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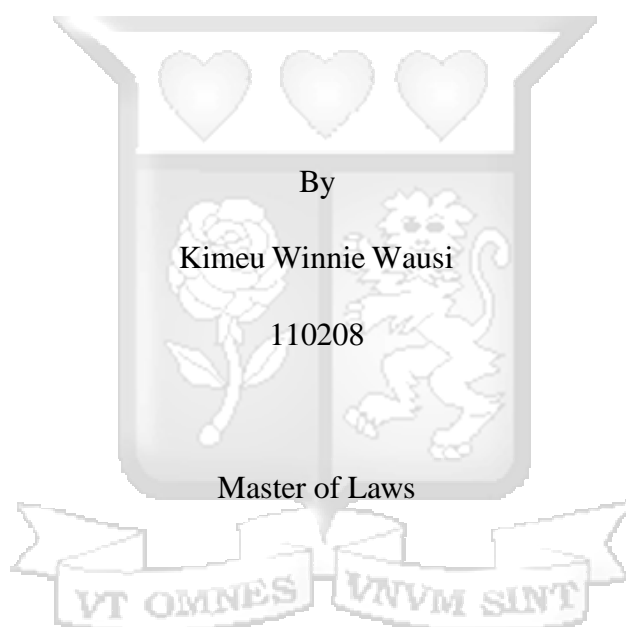
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# Women Trafficking in Kenya: Assessing the Policy, Legal and Institutional Framework



2022

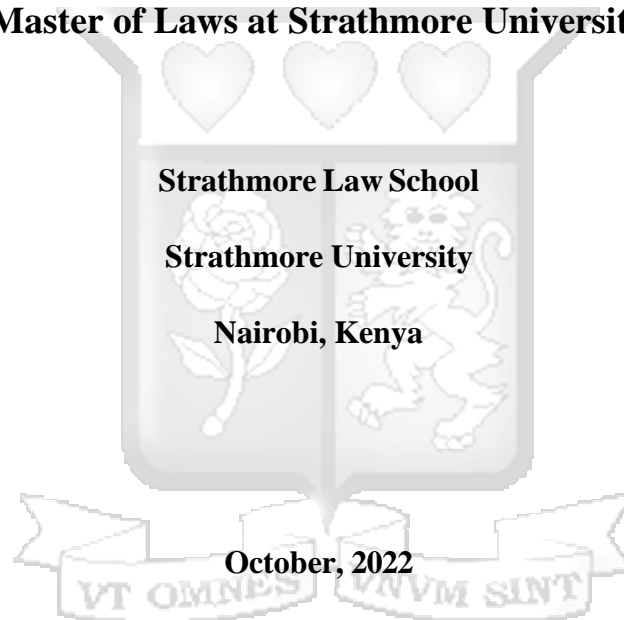
# **Women Trafficking in Kenya: Assessing the Policy, Legal and Institutional Framework**

By

Kimeu Winnie Wausi

110208

**Submitted in Partial Fulfilment of the Requirements for the Degree of  
Master of Laws at Strathmore University**



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## Approval

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## Abstract

Kenya has been identified as a tier 2 Country when it comes to combatting human trafficking this is according to the Trafficking in Persons Report 2020, this means that Kenya does not quite comply with the standards put in place to combat human trafficking. Currently Kenya has one of the highest number of women and girls trafficked in the East Africa region.

Human trafficking is not a new phenomenon, however over recent years it has turned out to be a grave problem. Women and girls in particular are the majority of individuals affected, they make up 80% of the total number of trafficking victims all around the world.<sup>1</sup>

Women have become the major prey when it comes to human trafficking, circumstances such as unemployment, social economic factors and lack of education have catalyzed the situation therefore making them more vulnerable to human trafficking.

Kenya has been identified as a transit and destination point for human trafficking. This means that victims from neighboring East Africa regions are being trafficked into Kenya and others out of Kenya into international destinations. It has been noted that Kenya houses the headquarters for the human trafficking ring in East Africa, these rings use recruitment centers as covers to conduct these heinous acts.<sup>2</sup>

This thesis seeks to address the inadequate nature of Kenya, policy, legal and institutional framework in support of the fight against human trafficking mostly in women and girls. It shall look at what causes human trafficking in women in Kenya and why Kenya has one of the largest numbers of trafficked women and girls in East Africa. It will also look at the legal, policy and institutional framework that has currently been put in place to combat human trafficking in women. The main agenda of this thesis is to uncover the difficulties in policy and regulation so that Kenya's position in the global arena when it comes to human trafficking can be improved.

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<sup>1</sup>United Nations: Office on Drugs and Crime: An Introduction to Human Trafficking: Vulnerability, Impact and Action, New York, (2008), 45.

<sup>2</sup> Trafficking in Persons Report, 20<sup>th</sup> Edition, United States of America, June, (2020) 335.

# Table of Content

<b>Declaration and Approval</b> .....	ii
<b>Abstract</b> .....	iii
<b>Case Law</b> .....	viii
<b>Legal Instruments</b> .....	viii
<b>National Statutes</b> .....	ix
<b>International Instruments</b> .....	ix
<b>Acknowledgement</b> .....	x
<b>CHAPTER ONE</b> .....	1
1.0 BACKGROUND.....	1
1.1 RESEARCH PROBLEM.....	4
1.2 RESEARCH QUESTIONS.....	4
1.3 RESEARCH OBJECTIVES .....	4
1.4 RESEARCH HYPOTHESIS .....	4
1.5 LITERATURE REVIEW.....	4
1.6 THEORETICAL FRAMEWORK .....	12
1.6.1 SOCIAL DISINTEGRATION THEORY .....	12
1.7 METHODOLOGY.....	14
1.8 CHAPTER BREAKDOWN .....	14
<b>CHAPTER 2</b> .....	16
<b>2.0 : HISTORY, PREVALENCE AND FACTORS CONTRIBUTING TO WOMEN TRAFFICKING IN KENYA</b> .....	16
<b>INTRODUCTION</b> .....	16
2.1 DEFINING HUMAN TRAFFICKING IN WOMEN.....	16
2.2 HISTORY OF HUMAN TRAFFICKING.....	19
2.3 FACTORS CONTRIBUTING TO WOMEN TRAFFICKING.....	21
2.3.1 CONFLICT AND VIOLENCE.....	22
2.3.2 LACK OF EMPLOYMENT.....	22
2.3.3 DEMAND FOR CHEAP LABOUR.....	22
2.4 WOMEN TRAFFICKING IN KENYA.....	23
2.5 CAUSES OF HUMAN TRAFFICKING IN WOMEN .....	24
2.6 KENYA AS A SOURCE, TRANSIT AND DESTINATION COUNTRY .....	27
2.7 KENYA AS A TRANSIT COUNTRY .....	28
2.8 KENYA AS A DESTINATION COUNTRY .....	29
<b>CHAPTER THREE</b> .....	31
<b>3.0 POLICY AND LEGAL FRAMEWORK OF COMBATING HUMAN TRAFFICKING IN</b>	

WOMEN IN KENYA- A CRITIQUE OF ADEQUACY AND RELEVANCE.....	31
3.1 INTERNATIONAL LAW .....	31
3.1.1 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) .....	31
3.1.2 THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN.....	32
3.1.3 UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME. ....	33
3.1.4 PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS.....	34
3.1.5 PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING .....	34
3.1.6 PROTOCOL ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA, 2003.....	35
3.1.7 PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY .....	36
3.2 NATIONAL LEGISLATION .....	37
3.2.1 CONSTITUTION OF KENYA 2010.....	37
3.2.2 COUNTER-TRAFFICKING IN PERSONS ACT 2010.....	38
3.3 POLICY FRAMEWORK .....	41
3.3.1 COUNTER-TRAFFICKING IN PERSONS ACT ADVISORY COMMITTEE.....	41
3.3.2 Prevention .....	43
3.3.3 Protection .....	43
3.3.4 Prosecution.....	44
3.4 GUIDELINES FOR NATIONAL REFERRAL MECHANISM FOR ASSISTING VICTIMS OF HUMAN TRAFFICKING IN KENYA .....	45
3.4.1 VICTIMS PROTECTION ACT NO. 17 OF 2014.....	46
3.4.2 CHILDREN ACT 2001.....	47
3.4.3 SEXUAL OFFENCES ACT NO. 3 OF 2006 .....	47
3.4.4 PROTECTION OF ORGANIZED CRIME ACT NO. 6 OF 2010 .....	48
3.4.5 EMPLOYMENT ACT 2012 CAP 226 .....	48
3.4.6 TRAFFICKING IN PERSONS REPORT 2020 .....	48
3.4.7 PROSECUTION .....	49
3.5 PREVENTION.....	50
CHAPTER 4 .....	51
4.0 INSTITUTIONAL FRAMEWORK FOR COMBATING WOMEN TRAFFICKING IN KENYA- ACHIEVEMENTS AND CHALLENGES .....	51
4.1 NATIONAL POLICE SERVICE.....	51
4.2 ANTI-HUMAN TRAFFICKING CHILD PROTECTION UNIT (AHTCPU).....	53
4.3 DIRECTOR OF PUBLIC PROSECUTIONS .....	57
4.4 MINISTRY OF LABOUR AND SOCIAL PROTECTION .....	59

4.5 JUDICIARY.....	64
4.6 NON-GOVERMENTAL ORGANIZATIONS.....	66
CHAPTER FIVE.....	72
5.0 CONCLUSION AND RECOMMENDATIONS.....	72
5.1 CONCLUSION.....	72
5.2 RECOMMENDATIONS.....	73
BIBLIOGRAPHY.....	75
BOOKS.....	76
JOURNALS.....	78
REPORTS.....	79
INTERNET SOURCES.....	80
Appendices.....	81
Appendix A.....	81
Appendix B.....	83



## Acronyms

CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
CTiP	Counter-Trafficking in Persons Act
IOM	International Organization for Migration
KNBS	Kenya National Bureau of Statistics
MIA	Mercy International Association
NCRC	National Crime Research Centre
NGO	Non-Governmental Organization
NPA	National Plan of Action
TIP	Trafficking in Persons
TVPA	Trafficking Victims Protection Act
UAE	United Arab Emirates
UDHR	Universal Declaration of Human Rights
UNODC	United Nations Office on Drugs and Crime
USA	United States of America
VOT	Victims of Trafficking

## Case Law

*Muhammad Asif v. Republic Criminal case No. 27 of 2017 (eKLR) High Court of Machakos.*

*Rantsev v. Cyprus and Russia ECrtHR Para 28*



## **Legal Instruments**

The Constitution of Kenya 2010

## **National Statutes**

Counter-Trafficking in Persons Act No. 8 of 2010

Children's Act 2001 Cap 141

Criminal Procedure Code Cap 75

Employment Act Cap 226 2012

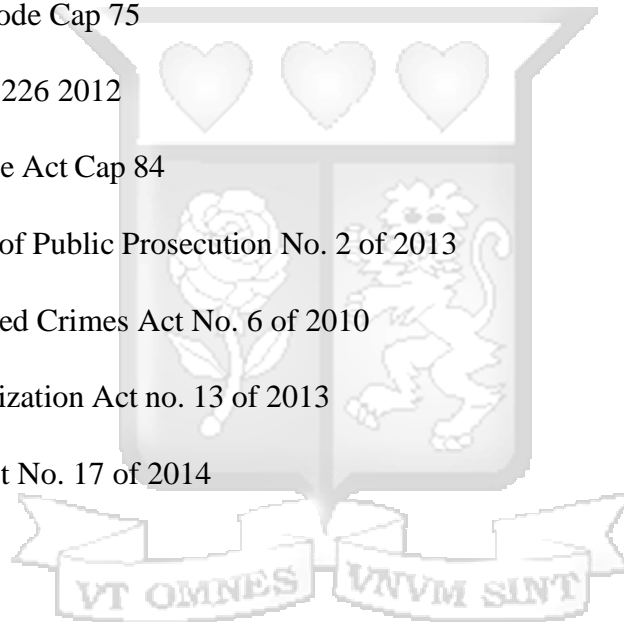
National Police Service Act Cap 84

Office of the Director of Public Prosecution No. 2 of 2013

Prevention of Organized Crimes Act No. 6 of 2010

Public Benefits Organization Act no. 13 of 2013

Victims Protection Act No. 17 of 2014



## **International Instruments**

Protocol to Prevent, Suppress and Punish Trafficking Especially Women and Children  
Supplementing the United Nations Convention against Transnational Organized Crime

Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in  
Africa

Protocol on the Sale of Children, Child Prostitution and Child Pornography.

The Convention on the Elimination of All Forms of Discrimination Against Women

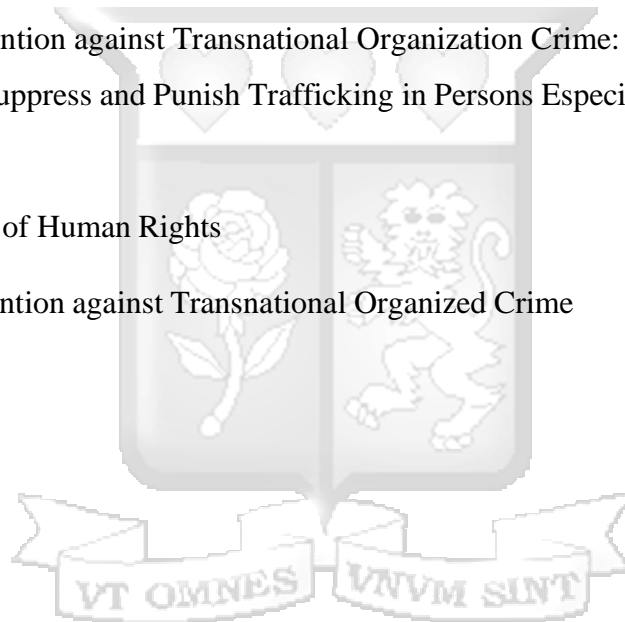
The Protocol against the Smuggling of Migrants by Land, Sea and Air

United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons

United Nations Convention against Transnational Organization Crime: Annex II: The  
Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and  
Children

Universal Declaration of Human Rights

United Nations Convention against Transnational Organized Crime



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# CHAPTER ONE

## INTRODUCTION

### 1.0 BACKGROUND

Human trafficking is a form of modern-day slavery, a grave human rights violation that involves a crime against an individual and the State as a whole. It is not a new phenomenon as it has a long history. It can factually be traced back to one of the first written laws in the history of man. *The Code of Hammurabi* whereby slavery was considered an established institution.<sup>3</sup> Slavery was officially abolished by the British Empire in 1833 and close to three quarters of a million people subsequently freed. Today, however, it is widely recognized that modern day slavery/human trafficking is more widespread than at any other time in world history and that almost no country in the world is unaffected by this threat.<sup>4</sup>

Article 3, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime defines trafficking in persons as:

*“the recruitment, transportation, transfer, harbouring or receipt of persons by means of a threat or use of force or other forms of coercion, abduction, fraud, deception and abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent and to have control of a person for the purpose of exploitation.”<sup>5</sup>*

Human trafficking affects nations from all sectors of the world. It is multidimensional in that it deals mostly with the violation of human rights of the victims.<sup>6</sup> Women trafficking is greatly related to the economic demand and supply in the worldwide market.

In 2017 there were 40.3 million people in modern slavery.<sup>7</sup> 24.9 million People in forced labour and 15.4 million in forced marriages.<sup>8</sup> This ultimately translates to five victims of

---

<sup>3</sup>King The Code of Hammurabi,(2007), 11.

<sup>4</sup> Skinner A Crime so Monstrous,(2008), 13.

<sup>5</sup> Article 3, *United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November. (2000)

<sup>6</sup> United States of America: Department of State: Trafficking in Persons Report June (2019),3.

<sup>7</sup> International Labour Organization, Forced Labour, modern slavery and human trafficking, Facts and Figures, (2014), 34.

<sup>8</sup> International Labour Organization, Forced Labour, modern slavery and human trafficking, Facts and figures, (2014), 35.

modern slavery for every 1,000 people in the World.<sup>9</sup> Out of the 24.9 million trapped in forced labour, 16 million people are exploited in the private sector such as domestic work, construction or agriculture.<sup>10</sup> 4.8 Million People are forced into sexual exploitation whereas 1 million people are forced into forced labour.

These concerns are directly linked to the way in which the current understanding of trafficking has evolved out of a history of policy, domestic and international legal mechanisms of addressing three key types of harm: chattel slavery, slavery and servitude and organized crime.<sup>11</sup>

European countries such as Belarus are highly rated for women trafficking, Belarusian women who are seeking employment are trafficked into countries such as Turkey and Poland. These women are forcefully into commercial sex trade and forced labour.<sup>12</sup>

African countries are also affected by women trafficking, countries such as the Central Africa Republic who encounter civil unrests. Women are mostly enslaved by militia groups and turned into sex workers, forced into forced labour and others forcibly enlisted into the militia.<sup>13</sup>

The situation in Kenya is no different; women are trafficked in huge numbers mostly to the Middle East and others to oversee countries. Circumstances such as unemployment, social – economic order, lack of education, and illiteracy have greatly catalysed women being trafficked in Kenya. Kenyan women are frequently recruited both legally and illegally by employment centres or voluntarily migrate to the Middle East, the United States, Southeast Asia and Europe with the promise of well-paid employment. Upon their arrival, everything changes their passports and identification documents are withheld, they are placed in forced labour environments’, they are also sexually exploited.<sup>14</sup>

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<sup>9</sup> International Labour Organization, Forced Labour, modern slavery and human trafficking, Facts and figures, (2014), 35.

<sup>10</sup> International Labour Organization, Forced Labour, modern slavery and human trafficking, Facts and figures, (2014), 36.

<sup>11</sup> M. Cherif Bassiouni, Addressing International Human Trafficking in Women and Children for Commercial Sexual Exploitation in the 21<sup>st</sup> Century, (2014), Vol. 81, 417.

<sup>12</sup> Anna Maria Kozłowski: Trafficking Against Human Beings from the Polish-Europeans Perspective: Why the State Security Approach is the Wrong Solution, Boston College Electronic Thesis, (2011) ,68.

<sup>13</sup> Trafficking in Persons Report, (2019), 567.

<sup>14</sup> United Nations Office on Drugs and Crime: United Nations Global Initiative to Fight Human Trafficking An Introduction to Human Trafficking: Vulnerability, Impact and Action. New York, (2008), 20.

Kenya has been said to be a source, transit and destination point for trafficking in East Africa,<sup>15</sup> these heinous acts often occur in Kenya from neighbouring countries such as Burundi, Rwanda, Somalia, South Sudan, Tanzania and Uganda.<sup>16</sup>

Women mostly in the Kenyan Coast are normally misled with lucrative jobs in the Gulf but end up working in situations of forced labour, subsequently leading to exploitation. Girls are particularly vulnerable to trafficking for sexual tourism. The most recently identified routes for cross-border trafficking are to the Middle East.<sup>17</sup>

The United Nations Convention against Transnational Organized Crime was signed in Palermo Italy in the year 2000. The convention was supplemented by two protocols:

- a. The Protocol to prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
- b. The Protocol against the Smuggling of Migrants by Land, Sea and Air.

These treaties have been put in place to obligate state parties to undertake and to ensure that their national legislations and policy meet the requirements of the said treaty or protocol and are consistent with their standards and uphold the said standards. Currently, Kenya has adopted a number of international legislations and is still in the process of trying to meet the internationally set standards for combating human trafficking, however as per the Trafficking in Persons Report 2021 it is yet to fully comply with the same.<sup>18</sup>

Kenya ratified the Palermo Protocol in the year 2004. Until 2010 the Kenyan government did not have a legislative framework for combating human trafficking. The Counter-Trafficking in Persons Act was drafted using the Palermo Protocol as its key legal instrument.

The main goal of this dissertation is, to demonstrate that the policy, legal and institutional framework mechanisms used in combating women trafficking in Kenya are inadequate and there is therefore the need to improve them.

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<sup>15</sup> International Organization on Migration: Human Trafficking in East Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda and Burundi. IOM Publications Platform, (2008), 32.

<sup>16</sup> Human Trafficking in Eastern Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda and Burundi, IOM Publications Platform, (2008), 33.

<sup>17</sup> International Organization for Migration: A Country Profile, Nairobi, IOM Publications Platform, (2015), 14.

<sup>18</sup> Trafficking in Persons Report: Office to Monitor and Combat Trafficking in Persons: Kenya: Office to Monitor and Combat Trafficking in Persons, (2021).

## 1.1 Research Problem

This dissertation addresses the inadequate nature of the Kenyan policy, legal and institutional framework in support of the fight against human trafficking surrounding women.

While taking cognisance of the government's active involvement in the fight against human trafficking, Kenya has over the years been trying to combat trafficking in women.

This dissertation intends to give an insight into the history, and the factors that have contributed to the high numbers of women trafficking in Kenya. Women trafficking is at an all-time high and therefore the legal, policy and institutional frameworks need to be clearly reviewed so that these frameworks can be improved and in turn can come closer to completely combating women trafficking in Kenya.

## 1.2 Research Questions

1. What is the history, prevalence and factors contributing to human trafficking in women in Kenya?
2. Is the policy and legal framework for combatting women trafficking in women in Kenya adequate and relevant?
3. What challenges do institutions mandated to combat human trafficking in women in Kenya face?

## 1.3 Research Objectives

The main objective of this thesis is to highlight the deficiencies, gaps and shortcomings in the legal, policy and institutional framework in women trafficking in women in Kenya and to make recommendations for improvement.

## 1.4 Research Hypothesis

Combating trafficking in women in Kenya can be curbed through a comprehensive, policy legislative and institutional framework.

## 1.5 Literature Review

Human trafficking in Kenya is not new. Women and children are the most vulnerable and trafficked to different parts of the world every day. It is quite a surprise that there is little literature in regard to human trafficking in and around Kenya. This means that there is a gap that has not been addressed. Therefore, I have isolated the aspect of trafficking in women with the sole reason of enhancing the chances of identifying what could be the problem and

what ought to be done to alleviate the problem, as such, this literature review seeks to point out that many authors have failed to lay greater emphasis on policy, legal and institutional framework as tools that can be successfully used in the fight against trafficking in women.

Mario Schulze in his paper, *Exploring Aspects of Vulnerability in the Content of Human Trafficking among Female Kenyan International Labour Migration*, talks of the, history and the main reasons' women feel the need to migrate. He goes further to mention that poverty and lack of education together with major corruption and a lack of mandatory procedures in the law enforcement agencies are the main reasons why women are trafficked to different parts of the world. He explores the causes of vulnerability to human trafficking among females in Kenya. He however fails to give solutions or recommendations for the menace called human trafficking.

