention on the Rights of the Child (CRC)⁵⁴

The UN CRC is an international convention setting out the civil, political, economic, social and cultural rights of children. Nations that ratify this international convention are bound to it by international law. Compliance is monitored by the UN Committee on the Rights of the Child

⁵¹The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Jun. 26, 1987, <http://www2.ohchr.org/english/law/cat.htm> (last visited Apr. 20, 2010).

⁵²The General Assembly, *National Report Submitted in Accordance with Paragraph 15(a) of the annex to Human Rights Council Resolution 5/1, Iraq*, U.N. Doc. A/HRC/WG.6/7/IRQ/1 http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IQ/A_HRC_WG.6_7_IRQ_1_E.pdf (last visited Apr. 20, 2010).

⁵³Convention Against Torture, art. 1, *supra* note 31 (defines torture as "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity)

⁵⁴Convention on the Rights of the Child, <http://www2.ohchr.org/english/law/crc.htm> (last visited Apr. 20, 2010).

(CRC) which is composed of members from countries around the world.⁵⁵ Iraq acceded to CRC in 1994 as well as its two optional protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, both in 2007.

d. Iraq's De Jure and De Facto Compliance

The Government of Iraq is under tremendous pressure to improve the domestic situation, particularly with regards to improving security and economic recovery. There is added pressure, of not only recognizing certain conventions, but also abiding by them. In doing so, Iraq has to attempt to meet both, de jure and de facto compliance. De jure compliance refers to matters of law and legal frameworks that include domestic laws, regulations, and setting up the requisite organizations that carry out matters of law. De facto compliance refers to matters of practice, and in particular to the implementation of de jure compliance and examines the situation on the ground as it exists. It also considers economic and social factors that affect the specific condition.⁵⁶ De facto in essence is where the rubber meets the road. De jure compliance, while not easy, can be a set of formalities and plans to address a problem. The difference can be embodied by an example of constructing a structure, de jure is the planning phase and de facto is the implementation phase. Both are very difficult, but as we will see, due to the fact that the international community and international law have had extensive experience in setting up international standards, de jure compliance for Iraq is comparatively simpler than de facto compliance.

⁵⁵ Convention on the Rights of the Child, <http://www.crin.org/resources/treaties/CRC.asp?catName=International+Treatie> (last visited Apr. 20, 2010).

⁵⁶ <http://www.merriam-webster.com/dictionary/defacto> (last visited Apr. 20, 2010).

- Iraq's De Jure Compliance

The first positive sign for Iraq is that Iraq's new Constitution, passed in 2005, specifically prohibits forced labor, slavery, slave trade, trafficking in women or children, and sex trade.⁵⁷ Secondly, Iraq has ratified the Convention against Transnational Organized Crime on 17 March 2008 and ratified the Trafficking Protocol on 9 February, 2009.⁵⁸ Iraq did not raise any objections on any provisions of either the Convention or its supplementary Trafficking Protocol and thus is now bound by certain obligations to trafficked persons, under international law.

Iraq has further taken additional steps to integrate itself on the international stage. The Iraqi government has taken an initiative and signed an International Compact with the United Nations through the UN Assistance Mission in Iraq (UNAMI) to establish a new partnership with the international community to help lay the foundations for a unified, democratic and federal state. The Compact includes a number of pledges which Iraq is working to fulfill, with the assistance of the international community. Some of the pledges include, inter alia, applying international human rights norms and standards in domestic courts, capacity building to help Iraq meet its human rights treaty obligations, and establish a national human rights institution.⁵⁹

One aspect in which the UN as a whole and UN Office of Drugs Crime (UNDOC) more specifically can help Iraq with is to start working towards steps for preventing trafficking, protecting trafficked victims, and prosecuting traffickers. The UNODC has created an

⁵⁷ Iraqi Constitution, art. 37.

⁵⁸ Trafficking Protocol, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en#3 (last visited Apr. 20, 2010).

