

**UNIVERSITY OF NAIROBI**

**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES (IDIS)**

**THE EFFICACY OF THE IMMIGRATION DEPARTMENT IN CONTROLLING  
HUMAN TRAFFICKING: ANALYSIS OF COUNTER-TRAFFICKING IN  
PERSON'S ACT 2010**

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**A Research Project Submitted in Partial Fulfillment for the Award of the Degree in  
Masters of Arts in International Studies, Institute of Diplomacy and International  
Studies, University of Nairobi.**

**2017**

**DECLARATION**

This project is my original work and has not been submitted for another Degree in any other University

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This project has been submitted for examination with my permission as the University supervisor

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## **DEDICATION**

To my lovely husband, Owino Harrison Ochieng' my son Richard and lovely daughters,  
Boolean and Maria for their encouragement

## **ABSTRACT**

This study explored the efficacy of the immigration department in controlling human trafficking: analysis of counter-trafficking in person's Act 2010. The main objective of this Research is to establish to examine the implementation of the counter-Trafficking in Persons Act 2010. The specific objectives were to discover the importance of human trafficking happenings in Kenya; to survey the human traffic practices and implementation plans in Kenya; to investigate the trafficking policy implementation process and analyse the gaps observed. The study employed a qualitative approach and sought to cover the exploratory and descriptive elements of the research process. The first part of the study gives a background of human trafficking policy implementation. The second part provides details of international perspectives of human trafficking. In the third part, the complexity in human trafficking is explored. Lastly, the fourth part of the paper presents a critical analysis of the implementation of trafficking in persons Act.

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# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the Study

Immigration has been a big issue in Europe since 1970's. This issue has nowadays taken a political meaning. It has been said that there is a worldwide migration crisis. Migration departments have tried to restrict migration several times unsuccessfully. There is wide gap between the objectives of individual countries migration policies and what actually is happening on the ground in industrialised democracies.<sup>1</sup> Human trafficking and the resultant formation of new ethnic communities are forces which have rendered governments helpless about it. National policies on immigration really matter as they indeed influence movement of persons but they are not always in tandem with the way they were intended to be. The globe is currently experiencing Human trafficking crisis. It is said to be the most profitable illegal trade after narcotics and weapons dealings. The findings by ILO have been confirmed by the information presented by United Nations Office on Drugs and Crime (UNODC). The finding indicates that in the year 2014 there were 152 victims from different countries all over the world..<sup>2</sup>Data collected has revealed different trafficking routes, where by majority of the victims i.e 49% being women and 33% minors.<sup>3</sup> Most of the victims originate from Sub-Saharan Africa, Eastern Europe, Central Asia and East Asia.<sup>4</sup> Most of the victims are shipped to North America, Middle East and Western Europe.<sup>5</sup> More than four million people are trafficked within and

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<sup>1</sup> Cornelius, 1994

<sup>2</sup> United Nations, Global Report On Trafficking In Persons 2014: Includes Text On Country Profiles Data. 5 (2015).

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

outside countries yearly world wide. Trafficking of Human beings has been cited as the most serious human rights issue affecting the world community. Naturally, the authorities and civil society have put a lot of effort on the repercussions of human trafficking. Nevertheless, with increasing research politicians and activists have come to the conclusion that to truly handle this problem then there must be a clear understanding of what causes. Human trafficking so as to make policies on that basis and act upon them. These reasons have attained increased global attention within the past ten years. Following the initiation of the United Nations (UN) Rule to prevent, Defeat and chastise Human Traffickers in the year 2000 and also the establishment of the United States Trafficking in persons global program year 2001.

Sub-Sahara Africa is a region most famous for various migration patterns which include cross border movements; refugees and internally displaced persons, labour migrants, contract workers and skilled professionals movements. Trafficking of Human beings is the latest to be added to the above mentioned list.. Perception in to this happenings resulted not from collected data but concerns arising from activists, media and non-governmental organisations in Togo, Benin and Nigeria in the late 1990s. Kenya has been having challenges in recognizing victims of the vice thus making it hard to develop policy and responses.

There is no statistics on the number of trafficked victims in Kenya there is scarcity of information on human trafficking especially with respect to labour movement. Victim identification is a challenge since most individuals fail to report the incidence. The issues

resulting through human trafficking have forced many countries in the region to come up with Anti trafficking policies with the intention of curbing the vice. Though these efforts are showing positive impact, many of the plans do not seem to be based on the true understanding and causes of human trafficking within each country in the region. Despite the fact that Trafficking has attracted political and public awareness recently, this happening is nothing new. This has been described as a diverse form of trade. A new form of slavery in the form of human trafficking has emerged since the abolition of slavery 140 years ago. This new kind of slavery is said to be the fastest growing organized crime and considered to be the third most lucrative illicit trade after drug trafficking and arms trade. There is conflicting agendas and objectives from various stakeholders and nations as a whole. Trafficking has become a serious political issue because it involves ethics and judgments about how the world is going to address foremost deprivations of human rights.

Human trafficking and politics are intertwined to extent that it cannot be avoided in public discourse. Through a review conducted of the current literature on human trafficking, most scholars agree human trafficking policy has not been adequately addressed by any piece of existing legislation, but they rarely explore the initial discourse and development of those policies as a possible explanation.

Why Migration? The movement of people from one country to another is determined and influenced by many factors within the countries involved. One important factor is the belief that one's economic status is going to improve. People usually move if such

movement will increase their social status usually through increased income. Another is the bureaucratic belief that rules designed class migrants and to control their entry and stay will effectively shape their average behaviour. These two factors result in the thought that migration can be turned on and off like a tap by good set policies.

## **1.2 Statement of Research Problem**

It is very clear that there is shortage of research on Human trafficking in East Africa especially in Kenya. Reports from International Organization on Immigration has shown that human trafficking is affected by both internal and international trafficking in East Africa. Reference is made to internal trafficking in Kenya, Tanzania and Uganda. One of the most important factor is Urbanization and urban/ rural connections, the concentration of labour intensive industries and military recruitment in Uganda.

Most migrations happens by movement of people from rural and slum communities also referred to as points of origin. Urban centers, intensive agricultural and tourists' centers are the destinations in Tanzania and Kenya. Mining areas in Tanzania are another attractive place for these movements. North and Western Kenya are listed as points of origin. The Kenya government enacted a Counter Trafficking in Persons Act in 2010 to fight Human Trafficking. This act criminalizes trafficking of people in Kenya. This Act guides the country in implementing measures in combating the vice. The act covers prevention and protection measures victim identification and prosecution.

The implementation of the policy has been a great challenge to the government as it requires all stakeholders and government machinery to work together effectively. These challenges have been highlighted by the United Nations Office on Drugs and Crime. The report by (UNODC) indicates that the implementation of human trafficking policy has remained problematic as a result of deficiency in action by nations. Kenya's immigration department has not done any research and no other relevant authority has taken the burden to do the same to see the effectiveness of the Act. This study tries to map the efforts done by Kenya's immigration department in implementing the Act. The study is guided by the following objectives.

### **1.3 Overall Objective**

The overall objective is to examine the implementation of the counter-Trafficking in Persons Act 2010.

### **1.4 Specific Objectives**

- i. To determine the importance of human trafficking happenings in Kenya.
- ii. To survey the human trafficking policies and implementation plans in Kenya
- iii. To investigate the effectiveness of the human trafficking policy implementation process in Kenya
- iv. To identify the gaps in the implementation process of human trafficking policy

## **1.5 Research Question**

- i. What is the significance of human trafficking phenomenon in Kenya?
- ii. What are the human trafficking policy implementation practices in Kenya?
- iii. How effective is the implementation process of human trafficking policy in Kenya?