In the report *Mixed Migration in Kenya: The Scale of Movement and Associated Protection Risks*,<sup>19</sup> highlights that Kenya is a critical hub in the region and attracts a large flow of mixed migration. It argues that Kenya hosts the largest refugee population from Somali, Ethiopia and South Sudan and that more than half a million of these refugees reside in Dadaab and Kakuma. These two camps host a sizeable number of refugees and also Internally Displaced Persons (IDPs).

The author goes further to mention that the high number of Internally Displaced Persons (IDPs) in these camps provide smugglers with a variety when it comes to human trafficking.<sup>20</sup> The report also argues that women in the camps are particularly very vulnerable and poor thus making it less of a challenge for traffickers to take advantage of them. It also mentions the fact that these camps are poorly secured by the police, a factor that has enhanced trafficking in the area. It however does not give a solution for the mounting problem experienced in Kenya. This report gives an insight into some of the factors that allow for trafficking to flourish. It describes the poverty faced by women in these refugee camps and the reasons why they opt to be transported to international destinations for employment opportunities.

*The Degradation of Work: Trafficking in Persons from a Labour Perspective: The Kenyan Experience*<sup>21</sup> gives the main causes and factors that have contributed to the high numbers of

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<sup>19</sup>Mixed Migration in Kenya: The Scale of Movement and Associated Protection Risks June (2013), 49-57.

<sup>20</sup> Mixed Migration in Kenya: The Scale of Movement and associated protection risks July (2013), 56.

<sup>21</sup> The Degradation of Work: Trafficking in Persons from a Labour Perspective: The Kenyan Experience (2015), 11.

women being trafficked from Kenya to other parts of the world.<sup>22</sup> According to the report they include,

- a. Corruption and weak enforcement laws. The report mentions that traffickers bribe corrupt law enforcement and migration officials to overlook such criminal activities.
- b. Cultural factors such as women's role in the family. Women migrate for work in order to support their families or to escape discrimination, violence or poverty.
- c. Lack of employment opportunities: There is a very high unemployment rate in Kenya. That makes it easy for victims of trafficking to be lured into lucrative job opportunities overseas.

The report however does not give solutions or recommendations on how to curb human trafficking in Kenya.

The International Organization for Migration (IOM) report,<sup>23</sup> argued about factors that contribute to trafficking of persons in East Africa. The report identifies issues such as gender, employment, education and civil unrest as playing a central role in regards to a person who is facing imminent trafficking. The report also categorized family related issues such as divorce, death of one or both parents as potentially relevant. The demand of labour especially in the Middle East. According to the said report has made the business of women trafficking to be very successful.

The authors' sole purpose in the article is the enumeration of factors contributing to human trafficking in general. They however, fail to touch on escalating women trafficking and how the vice can be curbed through the provision of adequate policy, legal and institutional framework.

Other factors at play include trafficking for ritual ends and at times for military engagements in overseas countries. The authors' main objective in the article is to bring to light contributing factors of human trafficking from a general perspective. They however, fail to touch on escalating women trafficking and how the vice can be curbed through the provision of adequate policy, legal and institutional framework.

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<sup>22</sup> The Degradation of Work, Trafficking in Persons from Labour Perspective: The Kenyan Experience (2015) .9-14.

<sup>23</sup> Human Trafficking in East Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda and Burundi, (2008), 60.

The article, Recommended Principles and Guidelines on Human Rights and Human Trafficking,<sup>24</sup> brings into focus State responsibility and individual responsibility over human trafficking. It goes further to state that States have the primary obligation to combat human trafficking. They however do not give specifics on how this crime can be combated mostly in women.

Malloch M. in her book *Human Trafficking* writes extensively on what constitutes human trafficking from a global perspective.<sup>25</sup> She critically examines the competing discourses surrounding human trafficking that entails the push and pull factors that form part of the criteria of human trafficking. She argues that these factors directly influence and perpetuate human sex trafficking structures. The factors play an influence as potential victims of trafficking are both “pushed and pulled” into being trafficked mainly due to living in extreme poverty.

According to Margaret, the push factors include, lack of employment opportunities, poverty, and economic imbalances among regions of the world, corruption, gender discrimination and political instability and conflict.<sup>26</sup> She elaborates in her book that the push factors are contrasted with the pull factors of demand for workers, the possibilities of higher standards of living, and the perceptions of many in poor communities that better opportunities exist in larger cities or abroad. She critically examines the competing discourses surrounding human trafficking, the conceptual basis of global responses and their impact from a global perspective. She however highlights the plight victims go through from the moment of transit to the moment they reach their destination.<sup>27</sup> She also gives a synopsis through short stories to actualize the dehumanization these victims of human trafficking go through. However, she neither gives the solution nor does she give recommendations and improvement that should be undertaken to curb and combat human trafficking all around the World.

Mercy International Association (MIA),<sup>28</sup> contends that Kenya is one of the countries in East Africa with a profound impact of trafficking in persons and this has been cemented by the

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<sup>24</sup> United Nations Human Rights: Recommended Principles and Guidelines on Human Trafficking, Geneva, (2010), 37.

<sup>25</sup> M.Malloch and P.Rigby: Human Trafficking, The Complexities of Exploitation, University of Stirilin Press, August 2016, 65.

<sup>26</sup> M.Malloch and P.Rigby: Human Trafficking, The Complexities of Exploitation, University of Stirilin Press, August 2016, 65.

<sup>27</sup> M.Malloch and P.Rigby: Human Trafficking, The Complexities of Exploitation, University of Stirilin Press, August 2016, 65.

<sup>28</sup> Mercy International Association: The Root Causes of Human Trafficking and Slavery in Kenya June (2018), 43.

lack of opportunities in the country resulting in many youths' women and children desirous of greener pastures elsewhere. The report identifies the following aspects as motivating factors to human trafficking and they include Poverty, poor government regulations, orphaned children and children suffering from mental and physical disabilities. The report argues that there seems to be a failure by the government to address the widening gap between the poor and the rich. It contends that poverty has led to despair among many youths making them vulnerable to illegal and unscrupulous agents who always promises them better things that are non-existent.

Orphaned Children-The authors advance an argument that children without parents suffer from isolation and neglect hence making them vulnerable to trafficking ideals and promises as they try to find better places to live in. Children with Physical and mental disabilities-The authors suggest that such kind of children normally come from disadvantaged background and as result easily fall prey of unscrupulous trafficking agents who normally promises them high quality life which are never actualized.

Government Regulation-The government of Kenya according to the authors is on the spot for licensing labour agents without properly vetting them to sieve out the unscrupulous ones who are only in the business for women and children trafficking. There also seems to be a problem according to the authors of international legal framework which is designed to seek consent of the victims before prosecution can be commenced. However, the authors' sole aim in this article was to point out factors that have contributed to human trafficking in general and as such they failed to address how the strengthening of policy legal and institutional framework

Tom Obokata clarifies that there are a number of key obligations imposed upon a State and one of those obligations includes having a sufficient policy, legislative and institutional framework to protect the victims of human trafficking.

He argues that the aspect of victim protection is vital. According to him the obligation to protect the victims of human trafficking derives from the general duty to secure, ensure or restore rights as well as to provide remedies.<sup>29</sup>He highlights the aspect of protection that is *non-refoulement* that States cannot return victims to their States of origin if there is a risk of them or their close family experiencing the torture, inhuman or degrading treatment, re-

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<sup>29</sup>Tom Obokata: *The African Court of Justice and Human and People's Rights in Context. Human Trafficking in Africa* Cambridge University Press, May (2019), 529-552.

trafficking or enslavement. He talks extensively on the individual responsibility when it comes to human trafficking and protection of victims of human trafficking.

According to Tom Obokata, human trafficking is rampant in Africa given the high level of poverty and also lack of adequate resources to tackle the issue. He highlights the role of the African Court of Justice and Human rights to combat human trafficking and how this Court can step in when national courts are unwilling and unable to investigate, prosecute and punish human trafficking and ensure that the traffickers are punished.<sup>30</sup> However, he does not give solutions to be problem and neither does he give recommendations that would assist in combating human trafficking in Africa.

Hansen<sup>31</sup> makes clear that human trafficking particularly in women as a crime threatens a number of aspects of life. He states that response to such threats can be made from two angles.<sup>32</sup> First by focusing on the individual and the society and dealing with social services, human rights, secure migration policies and protecting women in low- income communities. Second, he brings into focus the fact that human trafficking in women is a threat against state security.

According to Hansen, human trafficking is not only a shameful crime against humanity, but is also a crime threatening national and international security. He solely bases his facts on the transnational factors of the crime and largely relies on collaboration to be established on an international scale. He however does give an institutional framework of how the international bodies are to come and work together to curb this issue of human trafficking especially in women.

Agbu in his book *Corruption and Human Trafficking*,<sup>33</sup> is of the opinion that greed and indolence rather than just poverty are the major reasons for some of the victims getting involved and subsequently trapped in a situation that continuously defiles their being. In his view, human trafficking is very much interlocked with corruption where traffickers scheme

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<sup>30</sup> Tom Obokata: *The African Court of Justice and Human and People's Rights in Context. Human Trafficking in Africa*, Cambridge University Press, May 2019, 529-552.

<sup>31</sup> Hansen L :*The Little Mermaid's Silent Security Dilemma and the Absence of Gender in the Copenhagen School* Millennium Journal of International Studies, 2000, 285-306

<sup>32</sup> Hansen L,*The Little Mermaid's Silent Security Dilemma and the Absence of Gender in the Copenhagen School*, Millennium Journal of International Studies, 2000, 285-306.

<sup>33</sup>Agbu Osita, "Corruption and human trafficking: West African Review, 2003, 4(1).

with government officials.<sup>34</sup> He makes it clear that corruption is the reason human trafficking flourishes around Africa.

He brings forth the idea of addressing corruption in both the public and the private sector. He gives ways of tackling corruption and human trafficking such as incorporating human rights and development perspectives into anti-corruption work and giving enforcement officers' adequate investigative tools.<sup>35</sup> He however only recognizes few matters in human trafficking and he does not come up with quite limited recommendations to tackle this issue of human trafficking particularly in women.

Louise in her publication, *Why has Human Trafficking Flourished?*<sup>36</sup> Argues that the root causes have been identified for the existence of human trafficking are the push factors contrasted with the pull factors of demand for workers, the possibilities of higher standards of living, and the perceptions of many in poor communities that better opportunities exist in larger cities or abroad. She goes further to explain that trafficking has increased dramatically with globalization, the rise of illicit trade, and the end of the Wars. Free markets, free trade, greater economic competition, and a decline in state intervention in the economy have been hallmarks of the globalizing process. She contends that globalization is also characterized by greater mobility of goods and people and more rapid communications. She however does not give the solutions or recommendation to this global phenomenon.

Shelley provides an insight on all forms of human trafficking globally and regional perspectives focusing on various continents. She mentions historical perspective and compares it with modern perspective. Her argument gives an understanding on the rise and cost and various forms of human trafficking in different regions of the world.

Shelley states that regions in Africa have suffered long and permanent damage from colonization. Moreover, the subjugation of people during colonial rule has been perpetuated by domestic elites after independence. Civil unrests, armed criminal and guerrilla warfare in Africa have only compounded the number of vulnerable individuals ripe for exploitation.<sup>37</sup>

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<sup>34</sup> Agbu Osita, "Corruption and human trafficking: West African Review, 2003, 5.

<sup>35</sup> Agbu Osita, "Corruption and human Trafficking: The Nigerian Case. West African Review, Vol. 4. No. 1, 2003, 6.

<sup>36</sup> Shelley, L: *Why Has Human Trafficking Flourished? In Human Trafficking: A Global Perspective*. Cambridge: Cambridge University Press, 2010, 37-58.

<sup>37</sup> Shelley, L: *Why Has Human Trafficking Flourished? In Human Trafficking: A Global Perspective*. Cambridge: Cambridge University Press, 2010, 37-58.

She also brings out the issue of corruption in African countries that have taken away great opportunities for the youth leaving them uneducated and quite vulnerable to the issue of human trafficking. She finalizes by stating that human trafficking will probably grow in the 21<sup>st</sup> Century as a result of the growing economic and demographic inequalities worldwide and can only be effectively combated through the coordination of various agencies such as governments, civil societies, business communities, multilateral organizations and the media. She however fails to give recommendations on what mechanisms that governments are to engage in order to combat this issue.

Shelley again in another article analyses the cost of human trafficking to the victim, she focuses on the larger societal and political consequences of this atrocious activity without denying the suffering of the victims.<sup>38</sup> She argues that the cost of human trafficking are normally experienced on the individual, community, national, regional and global level. They have an impact from the source countries but also transit and host countries.

She argues that trafficking affects both democratic and dictatorial states and countries, during time of peace and times of war. Trafficking challenges states control over their borders and their ability to determine who will reside on their territory. Trafficking undermines states because according to Shelley, trafficking can survive only with the corruption and complicity of government officials. In certain countries, as has been documented in Thailand, the profits from trafficking help fund political parties and campaigns.<sup>39</sup> Shelley extensively explains the societal and political ramifications of human trafficking from a global perspective. She explains in detail how certain countries have over the years controlled human trafficking and also explains why human trafficking is thriving in other countries. She however does not give a global elucidation for the causes she greatly elaborates

Raymond Fishman, mentions that continents like Africa have high birth rates and vast youthful populations.<sup>40</sup> Yet the continents economies are not growing at the pace needed to absorb the expanding work force thus having societies highly stratified socially and economically with large numbers of citizens remaining permanently unemployed or underemployed with limited access to capital. He mentions that unknowingly youths are

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<sup>38</sup>Shelley, L. *The Diverse Consequences of Human Trafficking: In Human Trafficking: A Global Perspective*. Cambridge University Press, 2010, 59-80.

<sup>39</sup>Shelley, L. *The Diverse Consequences of Human Trafficking: In Human Trafficking: A Global Perspective*. Cambridge University Press, 2010, 59-80.

<sup>40</sup>Fishman & Miguel: *Economic Gangsters, Corruption, Violence and the Poverty of Nations*, Princeton University Press, Princeton, 2008,38.

given the ‘false hope mentality’ thus innocently being enjoined into human trafficking and slavery. He gives the recommendation that governments’ need to be stern when it comes to corruption as according to him is one of the root causes of which human trafficking is flourishing in the region. He however does not give recommendations on how this issue ought to be curbed before it completely gets out of hand.

The literature researched above has been extensive, the authors have vastly given an insight into women trafficking, the signs and factors that have contributed to the increased levels of women trafficking in Kenya and the world. The authors have seldom listed any solutions to women trafficking both in Kenya and the world. This research however intends to give solutions as combating women trafficking in Kenya.

## 1.6 Theoretical Framework

### 1.6.1 Social Disintegration Theory<sup>41</sup>

The main proponents of this theory were Shaw and Mckay.<sup>42</sup> This theory explains social environment and crime relationships. Without ignoring the importance of personal characteristics of the criminals, the theory highlights the impact of an individual’s social environment on crime and criminality. The central element is that communities can be characterized along a dimension of organization, at one end are socially organized communities and at the other are socially disorganized communities.

This is fundamental to the theory because social organization is vital to combating crime including human trafficking. Socially organized communities have solidarity (internal consensus on important norms and values such as a crime free community), cohesion (strong bonds among neighbourhoods), and integration (social integration among residents), which collectively help to lower crime rates.

In organized communities, there is evidence of informal surveillance or the casual but active observation of the neighbourhood street, movement-governing rules, or the avoidance of areas in or near the neighbourhoods viewed as unsafe, and direct intervention, or the questioning of strangers and residents and residents about suspicious activities. In short,

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<sup>41</sup>Shaw CR and HD Mckay: *Juvenile delinquency and urban areas: A study of rates of delinquents in relation to differential characteristics of local communities in American cities*, Chicago, University of Chicago, 1942, 57. Systemic Control Model and Routine Activities Model.

<sup>42</sup> Shaw CR and HD Mckay, *Juvenile delinquency and urban areas: A study of rates of delinquents in relation to differential characteristics of local communities in American cities*, Chicago, University of Chicago, 1942, 57.

socially organized communities have high levels of informal social control and lower rates of crime.

Explained hand in hand with Systemic Control Approach and Routine Activities Theory, social organization theory assists to explain human trafficking as another type of crime. In more practical terms, the theory explains distribution of human trafficking cases as a result of the lack of formal and informal social controls which in turn a function of the structural characteristics of a given community.<sup>43</sup>

In this regard therefore, arguments about the impact of structural forces such as poverty, unemployment, insatiability and heterogeneity as well as political-economic shifts on the distribution of crime rates is applicable to the distribution of crime or victimization rates through their influence on social cohesion and control in the communities.<sup>44</sup>

The systemic control approach is a combination of social disorganization and routine activities theories. It suggests that human trafficking mainly emerges as a result of the inability of communities to regulate the behaviour of their residents and visitors because of lack of formal and informal social controls (Private-parochial-public) in the hand, and increase criminal opportunities as a result of changed sustenance activities and related movements or routines of the persons on the other. This overall process ultimately increases the exposure and proximity to likely offenders in the absence of adequate controls (guardianship) in a given community.<sup>45</sup>

In a nutshell, a systematic control of social disorganization theory is capable of addressing several processes embedded in the emergence, continuance, frequency and prevalence of the contemporary problem of human trafficking at different levels of analysis. On the one hand, involvement of a wide range of nations in this transnational criminal activity across the globe further supports Shae and Mckays argument as regards the influence of structural characteristic of the communities on individual offending without regard to individual characteristics. On the other hand, emergence and geographic distribution of trafficking cases

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<sup>43</sup>Bursik R.J., *Social Disorganization and Theories of Crime and Delinquency: Problems and Prospects*, *Criminology* 26<sup>th</sup> Edition, 1988, 519-551.

<sup>44</sup> Shaw CR and HD Mckay, *Juvenile Delinquency and Urban Areas: A study of Rates of Delinquents in Relation to Differential Characteristics' of local communities in American cities*, Chicago, University of Chicago, 1942, 57.

<sup>45</sup> Shaw CR and HD Mckay, *Juvenile Delinquency and Urban areas: A study of Rates of Delinquents in Relation to Differential Characteristics' of Local Communities in American Cities*, Chicago, University of Chicago, 1942, 57.

<sup>45</sup>Bursik R.J., *Social Disorganization and Theories of Crime and Delinquency: Problems and Prospects*, 1988, *Criminology* 26<sup>th</sup> Edition, 519-551.

in accordance with certain structural characteristics of both origin and source countries underlines the ability of systematic control approach to address dynamics of human trafficking which emerge as a result of global transformation and disturb, parochial, and public level of control, opportunity structure and disorder in and across the nations.<sup>46</sup>

Thus, unlike current research on human trafficking, a systemic control approach can account for the processes that mediate the impact of global transformations on individual victimization without a dichotomous conceptualization of human trafficking with regard to sending versus receiving or origin versus destination countries.<sup>47</sup>

Although the difficulty of measuring social disorganization (even in a single country across several; neighborhoods') and restrictions of official data could limit the reliability and validity of suggested test of systemic control model of human trafficking, to the extent that it provides empirical evidence in the premised direction, the results can inform related policy interventions and reinforce further research and assumed associations. It is therefore important in this study as it provides modalities for the derivation of proposals from reform.<sup>48</sup>

## 1.7 Methodology

This research shall rely on primary, secondary and tertiary sources. I shall review Kenya Constitution 2010, Statutes, Reports, Newspaper articles and other scholarly writings.

## 1.8 Chapter Breakdown

Chapter one of the dissertation provided an overview and an introduction. It entailed the statement of the problem, research hypothesis, research questions and objectives of the study, theory relevant in the dissertation, methodology and a chapter breakdown.

Chapter Two interrogates the history of human trafficking, modern day trends of human trafficking, the domestic and international context of human trafficking, the causes and drivers of women trafficking and finally provided a conclusion.

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<sup>46</sup> Shaw CR and HD Mckay, *Juvenile delinquency and urban areas: A study of rates of delinquents in relation to differential characteristics' of local communities in American cities*, Chicago, University of Chicago, 1942, 57.

<sup>46</sup>Bursik R.J, *Social Disorganization and Theories of Crime and Delinquency: Problems and Prospects*, 1988, *Criminology* 26<sup>th</sup> Edition, 519-551.

<sup>47</sup> Shaw CR and HD Mckay, *Juvenile delinquency and urban areas: A study of rates of delinquents in relation to differential characteristics' of local communities in American cities*, Chicago, University of Chicago, 1942, 57.

<sup>47</sup>Bursik R.J: *Social Disorganization and Theories of Crime and Delinquency: Problems and Prospects*, 1988, *Criminology* 26<sup>th</sup> Edition, 519-551.

<sup>48</sup> Shaw CR and HD Mckay, *Juvenile delinquency and urban areas: A study of rates of delinquents in relation to differential characteristics' of local communities in American cities*, Chicago, University of Chicago, 1942, 57.

Chapter Three deals with the Constitutional framework, the policy framework, the legal framework. It will also deal with the International law framework, trafficking specific instruments, followed by a conclusion of the chapter.

Chapter Four handles the institutional framework for combatting women trafficking in Kenya, this entailed the policy formulation and implementation agencies for instance the Counter-Trafficking in Persons Advisory Agencies, the law enforcement and justice agencies, non-state actors and finally a conclusion of the chapter.

Chapter Five provides conclusions and recommendations of the dissertation.



## CHAPTER TWO

### 2.0 HISTORY, PREVALENCE AND FACTORS CONTRIBUTING TO WOMEN TRAFFICKING IN KENYA

#### Introduction

Trafficking in persons is a form of violence against the victims who mostly constitute of women and girls. The main reason why trafficking is at its highest is due to the high financial returns it guarantees as well as the high demand for it all across the globe.

This chapter seeks to answer the research question on the history, the prevalence and the factors that are contributing to women trafficking in Kenya.

Human trafficking in women is active and progresses in line with the existing political, social and economies environment. It is an act that is criminally motivated and violates the human rights of people.

The Constitution of Kenya 2010 grants certain absolute rights and freedoms that shall not be limited these are, Freedom from torture and cruel, inhuman or degrading treatment or punishment,<sup>49</sup> and Freedom from slavery or servitude,<sup>50</sup>

#### 2.1 Defining Human Trafficking in Women

In September of 2007, relevant government ministries provided a draft comprehensive human trafficking bill to the Attorney General. This national condemnation of human trafficking resulted in discussions and exchanges on strategies and solutions to address this menace. This as a result gave rise to the Counter- Trafficking in Persons Act of 2010.

The Counter-Trafficking in Persons Act defines human trafficking as,

*“A person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of –*  
*(a) threat or use of force or other forms of coercion; (b) abduction; (c) fraud; (d) deception; (e) abuse of power or of position of vulnerability; (f) giving payments or benefits to obtain the*

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<sup>49</sup>Article 25(a), Constitution of Kenya (2010).