⁵⁹ Fact Sheet on the International Compact with Iraq, <http://www.uniraq.org/ici.asp> (listing other pledges like: including human rights information in educational curricula and strengthening human rights awareness, governmental capacity building w/r to reporting on Iraq's international human rights treaty obligations, strengthening the role of civil society organizations in the construction of a democratic society, and strengthening legal and institutional protection in line with international standards, particularly for priority groups such as minorities, women and children, internally displaced persons, refugees returning to Iraq, widows, and older persons) (last visited Apr. 20, 2010).

International Framework for Action to Implement the Trafficking in Persons Protocol. Because the protocol was developed with a wide array of participation it has benefited from an almost universal definition and acceptance by the global community.⁶⁰ The International Framework for Action is a technical assistance tool that supports the UN Member States in the effective implementation of the Protocol.⁶¹ It consists of a narrative that describes key challenges in the implementation of the Protocol and proposes general measures that can be taken to effectively address the challenges. UNDOC has also developed a detailed handbook for parliamentarians for combating trafficking in persons. UNDOC believes that as public awareness of human trafficking grows, people will demand action to be taken.⁶² This toolkit will help parliamentarians live up to their responsibility in ensuring laws and measures are put in place and implemented.

UNDOC has also developed a Model Law against Trafficking in Persons. This Model Law has been developed to assist States in implementing the provisions contained in the Protocol and aims to facilitate the review and amendment of existing legislation as well as adoption of new ones.⁶³ The Model Law establishes mechanisms for criminalizing certain activities as well as adaptable legislative provisions that establish cooperation between different state authorities and NGOs.⁶⁴ Each provision is accompanied by detailed commentary that provides several options for legislators for courses of action. This Model law is available in the Arabic language making it easier to adopt its provisions.

⁶⁰ Tools and Publications, <http://www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuside> (last visited Apr. 20, 2010).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

Iraq's ability to reciprocate the advantageous advice, council, and recommendation of UNAMI and UN Office of Drugs and Crime (UNODC)⁶⁵ to its people is still in its infancy stage. There are several logistical problems that currently face the government. For starters, the government has been and remains to be pre-occupied with what they consider higher priorities such as security, economic and reconciliation policies. With regards to trafficking, while the constitution prohibits the trafficking of persons, there is no legal framework to prosecute traffickers because trafficking has not been legally identified in the Iraqi legal system.

The adoption and implementation of CEDAW, for example, can demonstrate Iraq's interest in remedying discrimination against women and addressing women's needs. On one end, the executive branch has established a number of ministries concerned with the promotion and protection of human rights. The main ones are the Ministry of Human Rights, Ministry of the Environment, Ministry of Displacement and Migration, Ministry for Civil Society Affairs, and the Ministry for Women's Affairs. On the face of it, this looks like a promising ordeal. In 2010, the UN reported that dozens of non-governmental organizations (NGOs) dedicated to women and children have been established in Iraq. Iraq has implemented institutional structure for the advancement of children's rights has been established, including a Child Welfare Authority, a multispectral authority representing various ministries with a stake in the situation of children.⁶⁶ The Authority formulates policies aimed at improving the situation of children and resolving their problems.⁶⁷ Thus it seems that Iraq is taking steps to meet some of the requirements set

⁶⁵ NODC was established to assist the UN in better addressing a coordinated, comprehensive response to the interrelated issues of illicit trafficking in and abuse of drugs, crime prevention and criminal justice, international terrorism, and corruption. These goals are pursued through three primary functions: research, guidance and support to governments in the adoption and implementation of various crime-, drug-, terrorism-, and corruption-related conventions, treaties and protocols, as well as technical/financial assistance to said governments to face their respective situations and challenges in these fields.

⁶⁶ Human Rights Report, *supra* note 53 at 22.

⁶⁷ *Id.*

forth by the convention. Those, thus far include not much more than setting up the institutions and entities that would allegedly be capable of handling children's issues.