## **1.6 Literature Review**

### **Human Trafficking**

Because of the international nature of human trafficking, the global community has taken steps to fight the menace. The United Nations has enacted a protocol which all member states must adhere to. The protocol lays down ways by which human trafficking can be suppressed, punished and prevented.<sup>6</sup> This protocol has been an upgrade of the UN's Convention against International organized crime. The protocol; provides for a worldly accepted definition of human trafficking which acts as a legally accepted tool. The protocol defines Human Trafficking in Article 3 section recognizing that it encompass harboring, transportation and/or receipt of persons through coercion and or dishonesty and by giving of cash to attain a consent of exploiting other persons.<sup>7</sup>

More than 157 countries have approved the protocol though none of them has shown serious commitments in its implementation. Most countries have been reluctant in implementing the protocol because of lack of penalties in non-adherence. Critics have said that failure to hold members accountable has been the resultant lethargy in its

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<sup>6</sup> Obokata, 2006

<sup>7</sup> United Nations. (2000).

inaction. Under the Counter-Trafficking in Persons Act, 2010, human trafficking is defined in line with the protocol's definition. The Act further outlines that where any of the highlighted means are used, the consent of the victim is irrelevant.<sup>8</sup>

### **Human Trafficking Unpacked**

The definition of human trafficking as defined by the protocol has given different stakeholders a general guidance and point of reference in tackling human trafficking.<sup>9</sup> Human trafficking has affected 143 out of 192 countries of the world.<sup>10</sup> People are mistreated and handled as commodities in their search for better lives in other countries. Human trade has been going on because traders believe there is a lot of profit in it and that a human being can be used again and again not like other commodities. . People on the move are very vulnerable to exploitation and thus their rights are not protected. For instance, migrants ache from a dilemma called “between state protection mechanisms” which is whereby the origin country of the migrant is unable to offer the required protection and the destination nation is unwilling to offer the same. Haynes<sup>11</sup>, states that exploitative conditions which result in human trafficking are as follows: unstable families, very little education and employment opportunities, discrimination based on gender/ racial hate/ caste ,existence of structural pressure whether economic or social . Human trafficking has its advantages. Migrants familiarities and experiences has prompted scholars to study globalization and demands of the market as well as migration practices and policies. The research on human trafficking brings out the responsibility of

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<sup>8</sup> Counter-Trafficking in Persons Act, 2010

<sup>9</sup> Obokata, 2006

<sup>10</sup> Caplin, 2009

<sup>11</sup> Ibid



a nation in governing the movement of people in their country of origin or destination. Kaur's<sup>12</sup> analysis of labor migrant guide shows similar issues tackled by labor-importing nations such as Malaysia. The migrants are employed in low paying jobs that are rejected by local people. Destination countries need to work together with employers to legalize activities that enhance segregation, disempowerment, and marginalization.<sup>13</sup>

The segregatory practices increases the migrant workers chances of exploitation. Many Malaysian workers undergo forced labor such as restraint in movement, lies and low wages, passport withholding and debts emanating from their recruitments. The address of Human Trafficking has been criticized for lack of serious research and being detached from theory.<sup>14</sup> Go dziak and Bump posits that no effort has been put in place to critically investigate human trafficking phenomenon.

The lack of theoretical basis on the study of human trafficking indicates a shortage in the academic standards. Due to small samples available there are limits to the generalization and extrapolation of findings because the research mostly involves case studies.<sup>15</sup> Nevertheless, Tyldum posit that more narrowly defined study would give better human trafficking knowledge. There is justification for development and improvements in the understanding of human trafficking so that Malaysian government's implementation of its policies will be a thorough process.

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<sup>12</sup> Kaur, A. (2010).

<sup>13</sup> Lim, T.C. (2003).

<sup>14</sup> Zhang, S.X. (2012)..

<sup>15</sup> Go dziak, E.M. and Bump, M.N. (2008).

The government is one of the key stakeholders in the fight against human trafficking. Governments might be promoting and restraining abusive labor migration and abandoning or securing defenseless population through implementation of policies. The current sought to investigate human trafficking by analyzing how the policies to curb it are being implemented by considering that there is lack of research on the topic. Through this view the study will provide practical solutions to the menace by considering the obstacles being faced.

### **Policy Implementation**

Public policy is acclaimed to give directions in problem-solving and in the provision of goods and services to the society. The policy is created by government agencies and its officials.<sup>16</sup> Both actions and inactions are considered as public policy.<sup>17</sup> It therefore comprises of behavior as well as intended purposes. As suggested by Hogwood and Gunn.<sup>18</sup> The policy results should be scrutinized to see if it delivers according to the policy formulators expectations. The path of execution may be in the form of inaction in other words bad decisions. Policies are important processes passed over-time involving intra and inter organizational relationships.

Other parties and especially the civil society and private sector may be involved in every aspect of public policy implementation process. Government may not be considered to be special but eventually its contribution is of significance especially in binding them legally. Usually, policies take various forms which include executive orders, legislation

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<sup>16</sup> Anderson, J.E. (1975).

<sup>17</sup> Hill, M. and Hupe, P. (2009).

<sup>18</sup> Ibid

or other acts considered to be official.<sup>19</sup> In Kenya, the policies on human trafficking, takes a legislation form referred to as the Counter-Trafficking in Persons Act 2010. The 2010 Act specifically enacted to create a comprehensive and specific law in Kenya to deal with peoples trafficking activities. Further, the legislation elaborates on behaviors associated with prevention, prosecution, protection and care for trafficked victims. Various actors are incorporated by the 2010 Act since it is the key policy that is associated with fighting human trafficking, where the Ministry of Interior and National Security is included as the major policy driver. In order to address problems relating to human trafficking, the 2010 Act plays a major role in setting forth public policy and the courses of action that leads to specific results subject to its actual implementation.

In order to achieve the desired goals, public policy must be implemented. Therefore, implementation is a key stage in the policy implementation process that is associated with precise policies as a reply to certain glitches in community.<sup>20</sup> According to Van Meter and Van Horn, implementation policy is undertaken by private and public individuals to attain a set of goals recognized in previous policy decisions. The scholars assert that, for the implementation phase to start, the key goals and objectives must first be laid down. In Kenya, the implementation phase on human trafficking policy commenced after establishing the Act.

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<sup>19</sup> May, P. (2003).

<sup>20</sup> Hill, M. and Hupe, P. (2009).

Policy tends to deviate from its intended unique form as a result of alterations during the implementation of the policy. Majone and Wildavsky<sup>21</sup> support the view that those implementing goals and programmes modify them since in most cases they are faced various constraints hence they change them in order to adapt to changing circumstances. However, other researchers are of different view when it comes to matters dealing with inevitable alterations to the policies. According to the first school of thought, the adjustment of these policies is essential since it usually reveals the actual situation.<sup>22</sup> Adapting to policy modification is thus reflected to be necessary as they allow value addition to policy intentions. Other scholars argue that there is very less which can be done to avoid policy modification whether desirable or not, as a result of unavoidable doubts of policy goals and battle among policy implementers.<sup>23</sup>

The implementation policy emphasizes on actions that impacts public services delivery that leads to policy insinuation. The implementation study pinpoints the possible gap between policy purposes and actual public services delivery. It allows proper public understanding of how the policy will be implemented into actual actions. Policy implementation is frequently ignored due to naïve misunderstanding that implementation of a reputable policy will be made as per the decision of policy makers hence the desired outcomes.<sup>24</sup> It is dishonestly considered a simple process through which all major policy issues are previously resolved by the policy makers.

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<sup>21</sup> Majone, G. and Wildavsky, A. (1978).

<sup>22</sup> Schneider, A.L. and Ingram, H. (1997).

<sup>23</sup> May, P. (1999).

<sup>24</sup> Smith, T.B. (1973)

Regardless of research on policy implementation concerning various issues having been undertaken for several decades, most of these researches are mostly concentrated in west countries and Europe and North America in particular. Almost 90 % of all research publications regarding public policy implementation are in the Western hemisphere, and which focuses more on those public policies touching on health, environmental, educational social and economic matters.<sup>25</sup> Based on specific research agendas, majority of policy implementation scholars are usually biased when it comes to selecting topics to research on as per certain policy sectors of interest and regional location. Therefore, this survey is an initial attempt in assessing human trafficking in Kenya focusing on the perspective of policy implementation.

### **1.7 Empirical Review**

There is changing trend in human trafficking as revealed by the 2012 report on counter trafficking by International Organization for Migration (IOM)'s. In 2011, at least half of the assistance provided by IOM 53 related to labor trafficking as compared to 27 percent which related to sex trafficking.<sup>26</sup> Therefore, basing on IOM assisted cases, labor trafficking can be said to be the major form of trafficking after being reported more than sex trafficking since 2010. However, majority of labor trafficking cases are as per the legal and contractual work according to IOM.