<sup>50</sup> Article 25(b), Constitution of Kenya (2010).

*consent of the victim of trafficking in persons; or (g)giving or receiving payments or benefits to obtain the consent of a person having control over another person.*<sup>51</sup>

The Palermo Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime defines trafficking as,

*“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring 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 or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of other or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs ... The consent of a victims of trafficking in persons to the intended exploitation set forth (above) shall be relevant where any of the means set forth (above) have been used.”*<sup>52</sup>

The protocol has a special focus on the plight of children and women. This is because trafficking in persons is a factor concerning mainly women and children.

The protocol has three distinct elements these are the act itself which entails recruitment, transportation, transfer, harbouring or receipt of persons. The second element is the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim. The third element is the purpose, the exploitation, which entails exploiting the prostitution of others, sexual exploitation, forced labour, slavery and the removal of organs.

In the European Court of Human Rights in a judgment *Rantsev v. Cyprus and Russia*, defined human trafficking as,

*“Trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of power attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the*

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<sup>51</sup> Section 3(1) Counter-Trafficking in Persons Act, (No. 8 of 2010.)

<sup>52</sup>Article 3, United Nations General Assembly, United Nations Convention against Transnational Organization Crime; Annex II: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

*sex industry but also elsewhere. It involves the use of violence and threats against victims, who live and work under poor condition.*"<sup>53</sup>

Human trafficking represents a grave violation of human rights and human dignity and is one of the most serious crimes. It is increasingly developing into a global problem that should be tackled from both the local and the international level.<sup>54</sup> According to the International Labour Organization 2.4 million people fall victims of human trafficking at any given time and that profits from trafficking are about \$32 billion every year.<sup>55</sup>

Migrant smuggling is an offence that occurs across borders. It entails helping migrants enter or stay in a particular country by illegal means for a price. An example is the Kenya Uganda border where smugglers charge money from migrants to transport them across the border into Kenya, this means bypassing the entry requirements. The main difference between human trafficking and migration is the voluntary aspect, in human trafficking there is deceit of a better future and there are threats to ensure the victims of trafficking adhere to the masters. While in the case of migrants it is voluntary they move across the border voluntarily.

Kenyan women and girls are trafficked both internally and transnationally for forced labour and sexual exploitation. Transnational trafficking is the most identified form of human trafficking. Europe and the Middle East are the primary destination points upon which Kenya women are trafficked to. Kenya has been identified as a source, transit and destination for human trafficking, women are smuggled through Kenya to various destinations across the globe.<sup>56</sup>

Contributing to the frequency of human trafficking in women in Kenya is the presence of a vast population of victims of forced displacement. Kenya hosts an estimated 490,000 refugees in its Dadaab and Kakuma camps and other urban areas.<sup>57</sup> It has been noted that

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<sup>53</sup> ECtHR, *Rantsev v. Cyprus and Russia* Para. 281, 2010.

<sup>54</sup> United Nations: Office of the High Commissioner: Human Rights and Human Trafficking. Fact sheet No. 36. (2014), 2.

<sup>55</sup> International Labour Organization, *A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva, (2005), 45.

<sup>56</sup> Assessment Report on the Human Trafficking. Situation in the Coastal Region of Kenya. May (2018) 11.

<sup>57</sup> Awareness against Human Trafficking (HAART), *Displacement, Violence and Vulnerability: Trafficking among internally Displaced Person in Kenya*, Nairobi, (2016), 10.

human traffickers scout unsuspecting refugees in order to exploit their vulnerability.<sup>58</sup> Older Somali women have been said to be playing roles in the luring and trafficking of younger Somali women in the camps. Internally Displaced Persons in Kenya are also highly vulnerable to human trafficking, reports have shown the occurrence of human trafficking for forced labor and sexual exploitation within IDP communities.<sup>59</sup>

## 2.2 History of Human Trafficking

Human trafficking and slavery have been in existence since the earliest records of humanity, in 1720 the Code of Hammurabi was the first document in law that highlighted human trafficking and slavery.<sup>60</sup> In 700 BC, there was slave trade around the African Sahara Desert that operated internally and which required places that served as trading posts this was the first ever recorded signs of human trafficking in the African Region.<sup>61</sup>

In 416 BC, slavery and human trafficking was prominent during the wars between the Greeks and the Turks, it was a feature of societal hierarchies throughout the ancient world. Egyptian and Roman governments made slavery not only a spoil of warfare but a key element in the development of their empires.<sup>62</sup>

In 1446 Portugal claimed ownership of Guinea, where slaves were captured, transported and put through a series of beatings, they were treated as property, this included any children born from the slaves they owned.<sup>63</sup>

In the 18<sup>th</sup> and 19<sup>th</sup> Centuries, the African continent was bled dry of its human resources through all possible routes. From the Indian Ocean, across the Sahara through the Red Sea, and across the Atlantic.<sup>64</sup> It is estimated that 4 million people were exported through the Red Sea and another 4 million through the East African shores of the Indian Ocean and more than 9 million along the Trans Sahara caravan route.

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<sup>58</sup> Awareness against Human Trafficking (HAART), Displacement, Violence and Vulnerability: Trafficking among internally Displaced Person in Kenya, Nairobi, (2016), 10.

<sup>59</sup> Awareness against Human Trafficking (HAART) Natural Disaster, Human Trafficking and Displacement in Kenya. HAART Research Series No. 3, (2017), 22.

<sup>60</sup> Introduction and History of Human Trafficking and Modern-Day Slavery. Chapter 1. (2018) 9.

<sup>61</sup> Introduction and History of Human Trafficking and Modern-Day Slavery. Chapter 1. (2018), 10.

<sup>62</sup> Introduction and History of Human Trafficking and Modern-Day Slavery. Chapter 1. (2018), 12.

<sup>63</sup> Introduction and History of Human Trafficking and Modern-Day Slavery. Chapter 1. (2018), 13.

<sup>64</sup> Kidnapping: An underreported Aspect of African Agency during the Slave Trade Era (1440-1885). 2009,5.

The Coastal Region in Kenya is a clear reminder of the terrors that human beings are capable of, between the medieval era and the early 20<sup>th</sup> Century, Arab slave traders captured the Bantu speaking people from present day Kenya, Tanzania and Mozambique, brought them to the coast for export.<sup>65</sup>

In 1996 Kenya had a 43.1% rate of child labour and trafficking.<sup>66</sup> These children migrated from the rural parts of the country to urban areas in search of employment.<sup>67</sup> In 2001, the number of mistreated domestic workers in the international scene had greatly increased, some of these workers were Kenyan nationals.<sup>68</sup> An example that stood out was that of two Kenyan employees in the United States of America. Mary Chumo and Alice Benjo who were kept as modern-day slaves at the house of their employer in the United States, an employee at the Kenyan Embassy in Washington. They had been employed by Elizabeth Belsoi, a Kenyan citizen. According to court documents, they worked 18 hours a day, they were not allowed to use the phone or leave the homestead. Belsoi denied the charges and stated that she fully complied with the employment contract that they had agreed on.<sup>69</sup>

In 2002, a child prostitution report stated that children from poor backgrounds were being taken but instead of taking care of their basic needs, they had hired and sold them out for prostitution.<sup>70</sup> This was common around the coast. Children from different parts of Kenya were found in brothels.<sup>71</sup>

2004 brought one of the biggest human trafficking scandals in Kenya. Mr. Gilbert Deya, a Kenyan citizen evangelical pastor based in London purported to inspire miraculous inceptions among infertile and post-menopausal women through prayer. This tale gained attention after it was reported that the women who had sought an alternative from pastor Deya had allegedly been observed travelling to Kenya with Mrs. Deya and each returned with a baby. Examination through DNA testing revealed that out of the fifteen children the police

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<sup>65</sup><https://www.dw.com/en/east-africas-forgotten-slave-trade/a-50126759> Silja Frohlich: Africa History: East Africa's Forgotten Slave Trade, DW Feature 22.08. 2019.

<sup>66</sup> International Labour Organization (ILO) News, Geneva, 10 June 1996, 98.

<sup>67</sup> Sande Anne, Child Labor in Nona Region of Western Kenya and Implications on the Rights of Children: Critical Reflections, Vol. 23, Issue 4, Journal of Humanities and Social Sciences, 70-75, April 2018.

<sup>69</sup> Armour S. Part 1: Some Foreign Household Workers enslaved, USA Today 11/21/2001.

<sup>70</sup> [www.newsfromafrica.org/newsfromafrica/articles/art\\_854.html](http://www.newsfromafrica.org/newsfromafrica/articles/art_854.html). Ochieng Z. News from Africa, 22<sup>nd</sup> August 2002

<sup>71</sup> [www.newsfromafrica.org/newsfromafrica/articles/art\\_854.html](http://www.newsfromafrica.org/newsfromafrica/articles/art_854.html). Ochieng Z. News from Africa, 22<sup>nd</sup> August 2002

rescued, only six were their biological offspring.<sup>72</sup> This caused an order for the extradition of Mr. Deya to be issued by then Home Secretary Jacqui Smith which failed in 2007 due to the United Kingdom's requirement that Mr. Deya be extradited to a prison of acceptable standards.<sup>73</sup>

However, in 2007, an Italian citizen was arrested in the Coast on suspicion of human trafficking for enabling human prostitution. In the same year two women were charged with child prostitution after luring a 14-year-old girl to their home and forcing her into prostitution.<sup>74</sup>

In 2010, Kenya enacted the Counter-trafficking in persons Act which criminalizes human trafficking.

The most current trend of women trafficking is the idea of employment overseas, a number of women have been targeted and deceived by recruitment agencies into believing that they have successfully acquired employment in Middle Eastern countries such as United Arab Emirates and Qatar. These women are shipped to these Middle Eastern countries not realizing that their employers actually paid a hefty amount to have them travel to the country. Once there they are put through slave like conditions which include, forced labour as well as being sexual exploited. This was highlighted by a victim of this horror in August of 2021.<sup>75</sup>

### 2.3 Factors Contributing to Women Trafficking

A number of facts have contributed to the increase in women trafficking, they include the profitability of the act, the demand for labour and sex workers and the complicity of government officials to the crime of women trafficking.

Women trafficking industry generates a profit of \$150 billion annually, Two-thirds of this is generated from commercial sexual exploitation, while the remainder comes from forced

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<sup>72</sup>[www.newsfromafrica.org/newsfromafrica/articles/art\\_854.html](http://www.newsfromafrica.org/newsfromafrica/articles/art_854.html). Ochieng Z. News from Africa, 22<sup>nd</sup> August 2002

<sup>73</sup><http://www.standard.co.uk/news/world/gilbert-deya-preacher-in-miracle-babies-case-fights-to-stay-in-britain-a3375626.html>. Dubuis A. 'Gilbert Deya: Preacher in 'miracle babies' case fights to stay in Britain.' The Standard UK 21 October 2016

<sup>74</sup> Human Trafficking in Eastern Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda and Burundi 2008, 11.

<sup>75</sup><https://www.pulselive.co.ke/news/i-was-held-at-gun-point-faith-murunga-narrates-horrifying-ordeal-in-saudi-arabia-on/9z4eltc> Dennis Milimo, Faith Murunga Narrates painful experience in Saudi Arabia and how she escaped, 19<sup>th</sup> August 2021.

economic exploitation such as domestic work and agriculture. Unfortunately, there seems to not yet be an effective way to stop these illegal money flows.<sup>76</sup>

This is the main reason why human trafficking is insanely growing annually in revenue generation. Particularly sex trafficking represents on the downfall of the economic globalization which is taking advantage of the effortless movement potential of money and people across national boundaries. The factors that have contributed to women trafficking include:

### 2.3.1 Conflict and Violence

The African region is faced with some of the harshest conflicts and this has made millions of people become refugees in neighbouring countries, it has also made them vulnerable and desperate. South Sudan, Kenya, Central Africa Republic have had and some are still having civil unrests in their countries. Millions of women and girls are displaced, this makes them vulnerable and desperate due to lack of basic needs. This makes them easy subjects of abuse through trafficking.<sup>77</sup>

### 2.3.2 Lack of Employment

Kenya has a large number of unemployed youth. The major reason for this includes lack of education and government corruption. As of September 2021, an estimated 1 million youth in Kenya are unemployed. Therefore the idea of a trafficker enticing them with the idea of employment in the Middle East is most glorious. The idea of employment and a better future makes women get into the bandwagon not realizing that the job is modern day slavery.

### 2.3.3 Demand for Cheap Labour

Certain economic sectors, particularly restaurants and kitchens, domestic labour, agriculture often demand for cheap workforce and are common exploiters of human trafficking.<sup>78</sup> They often search for desperate women and tell them false promises of a safe work space and a

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<sup>76</sup>United Nations Office on Drugs and Crime, United Nations Global Initiative to Fight Human Trafficking, Introduction to Human Trafficking, Vulnerability, Impact and Action. New York 2008, 44.

<sup>77</sup>Ronald Weitzer :New Directions in Research on Human Trafficking, Issue 653, Vol. 1 (2014), 6

<sup>78</sup> Aloysius John, Global Trends of Human Trafficking Conditions and Prevention Strategies, Taiwan July (2019), 22.

steady salary. Once they are shipped to the host country they realise it was all a sham that they are paid less than minimum wage and work overtime without pay.<sup>79</sup>

## 2.4 Women Trafficking in Kenya

Kenya has been identified as a source, transit and destination country for victims of human trafficking and human traffickers.<sup>80</sup> According to the 2020 United States of America (USA) State Department Trafficking in Persons Report, Kenya is ranked as a Tier 2 country, a position that is reserved for countries that do not meet the minimum set out requirements of the US Trafficking Victims Protection Act (TVPA) but are working to do so.<sup>81</sup>

Human traffickers in Kenya exploit victims both within and outside the republic. Victims of trafficking around East Africa are mostly enrolled by both legal, illegal and unregulated recruitment centres, however some voluntarily migrate to countries in Southeast Asia, Europe and the Middle East on sham promises of employment.<sup>82</sup> Once they arrive at the destination countries, trafficking victims often have their passports and travel documentation seized by their employers before being subjected to forced manual labour, domestic servitude and sexual exploitation.<sup>83</sup> Internal trafficking in Kenya deals mostly with trafficking in persons from the rural areas to the urban areas like Mombasa and Nairobi.<sup>84</sup>

Kenyan women are vastly trafficking across the Kenyan borders. Kenya has three major cities that is Nairobi, Kisumu and Mombasa, majority of women move from low income rural areas into the urban cities for better livelihoods.<sup>85</sup>

Victims of internal trafficking are mostly attracted by education and job opportunities, they enter into trafficking situations where they are exploited through forced labour, street begging, domestic servitude and various forms of sexual exploitation.<sup>86</sup>

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<sup>79</sup>International Labour Organization, A Global Alliance against Forced Labour: Global Report under the Followup to the ILO Declaration on Fundamental Principles and Rights at Work Geneva, (2005), 87.

<sup>80</sup>Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya May (2018), 11.

<sup>81</sup>United States of America Department of State, *Trafficking in Persons Report 2020 (US TIP Report)*, 292.

<sup>82</sup>Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya May (2018), 11.

<sup>83</sup>Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya May (2018), 11.

<sup>84</sup>Kenya National Crime Research Centre, *Report on Human Trafficking in Kenya, June (2015)*, 9

<sup>85</sup>Awareness against Human Trafficking (HAART), Displacement, Violence and Vulnerability: Trafficking among internally Displaced Persons in Kenya (Nairobi 2016) , 14.

<sup>86</sup> Awareness against Human Trafficking (HAART), Displacement, Violence and Vulnerability: Trafficking among internally Displaced Persons in Kenya (Nairobi 2016), 54.

Poverty and unemployment are the main reasons why women trafficking in Kenya is at an all-time high.<sup>87</sup> Other factors that have contributed to high levels of trafficking in Kenya are, peer pressure, lack of awareness and illiteracy. Although women are internally trafficked within Kenya, the profile of victims of internal trafficking in Kenya are mostly unemployed Kenyans below the age of 18 who are in search of better remuneration to support their families and themselves.<sup>88</sup>

## 2.5 Causes of Human Trafficking in Women.

Trafficking is multifaceted and mostly connected to Poverty, weak governance, armed conflict, lack of effective protection against discrimination and exploitation

### 2.5.1 Poverty

Human traffickers come with the deception of quick employment and stability in order to recruit victims. Traffickers will most likely look for women who are susceptible to coercion into the industry.<sup>89</sup> These individuals tend to be immigrants fleeing from their homes because of natural disasters, political instability, civil wars and economic hardships. Displacement of populations tends to increase individual's vulnerability and self-protection. This makes them easy targets for human trafficking.<sup>90</sup>

### 2.5.2 Economic Causes

There is an alarming shortage of employment particularly for unskilled labour. Youth unemployment is constantly on the rise. The labour market for women is quite restricted - consistently more than the young men. Unskilled women are valued more when it comes to household work therefore the work that is mostly available includes working long hours with minimal pay.<sup>91</sup>

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<sup>87</sup> National Crime Research Centre Publication, Issue October (2020) ,71.

<sup>88</sup> National Crime Research Centre, Publication Issue October (2020), 40.

<sup>89</sup>Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings*, Green Publishing Group, USA, (2009), 219.

<sup>90</sup>Carrie Beichel Berger: *Human Trafficking: The Hidden Aftermath of US Natural Disasters*, March (2020),24.

<sup>91</sup> Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings*Green Publishing Group, USA, (2009).

As of May 2020, 15.9 million Kenyans were unemployed making it easy for traffickers to easily convince their prey.<sup>92</sup> Economic constraints are therefore pushing women from the countryside, refugee camps and villages into the metropolises, from poorer to richer countries looking for employment. As a result of the rapid urbanization fuelled by these trends, women from rural areas are being exposed to new income and consumption patterns. Women are therefore becoming more and more desperate for better opportunities and that is where traffickers wait for them ready to pounce on their prey and traffic them to richer countries.<sup>93</sup>

### **2.5.3 Social-economic causes**

Oppression of women and children within patriarchal families and social structures in which women are subordinated to men is another reason women fall prey to traffickers. It is also a major factor in the demand for sexual and labour services, without which human trafficking could not prosper.<sup>94</sup> Not only do women and girls not enjoy the same privileges as men they are often regarded as a burden to many families and therefore less time and money is invested in them, they therefore find themselves unskilled and unemployed. In certain communities' women are sold off to traffickers for a price with the notion that they will get employment wherever it is they are going.<sup>95</sup>

### **2.5.4 Demand and supply of human trafficking**

In a lot of developing countries poor economic, political and social infrastructure contributes to poverty, conflict and bad governance which in turn forces people to leave and look for opportunities elsewhere.<sup>96</sup>

In most cases you will find that individuals who use irregular routes become the victims of trafficking, ignorance, lack of skill and exposure makes one a target of trafficking.

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<sup>92</sup> Kenya National Bureau of Statistics: Economic Survey 2020,44.

<sup>93</sup> Awareness against Human Trafficking (HAART), Displacement, Violence and Vulnerability: Trafficking among internally Displaced Persons in Kenya, Nairobi, 2016,34

<sup>94</sup> United Nations Office on Drugs and Crime: An Introduction to Human Trafficking: Vulnerable, Impact and Action. (New York 2008).

<sup>95</sup> Awareness against Human Trafficking (HAART), Displacement, Violence and Vulnerability: Trafficking among internally Displaced Persons in Kenya (Nairobi 2016).

<sup>96</sup> Human Trafficking in Eastern Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda and Burundi (2008) ,15.

Developed countries mainly seek unskilled women for labor, these countries include the West, the Middle East as well as big cities. The uncontrollable expansion of the sex and pornography industry has created increased demand for women trafficking not only from developing countries to developed countries but also into big cities and holiday resort areas.<sup>97</sup> Women and girls are kept captive in brothels to work as commercial sex workers at the disposal of sex tourists and sex traders or are exported to Western destinations where they are confined in inhumane houses and are traded for the purpose of commercial sex including prostitution and pornography.<sup>98</sup>

There is also a high demand for cheap and submissive labor both in the informal and formal sectors that is domestic work, construction and fishing. The more vulnerable and illegal people are the easier it becomes to take advantage of them and the cheaper they become.<sup>99</sup>

### **2.5.5 Trafficking for purposes of organ removal**

Organ trafficking is the practice of stealing or buying organs through exploitation to be sold in the black market for profit. There is a vast demand of organs in the globe, the legally available organs for transplant can only satisfy 10% of the global organ transplant needed.<sup>100</sup>

Illegal collecting of organs is not done legally or willingly, women and girls are trafficked from African countries with the view that they will obtain good employment only for them to get to their destinations and become marks for organs harvesting.<sup>101</sup>

### **2.5.6 Civil unrest**

Armed conflicts can lead to massive forced displacements of people. War creates immense numbers of orphans and street children who are especially vulnerable to

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<sup>97</sup> Makonen Getu: Human Trafficking and Development: The Role of Microfinance, July (2006),142-156.

<sup>98</sup> Katrin Corrigan: Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic, Vol. 25 Issue 1, (2001) 34.

<sup>99</sup> United Nations Office on Drugs and Crime: An Introduction to Human Trafficking: Vulnerability, Impact and Action. New York (2008), 60.

<sup>100</sup> Martin, D., Van Assche, K, Dominguez-Gil, B, Lopez-Fraga, M, Gallont, R, Capron, A. *Strengthening global effects to combat organ trafficking and transplant tourism*, (2019), 30.

<sup>101</sup> Martin, D., Van Assche, K, Dominguez-Gil, B, Lopez-Fraga, M, Gallont, R, Capron, A *Strengthening global effects to combat organ trafficking and transplant tourism* , (2019),34.

trafficking.<sup>102</sup>For instance the civil unrest in Somalia has caused a large number of families to flee into Kenya and this is where they are targeted by traffickers with the idea of better economic opportunities ahead.

## 2.6 Kenya as a Source, Transit and Destination Country

Kenya has been identified as a source, transit and destination country for victims of trafficking. There is however scarce information on the total number of Kenyan citizens who are employed outside Kenya, it has been estimated that there are over 3 million Kenyans who work abroad, however the majority of Kenyan nationals attain their employment from the Middle East.<sup>103</sup> Kenya as a source for transnational human trafficking, Kenyan citizens are trafficked to countries in the Middle East, neighboring African countries, North America and Europe mostly for labour and sexual exploitation.