- Iraq's De Facto Compliance

In Iraq, the problem does not end with ratification of these treaties. The problem seems to start at the implementation phase. Establishing the organizational structure and offices to address certain problems is the beginning of the problem. Giving those entities the authority and logistical capacity to carry on their missions is the bigger problem. In early 2009, for example, the Minister for Women's Affairs quit her post in protest for the lack of government aid to the ministry.⁶⁸ She claimed that the government slashed the ministry's budget, and with a staff of only 18, her ministry lacked sufficient authority and resources to help women facing great hardships.⁶⁹ Thus, it would seem, that Iraq has taken the step of setting up the skeletal framework for addressing women's issues, by establishing a ministry, but not breathing life into the ministry with logistical funding, and clear enumerated authorities in its field.

Iraq cannot remedy trafficking violations if it is not done within a human rights framework. Issues arising from protection and rehabilitation of trafficked people, prosecution of traffickers and even prevention of such activities arise from a fundamental understanding of the rights of affected groups like women and children.

Violence against women in Iraq is underscored by a set of laws that excuse or provide mitigated sentences for rape, abduction, assault and murder of women in direct violation of international convention that Iraq is a party to.⁷⁰ Under the pretext of restoring family honor and maintaining order within the family, such laws subordinate women to men and perpetuate

⁶⁸ Iraqi Women's Minister Resigns in Protest, <http://www.msnbc.msn.com/id/29088322/> (last visited Apr. 20, 2010).

⁶⁹ *Id.*

⁷⁰ The Status of women in Iraq, *supra* note 44, at 63.

violence within the family and the community.⁷¹ To increase to problem, these laws have been coupled with a rise in conservatism, armed conflict, and a flawed law enforcement system, which add to the insecurity experienced by violated groups, such as women and children, both inside and outside the home.⁷²

The CEDAW Committee's General Recommendation Number 19 elaborates on the meaning of discrimination set forth in Article 1 of the convention as "gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence."⁷³ Thus it would seem that issues such as rape and sexual assault, kidnapping, honor crimes and killings, tribal practices, and religious motivated violence are all to be addressed under Iraq's international law obligations.

- Rape and Sexual Assault Issues

With regards to rape and sexual assaults, there has been a substantial increase in reported cases of sexual abuse in Iraq over the past few years. Iraq's Penal Code (IPC) No. 111 of 1969 (with amendments) dictates that rape is a private offense, which means that no action can be brought by the state without the consent of the complainant or a legal guardian.⁷⁴

While the provisions pertaining to rape and sexual assault, such as sexual intercourse with a minor, sexual assault, all specify various maximum penalties the IPC allows for a remedy that severely undermines the human rights of the assaulted victims. Article 398 of IPC No. 111 allows the defendant to be excused in cases of rape and sexual assault if he marries his victim,

⁷¹ *Id.*

⁷² *Id.*

⁷³ Committee on the Elimination of Discrimination Against Women, General Recommendation 19, Violence Against Women (Eleventh Session 1992), UN DOC A/47/38(1993) at Paragraph 6.

⁷⁴ Iraqi Penal Code No. 111

even after a sentence has been imposed.⁷⁵ This demonstrates the prevalent cultural and institutional lack of understanding of women's rights. Here, the law provides that the sentence be reinstated or proceedings will resume if the defendant divorces the victim without legal justification during a period of three years following the cessation of the proceedings.⁷⁶ What the law does, is effectively sentencing the victim to a minimum of three years with her rapist.

To understand the dynamic at play, advocates of this provision argue that it was passed in the interest of the victim, so that her honor may be restored by virtue of marriage and thus avoiding a potential honor killing.⁷⁷ This seems to completely ignore what is going on with the victim and assumes a necessity to saving her life by creating a single over arching remedy of marriage. The cultural taboo is very strong when it comes to women sexual exploitations in Iraq, and the pervasive mentality is: the quieter it is, the better it is very all involved, especially the victim.