According to the report findings, women continue to be the most trafficked victims. Women who are trafficked are usually exploited sexually or labor exploitation and in

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<sup>25</sup> Saetren, H. (2005).

<sup>26</sup> International Organisation for Migration (IOM). (2012).

some extreme cases they are both exploited in sex and labor. However, male trafficked victims number has increased by 23.2 percent as indicated by IOM assistance report. According to IOM, the process of victim identification is usually a major challenge to both the government as well as other NGOs and international institutions such as IOM providing assistance to trafficked victims.<sup>27</sup>

The United Nations approach to Prevent, Suppress and Punish human Trafficking has provided a recognized meaning of human trafficking with three approaches widely known as 3Ps: protection, prevention, and prosecution.<sup>28</sup> Irrespective of the high cost of adopting and complying with the 3Ps approach, member countries are obligated to adopt the same. The impact of the protocol entailing the adoption of analyses the impact of the Protocol regarding the adoption of 3Ps approach by various states is challenging since majority of states will only focus on the approach which is cheap to comply with.<sup>29</sup> According to the empirical results, many countries ensure protocol compliance by deliberately choosing to focus on prevention compared to the others. This is because prevention measures can be undertaken while making use of the local resources without experiencing resistance from the members of the public as associated with the prosecution and protection measures. Protection and prosecution require new law and implementation of policy that may be a burden. In order to provide temporary residence permits to the trafficked victims greater resources are needed. Proper working capacity for law enforcing agencies together with the judiciary are paramount to proper enforcement of new anti-trafficking law. Therefore, many states tend to consider

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<sup>27</sup> Ibid

<sup>28</sup> United Nations. (2000).

<sup>29</sup> Cho and Vadlamannati 2012

adopting prevention approach. This however might discourage actual investigation of the definite situation in majority of the countries.<sup>30</sup>

Reid<sup>31</sup> reviewed previous study on victim vulnerabilities over the last decade 2011. As per the study outcomes, it was revealed that external casualties risk is linked to its migrant status. The risk in most cases is due to the lack of proper travel documentations, or a trafficker-sponsored agency or expired travel documents. Additionally, trafficked victims also are exposed to the risk of scam in their domestic countries especially fraudulent employment agencies that fail to tell the victim matters relating to working conditions as well as payment abroad. At their new countries abroad, trafficked victims' woes continue as they are faced with both language and cultural barriers which in turn isolated the victim reducing their chances of ever accessing protection and support. Foreign victims fall prey easily to human traffickers due to their desire to life a better life while at the same time assisting their families and relatives back in their countries of origin. Women and girls are more preferred by human traffickers compared to men and boys in relation to gender vulnerability. Quality and quantity of other similar studies available constitute some of the limitations of this review. Since the main focus of the review is sex trafficking in North America, the findings may not be generalized for various types of trafficking.

According to different findings, it has been set up that human trafficking is identified with worldwide work relocation related issues. These issues of identify with worldwide

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<sup>30</sup> U.S. Department of State. (2009).

<sup>31</sup> Reid, J.A. (2012).

financial dissimilarity between states whereby destitution and movement are the key main thrusts behind global trafficking in people.<sup>32</sup> A survey conducted by Mahmoud and Tresbech bolsters the critical part of movement in leading of human trafficking.<sup>33</sup> It emphatically demonstrates that casualties from expansive scale migration streams locales are more helpless against be enrolled by human traffickers. Additionally, a nearby connection between human trafficking and illicit relocation designs are likewise settled by the examination. The overview results bolster the contention that an adaptable relocation arrangement is significant to manage human trafficking albeit no genuine information established a less prohibitive movement strategy as the solution for the issue. Subsequently, keeping in mind the end goal to give complete confirmation of an adequacy and adaptable movement arrangement in managing human trafficking more research is required. All in all, the investigation explains that as long as the movement weight keeps on staying high then human trafficking will keep on exacerbating. Despite the fact that the overview fundamentally examines the financial matters of human trafficking, a prominent picture of human trafficking issue is not provided.

On the same vein, Chuang opines that human trafficking is a response to the current socioeconomic trend of globalization.<sup>34</sup> The theme of discussion thus is based on Poverty and gender-based discrimination of women, which is not consistent with the general trafficking practice that also includes men as victims. Though other trafficking activities apart from sexual exploitation are acknowledged in the article, the article provides human trafficking view via gender based perspective of women's exploitive state that seems to

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<sup>32</sup> International Labour Organisation (ILO). (2005).

<sup>33</sup> Mahmoud, T.O. and Trebesch, C. (2010).

<sup>34</sup> Chuang, J. (2006).



fuel migration. Therefore, women are the one's considered in Chuang's article as trafficked victims. Lazcko<sup>35</sup> while supporting this affirmed that most studies conducted on human trafficking focus on women and children that are sexually exploited. Therefore, human trafficking must address other forms of trafficking in order to redress this imbalance. However, the article provides the importance of considering human trafficking strategically and holistically. Considering that, majority of trafficking research conducted are only aimed at addressing short-term challenges. Chuang realized the importance of future research to focus on equality, human rights and development. Inclusion and acknowledgement of labor trafficking issues has led to trend in human trafficking research to change since the whole concept doesn't only focus on sexual exploitation. Effort has been concentrated to change the narrow thinking of defining human trafficking as only involving women and girls being sexually exploited to a broader aspect of addressing the human trafficking issues.<sup>36</sup> Hanley, Oxman-Martinez, Lacroix and Gal<sup>37</sup> in 2006 conducted a comprehensive survey which aimed at exploring human trafficking more broadly to also include human trafficking beyond its original perception to not only focus on sexual exploitation but also labor exploitation. The survey emphasizes the significance of looking at human trafficking as labor related, based on race, age or gender.

Hanley, Oxman-Martinez, Lacroix and Gal evaluates the serious role of the international market which endangers human through illegal human trafficking fueled by supply and demand between origin and destination countries. The study outcomes acknowledge the

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<sup>35</sup> Lazcko, F. (2005).

<sup>36</sup> Chuang, J.A. (2010).

<sup>37</sup> Hanley, J., Oxman-Martinez, J., Lacroix, M., and Gal, S. (2006).

role of trafficked victims“ in making their personal decisions to be exploited in a foreign land. Having trust and being hopeful about securing a superior life over the long haul add to larger part making their own particular accord to move and acknowledge the exploitative work condition. Despite the fact that the exploration records the ways the cutting edge specialist organizations manage human trafficking incidences, the anxiety is on recognizing the holes in the management of trafficking. Nonetheless, the exploration configuration is constrained to just the cutting edge associations as the recognized respondents without considering genuine casualties' reactions. Because of this negative mark, the overview won't not have the capacity to really catch the genuine experience of the trafficked casualties when they are helped by the cutting edge associations.<sup>38</sup>

In order to reduce the gaps in literature regarding human trafficking, the United States in many instances actively supported evidence-based research. Two key studies for law enforcement and service providers were commissioned by the U.S. Department of Justice. The two involved identifying human trafficking victims<sup>39</sup> and Understanding the law and enforcement put in place to govern trafficking.<sup>40</sup> The reports evaluates the local and national policies put in place to fight human trafficking. According to Farrell, McDevitt and Fahy<sup>41</sup> 70 percent of most frequent challenges faced by law enforcement agencies non-cooperation on the part of the victims. As per the study findings, human trafficking management bodies are more Newton, Mulcahy and Martin points out that it is important to explain human trafficking while at the same time conducting practitioners

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<sup>38</sup> Ibid

<sup>39</sup> Newton, P.J., Mulcahy, T.M. and Martin, S.E. (2008).

<sup>40</sup> Farrell, A. McDevitt, J. and Fahy, S. (2008).

<sup>41</sup> Ibid

systematic training and also raising public awareness.<sup>42</sup> Also, the survey results indicate that maintenance of accurate records is important so as to be able to properly understand human trafficking. Efforts against trafficking have greatly been hindered by lack of cooperation and jurisdictions tensions. Also according to the report, in order to improve the capacity and provide better support for trafficked individuals more adequate resources are required. Since both of these studies are conducted within the United States, the results may not be replicated in every part of the world.