The movement of Kenyans to countries in the Middle East such as Saudi Arabia, United Arab Emirates (UAE), Qatar, and Oman have been accelerated by poverty and unemployment opportunities. This happens mostly to women living in coastal areas as well as North Eastern areas.<sup>104</sup> With the economic recession in Kenya at the start of the millennium and a steady increase in the wealth of oil states in the Middle East, economic movement has become a survival strategy for unemployed youth in Kenya. This push and pull factors have caused a rise in the supply and demand for unskilled labor which has been greatly exploited by unregulated labor recruitment centres and has made Kenyan women easy marks for human traffickers.<sup>105</sup>

Reports from the media have highlighted the plight of Kenyans suffering labor and sexual exploitation in destination countries and complaints by ousted trafficked workers from the Middle East, the Kenyan Government temporarily barred the recruitment of Kenyan

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<sup>102</sup> Human Trafficking in Eastern Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda and Burundi, (2008), 15.

<sup>103</sup>Daghar M, *The New Slavery: Kenyan workers in the Middle East, ENACT Policy Brief, Issue 16 June 2020*, 2.

<sup>104</sup> Daghar M, *The New Slavery: Kenyan workers in the Middle East, ENACT Policy Brief, Issue 16 June 2020*, 1

<sup>105</sup> Daghar M, *The New Slavery: Kenyan workers in the Middle East, ENACT Policy Brief, Issue 16 June 2020*, 2

workers to the Middle East in September of 2014.<sup>106</sup> The ban was however lifted in 2017 with restrictions which stated that recruitment would only be allowed to accredited recruitment centres that have been vetted and obtained new licenses from the government.<sup>107</sup>

Despite this control by the government, reports of exploitation and human trafficking of Kenyans abroad persist. Measures approved by the government to streamline recruitment activities carried out by agencies have driven criminal activity underground as recruitment agents have found different ways to bypass the ban and vetting process.<sup>108</sup> This is also aided by the corruption and compliancy in government offices between the traffickers and the government officials in procuring passports and other travel documentation.<sup>109</sup>

Due to the increased level of human trafficking to the Middle East for exploitation, the US State Department has also reported that Kenyan women are also exploited by Nigerian criminal organizations in Thailand.<sup>110</sup> Kenyan women have also been reported to have been trafficked within the East African region to Somalia for exploitation in armed conflict.<sup>111</sup>

## 2.7 Kenya as a Transit Country

Kenya as a transit country has victims including Ugandans, Ethiopians', Somalis, Indians, and other countries in the East African region who are trafficked through Kenya enroute to other parts of African and the Middle East.<sup>112</sup> During the ban on labor externalization to the Middle East in Uganda due to reports of increasing human rights violations

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<sup>106</sup> Brian Ngugi, *Kenyan government moves to combat migrant worker abuse in the Gulf*, *Equal Times* 13 October 2014,6

<sup>107</sup> <https://deeply.thenewhumanitarian.org/womensadvancement/articles/2017/12/13/kenya-lifts-ban-on-sending-domestic-workers-to-the-middle-east>Christabel Ligami, *Kenya Lifts Ban on Sending Workers to the Middle East*, *Newsdeeply* 13 December 2017.

<sup>108</sup> Daghar M, *The New Slavery: Kenyan workers in the Middle East*, *ENACT Policy Brief*, Issue 16 June 2020, 3

<sup>109</sup>Daghar M, *The New Slavery: Kenyan workers in the Middle East*, *ENACT Policy Brief*, Issue 16 June 2020,4

<sup>110</sup>United States of America Department of State, *Trafficking in Persons Report 2014 (US TIP Report)*,295

<sup>111</sup>United States of America Department of State, *Trafficking in Persons Report 2014 (US TIP Report)*, 295

<sup>112</sup>Awareness against Human Trafficking (HAART), *Displacement, Violence and Vulnerability: Trafficking among internally Displaced Persons in Kenya* (Nairobi 2016),76.

including human trafficking suffered by Ugandan nationals, traffickers use Kenya as an alternative trafficking route to the Middle East.<sup>113</sup>

## 2.8 Kenya as a Destination Country

Years of considerable economic growth, political stability, and a standard of living considerably higher than that of neighboring countries in East Africa, countries have subsidized to make Kenya a destination for victims of human trafficking.<sup>114</sup> Individuals of other African and Asian realms are trafficked into Kenya for various forms of exploitation.<sup>115</sup>

Urban areas such as Mombasa and Nairobi are the preferred destinations for human traffickers.<sup>116</sup> It has been noted that there is a large increase in the trafficking of Ugandan women for labor and sexual exploitation into Kenya especially in the Eastleigh area.<sup>117</sup> It has also been highlighted that the increased trafficking of young Ugandan girls into Kenya for exploitation as domestic workers, where they are subjected to work for long hours with little to no pay.<sup>118</sup> In 2014 the Kenyan Government identified and rescued 96 Ugandan nationals who were trafficked into Kenya for exploitation.<sup>119</sup>

Trafficking of Nepalese, Pakistani and Indian women are also shipped into Kenya for sexual exploitation especially the coastal and Nairobi regions.<sup>120</sup> Recruiters and traffickers have also been reported to use debt bondage, where the women are indebted to the traffickers for the cost of the trip to the trafficked destination, to force their victims from the above mentioned states to work in *Murja* dances in Nairobi and Mombasa night

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<sup>113</sup>United States of America Department of State, *Trafficking in Persons Report 2014 (US TIP Report)*,389.

<sup>114</sup> Human Trafficking in Eastern Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda and Burundi (2008) ,15.

<sup>115</sup>Ministry of Labour Social Security and Services, *The National Plan of Action for Combating Human Trafficking: Strategic Framework 2013-2017*, 2.

<sup>116</sup> Awareness against Human Trafficking (HAART), *Displacement, Violence and Vulnerability: Trafficking among internally Displaced Persons in Kenya* (Nairobi 2016), 14.

<sup>117</sup> United States of America Department of State, *Trafficking in Persons Report (2014)*, 295.

<sup>118</sup> BBC News Africa Eye, *The Hidden Lives of “House girls” in Kenya*, 20 May (2019), 296.

<sup>119</sup> United States of America Department of State, *Trafficking in Persons Report (2014)*,389.

<sup>120</sup> IOM, *Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya, May (2018)*, 11.

clubs, where they are exploited through commercial sexual exploitation to pay off their debts.<sup>121</sup>

In conclusion this chapter did seek to analyse the factors that have contributed to women trafficking in Kenya. As has been noted the major factors that have driven women into trafficking, they mostly include poverty, unemployment and certain socio-economic factors.

However, if we make women aware then we can try and prevent this menace, improvement of their situations could also play a big role in preventing women from being involved in trafficking.



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<sup>121</sup> IOM, *Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya, May (2018)*,

## CHAPTER THREE

### 3.0 POLICY AND LEGAL FRAMEWORK OF COMBATING HUMAN TRAFFICKING IN WOMEN IN KENYA- A CRITIQUE OF ADEQUACY AND RELEVANCE.

This chapter seeks to review the existing policy, legal and institutional framework both internationally and nationally in the context of women trafficking. It aims to demonstrate that the existing framework is marred with serious deficiencies that need to be addressed if the war on women trafficking is to be won. The chapter interrogates in an in-depth manner the Constitutional, policy and legal framework. The policy framework will discuss the National Plan of Action to Combat Human Trafficking, the Guidelines for National Referral Mechanism for Assisting Victims of Human Trafficking in Kenya. The legislative framework will focus on the Counter-Trafficking of Persons Act, The Prevention of Organized Crime Act, General human rights instruments this includes the Universal Declaration of Human Rights, African Charter on Human and Peoples Rights, the Maputo Protocol to name a few.

Women are trafficked from poorer countries to countries where the standard of living for an average person is relatively higher.<sup>122</sup> The fact that lesser developed countries populations are used for trafficking supports the recognition of a right to development as a human right. Trafficking is linked with forced prostitution that follows false promises of well-paying jobs.

Over the years Kenya has taken different approaches legislative and operational counter trafficking measures, Kenya has ratified laws and developed policies specifically and generally aiming at controlling human trafficking in women.

### 3.1 International Law

#### 3.1.1 Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly in Paris on 10 December 1948. The preamble gives the inherent dignity and the equal and inalienable rights of all members of the humanity. The Declaration

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<sup>122</sup>Dorchen Leidholdt, Position Paper for the Coalition Against Trafficking in Women, Special seminar on Trafficking, Prostitution and Global Sex Industry, United Nations Working Group on Contemporary forms of slavery, organized by Coalition against Trafficking, International Movement Against Discrimination and Racism, International Human Rights Law and Anti-slavery June 1 1999, 543.

provides the right to life, liberty and security of every person.<sup>123</sup> It states that no one is to be held in slavery and that slave trade is prohibited in all methods and form. Victims of trafficking are sold to the highest bidder which means their human dignity and freedoms are greatly violated.<sup>124</sup> It goes further to provide that no one is to be exposed to torture, cruel and to inhumane or degrading treatment or punishment.<sup>125</sup>

Victims of human trafficking are normally tortured for the pleasure of human traffickers. Article 7 of the UDHR states that all human beings are equal before the law, and that every human being is entitled to equal protection of the law without any discrimination.<sup>126</sup> It also brings into focus the right of every human being to work and earn a living, freedom of choice when it comes to employment with just and favourable conditions of work.<sup>127</sup> Traffickers will mostly take advantage of the helplessness of victims and promise them a false hope of a bright future and money before they can realize they are taken as slaves and forced to work in inhumane conditions thus violating the principles of the UDHR.

The UDHR is a comprehensive legislation however it is general in that it only provides interpretation for human rights laws.<sup>128</sup>

### 3.1.2 The Convention On the Elimination of All Forms of Discrimination against Women.

The Convention on the Elimination of All Forms of Discrimination against Women, was adopted in 1979 by the United Nations General Assembly. The CEDAW ratified into Kenya law in December 1984. It makes clear that trafficking is quite rampant mostly in women followed by children. This Convention gives instruction to all State Parties to denounce discrimination against women in all its forms. States have also agreed to pursue by all appropriate means and without delay a policy of eradicating discrimination against women.<sup>129</sup> It goes further and states that all State Parties ought to take appropriate measures to exclude discrimination against women by any person, organization or enterprise,<sup>130</sup> and that all

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<sup>123</sup>Article 3 Universal Declaration of Human Rights.

<sup>124</sup>Article 4 Universal Declaration of Human Rights.

<sup>125</sup> Article 5 Universal Declaration of Human Rights.

<sup>126</sup>Article 7 Universal Declaration of Human Rights.

<sup>127</sup> Article 23 Universal Declaration of Human Rights.

<sup>128</sup>G. Christenson, Using Human Rights Law to Inform Due Process and Equal Protection Analyses, University of Cincinnati Law Review No. 52, 1983, 3.

<sup>129</sup> Article 2 Convention on the Elimination of All Forms of Discrimination against Women.

<sup>130</sup>Article 2 (e) Convention on the Elimination of All Forms of Discrimination against Women.

State Parties ought to take every measure this includes drafting legislation to suppress all forms of traffic in women, and exploitation of prostitution in women.<sup>131</sup>

The CEDAW does not specifically give procedures on how a victim of trafficking is to be repatriated back into their home state and leaves the repatriation details to the host state who determine the procedures for repatriation, in most instances repatriation takes weeks and sometimes months making the women anxious and depressed.

### 3.1.3 UN Convention Against Transnational Organized Crime.

Article 1 of the Convention states that the main purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.<sup>132</sup>

Article 3 of the UN Convention against Transnational Organized Crime states that an offence is transnational in nature if:

- a. It is committed in more than one State,
- b. It is committed in one State but a significant part of its preparation, planning, direction or control takes place in another State,
- c. It is committed in one State but involves an organized crime group that engages in criminal activities in more than one State; or
- d. It is committed in one State but has substantial effects in another State.<sup>133</sup>

Article 5 goes further to state that each State Party is to draft legislative and other measures necessary to establish criminal offences,

Article 25 bring into focus that assistance and the protection of victims of organized crime, it states that State parties are to take proper measures within their means to provide assistance and protection to victims of offences of organized crime.<sup>134</sup> Each State party is to launch access to compensation and restitution for victims of offences of organized crime.<sup>135</sup>

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<sup>131</sup> Article 2 (f) Convention on the Elimination of All Forms of Discrimination against Women.

<sup>132</sup> Article 1 United Nations Convention Against Transnational Organized Crime.

<sup>133</sup> Article 3 United Nations Convention against Transnational Organized Crime.

<sup>134</sup> Article 25(1) United Nations Convention Against Transnational Organized Crime.

<sup>135</sup> Article 25(2) United Nations Convention Against Transnational Organized Crime.

Due to reluctance by states to co-operate, you find that traffickers can easily move from one state to another and also state officials' complacency has also made it very difficult to nab transnational criminals conducting trafficking activities.

### 3.1.4 Protocol Against the Smuggling of Migrants.

The Protocol Against the Smuggling of Migrants by Land, Sea and Land Supplementing the United Nations Convention Against Transnational Organized Crime, came into force in 2004 by the United Nations General Assembly in Addis Ababa. The Protocol against the Smuggling of Migrants by Land, Sea and Air was ratified into Kenya law in 2008.

The objective of the Protocol is to prevent and combat the smuggling of migrants, as well as promote cooperation among State Parties. The Protocol intends to supplement the UN Convention against Transnational Organized Crime.<sup>136</sup>It declares that the effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive approach including cooperation, the exchange of information and other appropriate measures including socio-economic measures, at the national, regional and international level.<sup>137</sup>

It goes further to state that State Parties are to cooperate with each other and with capable international organization, non-governmental organizations, to ensure adequate training in territories to prevent, combat and eradicate human smuggling.<sup>138</sup>

This Protocol however does not specify on how co-operation is to done, most government bodies are normally not very eager to share information with other nations and with non-governmental actors this makes it difficult to therefore co-operate and share information.

### 3.1.5 Protocol to Prevent, Suppress and Punish Trafficking.

The Protocol to Prevent, Suppress and Punish Trafficking is a supplement of the UN Convention against Transnational Organized Crime. Article 2 of the Protocol gives the statement of purpose of the Protocol which is to,

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<sup>136</sup>Article 2 Protocol against the Smuggling of Migrants by Land, Sea and Air.

<sup>137</sup> Article 2 Protocol against the Smuggling of Migrants by Land, Sea and Air.

<sup>138</sup> Article 14(2) Protocol against the Smuggling of Migrants by Land, Sea and Air.

- a. Prevent and combat trafficking in persons, paying particular attention to women and children
- b. Protect and assist the victims of trafficking, with full respect for their human rights
- c. Promoting cooperation among State Parties in order to reach the above-mentioned objectives.<sup>139</sup>

Article 6 goes further to provide for measures of assistance to and protection of victims of trafficking which include, providing privacy and identity of victims of trafficking in persons which include making legal proceedings relating to such trafficking confidential.<sup>140</sup> Providing physical, psychological and social recovery of victims of trafficking including providing cooperation with non-governmental organizations, other elements of civil society.<sup>141</sup>

Article 8 provides for the repatriation of victims of trafficking, stating that each State party which a victim of trafficking is a national or person of permanent residence at the time of entry into the territory of the receiving State Party is to expedite and accept the safe return of that persons without undue or unreasonable delay.<sup>142</sup>

Article 9 goes further to provide prevention and cooperation measures, it states that State Parties are to establish programmes and policies, to prevent and combat trafficking and to protect victims of trafficking especially women and children from revictimization.<sup>143</sup>

State Parties are also to approve or strengthen legislative measures such as social, cultural and educational measures, to discourage the demand that nurtures all forms of exploitation of persons, especially women and children that leads to trafficking.<sup>144</sup>

### 3.1.6 Protocol on Human and Peoples' Rights on the Rights on the Rights of Women in Africa, 2003.

The Protocol to the African Charter on Human and Peoples' Rights on The Right of Women in Africa also known as the Maputo Protocol, adopted in 2003 in Mozambique.

The Maputo Protocol, protects the value of non-discrimination when it comes to colour, language, religion, ethnic group, fortune, or any other status.<sup>145</sup>

<sup>139</sup> Article 2 The Protocol to Prevent, Suppress and Punish Trafficking.

<sup>140</sup> Article 6(1) The Protocol to Prevent, Suppress and Punish Trafficking.

<sup>141</sup> Article 6(3) The Protocol to Prevent, Suppress and Punish Trafficking.

<sup>142</sup> Article 8 The Protocol to Prevent, Suppress and Punish Trafficking.

<sup>143</sup> Article 9 (1) The Protocol to Prevent, Suppress and Punish Trafficking.

<sup>144</sup> Article 9 (5) The Protocol to Prevent, Suppress and Punish Trafficking

<sup>145</sup> Article 9 (5) The Protocol to Prevent, Suppress and Punish Trafficking

The Protocol goes further to mention that State Parties have been given the duty to combat discrimination against women including upholding equity and ensuring it is applied.<sup>146</sup>

The Protocol states that every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal right,<sup>147</sup> she shall have the right to be respected as persons and that States shall ensure that implementation takes place and that respect for every woman shall be upheld and that she shall be protected from sexual and verbal assault and violence.<sup>148</sup>

The Protocol in Article 18 states that all State Parties are to eliminate every discrimination against women and ensure the protection of rights of women.<sup>149</sup>

The Protocol opposes polygamous marriages which has greatly been under contention for some time now.

### 3.1.7 Protocol on the Sale of Children, Child Prostitution and Child Pornography.

The Protocol on The Sale of Children, Child Prostitution and Child Pornography was adopted, ratified and accented in 2000 by the United Nations General Assembly in New York. The Protocol on The Sale of Children, Child Prostitution and Child Pornography entered into force in January 2002.

The Protocol states that State Parties shall forbid the sale of children, child prostitution and child pornography, it goes further to state that each State Party shall make sure that a number of acts and activities shall be implemented in the national criminal and penal law of each member State,<sup>150</sup> these include accepting, delivering a child for sexual exploitation, transfer of body organs, forced child labour, unlawfully taking hold of a child for the purpose of child prostitution, smuggling the possession of the child for child pornography.<sup>151</sup>

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<sup>146</sup>Article 2 The Protocol to the African Charter on Human and Peoples Rights on The Rights of Women in Africa.

<sup>147</sup> Article 3 (1) The Protocol to the African Charter on Human and Peoples Rights on The Rights of Women in Africa.

<sup>148</sup> Article 3(4) The Protocol to the African Charter on Human and Peoples Rights on The Rights of Women in Africa.

<sup>149</sup>Article 18 Article 2 The Protocol to the African Charter on Human and Peoples Rights on The Rights of Women in Africa.

<sup>150</sup>Article 3(1) Protocol on the Sale of Children, Child Prostitution and Child Pornography.

<sup>151</sup>Article 3 (2) Protocol on the Sale of Children, Child Prostitution and Child Pornography.

The Protocol makes clear that each State Party is to ensure that all the above mentioned offences are punishable and consider their weighty nature.<sup>152</sup>

Article 8 of the Protocol states that State Parties are to embrace a number of measures to uphold the rights and interests of children who become victims, they include, Identifying that the minor is vulnerable and coming up with procedures to identify their special needs, Informing the child of their rights and keeping them informed in how their trials are going, avoiding delays when it comes to their trial and execution for compensation.<sup>153</sup>

It goes further to state that State Parties shall take all steps necessary to reinforce cooperation between state parties so that detection, investigation, prosecution and punishment of those guilty of engaging in these acts that involves selling children and child prostitution as well as child tourism.<sup>154</sup>

Poverty in the coastal areas of Kenya has increased the number of child prostitution in the area. Children are being sold by their guardians and are getting involved in sexual exploitation.

## 3.2 National Legislation

### 3.2.1 Constitution of Kenya 2010

Article 25 of the Constitution of Kenya 2010, provides for fundamental rights that may not be limited or derogated from,

*“Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited – freedom from slavery or servitude.”<sup>155</sup>*

Chapter 4 of the Constitution of Kenya 2010 is based on protecting the victims of trafficking, they include the right to life,<sup>156</sup> equality and freedom from discrimination,<sup>157</sup> right to human dignity<sup>158</sup> and freedom of movement and residence,<sup>159</sup> and protection of victims of offences.<sup>160</sup>

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<sup>152</sup>Article 3 (3) Protocol on The Sale of Children, Child Prostitution and Child Pornography

<sup>153</sup>Article 8 Protocol on the Sale of Children, Child Prostitution and Child Pornography.

<sup>154</sup> Article 10 Protocol on The Sale of Children, Child Prostitution and Child Pornography

<sup>155</sup>Article 25(b) Constitution of Kenya (2010).

<sup>156</sup>Article 26 Constitution of Kenya, (2010).

<sup>157</sup> Article 27 Constitution of Kenya, (2010).

<sup>158</sup> Article 28 Constitution of Kenya, (2010).

<sup>159</sup> Article 39 Constitution of Kenya, (2010).

<sup>160</sup> Article 50(9) Constitution of Kenya, (2010).

Article 30 prohibits slavery, servitude and forced labour,

*“(i) A persons shall not be held in slavery or servitude.<sup>161</sup> (2) A person shall not be required to perform forced labour.”<sup>162</sup>*

Article 53 in providing for the rights of children states that,

*“Every child has the right, -(d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.”<sup>163</sup>*

### 3.2.2 Counter-Trafficking in Persons Act 2010

Parliament enacted the Counter Trafficking in Persons Act on the 17<sup>th</sup> of September, 2010. The preamble states that the intention of the Act is to adhere to Kenya’s’ obligation under the United Nations Convention against Transnational Organized Crime particularly in its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

The Counter-Trafficking in Persons Act defines human trafficking,

*“A person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of – (a) threat or use of force or other forms of coercion;(b) abduction;(c)fraud;(d) deception;(e) abuse of power or of position of vulnerability;(f)giving payments or benefits to obtain the consent of the victim of trafficking in persons; or (g)giving or receiving payments or benefits to obtain the consent of a person having control over another person.”<sup>164</sup>*

According to the Counter-Trafficking in Persons Act, child trafficking is defined as *“The recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation shall be considered “trafficking in person “even if this does not involve any of the means set out in subsection (i) of this Act.”<sup>165</sup>*

Punishment for trafficking according to the CTiP is thirty years or a fine that is not less than thirty million.<sup>166</sup>It goes further to state that that a person aids and abates the crime of human

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<sup>161</sup> Article 30 (1) Constitution of Kenya, (2010).

<sup>162</sup> Article 30 (2) Constitution of Kenya, (2010).

<sup>163</sup> Article 53 Constitution of Kenya, (2010).

<sup>164</sup> Chapter 3 Counter Trafficking in Persons Act (Act No. 8 of 2010).

<sup>165</sup> Chapter 3(5) Counter-Trafficking in Persons Act (Act No. 8 of 2010).