- Honor Killings

IPC differentiates between regular homicides and honor killings. Honor killings are treated differently from other murders in that they allow for mitigated sentences when honor killing is involved. This is not only inconsistent with the illegality of the act, murder, but also serves to enforce the practice of honor killing as a form of extra-judicial punishment.⁷⁸ The mitigated sentences are also discriminatory as they punish acts of violence against women much more leniently than acts of violence against men.⁷⁹ For example a penalty for murder in Iraq is usually

⁷⁵ Iraqi Penal Code No. 111, Article 398

⁷⁶ The Status of Women in Iraq, *supra* note 70.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

either death or life imprisonment, however, IPC makes an exception in cases where the man murders his wife or female relative when they invoke a motive of honor preservation.

A Substantial number of honor crimes have been reported in Iraq.⁸⁰ CEDAW Committee has expressed its deep concern regarding the violence perpetrated against women in Iraq in the form of honor killings⁸¹. It noted that in addition to the continued practice of this particularly brutal form of violence against women, such crimes are not prosecuted and punished as other crimes. Honor crimes do not necessarily have to be killing. They can also be in forms of mutilation, female genital cutting, and increase in domestic violence. For example, a 2005 Amnesty International report contains an account of a 24 year old pregnant Iraqi Woman who was accused of adultery and tortured and mutilated by six members of her husband's family.⁸² The men who tortured her were released within 24 hours on the grounds that they were safeguarding family honor.

Another factor to be considered in understanding the cultural dynamic is that of tribal practices. There have been reports of cases where women are used as bargaining tools or as gifts between tribes. Girls and women are used as peace offerings between two tribes to resolve a conflict.⁸³ While the frequency of such cases are not as much as other violations against women, it goes to show a cultural indifference to such human rights shortcomings and the prevalent mentality in rural areas.

Such crimes constitute a form of family and community violence against women, violating their right to life, security, of the person, freedom from torture, inhumane and degrading

⁸⁰ United Nations Security Council. "Report of the Secretary-General pursuant to paragraph 30 of resolution 1546 (2004)." September 1, 2006

⁸¹ CEDAW/C/IRQ/2-3 468 and 469, 14 June 2000, paragraph 193 ("The Committee is also deeply concerned by the violence against women perpetrated through honour killings.")

⁸² Iraq: Decades of suffering. Now women deserve better. Amnesty International (2005)

⁸³ The Status of women in Iraq, *supra* note 70 at 66.

treatment, and equal protection of the law. All of which are advocated by the UN conventions Iraq has signed on to as well as Iraq's new Constitution.

III. Human Trafficking – Iraq

The previous section served to demonstrate Iraq's inability to meet with de jure compliance where Iraq's penal code is in direct conflict with principles advocated in the International conventions that Iraq is signatory to. Furthermore, there are sever shortcomings with regards to de facto compliance due to lack of resources, awareness and inherent complacency and lack of fundamental understanding of human rights issues on the part of the government and the general population. That problem has been exacerbated by the increase in violence in what would otherwise be considered a civil war that ensued between 2006 and 2008, resulting in mass migration of people, increase in violence against women and children, and exploitation of those groups.

a. Post War Effects

The Iraq war has produced a massive wave of refugees. It is estimated that approximately 2 million refugees have fled the country, primarily to Syria and Jordan, a displacement identified as the largest displacement of people in the Middle East since 1948.⁸⁴ In addition, the conflict has produced an estimated 2 million internally displaced persons⁸⁵. Other estimates include an additional quarter million Iraqis have fled from central and southern Iraq to areas under the administration of the Kurdistan Regional Government.

⁸⁴ Minwalla & Portman, *supra* note 14, at 12.

⁸⁵ The UN cluster on Refugees, IDPs and Durable Solutions, of which IOM is the deputy coordinator, estimates that the number of Iraqis displaced by violence since the bombings of the Al-Askari shrine in Samarra in late February 2006 has now increased to almost 800,000 individuals. This figure, combined with the 1.2 million individuals who were internally displaced before February 2006 brings the total number of internally displaced to almost 2 million. <http://www.reliefweb.int/rw.RWB.NSF/db900SID/RMOI-728MWY?OpenDocument>, (last visited Apr. 12, 2010).