According to Logan, Hunt, and Walker<sup>43</sup> provide four state-focused statements on the synthesis and another five reports that are nationally focused on the United States human trafficking. About the nine investigations, the conclusions point that individual trafficking influences people, a unit of people and the society where the offense transpires. This crime varies from normal crimes since it is further complicated to recognize due to its private character how utmost victims prefer not to identify themselves. In existence of discrimination to the trafficked individuals especially immigrant sufferers are connected to the greater problem of transients in common. It causes inadequate admittance to appeal since of their unrecorded situation. Exchange sufferers ought to higher require succeeding the traumatic encounter, becoming nothingness to victims and no place to settle. People tremble for their safety and that of their siblings in their habitat nations. The research confirms the complexity of individual exchanges as it includes various divisions and different realms. Notwithstanding its confusion, one of the commonly discussed obstacles to individual trafficking is the intricacy of scarce support, income, and workers. As an

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<sup>42</sup> Newton, P.J., Mulcahy, T.M. and Martin, S.E. (2008).

<sup>43</sup> Lagon, M. (2008, May)

outcome, adequate anti-trafficking standards need to add support and improved procedures including (i) organized instruction, civic recognition campaigns and inter-party customized procedures (ii) aids and outreach plans fine-tuned to trafficked victims" requirements such as communication admittance for trafficked characters; (iii) statutory safeguard to shun victims being intimidated when collaborating with enforcers of the law and (iv) on-going study involving management of data system. However, this integration has inadequate protection aiming at the United States only. Even though this is a review of studies, the important outcomes are restrained to the current investigations accustomed and administered by other scholars.

Several studies focus on the protection important of trafficked individuals" as human rights against violation. According to Willman's research on illegal human trafficking along the Asian borders reveals inadequate safeguard for affected sufferers as the outstanding difficulty on legislation for anti-trafficking and enforcing law pursuits in the country. A gap exists for the anti-trafficking legislation to defend affected individuals and the existence of 'individual rights' infringement. The victims" freedoms to inquire pay are essentially not effective. The research designates that contemporary responsibility devices within the Asian country serve to highlight a felonious strategy but not personal rights method. However, the data depends on records generated by other scholars. Therefore, the conclusions may appear a concise distorted in the absence of exact position summary.

Musto<sup>44</sup> in his research reviews how Netherlands Dutch authority and other NGOs works towards guarding trafficked victims. The research designates that affected individuals' security is imperative to overcoming the potential danger of pre-trafficking, progressing legal pursuit of traffickers and allowing a sensitive structure to approach the affected' personal freedoms abuse. Due to a successful partnership between Dutch administration bureaus and NGOs on related matters has demonstrated to be more efficient in supporting stability to widespread guarding exercises. The research outlines the necessity for a model variation from safeguarding trafficked individuals to guarding victim's freedom. The effort needs joint exercise that manages to genuine classification and employment of trafficked individuals. The motivation of trafficked martyrs is reliant on authority support in several patterns such as interim and perpetual residency, settlement, pharmaceutical and social amenities, experiences practice, communication plans. This investigation examines the stipulation of security support that is targeted upon the cooperation of victims and authority enforces the law. Also, it criticises the approach of Dutch government support on personal freedoms that displays a prejudice in its provision for anti-trafficking practice. Notwithstanding holding a qualitative ethnographic research, it does not support any ethnographic aid incomplete records. The review is frequently sourced in the literature report and not by searching wider within the qualitative research.

Up to date, undetailed research addresses the professional impression of coordinating with victims of trafficking. In Northern England city, a qualitative research was

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<sup>44</sup> Musto, J.L. (2010).

administered revealed that the higher challenge of trafficking with sex-victims compared to other vulnerable units.<sup>45</sup>

Dispensing with the emotional stress encountered by the aggrieved victims, most of the social care and health staff encounters a contradictory influence on their profession due to fatigue, lack of understanding and disbelief from patients testimonies. Also, the staff community careers are negative affects their longevity and well-being due to emotions as they coordinate trafficked victims. Thus, developing coping mechanisms are important to the staff members such as keeping less sympathy with the patients and becoming variant in their commitment to reduce chances trauma. Adequate aid and collaboration should be a superiority dealing with the traumatizing circumstances with trafficked individuals. Lack of sufficient knowledge, inadequate exercise, and learning endanger the social care staffs to the hazard of secondary traumatic stress. As a result, there is a high possibility of jeopardizing the status and culture ability delivery service. However, the research only evaluates the subconscious and fitness consequence of the workers at one point. The comparison is less compared to other points that enable outcome generalization.

## **1.8 Theoretical Framework**

### **Bureaucracy Theory**

In Kenya, the existence of government bureaucrats is the definition of human trafficking policy. The perception of bureaucracy models brings a sociological opinion that understands the value of a policy to the extension of current industrial civilization. Most significantly, bureaucracy theory is used in management and organization to a position of

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<sup>45</sup> Kliner, M. and Stroud, L. (2012).

features presented by companies in several levels, mainly functional specialization, centralization, formalization, and regularity. It needs more common, legal and regulated process of control as the distinguishing characteristic of a bureaucratic system.<sup>46</sup> An organization is bureaucratic if it needs staffs who are ready and willing to take a task will additional convert into the individual's maturation corresponding to the firm's terms.<sup>47</sup> Bureaucracy theory originated from German sociologist research, Max Weber, who reviewed his findings of the large-scale appearance of organizations between 19th and early 20th centuries. The author included the course 'bureaucracy' and development research of realism in current history on the structured focus large-scale firms.<sup>48</sup>

According to Weber, bureaucracy on large public or private organizations can be characterized by a determined hierarchy of indifferent services and hiring of competent employees who can adhere to discipline and authority.<sup>49</sup> Characteristics of Weber's bureaucracy demonstrate that it is the most reasonable and the most productive system for a system to perform in communicating out necessary authority over the individual. Further, the scholar understands that bureaucracy presents a company the interests of a machine composition produce to a firm. The bureaucrats believe that machine can offer their duties productively in the absence of external preferences influencing the use of process and consequence.<sup>50</sup>

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<sup>46</sup> Weber, M. (1947).

<sup>47</sup> Kanter, R. (1990).

<sup>48</sup> Maravelias, C. (2003).

<sup>49</sup> Denhardt, R.B. and Denhardt, J.V. (2009).

<sup>50</sup> Weber, M. (1946).

Weber in Gerth and Mills perceives bureaucracy as defines the executives by avoiding any special interest to prevent unfair practice in conducting their responsibilities.<sup>51</sup> Considering Weber's pioneered the work of bureaucratic organizations, they have been deliberately compiled as social groups and installed to accomplish a specific assignment depending on the customs wanted for all models of bureaucracy.<sup>52</sup>

Through a set of legal rules, a bureaucracy system is established aiming at providing the authorization for the bureaucrats to act or behave accordingly.<sup>53</sup> Weber outlined this legal rule as a rational authority and a structure for steering decisions.<sup>54</sup> The researcher believed that bureaucracy is a form of legal authority or ratified rules that raise the rights for the bureaucrats.<sup>55</sup>

Most of the complex administrative assignments of large communities and firms require being handled using bureaucracy. Cohen is the view that the community converts bigger and further complex, it is obvious that there is an opportunity for interindividual and interunit dispute. In this sense, the indifferent pressure must be conceived accessible to the community through a bureaucracy form to encourage the fair sharing and administration of social justice.<sup>56</sup> Therefore, bureaucracy is one of the most significant social measures in the society as it is effective, anticipated, indifferent and quick.

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<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> Best, S. (2002).

<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Cohen, H. (1965).