<sup>166</sup>Chapter 3 (5) Counter-Trafficking in Persons Act (Act No. 8 of 2010).

trafficking is liable for imprisonment for thirty-year jail term or a fine of not less than thirty million Kenya shillings.<sup>167</sup>

Offences related or done in prolongation of trafficking as per the CTiP Act include:

The promotion of child trafficking that is adoption, fostering and guardianship with the sole intention of trafficking these children carries a jail terms of not less than 30 years or a fine of twenty million Kenya shillings.<sup>168</sup>

One who promotes trafficking that including,

-leases a building or a house or allows his property to be used for the purpose of human trafficking,

-Someone who exports materials and publishes materials for the reason of human trafficking,

-Someone who manages a job recruitment agency for the reason of encouraging human trafficking,

If found guilty they face a jail term of thirty years and a fine of twenty million Kenya shillings.<sup>169</sup>

**Acquisition of travel documents by fraud or mis presentation:** The acquisition of travel documents by fraud or mis presentation for the commission of trafficking in persons, and makes offenders liable to a minimum prison sentence of 10 years or a fine of not less than 10 million shillings, or to both and upon subsequent conviction, to imprisonment for a term of not less than 10 years without the option of a fine.<sup>170</sup>

**Facilitating entry into or exit out of the country:** The CTIP criminalizes the facilitation for the purpose of trafficking in persons of exit or entry into Kenya via any official or unofficial entry points. Offenders are liable to punishment of an imprisonment term of not less than thirty years, or to a fine of not less than 30 years, or to a fine of not less than 30 million shillings, or to both and upon subsequent conviction, to imprisonment for a term of not less than 30 years without the option of a fine.<sup>171</sup>

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<sup>167</sup> Section 2(a) Prevention of Organized Crimes Act (Act No. 6 of 2010).

<sup>168</sup>Section 4 Counter-Trafficking in Persons Act 20 (Act No. 8 of 2010).

<sup>169</sup>Section 5 Counter Trafficking in Persons Act 2010 (Act No. 8 of 2010).

<sup>170</sup>Section 6 Counter-Trafficking in Persons Act 2010 (Act No. 8 of 2010).

<sup>171</sup>Section 7 Counter-Trafficking in Persons Act 2010 (Act No. 8 of 2010).

**Life threatening circumstances or death:** Section 9 relays to situations where a victim of trafficking suffers any permanent or life-threatening bodily harm, death any other life threatening or terminal illnesses. Offenders are liable to a prison term of life.<sup>172</sup>

**Trafficking in persons for organized crime:** In instances where trafficking occurs as part of an organized crime then the culprit is liable to imprisonment for life.<sup>173</sup>

The CTIP Act also contains provisions for the protection of victims' rights in times of prosecution, safeguarding victims' confidentiality during trafficking proceedings,<sup>174</sup> rendering of victim impact statements,<sup>175</sup> and exemption from paying legal fees in civil suits.<sup>176</sup> Other rights of victims include:

- a. Provision of restitution to victims,<sup>177</sup>
- b. Victim immunity from prosecution for offences committed as a result of being trafficked,<sup>178</sup>
- c. Provision of support to victims of trafficking, this includes
  - Return to and from Kenya
  - Resettlement
  - Re-integration
  - Appropriate shelter and other basic needs
  - psychosocial support
  - Appropriate medical assistance
  - Legal assistance or legal information including information on the relevant judicial and administrative proceedings or
  - Any other necessary assistance that a victim may require.<sup>179</sup>

d. Reparation of trafficked persons to and from Kenya: The Act affords for the minister responsible for immigration in Kenya to make arrangements for the repatriation of foreigners trafficked into Kenya to their respective places of origin. If the process of repatriation could expose the victim to danger the victim is to be granted permission to remain in Kenya. The

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<sup>172</sup>Section 9 Counter-Trafficking in Persons Act 2010 (Act No. 8 of 2010).

<sup>173</sup>Section 10 Counter- Trafficking in Persons Act 2010 (Act No. 8 of 2010).

<sup>174</sup> Section 11 Counter-Trafficking in Persons Act 2010 (Act No. 8 of 2010).

<sup>175</sup> Section 12 Counter-Trafficking in Persons Act 2010 (Act No. 8 of 2010).

<sup>176</sup> Section 16 Counter-Trafficking in Persons Act 2010 (Act No. 8 of 2010).

<sup>177</sup> Section 13 Counter-Trafficking in Persons Act 2010 (Act No. 8 of 2010)

<sup>178</sup> Section 14 Counter-Trafficking in Persons Act 2010 (Act No. 8 of 2010).

<sup>179</sup> Section 15 Counter trafficking in Persons Act 2010 (Act No. 8 of 2010).

minister of immigration should also provide for the repatriation of Kenyan nationals who are also victims of transnational trafficking back to Kenya.<sup>180</sup>

The CTIP Act instructs the Advisory Committee with the responsibility of advising the Ministry of Gender children Social Development Minister on inter-agency counter trafficking activities and the implementation of preventive, protective and rehabilitative measures for victims of trafficking. The committee is also responsible for counter trafficking policy formulation and coordination between stakeholders and the execution of counter trafficking mechanisms.

The Act contains a special provision for the establishment of a National Trust fund for assisting victims of trafficking. The Act provides for funding the trust fund through parliamentary budgetary allocation from items impounded from traffickers and investments made on behalf of the fund.<sup>181</sup>

The Act is extensive when it comes to human trafficking violations, however the penalties are not as tough, and this means that the judge can opt to give an offender a prison sentence or a fine. Human trafficking is a grave crime and a fine is a slap on the wrist in comparison to the violation of human rights committed.

Another gap noted is the lack of understanding of human trafficking offences by arresting officers who will place immigration and labour violation charges on the accused instead of bringing human trafficking offences against them.

The issue of protective shelters provided by the Act states that the government ought to provide these shelters to human trafficking victims until they are fully repatriated back into their communities. However, to date there are no protective shelters for victims of human trafficking.

### 3.3 Policy Framework

#### 3.3.1 Counter-Trafficking in Persons Act Advisory Committee

The Counter-Trafficking in Persons Act advisory committee established the National plan of Action which was a plan that took four years from 2013 all through to 2017. The National

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<sup>180</sup>Section 18 Counter- Trafficking in Persons Act 2010 (Act No. 8 of 2010).

<sup>181</sup>Section 22 Counter- Trafficking in Persons Act 2010(Act No. 8 of 2010).

Plan of Action for Combating Human Trafficking 2013 to 2017 was advanced with the main purpose of implementing Kenya's obligation under the United Nations Convention against Transnational Organized Crime particularly in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children.<sup>182</sup>The main objective of the plan is to promote co-operation between different stakeholders from all sectors in Kenya and lay the groundwork for closer co-operation with other countries in East Africa and beyond.<sup>183</sup>

The main functions of the Counter Trafficking in Persons Advisory Committee are as follows:<sup>184</sup>

1. Frame of a comprehensive and assimilated program to prevent and suppress trafficking in persons;
2. Management of policies and Programmes of the agencies to effectively address the issues and difficulties attendant to trafficking in persons;
3. Management of the dissemination of information on the law and the issues relating to trafficking in persons through concerned agencies and non-governmental organizations;
4. Construction of programmes for the rehabilitation of both locally and internationally trafficked persons;
5. Observing and evaluation of the improvement of Kenya with respect to prevention, protection and prosecution efforts relating to trafficking in persons;
6. Discussions and advocacy with Government departments and agencies and non-governmental organizations, to advance the purposes of this Act;
7. Gathering and documentation of data on cases of trafficking in persons for purposes of policy formulation and program direction;
8. Development of mechanisms to ensure the timely, coordinated, and effective response to cases of trafficking in persons;
9. Processes to enhance cooperative efforts and mutual assistance between Kenya and other countries through bilateral and multilateral arrangements to prevent and suppress international trafficking in persons;
10. Measures necessary to rehabilitate victims of trafficking in persons and in particular the: (i) implementation of rehabilitative Programmes including education and

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<sup>182</sup> United States Department of State, 2014 Trafficking in Persons Report – Kenya 2014.

<sup>183</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017, 2.

<sup>184</sup>United Nations Human Rights: International instruments concerning trafficking in persons. August. 2014, 34.

protective Programmes for the victims of trafficking in persons; (ii) provision of counselling services and temporary shelter to victims of trafficking in persons; and (iii) establishment of centres' and Programmes for intervention at various levels of the community;

11. Mechanisms to screen persons entering or leaving Kenya to determine if they are victims of trafficking in persons; and

12. Public information operations against trafficking in persons.<sup>185</sup>

From the forgoing it can be discerned that the role of the Advisory Committee is limited as it can only provide recommendations. However, the fight against women trafficking requires a concerted effort and hence the need to assess other relevant institutions.

The National Plan of Action propositions an approach in dealing with the prevention of human trafficking that is the 3P approach.<sup>186</sup>

### 3.3.2 Prevention

Prevention is the main factor of the universal movement to monitor and combat human trafficking. The main concern of the Advisory Committee for prevention are: Increasing the number of criminal justice experts, increasing the public's awareness on matters relating to human trafficking this can be done through campaigns and decreasing fraudulent recruitment agencies in town counties this will be done through monitoring and assessing employment agencies.<sup>187</sup>

### 3.3.3 Protection

Shielding victims to mitigate harm suffered as victims of trafficking as a result of any exploitation and consequences' they might have faced for instance social, physical and psychological abuses. The main approaches for protection the plan adopted are:

- a. Direct assistance that is promoting awareness and sensitization of the public by developing, printing and disseminating national guidelines for identification of victims, constructing a national mapping exercise identifying all existing support services available to trafficked persons.<sup>188</sup>

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<sup>185</sup>Section 23, Counter trafficking in persons Act,(Act No. 8 of 2010 )

<sup>186</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017, 2.

<sup>187</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017, 7.

<sup>188</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017,8.

- b. Capacity building that is providing education for service providers and other relevant stake holders by carrying out training needs assessments for stakeholders and concerned persons. The training is for combating human trafficking and deploying experts in vulnerable areas or hot spots to identify possible victims and perpetrators of trafficking.<sup>189</sup>

### 3.4.5 Prosecution

The main tactical priorities for prosecution of human trafficking crimes are:

- a. Formulating and implementing a legislative framework and developing regulations to operationalize the *Counter Trafficking in Persons Act, (No. 8), 2010* and lobbying for their adoption and amendment of *Counter Trafficking in Persons Act (No. 8), 2010*.<sup>190</sup>
- b. Operationalization of the Counter Trafficking in Persons Act through improving the skills of prosecutors and judicial officers to operationalize the Counter Trafficking in Persons legislation.<sup>191</sup>
- c. Create a data base on case law and research by developing and compiling a human trafficking case law on rulings and judgments on issues relating to trafficking in persons.<sup>192</sup>

Other than the prevention, protection and prosecution, the national plan also aims at looking into a number of vital aspects that cut across the three main approaches, they are:

- a. Data and Research: It involves facilitating availability of data to meet reporting obligations and case management, collaboration with institutions such as the Kenya Bureau of Statistics to have markers of trafficking.<sup>193</sup>
- b. Collection of Data by Protective and Victim Service Providers by developing a standardised system for collecting data of potential victims and perpetrators of trafficking and facilitating collection, storage and sharing of data.<sup>194</sup>
- c. International Cooperation implemented by facilitation of the development of international cooperation mechanism including joint legal assistance and investigation

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<sup>189</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017, 9.

<sup>190</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017, 9.

<sup>191</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017, 10.

<sup>192</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017, 10.

<sup>193</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017, 10.

<sup>194</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017, 10.

and developing arrangements to reciprocate the same in order to enhance international cooperation mechanisms on counter trafficking.<sup>195</sup>

- d. Operationalizing of the Advisory Committee that is following the implementation of the counter trafficking in persons through ensuring resource mobilization to enable the Advisory Committee deliver on its mandate, report and advice the Cabinet Secretary on inter agency activities. Ensuring implementation of regional and international instruments on trafficking in persons, development of standardized training manuals and benchmarking on efforts of combating human trafficking.<sup>196</sup>

### 3.4 Guidelines for National Referral Mechanism for Assisting Victims of Human Trafficking in Kenya.

It provides guidelines that uphold the values and principals of the Constitution of Kenya, it seeks to preserve the victim's dignity at all times and to protect them against discrimination in regard to their color, the gender, race, religion, nationality, their opinion, language, property or family status.<sup>197</sup>

The National Referral Mechanism provides a system of identification, transfer, holistic support and assistance based on the gender, age, specific needs and reintegration of victims in Kenya. The main objective of the guidelines is to promote co-operation between all relevant government departments and other organizations and agencies involved in providing assistance to human trafficking victims and to protect the rights of victims through victim identification process, provision for better support and protection service, and establishment of programs of full recovery and rehabilitation.

The policy contains a number of recommendations of trafficking in Persons victims, they include:

- a. Principles for victim protection and assistance: This entails non-discrimination of victims, respect and protection of human rights, modified treatment and care, confidentiality, and the best interest of the victim.

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<sup>195</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017 , 11.

<sup>196</sup>The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017 , 11.

<sup>197</sup>National Referral Mechanism for Assisting Victims of Human Trafficking in Kenya,27.

-Children are given special attention this include: having a trust worthy guardian, being simple with the child, always reassuring the child and keeping their movements at a minimal.

- b. Standard operating Procedures that ought to be followed by service providers: This entails verifying, ascertaining and proving that the individual is an actual victim of trafficking. The process entails, conducting interviews, exposing the victims to reflection and recovery, and also vigorous psychological counseling for the victims.<sup>198</sup>
- c. Flow charts of directing or redirecting the victims to better provisions: This a set of procedures that ought to be covered once a victim of trafficking is identified. They include, report of a alleged matter of human trafficking to the first responders, Referral of the victim to authorities, valuation of the victim of trafficking, and then finally making confirmation whether the individual is a human trafficking victim.<sup>199</sup>
- d. Return, repatriation and reintegration of victims of trafficking: This is the final stage where the victim is taken back to the community, it entails preparing the family and the community, providing documents for travel, ensuring the victim has contacts of psychological assistance around his community and if the victims responds well then closure of the file.<sup>200</sup>

### 3.4.1 Victims Protection Act No. 17 OF 2014

The Act goes ahead to state that whoever is given the duty to identify victims shall assess each victim and file a report on the victim within 24 hours.<sup>201</sup> The Act goes further to state the details that are required to take from a victim.<sup>202</sup> The victim has the right to privacy and confidentiality. The victims also have a right to a trial process, to be present at their trial in person or their advocates, and to also be told the charge that the offender is facing.<sup>203</sup>

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<sup>198</sup>National Referral Mechanism for Assisting Victims of Human Trafficking in Kenya,33.

<sup>199</sup>National Referral Mechanism for Assisting Victims of Human Trafficking in Kenya,34.

<sup>200</sup>National Referral Mechanism for Assisting Victims of Human Trafficking in Kenya, 52

<sup>201</sup>Section 6 (1) Victims Protection (Act 17 of 2014).

<sup>202</sup> Section 7 Victims Protection (Act 17 of 2014).

<sup>203</sup> Section 9 Victims Protection Act (17 of 2014)

The victim also has the right to be protected, to be free from all forms of intimidation, from fear, corruption and abuse. The victim is also entitled to security, medical care, and protection from the police.<sup>204</sup>

When it comes to victim impact statement, the victims may make a victim impact statement to the court sentencing the individual, this statement may be used by the courts during the sentencing process.<sup>205</sup>

In regard to children victims, the child ought to be held in a place with the parent's guardians or care-givers, the child should be placed in a safe environment until the court makes a determination on the matter. The child shall also be accorded treatment and safety.<sup>206</sup>

### 3.4.2 Children Act 2001

The Children Act was enacted in 2001 and it makes provisions for the protection of children from all forms of trafficking. The Act provides that, a child is authorized to be protected from abuse both physical and psychological, a child shall also be protected from neglect and exploitation this includes selling the child, trafficking the child by any individual.<sup>207</sup>

It goes further to state that should a child become a victim of abuse, the child shall be provided with immediate treatment.<sup>208</sup>

### 3.4.3 Sexual Offences Act No. 3 OF 2006

The Sexual Offences Act came into effect on 21<sup>st</sup> July 2006 and it makes proper and concise provisions on sexual offences. Section 14 of the Act provides that,

*A person who is responsible for aiding and abating any persons, including providing them with travel documents both in Kenya and outside Kenya with the goal of enabling any sexual offence against a minor whether or not that crime was committed or organizes contact with others with the intention of promoting in a way that promotes a sexual offence shall be found guilty of an offence. If found guilty the individual is to be imprisoned for not less than 10 years and a fine of not less than 2 million shillings.*<sup>209</sup>

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<sup>204</sup> Section 10 Victims Protection (Act 17 of 2014).

<sup>205</sup> Section 12 Victims Protection (Act 17 of 2014) read together with Section 39 (c) Criminal Procedure Code (Cap 75)

<sup>206</sup> Section 18 Victims Protection (Act 17 of 2014).

<sup>207</sup> Section 13 Children Act 2001 (Cap 141).

<sup>208</sup> Section 13 Children Act 2001 (Cap 141).

<sup>209</sup> Section 13 Children Act 2001 (Cap 141).

### 3.4.4 Protection of Organized Crime Act No. 6 OF 2010

Section 2 of the Protection of Organized Crime Act defines an Organized Crime Group as, three or more persons existing together for a certain time and acting with the aim of committing serious crimes, committing crimes with the purpose of financial or material benefit.<sup>210</sup>

Section 4 of the Act goes further to state that, a person who is actively engaged in organized crime activity on being convicted is to pay a fine of 5 million Kenya shillings or a jail terms not more than 15 years or both.<sup>211</sup>

### 3.4.5 Employment Act 2012 Cap 226

Section 27 states that an employer is to control the working hours of the employee, and that the employee shall be entitled to one day rest every seven days.<sup>212</sup>

It goes further to state that every twelve months an employee shall be eligible to twenty one days leave,<sup>213</sup> an employer is also entitled to provide reasonable housing for his employees near the place of employment.<sup>214</sup> The Employer shall also provide sufficient supply of water and food as expressly agreed at the time of entering into the contract.<sup>215</sup> Child labour is also prohibited, no employer shall employ a persons in any activity that constitutes the worst form of child labour.<sup>216</sup>

### 3.4.6 Trafficking in Persons Report 2020

The *Trafficking in Persons Report* is an annual report issued by the United States Department Office to Monitor and Combat Trafficking in Persons which ranks governments based on their seeming efforts to acknowledge and combat human trafficking.<sup>217</sup> These particular reports place countries in tiers on how they comply with the global standards drawn in the US. The Trafficking Victims Protection Act of 2000. Tier 1 contains countries whose governments' have fully complied with the minimum standards in the Trafficking Victims Protection Act. Tier 2, contains countries whose governments do not fully comply with the Trafficking Victims Protection Act minimum standards, but are making efforts to bring

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<sup>210</sup> Section 2(b) Prevention of Organized Crimes Act (Act No. 6 of 2010).

<sup>211</sup> Section 4(1) Prevention of Organized Crime Act (Act No. 6 of 2010).

<sup>212</sup> Section 27 Employment Act 2012 (No. 11 of 2007).

<sup>213</sup> Section 28 (1) Employment Act 2012 (No.11 of 2007).

<sup>214</sup> Section 31 Employment Act 2012 (No. 11 of 2007).

<sup>215</sup> Section 33 Employment Act 2012 (No.11 of 2007).

<sup>216</sup> Section 53 Employment Act 2012 (No.11 of 2007).

<sup>217</sup> Trafficking in Persons Report: United States Department of State. June 20<sup>th</sup> 2020, 301.

themselves into compliance with those standards.<sup>218</sup> Tier 2 Watch list countries are those whose governments' do not fully comply with the minimum standards. Finally, Tier 3 countries are those government that do not fully comply with the minimum standards and are not making any significant effort to comply to the standards.<sup>219</sup>

The Government of Kenya according to the report is a Tier 2 country, this is because it does not fully meet the minimum standards for the elimination of trafficking,<sup>220</sup>and it is however making strides to do so. The report was divided into three parts the Prosecution, the Protection and the Prevention.

### 3.4.7 Prosecution

Kenya falls under Tier 2 due to uneven protection efforts. The Kenya government in the year 2019 reported 853 victims of human trafficking 275 being adult females, 351 girls and 227 being boys. The government referred 78 victims to shelter services. The DCI'S Transnational Organized Crime Unite (TOCU) identified 144 trafficking victims during different searches.<sup>221</sup>

Care for victims was diverse in quality depending on the gender, age, nationality and location of the victim. Victims could make a choice of safe shelters but were excepted when their security was at risk.<sup>222</sup> The government deeply counted on NGO's to run all the safe houses and shelters that were utilized to keep victims of trafficking safe.<sup>223</sup>

The National Treasury in the 2019-2020 fiscal year 20 million Kenyan shillings was allocated to the National Assistance Trust Fund for Assisting Victims of Trafficking, shareholders voiced their apprehensions regarding the absence of a structure for the fund's expenditure and that the disbursement was made due to a court matter.<sup>224</sup>

The government also protected Kenyan nationals' victims overseas. Facilitating compensations and providing psych-social counselling and medical check-ups to Kenyan citizens identified as victims overseas. The Ministry of Labour and Social Protection (MOL)

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<sup>218</sup> Trafficking in Persons Report: United States Department of State June 20<sup>th</sup> 2020, 301.

<sup>219</sup> Trafficking in Persons Report: United States Department of State. June 20<sup>th</sup> 2020, 301.

<sup>220</sup> Trafficking in Persons Report: United States Department of State. June 20<sup>th</sup> 2020 , 302

<sup>221</sup> Trafficking in Persons Report: United States Department of State. June 20<sup>th</sup> 2020 , 302

<sup>222</sup>Trafficking in Persons Report: United States Department of State. June 20<sup>th</sup> 2020 , 302

<sup>223</sup>Trafficking in Persons Report: United States Department of State. June 20<sup>th</sup> 2020 , 302

<sup>224</sup>Trafficking in Persons Report: United States Department of State. June 20<sup>th</sup> 2020 , 302.

assigned labour attaches' who to date continue to work in Kenyan diplomatic missions in United Arab Emirates, Qatar, and Saudi Arabia.<sup>225</sup>

### 3.5 Prevention

The report stated that the government improved on efforts to prevent trafficking. The Kenya government coordinated with international organizations and provided the training for law enforcement officials from Sub Sahara Africa to East Africa.<sup>226</sup> The government also in collaboration with the Ministry of Labour hosted the regional ministerial forum for coordinating labour migration policies in East Africa as well as sub-Saharan Africa in January of 2020.