b. Iraq's Current Classification

Iraq's 2009 classification by the US DoS is a Tier 2 Watch List. This means that Iraq is somewhere between a government that is making significant efforts to comply with minimum international standards and one that is not fully complying and do not seem to make significant efforts to so.⁸⁶ Iraq is both a source and destination country for men, women and children trafficked for the purposes of commercial sexual exploitation and involuntary servitude.⁸⁷ Iraqi women and girls, some as young as 11 years old, are trafficked within the country and abroad to Syria, Lebanon, Jordan, Kuwait, UAE, Turkey, Iran, and Yemen for forced prostitution and sexual exploitation within households in these countries.⁸⁸ Some victims are sexually exploited in Iraq before being sold to traffickers who take them abroad. In some cases, women are lured into sexual exploitation through false promises of work.

The problem does not stop there. There is a refugee crisis as well in countries such as Syria and Jordan where hundreds of thousands of Iraqis have fled the violence in Iraq and have nowhere else to go. In Syria for example, there are more than a million Iraqi refugees, many are women whose husbands or fathers have been killed.⁸⁹ They are banned from working legally and so they have very few options outside the sex trade.⁹⁰ No one knows how many end up as prostitutes, but Women's Wills, an Iraqi women's group, put the figure at 50,000.⁹¹ The Syrian Women Observatory (SWO) states that some of the women have been sexually abused in Iraq, but others have been prostituted by fathers and uncles who bring them to Syria under the pretext

⁸⁶ Trafficking in Persons Report, *supra* note 3, at 162.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ 50,000 Iraqi Refugees Forced into Prostitution, <http://www.independent.co.uk/news/world/middle-east/50000-iraqi-refugees-forced-into-prostitution-454424.html> (last visited Apr. 20, 2010).

⁹⁰ *Id.*

⁹¹ *Id.*

of protecting them.⁹² They continue to state that “they are virgins, and they are brought here like an investment and exploited in a very ugly way.”⁹³

Within Iraq, some victims are lured into sexual exploitation through false promises of work.⁹⁴ Others become victims through sale or forced marriage. Family members have trafficked girls and women to escape desperate economic circumstances, to pay debts, or resolve disputes between families.⁹⁵ Some women are trafficked within Iraq for sexual exploitation through the traditional institution of temporary marriages (*muta’a*).⁹⁶ For these women, they face other problems: when trafficked by non family members, they will in turn face honor killings if the families find out that they have been raped or forced into prostitution.

The traffickers tend to be predominantly male, but sometimes female family members traffic their own children or relatives.⁹⁷ In Iraq, and especially post the sectarian violence that ensued in 2006, there developed an underworld for sex trafficking. It is an underworld where nefarious female pimps hold sway and where improvised mothers sell their teenage daughters into a sex market that believes females who reach the age of 20 are too old to fetch a good price.⁹⁸ The youngest victims, some ages 11 and 12, are sold for as much as \$30,000, while others can go for as little as \$2,000.⁹⁹ These trafficking routes extend both, locally and internationally. The victims are trafficked either illegally on forged passports or “legally through

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Trafficking in Persons Report, *supra* note 86, at 162.

⁹⁵ *Id.*

⁹⁶ Under the *muta’a* arrangement, the family receives a dowry from the husband and the marriage is terminated after a specified period of time.

⁹⁷ *Id.*

⁹⁸ Iraq’s Unspeakable Crime: Mothers Pimping Daughters, *supra* note 18.

⁹⁹ *Id.*

forced marriages”.¹⁰⁰ A married female, even one as young as 14, raises few suspicions if she’s travelling with her “husband.”¹⁰¹ The girls are then divorced upon arrival and put to work.¹⁰²

c. Current Problems

i. Lack of Coordination

NGOs such as the Organization of Women’s Freedom in Iraq (OWFI) have been tracking trafficking activities by placing women staff in the trafficking environments as pimps and document trafficking activities throughout different regions in Iraq. OWFI has spent more than 2 years collecting trafficking data of women and children and have publicly announced their results through reports and satellite television stations. In light of their efforts and other organizations, the government spokesperson announced that a draft trafficking law is in the works.¹⁰³