He observed that bureaucratic power and expertise that is fully developed might outpower the current democratic regulations. Similarly, Weber warned toward the influences of bureaucracy on personal rights in Denhardt and Denhardt. The reason being, bureaucracy ends in an extremely power-driven approach to a firm that is structured on the system and control.<sup>57</sup>

Bureaucracy is encountered by several difficulties as individual behavior cannot be strictly monitored as machine result. In precise, programmed and practiced, the bureaucrats strive to balance in performing their responsibilities.<sup>58</sup> The uncertain possible of balance is undoubtedly disconcerted as bureaucrats attempt to prevent being too odd and being good to the other stakeholders. Cohen criticized the assertions of Weberian's on bureaucracy. Bureaucrats are considered to be more involved in preserving their profession than concentrating on their clients due to the career orientation. Emphasis on the commands always holds the operation of the firm and deflects the bureaucrats from the real task required. The major criticism is that bureaucrats are territorial, over arguing on precedent and authority.<sup>59</sup>

Weber had already provided an overview of the ideal bureaucracy characteristic, and unanticipated outcomes that emerge as the individual are dehumanized.<sup>60</sup> Further, Merton argues that bureaucracy may cause unintended outcomes to the bureaucrats due to a general system of rules, specialization and high division of labor. In most cases,

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<sup>57</sup> Ibid

<sup>58</sup> Denhardt, R.B. and Denhardt, J.V. (2009).

<sup>59</sup> Ibid

<sup>60</sup> Cohen, H. (1965).

bureaucrats suffer from rigidity due to high training on the application of rules and thus, incapacitating their capability to deal with each case as required. If the organizational embraces bureaucracy, it enhances the displacement of purposes as the existing policy justifies the end value.<sup>61</sup> Also, bureaucracy implements authority and principal controls to accomplish aims with less inflexibility and inadequacy of acknowledgment to varying difficulties. However, command and control may reduce the bureaucrats' capacity of responding accordingly. Over time in bureaucratic organizations, personal norms have emerged as the bureaucrats continue to utilize unconventional organizations and acquire personal methods of administering enterprise. As a result, Weber receives a lot of criticism for knowingly allowing that specific acquiescent is obvious to grow habitual as the foundation of orders and regulation.<sup>62</sup> Crozier concluded that regardless of existing hierarchy of status and practices in bureaucracy, bureaucrats may pretend not to follow them but it does not suggest that they regularly or constantly result in the firm's conditions despite being specified. Considering that such cases unusually endure in the real working environment, many scholars argue that system of the hierarchy should not be a basis for understanding an organization but a method of interaction and agreement. In humanizing an inflexible, machine-like social system of bureaucracy, adaptability and responsibility are essential.<sup>63</sup> This is in the connection that bureaucracy is dynamic where change is continuous and is built upon various series events and unexpected outcomes that importantly turn out to be part of process of the public system as the bureaucrats focus on changing the policy into reality measures.<sup>64</sup> Outlining all its advantages of

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<sup>61</sup> Ibid

<sup>62</sup> Merton, R.K. (1957).

<sup>63</sup> Ibid

<sup>64</sup> Ibid

existing in organization systems, management, control, and administration, a lot of people see it in a pejorative manner. Importantly, Weber more interests were on its drawbacks.<sup>65</sup> Merton considers bureaucrats to individuals who no longer perceive the authority as the means of the final product but as ends in and personal.<sup>66</sup> Current research will analyze the effectiveness of regulating individual trafficking in Kenya in the effort to adhere to Counter-Trafficking in Person's Act 2010 using theory lenses.

### **1.9 Research Gap**

In this sense, most of the investigations on trafficking locus on sexual violation of female, it is essential that the examination of individual trafficking to be administered in a general such that even recognition is offered to each victim of trafficking, including several aspects of this phenomenon.<sup>67</sup> Also, it is important to note that trafficking does not only comprise women and girls but all genders. The unequal emphasis on sex human trafficking diverse the effort desired to analyze the spreading habit of trading to other practices such as agricultural employment, construction jobs, residential confinement or even bonded labor. Regarding the research on human trafficking focuses more on the trafficked individuals and less attention to other participants involved, that is service deliverers, the traffickers, and the clients.<sup>68</sup> The NGOs and law enforcers and agencies play an important role in an attempt to approach the gap. It examines the design practicing method according to the influence of the parties involved, especially

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<sup>65</sup> Peters, B.G. (2010).

<sup>66</sup> Blau, P. (1966).

<sup>67</sup> Lazcko, F. (2005).

<sup>68</sup> Chuang, J. (2006).

government agencies which are relevant to the subject matter.<sup>69</sup> Some of the scholars have been selected in addressing concerns associated with individual trafficking, which is of significance to the current research. The research findings make essential contribution to the continuous examination of social trafficking hypothesis analysis. Among several studies that have been conducted on human trafficking, they have been selected based on the relevance of their topics in addressing the literature gaps.

## **1.10 Methodology**

### **Research Design**

A research design specifies the methods and procedures for collecting and analysing the needed information. It highlights a blue print for the research as well as the chosen research method to determine the information needed.<sup>70</sup> The study will employ case study design because of its ability to give historical analysis of a situation and emphasis to accuracy through minimised biases. Qualitative approach will be employed in the present study because of the sensitivity of the issues to be examined. The case study will focus meetings and field perceptions of a circumstance trying to catch the all-encompassing photo of the marvel. It will contemplate the "issue investigated through at least one cases inside a limited framework."<sup>71</sup> In this study, the subjective approach investigates a limited framework for just a single case in light of top to bottom information gathering including numerous wellsprings of data, for example, perceptions, meetings and archive examination.

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<sup>69</sup> Lazcko, F. (2005).

<sup>70</sup> Mugenda M. 1999

<sup>71</sup> Cresswell, J. W. (2007).

## **Population of the Study**

A population is the set of individuals, objects or data from where a statistical sample can be drawn.<sup>72</sup> The study population for this study will include government officials, in the ministry of interior and national security.

## **Research Instruments**

The study will employ qualitative approach with the aid of interview guides and desk review of published material on the subject matter. Interview guide is a data collection method involving questioning of individuals and documentation of the responses done during the process.<sup>73</sup> Review of published material is a way of data collection where secondary data are used in a study. It is usually a good starting point as it paints a picture of the situation has opined by other authors.

## **Data Analysis**

Content analysis will be employed in this study; content analysis allows capturing of in-depth perspectives of the respondents as noted during the interviews. Emerging themes will then be summarised and presented to facilitate interpretation.

### **1.11 Scope of the Study**

The examination focuses on human trafficking in Kenya with the purpose of inspecting the strategy execution process. The contextual analysis delineates the unpredictability of human trafficking arrangement execution in Kenya.

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<sup>72</sup> Saunders et al., 2009

<sup>73</sup> Bailey D.K (1978:176).

### **1.12 Chapter Outline**

The first chapter provides the background to the study, the problem statement and the objectives of the study together with a brief literature review. The second chapter will highlight the significance of human trafficking phenomenon in Kenya; the third chapter will delve in the human trafficking policy implementation practices and processes; the fourth chapter will address the implementation process of the human trafficking policy in Kenya; and the last chapter will cover conclusion and recommendations for further studies.

## CHAPTER TWO

### INTERNATIONAL PERSPECTIVES OF HUMAN TRAFFICKING

#### 2.1 Introduction

Human trafficking trends are changing.<sup>74</sup> Majority of cases handled by the IOM relate to human trafficking as compared that of sex trafficking. The trend of labour trafficking has since 2010 surpassed that of sex trafficking that was conventionally high. According to IOM majority of the reported labour tracking cases are contractual in nature. However, the reality is that the work is in most cases degrading and not as promised to the victims by the traffickers. The IOM report further reveals that women are the most trafficked as compared to their male counterparts, even though in the recent past, the percentage of male trafficked has been on an upward trend.<sup>75</sup> Often, the trafficked women are sexually exploited and abused.<sup>76</sup>

Recognition of human trafficking is guided by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons from three perspectives; prevention, protection and prosecution commonly referred to as 3Ps.<sup>77</sup> The UN member states have an obligation for adopting the 3Ps approach.<sup>78</sup> While that is the directive, it is expected that the level of compliance would be low because its implementation is cost intensive. The low level of compliance is revealed in analysis by Vadlamannati that revealed that only one aspect of the approach (prevention) is adhered to and not the other two.<sup>79</sup> Prevention is the most

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<sup>74</sup> IOM). (2012).

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> United Nations. (2000).

<sup>78</sup> Ibid

<sup>79</sup> Cho, S. and Vadlamannati, K.C. (2012).

adhered to because it does not attract additional cost as would protection and prosecution measures. That is because the latter two would require enforcement of new laws that may attract resistance from the populace as well.