In finality the report stated that traffickers are illegally smuggling girls with physical disabilities from Tanzania into Kenya and are forced to beg on the side of the streets. Also a lack of monitoring recruitment centres' traffickers are also using online platforms to recruit women and girls into the human trafficking ring.<sup>227</sup>

In conclusion therefore after researching the legal instruments together with policies that touch on women trafficking in Kenya, it can be noted that the national legislation has a number of loop holes that need to be looked into these include the penalties for offenders found guilty of human trafficking. A fine is not deterrence enough to ensure this crime is combatted, many traffickers are able to come up with the fine and end up running away from justice.

The Act has also failed to fulfil its mandate of providing protective shelters for victims of human trafficking. Victims of trafficking are taken in by Non-governmental Organizations a task that ought to be conducted by the government.

Also noted in the chapter is that certain policies have expired that is the National Plan of Action 2013-2017 and are yet to be renewed. Also the CTiP does not prosecute suspected human trafficking suspects however they are prosecuted under the Sexual Offences Act which makes it a challenge securing evidence under the CTiP.

The legal and institutional framework therefore is comprehensive but not fully able to curb the rise of human trafficking in women in Kenya.

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<sup>225</sup>Trafficking in Persons Report: United States Department of State. June 20<sup>th</sup> 2020 , 303.

<sup>226</sup>Trafficking in Persons Report: United States Department of State. June 20<sup>th</sup> 2020 ,303.

<sup>227</sup>Trafficking in Persons Report: United States Department of State. June 20<sup>th</sup> 2020 , 303.

## CHAPTER 4

### 4.0 INSTITUTIONAL FRAMEWORK FOR COMBATING WOMEN TRAFFICKING IN KENYA- ACHIEVEMENTS AND CHALLENGES.

#### INTRODUCTION

This chapter seeks to answer the research question on what challenges are faced by stakeholders in their effort to strengthen policy, legislative and institutional framework. It will deal with the policy formulation and implementation agencies, the Counter-Trafficking in Persons Advisory Committee Different Ministries, Law enforcement and justice agencies, The National Police, The Office of the Director of Public Prosecution, The Judiciary and Non state actors, and then finally a conclusion on the chapter.

The country has a number of ministries dealing with human trafficking: the ministries of Labour and Social Protection, Ministry of interior, and Ministry of Foreign Affairs and International Trade and others. There are also various departments and councils and boards that are relevant to the issue. A general lack of coordination among these agencies weakens law enforcement. It hinders the capacity to make sure that human trafficking is prevented to the best extent possible and also the welfare and the protection of trafficking victims from a well-organized criminal market. What follows is an interrogation of each department in Kenya touching on women trafficking.

#### 4.1 National Police Service

The National Police Service (NPS) was established in 2011 under Article 243 of the Constitution.<sup>228</sup> It is headed by the Inspector-General, who is appointed by the President. Section 24 of the National Police Service Act details the functions of the NPS, they include *inter alia*:

- a. Protection of life and property,<sup>229</sup>
- b. Investigation of crimes,<sup>230</sup>
- c. Prevention and detection of crime,<sup>231</sup>
- d. Apprehension of offenders.<sup>232</sup>

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<sup>228</sup>Section 24 National Police Service Act (Cap 85).

<sup>229</sup> Section 24(d) National Police Service Act (Cap 85).

<sup>230</sup> Section 24(e) National Police Service Act (Cap 85).

<sup>231</sup> Section 24(g) National Police Service Act (Cap 85).

Human trafficking is a complex crime, which makes the investigation more complex. Victims of human trafficking are reluctant to report it to the police. It is thus difficult to identify signals of human trafficking.<sup>233</sup>

Investigation by the law enforcement agency of human trafficking is crucial for a number of reasons. Trafficking is a highly profitable business whereby criminals are at a low risk of detection and punishment. Due to this, criminals are becoming gradually enticed to human trafficking.<sup>234</sup> The crime is becoming more and more organized therefore establishing skilled networks that surpass borders and regions.

#### **4.1.1. Director of Criminal investigations (DCI)**

The office of the Director of Criminal Investigations is under the direction of the Inspector General.<sup>235</sup> Functions of the directorate Include

- a. Collect and provide criminal intelligence,<sup>236</sup>
- b. Undertaking investigations or serious crimes including human trafficking,<sup>237</sup>
- c. Apprehend offenders

#### **4.1.2 Border Police Unit (BPU)**

The Border Police Unit was formally referred to the Rural Border Patrol Unit is a branch of the National Police Service, established in July of 2008 with the core mission to be the leading border security provider to all people in Kenya. It has its headquarters in Kitui County. Section 27 of the National Police Service Act mandates the BPU with the provision of border patrol and border security.<sup>238</sup>

Its core functions include:

- a. Detecting and deterring illegal entries and related activities including human trafficking, smuggling of contraband and terrorists illegally entering Kenya,

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<sup>232</sup> Section 24(h) National Police Service Act (Cap 85).

<sup>233</sup>M. Verhoeven & B. Vangestel: *Criminal Investigation of Human Trafficking in the Netherlands Red Light District*, Springer Science Business Media 2013,93-108

<sup>234</sup>United Nations Office on Drugs and Crime: *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*, Vienna, June 2010, 76.

<sup>235</sup>Section 28 National Police Service Act (Cap 85).

<sup>236</sup>Section 35 (a) National Police Service Act (Cap 85).

<sup>237</sup>Section 35(b) National Police Service Act (Cap 85).

<sup>238</sup>Section 27( e) National Police Service Act (Cap 85).

- b. Conducting surveillance and reconnaissance along the border entry points to enhance border security.

In March 2020, the British High Commissioner and the Director of Criminal Investigations opened the Anti-Human Trafficking and Child Protection Unit in Mombasa its main objective is to deal with the threat of child sexual abuse and child trafficking in the coast region. The United Kingdom donated three vehicles and a mobile laboratory to allow the police to conduct victim interviews and examinations. The Unit has however not recorded any arrests or prosecutions thus far.

## 4.2 Anti-Human Trafficking Child Protection Unit (AHTCPU)

The Anti-Human Trafficking Child Protection Unit (AHTCPU) works under the Directorate of Criminal Investigations (DCI), it was established in 2006 and works closely with National Police Service, United Nations Office for Drugs and Crime, Interpol and UNICEF. The AHTCPU solely deals with matters human trafficking its core roles include:

- a. Carry out investigations on cases of child sexual exploitation and abuse,<sup>239</sup>
- b. Undertake investigations on cases of child trafficking,<sup>240</sup>
- c. Victim Identification<sup>241</sup>
- d. Rescue victims of human trafficking<sup>242</sup>
- e. Give advice to police officers and other stakeholders country wide on reported child sexual exploitation and abuse,<sup>243</sup>
- f. Liase with the department of children services and non-state actors in identifying, rescuing sexually abused children.<sup>244</sup>
- g. Raise awareness among police officers<sup>245</sup>

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<sup>239</sup>Stop the Traffic- Kenya; a member-based coalition for Civil Society Organization working within the anti-human trafficking field: Coalition of Anti-Human Trafficking CSOs for UPR – Kenya, 2020, 13

<sup>240</sup> Stop the Traffic- Kenya; a member-based coalition for Civil Society Organization working within the anti-human trafficking field: Coalition of Anti-Human Trafficking CSOs for UPR – Kenya, 2020, 13

<sup>241</sup> Stop the Traffic- Kenya; a member-based coalition for Civil Society Organization working within the anti-human trafficking field: Coalition of Anti-Human Trafficking CSOs for UPR – Kenya, 2020, 13

<sup>242</sup>Stop the Traffic- Kenya; a member-based coalition for Civil Society Organization working within the anti-human trafficking field: Coalition of Anti-Human Trafficking CSOs for UPR – Kenya, 2020, 13

<sup>243</sup> Stop the Traffic- Kenya; a member-based coalition for Civil Society Organization working within the anti-human trafficking field: Coalition of Anti-Human Trafficking CSOs for UPR – Kenya, 2020, 13

<sup>244</sup>Stop the Traffic- Kenya; a member-based coalition for Civil Society Organization working within the anti-human trafficking field: Coalition of Anti-Human Trafficking CSOs for UPR – Kenya, 2020, 13

<sup>245</sup>Stop the Traffic- Kenya; a member-based coalition for Civil Society Organization working within the anti-human trafficking field: Coalition of Anti-Human Trafficking CSOs for UPR – Kenya, 2020, 13

According to the head of the AHTCPU, 600 children are rescued from human trafficking annually in Kenya. In January of 2020, 120 girls were rescued in transit from Uganda to Kenya as they were being trafficked for domestic services.<sup>246</sup>

In March 2020, the British High Commissioner and the Director of Criminal Investigations opened another Anti-Human Trafficking and Child Protection Unit in Mombasa its main objective to deal with the threat of child sexual abuse and child trafficking in the coast region. The United Kingdom donated three vehicles and a mobile laboratory to allow the police to conduct victim interviews and examinations.

The AHTCPU also encounters certain challenges when undertaking their tasks these include, lack of communication and language barriers with the victims of trafficking, victims fear and lack of trust of the law enforcement officers, lack of personnel as of 2020 only 33 staff work in the AHTCPU these individuals move across the country in efforts to prevent and protect victims of human trafficking.<sup>247</sup>

The National Police Service in 2007 arrested an Italian national in Malindi on suspicion of human trafficking girls and facilitating child prostitution. In the case *Muhammad Asif v. Republic*,<sup>248</sup> the Appellant was accused and charged with the offense of human trafficking, in Athi River where he was willfully and unlawfully found trafficking eleven adult women which is contrary to Section 3(1)(d) read with section 5 of the Counter Trafficking in Persons Act. In 2019 the Kenya Police arrested three Kenyan women in Ruiru, according to the Directorate of Criminal Investigations' they were forcefully holding 25 women of different nationalities who were being held hostage at the Ruiru compound in readiness to transit them to Asian Countries.<sup>249</sup>

In 2020, the National Police through a BBC investigation unearthed a child trafficking ring and also arrested three medical officers involved in the theft and sale, they were accused human trafficking offence, and matter to date is being prosecuted in court.<sup>250</sup>

The National Police, however face certain challenges when it comes curbing human trafficking.

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<sup>246</sup>United Nations Office on Drugs and Crime-committed to the Cause: Working on the Frontline to end Human Trafficking

<sup>247</sup><https://www.unodc.org/unodc/frontpage/2020/July/committed-to-the-cause-working-on-the-frontline-to-end-human-trafficking---mueni-mutisya--head-of-ahtcpu--kenya.html> United Nations Office on Drugs and Crime: Committed to the Cause: Working on the Frontline to End Human Trafficking. Accessed 15<sup>th</sup> May 2021

<sup>248</sup> Criminal Appeal 82 of 2017 High Court at Machakos,

<sup>249</sup> <https://www.theeastafrican.co.ke/tea/news/east-africa/kenya-police-rescue-25-women-from-suspected-human-trafficking-ring-1415046> The East African: Kenya Police rescue 25 women from suspected human trafficking ring March 2019 Accessed 14<sup>th</sup> April 2021

<sup>250</sup><https://www.bbc.com/news/world-africa-54986993> Nita Bhalla Thomson Reuters November 18<sup>th</sup> 2020. Accessed 14<sup>th</sup> April 2021

#### a. Corruption

Police corruption in Kenya has emerged as a serious security challenge. Police corruption is quite rampant. The Transparency International has ranked Kenya Police as number 154 out of 182 countries that had been surveyed on the Corruption Perception Index. The Kenya police scored 81% corruption rate, thus gaining the reputation of the most corrupt institution in Kenya, and in the top ten ranking as the institution with a high bribery rate in East Africa region.<sup>251</sup>

Bribery has been reported to be one of the main ways to access the police and their services.<sup>252</sup> According to the Business Anti-Corruption portal,<sup>253</sup> the police struggle with a lack of oversight and organizational and technical deficiencies. Corrupt police officers are rarely arrested or prosecuted for corruption related crimes.

Corruption is also a problem at police stations located at the border. Police officers are bribed with hefty amounts of money to allow illegal persons into the country.<sup>254</sup>

Corruption in the National Police Service represents a systematic failure of governance in which the principal institution responsible for ensuring law and order, the observance of ethics and integrity standards, and enforcing the rule of law are compromised.<sup>255</sup> When it therefore comes to human trafficking, traffickers flourish due to the high nature of corruption condoned in the service. Police officers have a number of pay rolls, the State being their official pay roll and the traffickers who they ensure get easy transit to the destination.

When it comes to human trafficking, a number of police officers are complacent at a fee they will inform traffickers once they are close to being nabbed. They also in certain instances provide security to the perpetrators so that they are not robbed. In certain instances, they will also provide the traffickers with the best routes to use in order to evade detection by the law enforcement officers.<sup>256</sup>

These corrupt activities conducted by certain police officers is what is one of the major factors impeding the curbing of human trafficking in women.

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<sup>251</sup>Transparency International: The global coalition against corruption, Corruption Perception Index 2020, [www.transparency.org](http://www.transparency.org)

<sup>252</sup> Kempe Ronald Hope Sr: *Police Corruption and the Security Challenge in Kenya*, Vol. 11 Issue 1 January 2018,84-108

<sup>253</sup>Risk and Compliance Portal: *Business Anti-Corruption Portal: Kenya Corruption Report* June 2017 at Nairobi

<sup>254</sup> Institute for War and Peace Reporting: *Kenya's' porous borders under scrutiny*. January 2014, at Nairobi

<sup>255</sup>Kempe Ronald Hope; *Police corruption and the security challenge in Kenya*, African Security, Vol. 11 Issue 1 2018,54

<sup>256</sup>Trafficking in Persons Report 2020: Kenya

standards, and enforcing the rule of law are compromised.<sup>257</sup>When it therefore comes to human trafficking, traffickers flourish due to the high nature of corruption condoned in the service. Police officers have a number of pay rolls, the State being their official pay roll and the traffickers who they ensure get easy transit to the destination.

This one of the major reasons why victims of trafficking are usually reluctant to provide statements to the police for assistance because it is difficult to trust police officers due to the complacency of some of these officers.

b. Lack of resources

Police in Kenya operate with quite limited resources in comparison to the resources of the traffickers. According to the ILO, human trafficking in Africa is estimated to generate 150 billion dollars annually. The Police are led by weak operational preparedness and a lack of equipment and logistical capacity.<sup>258</sup>For instance, the police in Kenya do not have sufficient forensic laboratories and the vehicles used for patrols are constantly constrained due to breakdowns. Wastage of time taken through bureaucracy to file paperwork vehicles or working apparatus can be fixed.<sup>259</sup>

Police are paid low salaries. They also lack basic amenities, poor housing, and work in poor conditions. Police find themselves in dangerous, sometimes, life-threatening situations without inadequate insurance such as quick response teams or back-ups for assistance in times of dangerous activities.<sup>260</sup> They also face complications when providing for their families and when all does not go as planned in instances such as discharges due to injuries, it therefore becomes difficult for the National Police to match up to traffickers with multiple vehicles and advanced technology without lack of adequate resources.<sup>261</sup>

When it comes to trafficking, traffickers have modern technology which they use to detect authorities from a distance. This therefore makes it difficult for police to nab these traffickers using outdated vehicles or outdated tracking devices.

c. Police impunity

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<sup>257</sup>Kempe Ronald Hope; Police corruption and the security challenge in Kenya, African Security, Vol. 11 Issue 1 2018,54

<sup>258</sup>Usalama Reforms Forum, Communities and their police stations. A study report of 21 police stations in Kenya, 2012, 78.

<sup>259</sup>Usalama Reforms Forum, Communities and their police stations. A study report of 21 police stations in Kenya, 2012, 76.

<sup>260</sup> Usalama Reforms Forum, Communities and their police stations. A study report of 21 police stations in Kenya, 2012, 80.

<sup>261</sup>Usalama Reforms Forum, Communities and their police stations. A study report of 21 police stations in Kenya, 2012,76

Little has been done when it comes to punitive measures or criminal prosecution of officers for human rights thus integrating trafficking violations.<sup>262</sup> There is lack of accountability for police abuses despite Kenya having created accountability institutions under the 2010 Constitution. The Independent Police Oversight Authority (IPOA) Police oversight institution which was formed after 2010, according to the IPOA Performance Report January to June 2019 stated that 1,717 complaints were reported and out of these 134 cases were fully investigated and out of those 19 have been completely investigated.

Having seen what the police can do to innocent citizens, the killings by police have shown the police, the brutality conducted by the police makes it quite difficult for people to trust the police. This makes it difficult for police to investigate human trafficking because the people are frightened to speak up. This impunity by the police has made it challenging for individuals to trust the police and raise alarm due to the track record held by the police over the years.

Due to impunity citizens with information regarding human trafficking become reluctant to speak up because you could be implicated as an accomplice or you could be beaten for no good reason. Police impunity has greatly lowered the public confidence of citizens toward the police and in certain instances victims of trafficking are not confident enough to give information regarding trafficking to the police this has also affected the number of traffickers being nabbed and arrested.

### 4.3 Director of Public Prosecution

The mandate of the Director of Public Prosecutions (DPP) is derived from Article 157 of the 2010 Constitution, this institution undertakes Prosecution of criminal matters and all other aspects incidental thereto. The DPP is nominated and with the approval of the National Assembly and appointed by the President. The core functions of the DPP include but are not limited to:

- a. Promotion of public confidence in the integrity of the Office,<sup>263</sup>
- b. Instituting and undertaking criminal proceedings against any person before any court of law except the court martial,<sup>264</sup>
- c. Represent the State in all criminal cases, criminal applications and appeal.

According to data released to the public by the Director of Public Prosecution, in 2019 the DPP registered 174 trafficking in person's cases while at the same time secured 73 convictions a 42% success rate from the previous year 2018.<sup>265</sup>

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<sup>262</sup>The Police, The People, The Politics: Police Accountability in Kenya, Common Wealth Rights Initiative 2006,46

<sup>263</sup> Section 4(d) Office of the Director of Public Prosecution (No. 2 of 2013)

<sup>264</sup> Section 5(b)(I) Office of the Director of Public Prosecution (No. 2 of 2013)

<sup>265</sup><https://www.odpp.go.ke/prosecutions-sets-the-pace-on-curbing-human-trafficking/> Prosecution sets the Pace on curbing human trafficking: The Office of Director of Public Prosecution

In 2016 alone, there were 530 human trafficking related investigations which included human trafficking in women and children. The data was however not specific on each county. However, by 2017 there was a tremendous decline in human trafficking convictions in that only 35 cases were reported.<sup>266</sup>

In 2020 however the ODPP released the statistics of human trafficking stating that in 2019/2020, 174 human trafficking matters were registered and the ODPP secured 73 convictions therefore increasing the prosecution rate of human trafficking by 43%.<sup>267</sup>

The DPP has over the years made strides when it comes to prosecuting human trafficking cases. More prosecutors have been enrolled, the DPP regularly undertakes training of prosecutors and regular evaluations, this are major milestones.<sup>268</sup>

The DPP faces a number of challenges when handling issues relating to human trafficking in Kenya. They include:

a. Lack of personnel training

In 2015 there was a lack of personnel in the DPP, prosecutors who were to handle matters including human trafficking the Directorate of Public Prosecution had taken over prosecutorial functions, which were previous discharged by unqualified police officers.<sup>269</sup>

The same year, the DPP welcomed new prosecutors and support but with the growing human trafficking cases over the years, there have been complaints of backlog of cases and the prosecution being understaffed. It therefore makes it difficult to try human trafficking matters. This is because there are not enough prosecutors to handle these matters with the seriousness they deserve.<sup>270</sup>

The government commenced taking data collection on human trafficking cases in 2016 when it first recorded its annual human trafficking concluded cases.<sup>271</sup>

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<sup>266</sup><https://www.odpp.go.ke/prosecutions-sets-the-pace-on-curbing-human-trafficking/> The Office of Director of Public Prosecution Website. Accessed 20<sup>th</sup> May 2021

<sup>267</sup><https://www.odpp.go.ke/prosecutions-sets-the-pace-on-curbing-human-trafficking/> The Office of Director of Public Prosecution. Accessed 20<sup>th</sup> May 2021

<sup>268</sup><https://www.odpp.go.ke/prosecutions-sets-the-pace-on-curbing-human-trafficking/> The Office of Director of Public Prosecution. Accessed 20<sup>th</sup> May 2021

<sup>269</sup><https://www.odpp.go.ke/prosecutions-sets-the-pace-on-curbing-human-trafficking/> The Office of Director of Public Prosecution. Accessed 20<sup>th</sup> May 2021

<sup>270</sup>U.S Department of State: 2020 Trafficking in Persons Report: Kenya: Office to Monitor and Combat Trafficking in Persons: Kenya: Tier 2, 2020, 567.

<sup>271</sup> United Nations High Commissioner for Refugees: Trafficking in Persons Report Kenya: 2018

Litigants have stated that the shortage and lack of support from the DPP is to blame for the backlog of cases. They blame the DPP for failing to replace and appoint prosecutors who had been transferred.<sup>272</sup> It was mentioned that justice was delayed, and that one would appear before the magistrate to represent the accused, however the court would end up fixing another date because of prosecuting counsels.

As of 2019, the DPP has reported handling a total of 30 cases of human trafficking. However none of the cases involved forced labour to the Middle East countries. Clearly showing that human trafficking to the Middle East is either not recognized or is not given the priority it requires from the government.<sup>273</sup>

Prosecution of human trafficking cases is challenging due to the international angle and the number of people involved. Prosecutors in Kenya rarely get to be trained on issues relating to human trafficking. The DPP indicated that human trafficking victims are reluctant to testify while traffickers are often beyond reach for conviction. The first prosecutors training on record took place in December of 2019, where 60 prosecutors and investigators across East Africa.<sup>274</sup>

The training was organized by the Attorney General Alliance Africa Alliance Partnership in collaboration with the Judiciary Training Institute and the British High Commission.<sup>275</sup> The training was aimed at assisting Prosecutors, Investigators and Magistrates' grasp a better appreciation of legal framework that regulates human trafficking offences both international and national, and the various effective investigations and prosecutions of human trafficking.<sup>276</sup>

There is, therefore, a long road ahead of Kenya when it comes to the prosecution of human trafficking. However, tremendous strides are being made in the fight against human trafficking by prosecutors.<sup>277</sup>

#### 4.4 Ministry of Labor and Social Protection

The Ministry of Labour and Social Protection was formed as a result of a re-organization of Government in June 2018. Presidential Circular No. 1 of 2018 which constituted the re-organized government placed a number of departments under this Ministry.<sup>278</sup> They include: the Department of

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<sup>272</sup><https://reliefweb.int/report/kenya/kenya-s-reforms-aren-t-protecting-its-people-trafficking> Daily Nation:

Lawyers point fingers at Tobiko as Meru court hit by shortage of prosecutors September 2016

<sup>273</sup> Relief web: <https://reliefweb.int/report/kenya/kenya-s-reforms-aren-t-protecting-its-people-trafficking> Kenya's Reforms aren't protecting its people from trafficking January 2020. Accessed 15<sup>th</sup> May 2021

<sup>274</sup> Relief Web : <https://reliefweb.int/report/kenya/kenya-s-reforms-aren-t-protecting-its-people-trafficking> Kenya's Reform aren't protecting its people from trafficking January 2021. Accessed 15<sup>th</sup> May 2021

<sup>275</sup> Relief Web : <https://reliefweb.int/report/kenya/kenya-s-reforms-aren-t-protecting-its-people-trafficking> Kenya's Reform aren't protecting its people from trafficking January 2021. Accessed 15<sup>th</sup> May 2021

<sup>276</sup> Laurie Pointing: Keeping the Peace Vol. II 2014,89

<sup>277</sup> Kenya Trafficking in Persons Report 2008. US Department of State June 2008,

<sup>278</sup> Ministry of Labour, Social Security and Services: Strategic Plan 2013-2017 ,24-30

Labour, Department of Social Development, and National Council for Persons with Disabilities, and the National Employment Authority.<sup>279</sup>

The Department of Labour is a vital player when it comes to human trafficking in women due to the fact that it oversees the implementation of counter-trafficking and the enforcement of various statutes such as the Employment Act.