There seems to be a lack of trust in the relationship between the government and the NGOs. NGOs like OWFI for example state that despite their efforts, the government did not coordinate with them regarding the drafting of the law.¹⁰⁴ OWFI contends that they were unaware of a law being drafted until it was announced on television.¹⁰⁵ There are also other issues involve access and rights of the NGOs. Such issues including the issuing of government permits to NGOs, such as OWFI, that would allow them to operate in certain capacity. Some contend that the issuing of permits is manipulated in ways to control and pressure NGO

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Will Iraq Crack Down on Sex Trafficking; <http://www.time.com/time/world/article/0,8599,1890728,00.html> (last visited Apr. 20, 2010).

¹⁰⁴ Organization of Women’s Freedom in Iraq, <http://www.equalityiniraq.com/activities/104-owfi-pressures-the-legislators-into-a-draft-law-against-trafficking-of-women-and-girls> (last visited Apr. 20, 2010).

¹⁰⁵ *Id.*

activities. NGO's that are critical of the government, such as OWFI for example, tend to have a harder time getting permits.¹⁰⁶

ii. Lack of Acknowledgement of Trafficking Activities

While the existence of trafficking in Iraq has been documented by the UN, US and NGOs operating in Iraq, it wasn't until 2009 that the government officially admitted to the existence of the problem.¹⁰⁷ The Iraqi Human Rights Minister admitted that the Trafficking in Persons Report was "a tough report about the situation in Iraq and it was right in so many cases."¹⁰⁸ While this acknowledgement is welcome, it does come at a delayed time. By the time of the acknowledgement, trafficking industries, networks and operations have been well entrenched for more than 4 years.

Other elements in the government, such as the Chair of the Women, Family and Child Committee in the Iraqi Council of Representatives (CoR) rejected the possibility that Iraqi women can be trafficked or practice prostitution. She reportedly did not even engage in the discussion because the discussion was an insult to Iraqi women.¹⁰⁹

iii. Responsible Entities

Because there is no set human trafficking law in place, there is uncertainty as to the entities involved. For example, who is primarily responsible for tracking trafficking activities, prosecuting traffickers, preventing trafficking and protecting trafficked persons? This seems to involve a complex network of government ministries: (Interior, Justice, Human Rights, Health, even Education); branches of government to draft, legislate, and enact trafficking laws, as well as

¹⁰⁶ Will Iraq Crack Down on Sex Trafficking, *supra* note 103 (last visited Apr. 20, 2010).

¹⁰⁷ Organization of Women's Freedom in Iraq, *supra* note 104 (last visited Apr. 20, 2010).

¹⁰⁸ Will Iraq Crack Down on Sex Trafficking, *supra* note 103 (last visited Apr. 20, 2010).

¹⁰⁹ Organization of Women's Freedom in Iraq, *supra* note 104 (last visited Apr. 20, 2010).

a network of specialized NGOs that have been closely tracking the issue. Coordination between such entities on an issue that does not legally exist has been troubling.

iv. Barriers to Reporting – Fear, Honor, and Shame

Trafficking in persons, particularly those involving women and girls, is low on the priorities of the Iraqi government. The deterioration of the security situation in most of the country has impeded the collection of reliable data on trafficking. Civilian populations in parts of the country are routinely subjected to violence inflicted by criminal gangs, religious extremists, insurgent groups, and security and military forces. Kidnappings are frequent; many are presumed to be the result of ethnic cleansing or retribution, while others are done for purposes of collecting ransom or direct sale of individuals for purposes of prostitution or other forms of forced labor.

One of the biggest barriers to reporting criminal activity among women and girls in Iraq is the existence of deeply rooted cultural notions of honor and shame.¹¹⁰ Family honor is fiercely protected in Iraqi society and it is localized in women's bodies and sexuality and women who transgress sexual rigid sexual norms are viewed as having dishonored their families. Additionally, victims are reluctant to report abuses inflicted by their family members because they fear further abuse, loss of their children, poverty and homelessness, and being implicated in criminal activity.¹¹¹ These cultural beliefs result in a pervasive pattern in which victims are often

¹¹⁰ Minwalla & Portman, *supra* note 14, at 9 (in cases where abuses are perpetrated by the family, such as in cases of forced marriage and prostitution, there is no will to report either because the behavior is not viewed as criminal, or the family does not want to implicate its members.)