The potential for resistance is alive because the enforcement of new laws would guarantee the victims temporary residence that may not be well received by the citizens. At the same time, law enforcement agencies would require greater capacity for them to enforce new anti-trafficking law, hence the preference for the prevention element.

While this study aims to add knowledge to the human trafficking body of knowledge, its findings may be restrictive because of it only relies on annual human trafficking reports of Kenya supplemented by information from the United Nations Reports on Trafficking in Persons: Global Patterns. As such its findings may not be universal, but will go a long way in serving the academia. A review of literature on sex trafficking of a period spanning 10 years by Reid revealed that the migrant status of a victim informs the levels of vulnerability. The status may take many forms including improper documentation of records, expired documents among others.<sup>80</sup> Additionally, the victims are also deceived of the conditions of work and the pay abroad. The level of vulnerability is further exacerbated by cultural and language barriers leading to isolation and subsequently reducing support seeking chances.

Reid's review further reveal that social status back home and the desire to change ones life and that of their kin make individuals prey for traffickers. His findings support earlier

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<sup>80</sup> Reid, J.A. (2012).



observation that more women as compared to male are the victims of sex trafficking.<sup>81</sup> This findings are however criticized for only focusing on sex trafficking in North America and so cannot be generalized for other forms of human trafficking in other regions.

The review further reveals that issue of human trafficking is closely related to that of international labour migration and disparity in economies of countries in which both poverty and migration are the demand side factors of international trafficking in persons.<sup>82</sup> This position is echoed by the claims of Mahmoud and Tresbech that migration plays a significant role in the proliferation of human trafficking.<sup>83</sup> It also showed that a region with a high number of emigration is highly likely to be the hand of human traffickers suggesting a link pattern between illegal migration patterns and human trafficking. The review findings echo the claim that addressing human trafficking requires a flexible migration policy.

The same findings are found in another study, in an attempt to reframing trafficking as a migratory response to the contemporary socioeconomic trend of globalization, Chuang<sup>84</sup> centers his study on poverty and gender based violence deviating attention from widespread practice of trafficking involving men as victims. While cognizant of other

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<sup>81</sup> Ibid

<sup>82</sup> ILO). (2005).

<sup>83</sup> Mahmoud, T.O. and Trebesch, C. (2010).

<sup>84</sup> Chuang, J.A. (2010).

trafficking aspects other than sexual exploitation, Chuang approaches human trafficking from a gender perspective arguing that migration is fueled by women repression.<sup>85</sup>

The risk in Chuang's approach is the tendency to women trafficked victims only. This tendency is alive as claimed by Lazcko that the majority of research done on trafficking focuses more on women and children involved in sexual exploitation. There is therefore need to reduce the imbalance by considering other forms of trafficking. Just as is suggested by Chuang who despite taking a narrow approach advises that human trafficking should be viewed holistically. He recommends inclusion of specific interventions as a short term measure and allow for the equality and human rights for long-lasting impact.<sup>86</sup>

As shown in the background, human trafficking research is increasingly recognizing its other aspects that were earlier ignored in favour of sexual trafficking. Discourse on labour trafficking is on the rise, indicating a shift to a more comprehensive approach that not only focuses on women and children but male as well.<sup>87</sup> The suggested approach was taken by Hanley, Oxman-Martinez, Lacroix and Gal in 2006 in which other aspects of human trafficking like exploitation of labour was considered. The authors argue that there is need to recognize human trafficking as a labour issue fuelled by gender, race, age and class.<sup>88</sup> They further contend that labour market plays a significant role in engendering human trafficking through supply and demand between origin and destination countries.

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<sup>85</sup> Ibid

<sup>86</sup> Chuang, J. (2006).

<sup>87</sup> Chuang, J.A. (2010).

<sup>88</sup> Hanley, J., Oxman-Martinez, J., Lacroix, M., and Gal, S. (2006).

Their findings puts the blame on trafficking victims for choosing to be exploited abroad. The hope for a better life is indicated to be the main reason for the pseudo acknowledgement of the choice for exploitation. The study is criticized for only focusing on frontline trafficking service providers views only at the expense of the views of the victims' whose characteristics and needs have been blamed. Its findings therefore may not be generalized for the victim experiences.

Efforts are underway to clear human trafficking knowledge gaps, the U.S government is particularly enthusiastic in this quest. It has commissioned more than one study <sup>89</sup> that have sought to examine advancement in the fight against human trafficking.

The studies reveal that cooperation from victims is the greatest challenge that law enforcers face while handling human trafficking cases.<sup>90</sup> There is therefore need for creation of more awareness and training for practitioners if success is to be realized.<sup>91</sup> The findings of these studies suggests that human trafficking is not well understood and that there is need for a clear definition. Together, these efforts will result in better handling and more cooperation from the victims in the efforts against trafficking. Again like the other studies, the scope of the study was the U.S and as such the findings may not be applicable in other jurisdictions.

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<sup>89</sup> Newton, P.J., Mulcahy, T.M. and Martin, S.E. (2008).

<sup>90</sup> Ibid

<sup>91</sup> Newton, P.J., Mulcahy, T.M. and Martin, S.E. (2008).

The effect of human trafficking is far reaching, a review of nine studies by Logan, Walker and Hunt<sup>92</sup> reveal that its effect are suffered by individuals, a group of individuals and the communities in which the crime occurs. The study further identify the complexity in dealing with human trafficking in that unlike other crimes, its victims do not volunteer to self-identify.

Victims of human trafficking hardly access justice because of their undocumented status and prejudice towards them from the destination community. The fears of the victims is as complex as is the industry that involves multiple sectors; they fear for their lives, their families back and many other needs that they need to overcome.

The human rights of the trafficked victims has attracted a lot of attention. In Asia, the issue of human trafficking is well legislated but still the legislation is silent on protection of the victims.<sup>93</sup> The study suggests a gap between the intended victim protection and the reality. The study also notes that more emphasis is placed on criminal approach in addressing human trafficking than human rights approach.

In the Netherlands, emphasis is placed on victim protection to reduce chances of re-victimisation and provision of a legal framework for addressing human trafficking issues.<sup>94</sup> The approach Netherlands has taken is one in which the government partners with NGOs in handling human trafficking issues, an approach that has proven to be effective in the law enforcement efforts. The approach thus is recommended for its

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<sup>92</sup> Lagon, M. (2008).

<sup>93</sup> Willman, M.M. (2009)..

<sup>94</sup> Musto, J.L. (2010).

approach that protects victim's human rights. The approach is however criticized for showing a bias towards sex trafficking instead of labour trafficking. Musto is also criticized for doing more literature review than detailed qualitative review as his study sets out to be a qualitative one.

## **2.2 Human Security and Human Trafficking**

It seems that the discussions concerned with and policies aimed at addressing human trafficking follow the pattern of what is internationally seen as 'common' ways to look at and address the problem, as a human rights violation; as an issue of organised crime; and as culturally patterned.<sup>95</sup> These all offer valuable insights on and possible solutions for the matter at hand, but they lack insight on the root causes of human trafficking.

Framing the human trafficking problem primarily as a matter for law enforcement, fails to take into account the social causes of this crime. By failing to address the more complicated social causes of crimes, the symptoms might be addressed, but long-term solutions will not prevail.<sup>96</sup> A growing body of scholars assert that what is lacking in dominant discourses on trafficking is that trafficked persons are often purposeful actors who made choices. These options and choices available for these actors are often very constrained.<sup>97</sup> Thus, furthering the discussion on human trafficking and exploring the root causes of trafficking in persons might be addressed by also looking at the structural factors (on a global and local level). In

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<sup>95</sup> *Kokko, L., 2008.*

<sup>96</sup> *Ibid*

<sup>97</sup> *Ibid*

the search for root causes, looking at human trafficking as a human security concern can be helpful.<sup>98</sup>

The UN introduced the term ‘human security’ in 1994 as traditional state security policies were no longer enough to guarantee individuals’ security and cover the full spectrum of human rights. Human security filled the need for a bottom-up approach to security that developed during the twentieth century. The term is characterised by four key-words: it is all around appropriate, its parts are related, it underlines aversion, and it is individuals orientated.<sup>99</sup> The emphasis is on the security of the individual and the group, not the state and its region. Human security approaches still view states as having an essential impact in securing its residents, yet additionally attest that non-state on-screen characters assume similarly imperative parts in securing people. The talk that emerges from this approach is essentially worried about human-prompted issues, for example, movement, enlarging financial disparity. The rise of pandemic diseases such as HIV/AIDS, population growth, degradation of the environment and security concerns affecting individuals and communities (such as trafficking and terrorism). It seeks to address the root causes of conflict and violence, economic despair, political oppression and social injustices with an emphasis on prevention.