In 2018 to date, the Ministry has rescued over 1,500 victims of human trafficking of various nationalities, and have managed to get 61 convictions. The ministry has managed to fight for the helplessness of victims of trafficking by putting up various programs which include the InuaJamiiCash Transfer Programme that targets older persons, orphans and Vulnerable Children and Persons with Severe Disability.<sup>280</sup> The core aim of the program is to cushion the helpless members of our society and improve their livelihood. This program has greatly assisted these vulnerable groups to realize that their other better options and therefore decrease desperation and therefore protect them from trafficking.<sup>281</sup>

In January 2019, The Ministry of Labour in collaboration with IOM launched the 'Kenya Labour Migration Information Website to streamline labour migration therefore ensuring orderly and safe employment within and outside the Republic.<sup>282</sup>

The Ministry has also been vetting all local private employment recruitment agencies to ensure that any Kenyan going to work in foreign land is protected and within the law.<sup>283</sup>

This Department has not formed a comprehensive protection policy nor has it developed bilateral labour arrangements, as well as have the diplomatic capacity to safeguard Kenyan women from labour violations and exploitation.<sup>284</sup>

As of 2020, Kenya has established 3 Labour attaches' in Saudi Arabia, Qatar and United Arab Emirates. There main functions include handling concerns regarding the welfare of Kenyan migrant

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<sup>279</sup> Relief Web: <https://reliefweb.int/report/kenya/kenya-s-reforms-aren-t-protecting-its-people-trafficking>  
Kenya's Reform aren't protecting its people from trafficking January 2021. Accessed 15<sup>th</sup> May 2021

<sup>280</sup> Presentation for Regional LM Forum: Kenya Labour Migration: Trends, Challenges, Management and Political Areas for Cooperation January 2019, 6

<sup>281</sup> Presentation for Regional LM Forum: Kenya Labour Migration: Trends, Challenges, Management and Political Areas for Cooperation January 2019,7

<sup>282</sup> Presentation for Regional LM Forum: Kenya Labour Migration: Trends, Challenges, Management and Political Areas for Cooperation January 2019,7

<sup>283</sup> Presentation for Regional LM Forum: Kenya Labour Migration: Trends, Challenges, Management and Political Areas for Cooperation January 2019,8

<sup>284</sup> Presentation for Regional LM Forum: Kenya Labour Migration: Trends, Challenges, Management and Political Areas for Cooperation January 2019,8

workers, identification of employment opportunities, monitoring the implementation of labour agreements.<sup>285</sup>

Even with attaches there seems to be challenges faced by the Labour Ministry in Kenya when it comes to human trafficking cases in women in the country. Some of the challenges are:

**a. Lack of adequate regulation of recruitment centers**

Due to the high rate of unemployment in Kenya, citizens have focused on recruitment agencies for employment opportunities abroad. Many women have been victims of mistreatment and abuse while working abroad especially women working as domestic house helps in countries in the Middle East.

This Department of Labour is tasked with upholding and safeguarding the rights of migrant workers through bilateral agreements and other interventions. The government is responsible for tracing the number of its citizens working in all regions including the Middle East, Asia. It however appears that they do not quite have the number of migrant workers abroad.

The Ministry of Labour clearly demonstrated even with the introduction of essential verification of migrant workers employment contract, the government has no knowledge of the exact number of domestic workers living and working in the Middle East in particular.<sup>286</sup>

The government has over the years improved when it comes to monitoring international and national recruitment centers. In September of 2014, in trying to control migration from Kenya to the Middle East the government suspended more than 900 recruitment centres.<sup>287</sup>

The lack of clear-cut registered recruitment centers allows for innocent Kenyans to be decoyed and swindled into this deception of bright opportunities in the Middle East. However, a rude awakening dawn upon them once they arrive at their countries of employment.

Up to date rogue recruitment agencies are still thriving in the country. There is need to regulate the labour migration as well as prevent women trafficking.<sup>288</sup> Lack of checks and balances in the employment sector has made recruitment agencies flourish and benefit at the detriment of Kenyan immigrants. There needs to be put in place a policy incorporated with principles that will promote migration protection from the genesis that is the recruitment agency up until the destination thus to allow for human trafficking and traffickers to be identified.<sup>289</sup>

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<sup>285</sup> Presentation for Regional LM Forum: Kenya Labour Migration: Trends, Challenges, Management and Political Areas for Cooperation January 2019,8

<sup>286</sup> Presentation for Regional LM Forum: Kenya Labour Migration: Trends, Challenges, Management and Potential Areas for Cooperation January 2019

<sup>287</sup> [www.gulfnews/news/gulf/saudi-arabia/kenya-suspends-recruitment-to-middle-east](http://www.gulfnews/news/gulf/saudi-arabia/kenya-suspends-recruitment-to-middle-east) accessed 4th April 2021

<sup>288</sup> Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya May 2018,22.

<sup>289</sup> Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya May 2018,23.

Rogue recruiting centres have become so rampant to a point where the current Cabinet Secretary Simon Chulugui publicly stated that there have estimated been 90 Kenyan deaths at the hands of Middle East citizens.<sup>290</sup>

There is little guidance in dealing with workers trafficked before the 2014 recruitment agency has and those who are still being trafficked in foreign countries. The attention currently seems to be more concerned about the exploitation Kenyan women face when they reach foreign countries instead of the process of getting to those foreign countries.<sup>291</sup>

The Kenya government is finding it difficult to protect the labour rights of its nationals in the Gulf and other parts of the World this is because of a perceived fear that these countries would cut trade, rescind humanitarian aid and limit immigration in Kenya.<sup>292</sup> This therefore makes the government regulations ineffective. This is shown by the massive corruption, ineffective monitoring from the Ministry, illegal recruitment deployment agencies therefore making Kenyans at large vulnerable in the Middle East and parts of the World.<sup>293</sup>

Lack of implementation of legislation in Kenya is making the laws irrelevant when it comes to the protection of migrant workers.

b. Lack of Kenyan Attaches in different countries

As of 2021, there are only 3 attaches in total 1 in the Middle East, 1 in Europe and 1 in the United States of America. The number of women being trafficked into the Middle East is very high, yet the number of attaches is too low. This means that women trafficked into the Middle East are not quite being protected and are left to fend for themselves. These women are left desperate and helpless.<sup>294</sup>

The Ministry of Labour and social protection has over the years stated that they will recruit more attaches into the Middle East and other countries. However to date the number of attaches still stands at 3 and something needs to be done about this.<sup>295</sup>

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<sup>290</sup> <https://www.youtube.com/watch?v=SEhhIAnkbSs> JKL Live, Our Saudi Ordeal August 19<sup>th</sup> 2021.

<sup>291</sup> International Organization for Migration: Assessment report on the Human Trafficking Situation in the Coastal Region of Kenya, May 2018 at Nairobi.

<sup>292</sup> Floilan T. Malit Jr. 'Labour Protection in the Gulf Countries: A Comparative Analysis of Kenyan Governmental Gilemmas in Saudi Arabia and the United Arab Emirates,' unpublished Thesis Cornell University ILR School, 01 January 2016.

<sup>293</sup> Floilan T. Malit Jr. 'Labour Protection in the Gulf Countries: A Comparative Analysis of Kenyan Governmental Gilemmas in Saudi Arabia and the United Arab Emirates,' unpublished Thesis Cornell University ILR School, 01 January 2016.

<sup>294</sup> United Nations Human Rights: Office of the High Commissioner: Human Rights and Human Trafficking Fact sheet No. 36, New York, 2014, 67

<sup>295</sup> United Nations Human Rights: Office of the High Commissioner: Human Rights and Human Trafficking Fact sheet No. 36, New York, 2014, 67

### **c. Lack of cooperation**

The Ministry of Labour cannot tackle and control human trafficking on its own. The key Departments that play a role in human trafficking is the Department of Immigration together with the Ministry of Foreign affairs.<sup>296</sup>

There a lack of coordination between the different government ministries and this could be a major problem given that human trafficking is national and transnational in nature.<sup>297</sup>

## **4.4 DEPARTMENT OF IMMIGRATION**

The Department of Immigration is a government security agency that falls under the Ministry of Interior and Coordination of the government.<sup>298</sup>

Some of the challenges faced by this Ministry when it comes to combatting human trafficking include:

### **a. Corruption**

Corruption is a complex phenomenon, and fighting corruption in these institutions requires strong and able leadership committed to the cause.

According to the Kenya Urban Bribery Index, the Immigration Department comes in fifth with a 53.1% corruption rate. Therefore, making it one of the most corrupt government institutions in Kenya.<sup>299</sup>

When it comes to traffickers making passport and Visa applications for victims, cartels that are paid a hefty amount to ensure the passports are ready as and when required. Traffickers get assisted by the same people who are meant to detect and nab them.<sup>300</sup>

A number of Immigration officers who are tasked with preventing human trafficking through strictly containing our borders are the individuals aiding traffickers covertly sneak women and girls into Kenya from Uganda and Tanzania to be shipped to the Middle East.<sup>301</sup> Police officers and immigration officers connive with traffickers to illegally recruit girls to be taken to the Middle East while others

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<sup>296</sup> United Nations Human Rights: Office of the High Commissioner: Human Rights and Human Trafficking Fact sheet No. 36, New York, 2014, 65

<sup>297</sup> United Nations Human Rights: Office of the High Commissioner: Human Rights and Human Trafficking Fact sheet No. 36, New York, 2014, 69

<sup>298</sup> United Nations Human Rights: Office of the High Commissioner: Human Rights and Human Trafficking Fact sheet No. 36, New York, 2014, 69

<sup>299</sup> United Nations Human Rights: Office of the High Commissioner: Human Rights and Human Trafficking Fact sheet No. 36, New York, 2014, 70

<sup>300</sup> Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya May 2018, 43.

<sup>301</sup> Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya May 2018, 43.

tend to assist the traffickers forge immigration stamps and passports.<sup>302</sup>In certain incidences Police have been capturing the traffickers sneaking out girls through penetrable border points but because the women are so desperate they tend to plead with officers and offer bribes, so that they can be allowed to proceed with their journey.

In certain instances traffickers Police files have disappeared as they were being transported to the Prosecution offices.

d. Lack of trained professionals

The Immigration Department is a vital organ of the State, it controls the movement of people in and out of the country. Therefore training staff is vital to enable the officers to easily identify individuals being trafficked and the victims themselves.

The first recorded human trafficking training for immigration officers was undertaken in the year 2019. Out of over 1,000 Immigration officers stationed around the country, the resources for the training was only able to train eighteen officers.<sup>303</sup>A good but a very slow start. The IOM in partnership with the Department of Immigration organized a training focused on document examination,<sup>304</sup> fraud detection and countering human trafficking through detection of traffickers and victims, and also protection of victims of human trafficking in Kenya.<sup>305</sup>

This therefore reiterates that there is still work to be done in regard to training of Immigration officers.

## 4.5 JUDICIARY

Judges play a vital role when it comes to combatting human trafficking. They make decisions on interpretations of laws of human trafficking, they provide victims of trafficking protection and refer victims to other stakeholders.

All of the decisions judges make are important, judges may also provide guidance to law enforcement agencies who actively participate in the investigation phase.<sup>306</sup> Furthermore,

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<sup>302</sup>[https://www.newvision.co.ug/new\\_vision/news/1486216/police-officers-accused-aiding-human-traffickers](https://www.newvision.co.ug/new_vision/news/1486216/police-officers-accused-aiding-human-traffickers)  
Megan Harris DW News 19<sup>th</sup> September 2013

<sup>303</sup> Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya May, 2018, 45.

<sup>304</sup><https://www.iom.int/news/kenyan-immigration-officers-trained-migration-management-and-protection-victims-trafficking>

<sup>305</sup><https://www.iom.int/news/kenyan-immigration-officers-trained-migration-management-and-protection-victims-trafficking>. IOM Online News 23<sup>rd</sup> January 2020

<sup>306</sup> Office on Drugs and Crime: Call for applications: International Seminar for Judges: The Critical Role of the Judiciary in Combating Trafficking in Human Beings, Nairobi, 2014, 55.

judges may be called upon to cooperate and exchange information with judicial officials from various countries, especially in light of the transnational nature of the crime.<sup>307</sup>

Over the years the judiciary has played a critical role in curbing human trafficking. However, due to poor evidence collection mostly electronic evidence collection and delays in the judicial process have been cited to be the main issues faced by the judiciary when judging these matters.<sup>308</sup>

a. Lack of sufficient training

The Director of Judicial Training, Kathurima M’Inoti has stated that prosecution of human trafficking in Kenya is moving slow.<sup>309</sup> This was because judges, magistrates and prosecutors lack the proper training when it comes to handling the crime from the players involved to the electronic evidence relating to human trafficking in women. He further stated that human trafficking cases have become more challenging because of the number of players involved and the complexity of the situation. A high number of judges find it difficult to differentiate between the victim in the matter and the defendant in the same matter.

Human trafficking is a complex training is therefore a must do, however until recently the government recently slashed the judiciary budget by 50%<sup>310</sup> This means that a number of vital activities would be slashed and training fell into that category. There are a number of intricate parts that are involved to make a human trafficking case and without proper training it becomes difficult for judges to recognize and understand a human trafficking case.<sup>311</sup> This leads to difficulty in adjudicating this crime and therefore traffickers walk free due to lack of understanding of the matter with the root cause being lack of proper training for the judges.

b. Lack of adequate funds

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<sup>307</sup> Role of Judiciary in Combating Human Trafficking: Embassy of Israel in George, 2017, 65.

<sup>308</sup> Sean E. Goodison, Robert C Davis and Brian A. Jackson: *Digital Evidence and the US Criminal Justice System: Identifying Technology and Other Needs to More Effectively Acquire and Utilize Digital Evidence* 2015, 18-25.

<sup>309</sup><https://allafrica.com/stories/201911120139.html> Daily Nation: Kenya: Train Judiciary Staff on Human Trafficking Cases, State Told, November 2019.

<sup>310</sup><https://africacheck.org/fact-checks/reports/budget-cuts-hit-kenyas-judiciary-theres-no-global-funding-target> Lee Mwiti Budget cuts hit Kenya’s Judiciary –but there’s no global funding target’: Africa Check 18<sup>th</sup> August 2018, 76.

<sup>311</sup><https://africacheck.org/fact-checks/reports/budget-cuts-hit-kenyas-judiciary-theres-no-global-funding-target> Lee Mwiti Budget cuts hit Kenya’s Judiciary –but there’s no global funding target’: Africa Check 18<sup>th</sup> August 2018, 60.

Human trafficking cases are multiplex to handle this is due to the large amount of people involved and the vast amounts of money involved Kenya's first human trafficking. The former Chief Justice, David Maraga, stated that the Executive had slashed the Judiciary's budget, leading to the cancellation certain key services.

Since the slash in revenue the Judiciary has had to shut down several courts. This has affected up to 1500 cases and counting. Several vital departments have been slowed down and are on the verge of being shut down.<sup>312</sup>What this means is that a number of matters will not be heard, and certain modernizations in the judiciary such as electronic evidence collection, and ICT connectivity will be a problem in a vast number of counties, therefore justice will not be realized for the victims of human trafficking in Kenya.<sup>313</sup>

With these efforts remaining unmonitored and lacking and with a lack of judicial oversight in this matter a conducive environment for trafficking is in the process of being created.

#### 4.6 NON-GOVERMENTAL ORGANIZATIONS

The NGO sector in Kenya has undergone immense growth since independence to date. NGOs play a vital role in society. They fight violations of human rights either directly or by supporting the relevant state agencies,<sup>314</sup>offer direct assistance to those whose rights have been violated, lobby for changes to the national, regional and international law,<sup>315</sup> offer legal aid, psychological support, monitor compliance with human rights, rescue services and promote knowledge of, and respect for, human rights among the population.<sup>316</sup> The contributions made by NGOs are vital. They are managed and coordinated by private individuals. They get a large number of support and strength from members of the community.

In Kenya, NGOs are registered under the Non-Governmental Organization Co-ordination Act. The Public Benefits Organization Act 2013<sup>317</sup>Examples of NGOs that play key roles in the fight against human trafficking in women include the following: Awareness against

<sup>312</sup>Dennis Kiprono : Judiciary budget cuts unconstitutional and disingenuous 31<sup>st</sup> October 2019,40.

<sup>313</sup> Dennis Kiprono : Judiciary budget cuts unconstitutional and disingenuous 31<sup>st</sup> October 2019,43.

<sup>314</sup>Washington Odongo: Legal Framework of Kenya's NGOs Legal Entanglement and their soon to be solutions in the regulation of NGOs, 76.

<sup>315</sup> The Operational Environmental and Constraints for NGOs in Kenya. Strategies for good policies and governance 2012, .65.

<sup>316</sup> The Operational Environmental and Constraints for NGOs in Kenya. Strategies for good policies and governance 2012, 65.

<sup>317</sup> Section 6 (1) Public Benefits Organization Act 2013.

Human Trafficking, based in Nairobi and dedicated to fighting human trafficking in Eastern Africa, Kenya National Commission on Human Rights (KNCHR), FIDA Kenya and Trace Kenya, a national counter trafficking in Persons NGO based in Mombasa and founded in 2006 to help rescue, rehabilitate and re-integrate women and children who are victims of trafficking. Trace Kenya creates awareness through campaigns, Barazas and community dialogue forums. It also rescues victims of human trafficking, rehabilitate and counsel victims of trafficking.

NGOs working for the social cause can be said to be playing a complimentary to the role played by the police in investigating, and rescue operation of victims of trafficking. The specific roles of NGOs working on counter-trafficking include the following:

**a. Prevention**

Prevention is an important component to monitor human trafficking from a global perspective. Prevention measures are focused on addressing the vulnerabilities of local communities.<sup>318</sup> Meaning raising awareness and assisting in strengthening partnerships with law enforcement agencies, governments and other NGOs. NGOs take initiative in preventing the vulnerable sections of society from being trafficked.

For instance, Awareness against Human Trafficking (HAART) A Kenya based NGO is dedicated to fighting human trafficking all across Eastern Africa. When it comes to prevention measure HAART manages trainings from rural areas all the way to urban areas. HAART has highlighted the need to create awareness about the different forms of human trafficking through it speaking to children, parents, police officers or members of parliament.<sup>319</sup> For instance HAART raises awareness mostly to women from poor backgrounds, little education. HAART targets these same women and educate them on the ploys and games played by the traffickers to lure them to modern day slavery, They also assist women in making incomes this is through trainings in different backgrounds that range from art, to music to dance.<sup>320</sup>

HAART also recognizes that police officers, Immigration staff are normally the first responders when it comes to detecting active human trafficking as they try to pass through

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<sup>318</sup> United Nations Human Rights Office of the High Commissioner: Human Rights and Human Trafficking Fact Sheet No. 36.

<sup>319</sup> <https://haartkenya.org/>, HAART Kenya Website. Accessed 22<sup>nd</sup> May 2021.

<sup>320</sup> <https://haartkenya.org/>, HAART Kenya Website Accessed 22<sup>nd</sup> May 2021.

borders, the NGO trains these individuals in order to identify the situation and how best to handle the situation.<sup>321</sup>

Another NGO that has played a key role in prevention is the Kenya National Commission on Human Rights. It promotes respect for human right and develops a culture of human rights in the Republic, this is done through publicizing the rights of all human beings in Kenya, proving workshops for its staff thus to be able to handle situations of human rights abuses as and when they arise.<sup>322</sup>

Other actions intended to create awareness by NGOs include the following:

- a. Improve awareness on trafficking among immigration authorities, consular and diplomatic personnel.
- b. Work side by side with non-governmental organizations and civil society.<sup>323</sup>
- c. Create awareness of other relevant professionals for example medical center as well as the private sector to trafficking in women to enhance their readiness to address it adequately to strengthen their institutional capacity to counter it.
- d. Extending awareness to areas highly vulnerable with a higher risk of recruitment by traffickers.<sup>324</sup>

NGOs make recommendations to the government in framing policies and programme to prevent the trafficking offence from being committed.

#### **b. Protection**

NGOs have played an effective role in providing necessary protection to the rescued survivors of trafficking in many ways. This role of extending protection to survivors of trafficking is taken up by the NGOs by entering into partnership with the corporate sectors. They have been successful in getting suitable jobs to survivors of trafficking.<sup>325</sup> According to the Victims Protection Act,<sup>326</sup> the State is tasked with the

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<sup>321</sup><https://haartkenya.org/>. HAART Kenya Website. Accessed 22<sup>nd</sup> May 2021.

<sup>322</sup><https://haartkenya.org/>. HAART Kenya Website. Accessed 20<sup>th</sup> May 2021.

<sup>323</sup>United Nations Human Rights Office of the High Commissioner: Human Rights and Human Trafficking Fact Sheet No. 36.

<sup>324</sup><https://haartkenya.org/>. HAART Kenya Website. Accessed 20<sup>th</sup> May 2021.

<sup>325</sup> D. Valarmathi: *Role of Non-Governmental Organizations in Combating Human Trafficking –A Critical Analysis* Volume-v, January 2017-June 2017,67.