¹¹¹ *Id.*

blamed for being responsible for crimes such as rape or attempted honor killings, and are therefore treated abusively by the general public, investigators, police, and judges.¹¹²

v. Barrier to Reporting – Lack of Understanding of the Term: “Trafficking”

Because human trafficking is not a specific crime under Iraqi law, government ministries and agencies have no mechanisms in place to monitor and document human trafficking cases.¹¹³ For example, trafficking crimes are not specifically enumerated in Ministry of the Interior statistics on criminal activity and they have not included trafficking in police training curricula.¹¹⁴ Even if data is to be collected, data collection and statistical analysis in the Ministry of Interior and Justice is not highly developed, and information on trafficking related cases such as prostitution or kidnapping is often inaccurate.¹¹⁵

Human Trafficking is also widely misunderstood to be smuggling, placing additional constraints on gathering reliable data, as most border crossings do not collect statistical or qualitative information on persons leaving for neighboring countries.¹¹⁶ There are very few enforcement mechanisms to monitor and regulate labor and employment contracts, resulting in impunity for traffickers and lack of information on labor trafficking.¹¹⁷ Additionally, Iraqi law enforcement has limited ability to enforce the criminal laws in more remote villages and rural areas where tribal laws and codes predominate.¹¹⁸

There’s also the problem of understanding trafficking and distinguishing it from other crimes. Human trafficking is often confused with other crimes such as smuggling, labor

¹¹² *Id.*

¹¹³ Minwalla & Portman, *supra* note 110, at 8.

¹¹⁴ UNAMI. “Human Rights Report.” May-June 2006,

<http://www.uniraq.org/documents/HR%20Report%20May%20Jun%202006%20EN.pdf> (last visited Apr. 20, 2010).

¹¹⁵ Minwalla & Portman, *supra* note 110, at 8.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

exploitation or abuse, and prostitution. While trafficking cases usually involve other criminal activity, the presence of those factors alone does not necessarily mean that the person is trafficked.¹¹⁹ One essential test of trafficking is whether the victim is free to leave employment or is being forced or coerced by the perpetrator to continue the activity.¹²⁰ The coercive factors required to establish a trafficking case are frequently confused with issues of economic hardship and social exploitation such as sexual harassment.¹²¹

People frequently confuse trafficking with illegal smuggling which is the facilitation, transportation, attempted transportation, or illegal entry of a person across an international border in violation of one or more countries' laws.¹²² This is usually done through deception mechanisms such as using fake documentation. Smuggling in persons is a crime involving the facilitation of illegal entry into a state, whereas trafficking is a crime against the person and a violation of their human rights.¹²³ Smuggling deals with the protection of borders, and the aim of smuggling is not to exploit a person but to facilitate illegal entry and residency.¹²⁴ Individuals who are smuggled into another country are not trafficked unless there is some form of coercion to engage in forced labor or commercial sex in accordance with the above definition.¹²⁵ Smuggling alone does not rise to the level of trafficking, however many individuals who are smuggled are later trafficked. Voluntary prostitution and other commercial sex work are also frequently confused with sex trafficking, particularly because forced prostitution is a common form of trafficking in Iraq.¹²⁶

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

IV. Effective Solutions and Counter Measures

a. The Fundamental Change

The most important aspect of tackling the problem is a fundamental change in the cultural perception and identification of women's rights, children's rights, and human rights in Iraq. It is from that change that all significant and meaningful anti trafficking resolutions can emerge. In 1873 the United States Supreme Court upheld an Illinois Supreme Court Decision that stated "God designated the sexes to occupy different spheres of action."¹²⁷ The US Supreme Court went on to state:

[M]an is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood... The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother.¹²⁸

This is of great significance because it demonstrates the discriminatory, though non violent, attitude of a male dominated culture towards women in society. This is the exact same pervasive attitude in Iraq today. Where would the US be today had such ideologies ensued? By granting greater roles for women and greater fundamental understanding of their roles in society, the US has become a global beacon of culture, health, education, and human rights. Women today play as vital a role in every aspect of family and professional life in American society as their male counterparts. This goes to show that perhaps divinity in a social and cultural structure is largely man made and changing social paradigms do not conflict with intentions of the divine. In fact women today, as a group, enjoy far greater rights in the US than they ever have before.