At the heart of human security lie the individual and the protection of his/her physical security and civil liberties. In order to ensure the development and welfare of the individual, however, economic needs and the broader community (local and international) in

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<sup>98</sup> *Ibid*

<sup>99</sup> *Ibid*

which he/she operates should be taken into account. Human security thus views the individual not only as an object of security, but also as a subject of security, if empowered to act so – thus individuals can provide for their own security if allowed to do so.<sup>100</sup> This idea is vital when trying to combat human trafficking.

East Africa, presents a rather interesting scenario, where in Uganda for example, sex prostitutes working in the Gulf entice young women from home to join them because they supposedly have a market. In Kenya, syndicates run by Japanese traffic young girls to Europe and from South Asia to Kenya for the local market. Kenya is also a transit route to Europe for trafficked Ethiopian women.<sup>101</sup> In both Kenya and Uganda, orphaned young girls are sold by their caregivers to traffickers disguised as those to secure them better future.<sup>102</sup> Kenya and Tanzania serve as transit route for Ethiopian girls because of strict laws in Ethiopia that protects the rights, safety, and dignity of Ethiopians employed and sent abroad.<sup>103</sup> In the southern Africa, there is a rising trend for trafficking in women for sexual exploitation, the problem is particularly huge in Lesotho, Mozambique, Malawi, South Africa, and Zambia with South Africa being the destination point.<sup>104</sup>

### **2.3 Research Gap**

From the review, it is clear that while government bureaucrats are the implementers of human trafficking policy yet the studies mostly focus on victims. There is a high attention on sex trafficking by most studies at the expense of other forms of trafficking. The review

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<sup>100</sup> Ibid

<sup>101</sup> Butegwa. 1997.

<sup>102</sup> UNICEF.

<sup>103</sup> ILO, 2002.

<sup>104</sup> Ibid

also reveal that most studies were conducted in Europe, North America and Asia Pacific. So, there is need to not only focus on other forms of trafficking but to conduct studies in other regions as well. The current study therefore cannot be timelier as it fills the gap by focusing in Kenya and looking at human trafficking in its entirety. Most of the studies leave out a very key aspect in scholarly work by majorly focusing on economic and health aspects of victims and not academic analysis, something that the present study has sufficiently delved in. the review has also shown that the methodologies used are restrictive because it fails to provide a comprehensive view of the ill of human trafficking. The current study fills this gap by adopting an all-encompassing methodology.



## **CHAPTER THREE**

### **HUMAN TRAFFICKING COMPLEX: A STRATEGIC RESPONSE**

#### **3.1 Introduction**

This part introduces universal practices of approach usage embraced by different nations in the battle against human trafficking. The goal of this section is to research diverse nations' key reactions in managing the wrongdoing that may prepare for nations like Malaysia to truly consider embracing comparable techniques. A few nations are featured in the section because of their key reactions in battling human trafficking. A large number of them are in the western district in light of the fact that eastern nations are observed to need in their approach towards human trafficking. Their progression in perceiving human trafficking as a pandemic influencing the worldwide group pushes the motivation to truly battle the wrongdoing. Given the multifaceted nature of human trafficking wonder, a nation needs to build up a more prominent comprehension of the issue with a specific end goal to give viable reaction. Thus, this section starts by showing human trafficking issue worldwide before focusing on chose activities concentrating on institutional limit, bolster for casualties, counteractive action endeavors, request decrease, nearby association, universal participation and the part of research. These activities are huge as a major aspect of the 3Ps including anticipation, arraignment, and security as featured in the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

#### **3.2 Globalization and Human Trafficking**

Because of the concealed nature of the crime, numbers may change. In any case, narrative confirmation and studies demonstrate that the quantity of individuals being

trafficked overall every year runs from many thousands to a few millions.<sup>105</sup> The United States' insight group evaluated 800,000 individuals are being trafficked crosswise over worldwide outskirts yearly in which 80 for each penny of casualties are female, and up to 50 for every penny are minors.<sup>106</sup>

According to International Labor Organization (ILO) and the Global Estimate of Forced Labor (2012) 20.9 million individuals are casualties of constrained work while 18.7 million (90.0%) are abused in the private economy either by people or ventures. The report also posits that 2.2 million (10.0%) people are engaged in various forms of constrained work. In the private economy, the quantity of casualties of constrained work abuse is 14.2 million while individuals involved in constrained sexual misuse are 4.5 million. Ladies and young ladies speak to the greater part of the constrained work casualties with 11.4 million (55.0%) while men and young men add up to 9.5 million (45.0%). Constrained work influences a greater number of grown-ups than kids age.

As indicated in the ILO report,<sup>107</sup> 29.0 % of the constrained work casualties includes cross-outskirt movement (casualties left their nation of starting point to work in another nation where they were abused), 15 % includes inner relocation (casualties left their place of home to be misused inside a similar nation of root), and 56 % includes no development (casualties are misused in a similar area where they live). The gauge reveals that Asia Pacific has the most notable number of victims.

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<sup>105</sup> Jordan, A. D. (2002).

<sup>106</sup> Lagon, M. (2008).

<sup>107</sup> ILO (2012).

Human trafficking is a worldwide wrongdoing influencing practically every nation on the planet. More than 136 nationalities from the 118 nations were involved in human trafficking between the period of 2007 and 2010.<sup>108</sup> The growing rates of human trafficking are a consequence of the poor governance observed in the nations (Jordan, 2002). Human trafficking has continued to increase due to the push factors in various governments, including political change, social issues and genocidal practices (Jordan, 2002; Lee, 2005; Haynes, 2008; Williams, 2008). Conversely, the real force factor is the total or relative success and peace in the goal nations.<sup>109</sup> In those economies makes expanded interest for outside work, especially in the low-paying occupations as local people tend to avoid them. Human trafficking additionally flourishes with encouraging variables, for example, the accessibility of minimal effort transportation and correspondence advancements.<sup>110</sup>

Human trafficking is the second biggest criminal industry after medication trafficking, The United States Department of Health and Human Science indicates that human trafficking is the quickest developing criminal industry because of its rewarding business that conveys a lot of benefits as it includes long haul misuse of people that involves constant salary. Worldwide benefits from 2.4 million trafficked constrained workers everywhere throughout the world, greater part of the benefits that add up to US\$15.5 billion are created from individuals trafficked into or inside industrialized nations (10.9%).

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<sup>108</sup> UNODC (2012).

<sup>109</sup> Jordan, A. D. (2002).

<sup>110</sup> *ibid*

With its enormous populace base, developing urbanization and existing neediness, Asia is seen as the leading nation as far as human trafficking is concerned.<sup>111</sup> Asia has the highest number of trafficked constrained workers with 1.36 million (56.0%) contrasted with the modern nations.<sup>112</sup> Belser<sup>113</sup> posits that the dissimilarity between the created assistances and number of trafficked casualties is due to the lower cost of sexual administrations in Asia that is dictated by variables, for example, the salary level and the legitimate status of the sex business. An evaluation is done to indicate that normal costs in Asia extend from USD15 to USD16 for each administration. The Saharan Africa when contrasted with USD100 in mechanical nations.

In Asia, the size of human trafficking has turned out to be progressively aggravating. The pervasiveness of trafficking casualties on the planet is 1.8 for every 1,000 inhabitants.<sup>114</sup> Disturbingly, the number is twice that of Asia and the Pacific. The report also guarantees that the administrations of work request nations in Asia don't endeavor satisfactory endeavors to recognize trafficking casualties among the transients regardless of their standard migration works out. The nations are blamed for neglecting to consider hostile to trafficking benchmarks and casualty mind duties in executing their migration arrangements.

The ILO Global Estimate of Forced Labor (2012) indicates a higher predominance of constrained work in Asia and the Pacific. The report states that 3.3 million individuals are

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<sup>111</sup> Huda, S. (2006).