<sup>326</sup> United Nations Human Rights Office of the High Commissioner: Human Rights and Human Trafficking Fact Sheet No. 36,23.

responsibility of protecting and caring for the victims until they are repatriated back to the community or are taken to their countries of origin.<sup>327</sup>

NGOs have stepped in to do the work of the State and care and ensure the victims are in the correct state of mind to enable them testify in court.<sup>328</sup> This has been witnessed in a number of situations for instance HAART Kenya, once a human trafficking survivor is identified assistance is given, this includes counselling, providing transport services to and from police stations or court, training the victims, medical assistance legal aid, economic empowerment and rescue in certain cases. For instance, in 2014 HAART Kenya through their staff identified a number of victims of trafficked who had been repatriated back into the country but were finding it completely difficult to adjust back to normal life due to the traumatizing events they had undergone. HAART Kenya ensured counselling services were providing to them that is conducting regular discussions and assisting them reintegrate back into normalcy.<sup>329</sup>

Another example was witnessed in the recent 2019 case where a number of trafficked women from Nepal had been intercepted by police in a Night Club in Mombasa where the NGO Trace Kenya housed the women until they could be repatriated back to Nepal.<sup>330</sup>

### **c. Prosecution**

Prosecution is primarily the responsibility of law enforcement authorities and the judiciary, but it can be supplemented by NGOs and international organizations. Several NGOs have worked with police to intervene in transit areas to halt trafficking.<sup>331</sup> Cross-border cooperation especially during prosecution of criminals is key and this is an area in which NGOs are handy. Volunteers help to identify traffickers and collaborate with police to apprehend them.<sup>332</sup>

#### **4.6.1 Challenges faced by NGOs in the fight against human trafficking**

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<sup>327</sup> Rehema C. Batti. Challenges Facing Local NGOs in Resource Mobilization. Humanities and Social Sciences Vol 2 NO 3, 2014.,57-64.

<sup>328</sup> United Nations Human Rights Office of the High Commissioner: Human Rights and Human Trafficking Fact Sheet No. 36,24

<sup>329</sup> <https://haartkenya.org/> . HAART Kenya Website. Accessed 20<sup>th</sup> May 2021.

<sup>330</sup> <https://www.theeastafrican.co.ke/tea/news/east-africa/trafficked-for-sex-how-nepalese-girls-are-lured-into-a-life-of-slavery-in-kenya-1420756> Trafficked for Sex: How Nepalese girls are lured into a life of slavery in Kenya June 2019. Accessed 22 March 2021.

<sup>331</sup> International Framework for Action: To Implement the Trafficking in Persons Protocol: United Nations Office on Drugs and Crime 2009,85.

<sup>332</sup> Civil Society Actors: Non-Governmental Organizations. The Doha Declaration: Promoting a Culture of Lawfulness, November 2020, 5.

### **a. Lack of funding**

NGOs are normally involved in the process of human trafficking from the prevention stage, NGOs are not funded by the government, which as a result means that they are funded by good Samaritans who donate into their website. This is quite challenging because they are in the front lines when it comes to human trafficking. When it comes to protection, NGOs provide shelter, they provide for food for victims, they liaise with prosecutors to ensure their matters are moving in court, economic empowerment, family tracing and home visits, follow up of reintegrated victims and medical fee.<sup>333</sup>

It becomes challenging to handle these activities without funds or from donations.

### **b. Lack of Government support**

The government of Kenya is tasked to provide shelters for human trafficking victims, provide legal aid through prosecutors, repatriate victims of trafficking and support them. It therefore becomes quite a challenge when these conditions are not met given that the government places victims of trafficking in police station cells, they do not provide food or economic empowerment and the court processes take quite a while.<sup>334</sup> There is a slog rat mistrust between the victims of trafficking, the police officers and the NGOs. As mentioned in previous chapters the Kenya police are one of the most corrupt institutions' in Kenya making it quite a challenge to expect them to have kind interest when protecting victims.

Government corruption is also a major issue when it comes to challenges faced by NGOs this is in instances where funds are realised to support the victims of human trafficking in assisting them. However the funds either take too long or do not get to them at all making it quite difficult to assist victims of human trafficking.<sup>335</sup>

In conclusion therefore, the thesis question was answered in the affirmative. There is indeed a loop hole when it comes to the institutional framework when it comes to curbing women trafficking. There are a great lack of resources and capacity, and also high corruption levels has slowed the stakeholders' attempt to strengthen the policy, legal and institutional framework in Kenya. There a lack of understanding of the crime of women trafficking, as has

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<sup>333</sup>International Organization for Migration: Guidelines for Assisting Victims of Human Trafficking in the East Africa Region 2011, 56.

<sup>334</sup> International Organization for Migration: Guidelines for Assisting Victims of Human Trafficking in the East Africa Region 2011.56.

<sup>335</sup>International Organization for Migration: Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya, May 2018.

been revealed the police charge traffickers with different crimes, the police find it challenging to differentiate victims of trafficking from the traffickers which poses a large problem when it comes to curbing women trafficking in Kenya.

Also revealed is the need to train law enforcement agencies on the contents in the Counter-Trafficking in Persons Act and other legislation on human trafficking in women.



## CHAPTER FIVE

### 5.0 CONCLUSION AND RECOMMENDATIONS

#### 5.1 CONCLUSION

This chapter is a conclusion of the finding recovered after the research; it is followed by recommendations.

Chapter two discussed on human trafficking and its relation to human rights, where human trafficking originated, and the factors contributing to human trafficking in women, the cause and the drivers of human trafficking in Kenya.

Chapter three sought to answer the question on whether the legal and policy frameworks put in place are capable of curbing the rise of human trafficking in women in Kenya. The Legal and Policy frameworks do not fully curb human trafficking in women in Kenya there are certain loopholes which are, proving a human trafficking offence is challenging given that the CTip. Also, The Kenya National Plan to Action to Combat Human Trafficking is out dated, meaning there is currently no framework to guide the government and stakeholders in the prevention and response to the CTip Act.

Chapter four pursued to answer the question on what challenges do stake holders face in an attempt to strengthen policy, legal and institutional framework in Kenya. The main challenge as seen in chapter four is corruption, this is the main challenge faced by more than three quarters of the government ministries, followed by a lack of training thus a lack of knowledge when combating human trafficking, there is also the major issue of victims' treatment. Kenya is having challenges in including victims in the fight against human trafficking due to lack of knowledge and training victims are more or less mistaken to be culprits instead of survivors of human trafficking.

This thesis has demonstrated that the policy and the legal frameworks contain a number of loopholes which included lenient penalty for the crime of human trafficking in Kenya that is a fine. This allows the accused to pay a certain amount of money in order to avoid jail time. This poses a problem because it does not deter these traffickers and allowing these traffickers to continue with their crimes.

The National Plan of Action 2013-2017 has expired and as writing this thesis it is yet to be updated. The said ought to be updated to allow human trafficking policies to come to life.

This thesis has also identified that the major loophole when it comes to women trafficking in Kenya is the institutional framework that has been put in place to curb human trafficking. These Ministries do not have the necessary resources, there is a high number of corruption in between the ministries, there is a lack of women trafficking awareness in these ministries. This has made it very difficult to curb women trafficking in Kenya.

The recommendations below are having been brought forth by the challenges that were highlighted from chapter one to chapter four of the thesis.

## 5.2 RECOMMENDATIONS

1. The government should provide more training to all capacities of the government dealing with human trafficking, this includes the policemen, the immigration sector, and the first responders on how to identify and handle human trafficking. Currently police officers' and immigration officers arrest traffickers under the violation of labor and immigration laws. This has made human traffickers continue to freely conduct their illegal activities.

As writing this thesis it was close to impossible to find any human trafficking decided cases in Kenya yet women trafficking cases are highlighted almost daily in news outlets. This clearly shows that human trafficking matters are not being prosecuted or are being prosecuted as a different crime. This means that either judges or prosecutors do not understand the characteristics of human trafficking or are intentionally not prosecuting human trafficking crimes.

2. To open a central data base system all across the different ministries that are dealing with human trafficking so that offenders can easily be identified and nabbed. Different ministries in Kenya handle related human trafficking matters but are however in different department for instance the Ministry of Labour together with the Department for Public Prosecution deal with the registration of recruitment centers, the ministry of Interior deals with investigation of human trafficking.

This thesis has brought forth the fact that there is a lack of a central intelligence database and if a central data base can be instilled nabbing human traffickers will

prove to be less challenging as each ministry will be able to find material and files when investigation this crime and it will also be quite useful and thorough.

3. Monitor and assess employment centers, at the moment there are monitoring techniques that have been put in place are not extensive as there are a high number of illegal recruitment centers as highlighted in the thesis. All recruitment centers should be registered and regularly inspected. The Ministry of Labour in charge of registration of recruitment centers stated that there was no registration of all the women earning a living overseas. This means that these women have not been accounted for making it very dangerous for them out there.

All women traveling overseas for employment must indicate the recruitment center that is sending them there and how they will be keeping in touch with all the ladies, this will allow for accountability and reduce the risk of trafficking of women in Kenya.

4. The government should build victim centers for victims of human trafficking, at the moment we do not have any victim centers, victims are placed either in police cells or are taken by volunteer Non-governmental Organizations. Victims ought to be treated with dignity and respect, the government needs to train its officers in matters trauma and child friendly approached and interview techniques.
5. This thesis has shown that socio-economic factors have greatly contributed to women's vulnerability and in turn made women unknowingly travel overseas where they are trafficked and turned to slaves.

Deploying human trafficking experts to places where there are high numbers of women and children being trafficked, will allow for traffickers to easily be identified, it will also allow for women and children to be highly sensitized on what to expect or rather how to identify a trafficker.

6. Kenya currently appears to lack influence when it comes to negotiations in regard to trafficking matters in the Middle East. There are great gaps in the regional

negotiations with the Middle East. Countries such as the Philippines have demonstrated that bilateral agreements and negotiations can improve labor relations that is it allows authorities to oversee the protection of labor in the middle-east. Kenya ought to come up with negotiations that will allow Kenyan authorities to directly oversee the protection of women working in the Middle East and avoid these laborers' and workers from being exploited.

7. The thesis has noted that there is no current National Plan for Combating Human Trafficking. The government ought to put in place measures to develop a new National Plan for Combating Human Trafficking 2019-2023. The current National Plan has expired and to date it has not been updated.



# BIBLIOGRAPHY

## BOOKS

Agbu Osita: Corruption and Human Trafficking: West African Review, 2003

Alyson Warhust: Trafficking: A Global Phenomenon with an Exploration of India through Maps: August 2011.

Alexis A. Aronowitz, Human Trafficking, Human Misery: The Global Trade in Human Beings, 2013.

Anne G. The International Law of Human Trafficking, Cambridge University Press, January 2011

Carrie Beichel Berger: Human Trafficking: The Hidden Aftermath of US Natural Disasters, March 2020.

DorchenLeidholdt, Position Paper for the Coalition Against Trafficking in Women, Special seminar on Trafficking, Prostitution and Global Sex Industry, United Nations Working Group on Contemporary forms of slavery, organized by Coalition against Trafficking, International Movement Against Discrimination and Racism, International Human Rights Law and Anti-slavery June 1 1999.

Fishman & Miguel: Economic Gangsters, Corruption, Violence and the Poverty of Nations, Princeton University Press, Princeton, 2008.

Fuller L. The Morality of Law, Yale University Press, 1977.

Introduction and History of Human Trafficking and Modern-Day Slavery. Chapter 1. 2018.

International Organization on Migration: Human Trafficking in East Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda and Burundi, 2008.

Katrin Corrigan: Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic (2001) Vol. 25 Issue 1.

Kidnapping: An underreported Aspect of African Agency during the Slave Trade Era (1440-1885), 2009.

King: The Code of Hammurabi, 2007.

Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union, 1<sup>st</sup> Edition, Hart Publishing 2007.

Lo Lacono Eva: Victims, Sex workers and Perpetrator Gray Areas in the Trafficking in Nigerian Women, Trends in Organized Crime, 2014.

Louise Shelley: The Diverse Consequences of Human Trafficking June 2012.

Locke J, the Second Treatise of Government Barnes & Noble 2004.

MakonenGetu: Human Trafficking and Development: The Role of Microfinance, July 2006.

Martin,D. Van Assche, K, Dominguez-Gil, B, Lopez-Fraga, M, Gallont, R, Capron, A., Strengthening global effects to combat organ trafficking and transplant tourism (2019).

Margaret Malloch, Paul Rigby: Human Trafficking, The Complexities of Exploitation August 2016.

M. CherifBassiouni: Addressing International Human Trafficking in Women and Children for Commercial Sexual Exploitation in the 21<sup>st</sup> Century, 2014, Vol 81.

M. Verhoeven & B. Vangestel: Criminal Investigation of Human Trafficking in the Netherlands Red Light District, Springer Science Business Media 2013.

Mixed Migration in Kenya: The Scale of Movement and Associated Protected Risks, June 2013.

Nore M. Human trafficking: emerging legal issues and application, Lawyers and judges Publishing Company 2017.

Phillipa S. Human Trafficking and Modern Slavery Law and Practice, 2<sup>nd</sup> Edition, 2020.

R. McInerney: St. Thomas Aquinas Summa Theologize 1999.

Ronald Weitzer: New Directions in Research on Human Trafficking: 2014.

Siddharth K. Sex Trafficking: Inside the Business of Modern Slavery, Columbia University Press 2009.

Silvia S. Trafficking in Human Beings: Mordern Slavery Oxford University Press Vol. 20 Issue 2 2008.

Shelley, L: Why Has Human Trafficking Flourished? In *Human Trafficking: A Global Perspective*. Cambridge: Cambridge University Press, 2010.

Skinner: *A Crime so Monstrous*, 2008.

St. Thomas Aquinas: *The Summa Theologica: Translated by the Fathers of the English Dominican Province*, 2006.

Struss L. *Natural Right and History*, 1968

Tom Obokata: *The African Court of Justice and Human and Peoples Rights in Context. Human Trafficking in Africa*, May 2019

United Nations Office on Drugs and Crime: Combating Trafficking in Persons, A handbook for Parliamentarians, 2009

Veerendra M. *Combating Human Trafficking: Gaps in Policy and Law First Edition, Central Adoption Resource Authority, Ministry of Women and Children Development, Government of India*, Sage Publishing, January 2019.

## **JOURNALS**

Hansen L: The Little Mermaid's Silent Security Dilemma and the Absence of Gender in the Copenhagen School Millennium Journal of International Studies, 2000

Ministry of Labour Social Security and Services, the National Plan of Action for Combating Human Trafficking: Strategic Framework 2013-2017



## **REPORTS**

Assessment Report on the Human Trafficking. Situation in the Coastal Region of Kenya. May 2018.

Assessment Report on the Human Trafficking Situation in The Coastal Region, May 2018.

Awareness against Human Trafficking (HAART), Displacement, Violence and Vulnerability: Trafficking among internally Displaced Person in Kenya, Nairobi, 2016.

Global Estimates of Modern Slavery: Forced Labor and Forced Marriages: International Labor Organization, Vienna, 2018.

International Labour Organization, A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (Geneva, ILO, 2005).

International Organization for Migration: Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya. (Nairobi 2018).

International Labor Organization, Forced Labor, Modern Slavery and Human Trafficking: Facts and Figures, 2014.

Kaunga J., Study on Child Labour- Kenya, International Labour Organization, 2008.

Kenya National Crime Research Centre, *Report on Human Trafficking in Kenya, June 2015.*

Mercy International Association: The Root Causes of Human Trafficking and Slavery in

Kenya June 2018.

The National Plan of Action (NPA) for Combating Human Trafficking 2013-2017

National Referral Mechanism for Assisting Victims of Human Trafficking in Kenya, 2011.

United Nations Office on Drugs and Crime: Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants. June 2010. Vienna.

United Nations Human Rights: Recommended Principles and Guidelines on Human Trafficking, Geneva, 2010

United Nations Office on Drugs and Crime: United Nations Global Initiative to Fight Human Trafficking: An Introduction to Human Trafficking: Vulnerability, Impact and Action. New York.

United Nations Human Rights Office of the High Commissioner: Human Rights and Human Trafficking Fact Sheet No. 36.

United Nations Office on Drugs and Crime: Global Report on Trafficking in Persons, New York, 2018

United States of America Department of State, Trafficking in Persons Report 2014 (US TIP Report).

United States Department of State: Trafficking in Persons Report, Washington D.C, 2017.

United States of America: Department of State: Trafficking in Persons Report June 2019.



## INTERNET SOURCES

<https://www.dw.com/en/east-africas-forgotten-slave-trade/a-50126759> Africa History: East Africa's Forgotten Slave Trade.

2019 <https://deeply.thenewhumanitarian.org/womensadvancement/articles/2017/12/13/kenya-lifts-ban-on-sending-domestic-workers-to-the-middle-east> Christabel Ligami, *Kenya Lifts Ban on Sending Workers to the Middle East*, *News deeply* 13 December 2017

<https://www.youtube.com/watch?v=SEhhIAnkbSs> JKL Live, Our Saudi Ordeal August 19<sup>th</sup> 2021.

<https://www.cid.go.ke/index.php/sections/investigationunits/anti-human-trafficking-child-protection-unit-ahtcpu.html>. Directorate of Criminal Investigations.

[www.newsfromafrica.org/newsfromafrica/articles/art\\_854.html](http://www.newsfromafrica.org/newsfromafrica/articles/art_854.html) Ochieng Z, *News from Africa*, August 2002.

<https://deeply.thenewhumanitarian.org/womensadvancement/articles/2017/12/13/kenya-lifts-ban-on-sending-domestic-workers-to-the-middle-east> Christabel Ligami, *Kenya Lifts Ban on Sending Workers to the Middle East*, *Newsdeeply* 13 December 2017

Relief Web: <https://reliefweb.int/report/kenya/kenya-s-reforms-aren-t-protecting-its-people-trafficking> Kenya's Reform aren't protecting its people from trafficking January 2021. Accessed 15<sup>th</sup> May 2021



# Appendices

## Appendix A: Similarity Report



### Urkund Analysis Result

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Submitted By: Winnie.Kimeu@strathmore.edu  
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dissertation.docx (D51326131)  
Charu Srivastava .docx (D17803991)  
Hoff, Child Rights in Africa Final Paper.pdf (D27737426)  
<https://www.state.gov/reports/2020-trafficking-in-persons-report/kenya/> <https://www.crs.org/stories/stop-human-trafficking>  
[https://en.wikipedia.org/wiki/Human\\_trafficking\\_in\\_Kenya](https://en.wikipedia.org/wiki/Human_trafficking_in_Kenya)  
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577950/EP\\_RS\\_BRI\(2016\)\\_577950\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577950/EP_RS_BRI(2016)_577950_EN.pdf)  
<https://sf-hrc.org/what-human-trafficking>  
<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> <https://su-plus.strathmore.edu/bitstream/handle/11071/5227/A%20Critique%20of%20the%20role%20of%20the%20Government%20in%20Combating%20Human%20Trafficking%20in%20Kenya.pdf?sequence=1&isAllowed=y>  
<http://crimeresearch.go.ke/wp-content/uploads/2018/05/Human-Trafficking-in-Kenya.pdf> <https://www.unodc.org/toc/en/crimes/human-trafficking.html> [https://www.researchgate.net/publication/257771155\\_Alexis\\_A\\_Aronowitz\\_Human\\_trafficking\\_human\\_misery](https://www.researchgate.net/publication/257771155_Alexis_A_Aronowitz_Human_trafficking_human_misery)

\_The\_global\_trade\_in\_human\_beings

<https://deeply.thenewhumanitarian.org/womensadvancement/articles/2017/12/13/kenya-lifts-ban-on-sending-domestic-workers-to-the-middle-east>

<https://reliefweb.int/report/kenya/kenya-s-reforms-aren-t-protecting-its-people-trafficking> <https://www.pulselive.co.ke/news/i-was-held-at-gun-point-faith-murunga-narrates-horrifying-ordeal-in-saudi-arabia-on/9z4eltc>

[https://www.unodc.org/unodc/frontpage/2020/July/committed-to-the-cause\\_-working-on-the-frntline-to-end-human-trafficking---mueni-mutisya--heacpu--kenya.html](https://www.unodc.org/unodc/frontpage/2020/July/committed-to-the-cause_-working-on-the-frntline-to-end-human-trafficking---mueni-mutisya--heacpu--kenya.html) <https://www.theeastafrican.co.ke/tea/news/east-africa/kenya-police-rescue-25-women-from-suspected-human-trafficking-ring-1415046>

<https://www.odpp.go.ke/prosecutions-sets-the-pace-on-curbing-human-trafficking/> [https://www.newvision.co.ug/new\\_vision/news/1486216/police-officers-accused-aiding-human-traffickers](https://www.newvision.co.ug/new_vision/news/1486216/police-officers-accused-aiding-human-traffickers).



## Appendix B: Ethical Clearance Confirmation



22<sup>nd</sup> July 2022

Ms Kimeu Winnie  
winykimeu@gmail.com

Dear Ms Kimeu,

### **RE: Women trafficking in Kenya: Assessing the policy, legal and institutional framework.**

This is to inform you that SU-ISERC has reviewed and approved your above SU- master's research proposal. Your application reference number is SU-ISERC1439/22. The approval period is 22<sup>nd</sup> July 2022 to 21<sup>st</sup> July 2023.

This approval is subject to compliance with the following requirements:

- i. Only approved documents including (informed consents, study instruments, MTA) will be used
- ii. All changes including (amendments, deviations, and violations) are submitted for review and approval by SU-ISERC.
- iii. Death and life-threatening problems and serious adverse events or unexpected adverse events whether related or unrelated to the study must be reported to SU-ISERC within 48 hours of notification
- iv. Any changes, anticipated or otherwise that may increase the risks or affected safety or welfare of study participants and others or affect the integrity of the research must be reported to SU-ISERC within 48 hours
- v. Clearance for export of biological specimens must be obtained from relevant institutions.
- vi. Submission of a request for renewal of approval at least 60 days prior to expiry of the approval period. Attach a comprehensive progress report to support the renewal.
- vii. Submission of an executive summary report within 90 days upon completion of the study to SU-ISERC.

Prior to commencing your study, you will be expected to obtain a research license from National Commission for Science, Technology, and Innovation (NACOSTI) <https://research-portal.nacosti.go.ke/> and obtain other clearances needed.

Yours sincerely,

for Dr Ben Ngoye,  
Secretary; SU-ISERC

Cc: Prof Fred Were,  
Chairperson; SU-ISERC

STRATHMORE UNIVERSITY INSTITUTIONAL SCIENTIFIC AND ETHICAL REVIEW COMMITTEE (SU-ISERC) <b>22 Jul 2022</b> Email: <a href="mailto:ethicsreview@strathmore.edu">ethicsreview@strathmore.edu</a> P.O. BOX 59857-00200 NAIROBI-KENYA
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