¹²⁷ *Bradwell v. State*, 83 U.S. 130 (1873).

¹²⁸ *Id.*

The above arguments are exactly those made in Iraq and the broader Middle East today. A fundamental change in how women are viewed as members of a family and society is vital to any meaningful change in human rights and trafficking in Iraq. The first required step is for an Iraqi administration to be bold and progressive in their approach to women's rights and pragmatic in solving key issues that affect trafficking, coercion, prostitution and women's rights in general. The progressive approach is certainly a key element of the equation, but is not the only one. Iraq needs a comprehensive multifaceted solution to tackle this issue.

b. Role of Destination Countries

Iraqi persons are trafficked both, within the country's borders and outside to neighboring countries. Thus it would seem plausible that Iraq, as a source country, could enact laws that would eliminate trafficking activities, while neighboring countries can also adopt measures to eliminate trafficking as destination countries. This in a sense parallels the trafficking patterns of Eastern European persons into Western European countries. There is however one key difference, the Western European countries are considered Tier 1 countries and are well equipped with regards to prevention, protection and prosecution of trafficking activities.¹²⁹ In contrast to those European destination countries, trafficked Iraqi persons end up primarily in Tier 2 Watch List or Tier 3 countries.¹³⁰ This means that these destination countries do not comply with minimum human rights standards and are not making significant efforts to do so.¹³¹

¹²⁹ According to the US Department of State Trafficking in Persons Report, the great majority of western European countries fall under Tier 1 placement. Those include (UK, Austria, Belgium, Denmark, Croatia, Czech Republic, Finland, France, German, Italy, Luxembourg, The Netherlands, Norway, Poland, Spain, Sweden, and Switzerland.)

¹³⁰ Id. (Egypt, Bahrain, UAE, Qatar, Yemen) are Tier 2 Watch list countries. Syria is a Tier 3 country, while both Turkey and Jordan are Tier 2 countries.

¹³¹ In January 2009, the UNHCR reported that the Jordanian Parliament has adopted legislation to combat human trafficking in light of international complaints. The law paves the way for the creation of an anti-human trafficking commission to oversee its implementation, <http://www.irinnews.org/Report.aspx?ReportId=82587>, (last visited Apr. 20, 2010).

c. De jure Compliance with the Trafficking Protocol

Since a house cannot be built without a plan and schematics, de facto compliance cannot be met if without first creating the right environment for de jure compliance. Now that Iraq is signatory to the Trafficking Protocol, it will be bound by all of its stipulations. Since the Protocol creates a universal definition for human trafficking, Iraq should first attempt to define human trafficking within an Iraqi context. Additionally, As per Article 3 of the Protocol, trafficking must be criminalized.¹³² That means that Iraq has to expand its penal code to include criminal statutes that punish trafficking as defined by legislation.

Iraq must also investigate, prosecute, and punish trafficking offenders; provide protection services to victims, ensure that they are not punished for acts committed as direct result of being trafficked, and encourage their assistance in prosecuting offenders.¹³³ Additionally, Iraq should train officials in methods to identify victims; undertake a campaign to raise public awareness of trafficking; take measures to screen migrant workers; take steps to end the practice of forced marriages and curb the use of temporary marriages that force girls into sexual and domestic servitude.¹³⁴

¹³² Trafficking Protocol, art. 3, subparagraph (b)

¹³³ Trafficking in Persons Report, *supra* note 3 at 163.

¹³⁴ *Id.*