<sup>112</sup> Belser, P. (2005).

<sup>113</sup> Ibid

<sup>114</sup> U.S. Department of Health and Human Services. (2010).

involved in human trafficking. In spite of the fact that the Asia and the Pacific district have the highest number of constrained workers, Central and South Eastern Europe equally have relatively higher numbers. The report characteristics this uniqueness in the finding to the considerably more modest number of the district's populace contrasted with the Asia and the Pacific locale. It additionally recommends that the low predominance in the Developed Economies and European Union might be because of the nations' powerful usage of against trafficking systems.

Many countries encounter human trafficking including. In Taiwan, most trafficked casualties are from China, Vietnam or Thailand. A significant number of human trafficking casualties also come from Philippines or India.<sup>115</sup> They are low-talented laborers in assembling and angling ventures and in addition home parental figures and household specialists. A large number of these specialists are amazingly helpless against work trafficking as they confront corrupt dealers and managers support labour exploitation.

Most cases of forced labour include transients in financial divisions that flower with work cost as a noteworthy cause of business aggressiveness.<sup>116</sup> Larger part of the trafficked casualties in the USA includes transients and casualties trafficked in the nation (Logan et al., 2009). The exploitation frequently happens in states with substantial transient populace, for example, California, Florida, New York and Texas.<sup>117</sup>

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<sup>115</sup> U.S. Agency for International Development. (2008).

<sup>116</sup> Zhang, S.X. (2012).

<sup>117</sup> Ibid

Despite the fact that not all cases of human trafficking involve vagrants, they are exceedingly defenseless that make them vulnerable to the traffickers. A portion of the vagrant specialists are subjected to conditions characteristic of constrained work, for example, unlawful withholding of international IDs, confinements on development, non-installment of wages, dangers, physical or sexual manhandle, and obligation servitude identified with the enlistment expenses. Transient specialists have restricted human rights with no appropriate channel to voice out their worries, which adds to vulnerability of being trafficked.

### **3.3 Victims Support**

Acknowledgment of human rights measures for trafficked casualties involves sufficient insurance and help benefit accommodated the objective gathering. Subsequently, various positive improvements in connection to the range and extent of assurance, help and support for trafficked casualties have been embraced by nations around the world. The UK and US offer impermanent homes for the trafficked casualties. As much as the trafficked casualties get access to homes, they are treated as outcasts in the US. On the other hand, the casualties of human trafficking are treated offered remuneration benefits in the UK. Croatia and Austria also offers lawful assistance to the casualties. The measures determined in the Trafficking Protocol details some rules that should offer privileges to the human trafficking casualties. The United Nations High Commissioner for Refugees (UNHCR) reports that the Human trafficking casualties have been subjected to unfair treatments in most nations of the world (United Nations High Commissioner for Refugees, 2006). Few nations have taken an initiative of offering full support to the

affected persons. Nations, for example, the United States and the United Kingdom embrace migration alleviation to urge remote trafficked casualties to help with examinations and indictments. Under the Trafficking Victims Protection Act 2000, the United States gives two main sorts of migration alleviation to remote trafficked casualties:<sup>118</sup> (i) proceeded with nearness that permits brief movement help and may permit work authorisation for casualties who are potential observers in examination or arraignment; and (ii) T non-foreigner status (T visas) that take into account legitimate migration status for up to four years for trafficked casualties who participate with sensible law implementation demands for help with examination or indictment.

As a major aspect of national safety efforts, nations have a tendency to give certain conditions previously allowing visas. Trafficked casualties, be that as it may, are an excellent case as appeared by the United States. In spite of the fact that casualties' participation is key during the time spent revealing the criminal demonstration of human trafficking and its culprits, the United States permits the T visas to be acquired without prohibitive conditions, for example, declaration against the trafficker, feelings of the trafficker, formal criticism of the trafficker and sponsorship or endorsement by an exploring organization. The trafficked casualties may likewise apply the T visas for the benefit of their relatives, for example, life partners, kids, guardians, kin and relatives who confront peril because of the casualty's escape from the trafficker or participation with the law requirement. With the T visa, the casualties and their relatives are lawfully approved to work in the nation. The T visa holders are qualified for perpetual home status following three years that may inevitably prompt citizenship. T visas were allowed to 447

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<sup>118</sup> U.S. Department of Justice. (2011).

trafficked casualties and 349 close relatives in 2010, an expansion from 313 and 273 individually in 2009.<sup>119</sup> For the year 2010, 518 T visa holders (309 casualties and 209 relatives) had effectively turned out to be changeless inhabitants.

In the case of the United States, foreign nationals without a legitimate migration status for the most part are not qualified for government open advantages, for example, sustenance help and medicinal services programs. Be that as it may, the trafficked casualties who have been allowed with proceeded with nearness or have connected for T visa can get open advantages and administrations like displaced people with the issuance of an affirmation letter from the U.S. Branch of Health and Human Services.<sup>120</sup> The advantages incorporate focused on help with pay, social insurance and business seeks and in addition access to all help programs accessible to the U.S. nationals.

A similar security measure is likewise pertinent to the trafficked casualties in the United Kingdom. The transitory authorization to stay is conceded on a case-by-case reason for the casualties who collaborate with the law requirement experts in giving confirmation to arraign culprits of human trafficking. Subsequent to finishing an underlying remain of three years, the casualties can apply for lasting remain in the nation.<sup>121</sup> Not just the casualties appreciate the privilege to remain in another nation to begin another life, they are likewise ready to pick up from the Criminal Injury Compensation Scheme under the Criminal Injuries Compensation Act 1995.<sup>122</sup> The plan empowers trafficked casualties

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<sup>119</sup> Ibid

<sup>120</sup> Ibid

<sup>121</sup> Obokata, (2006).

<sup>122</sup> Ibid



who experience the ill effects of criminal wounds to be adjusted. To represent the measure of pay given to trafficked casualties, it has been featured that Criminal Injury Compensation Authority has granted between £16,500 - £62,000 to sex trafficked casualties required with prostitution.<sup>123</sup> The authority awarded the compensation as payment for false detainment and constrained prostitution. This has been a leap forward for casualties of rough wrongdoing as the case sets a point of reference for a more extensive meaning of criminal wounds without restricting them just to assault, attack, seizing and snatching.

The fundamental procedure in overseeing casualties in the United Kingdom is to guarantee that the casualties know their rights. Appropriate data is made accessible in different dialects so trafficked casualties can settle on their own choices with respect to their restoration procedure. Data, for example, particular course of action for trafficked casualties and choices accessible for restoration reasons for existing is given through effort program and connection specialists in UKHTC.<sup>124</sup>

In Austria, the administration funds a particular against human trafficking NGO to give open haven settlement and help for female trafficked casualties. In particular, the casualties are not kept automatically at the haven home in Vienna. Regardless of being an open safe house settlement, the place still works at its full limit of 18 beds in 2010.<sup>125</sup>

With respect to expulsion from their nation, the outside casualties are offered transitory inhabitant status.

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<sup>123</sup> Townsend, (2007).

<sup>124</sup> Home Office and Scottish Executive. (2009).

<sup>125</sup> U.S. Department of Justice. (2011).

Like Austria, Croatia gives financing to two NGO covers for human trafficking. The havens are assigned for ladies and minors individually. Croatia gives a similar standard of care to neighborhood and remote trafficked casualties including therapeutic care, instruction, legitimate help, mental care and help discovering business.<sup>126</sup> A similar open idea of victims' insurance applies in Croatia in which the grown-up casualties have the opportunity to pick either to be in the haven or leave freely. Grown-up casualties are permitted to leave the haven with no chaperones.

To have a casualty fixated approach concentrating on securing casualties of human trafficking will be an extraordinary change to the usage of human trafficking arrangement in Malaysia. In any case, the technique of giving residency allow to the trafficked casualties even to the individuals who confront extraordinary hardship if repatriated may not be reasonable for Malaysia. This is on account of the insurance strategy that plans to secure the victims human rights can have a negative impact of empowering illicit movement.<sup>127</sup> Such choice is probably going to prompt a political clash because of residential protection towards transients.

As a destination country with 96.0 for each penny of trafficking streams including outside casualties, Malaysia is straightforwardly influenced by human trafficking push factor that starts in different nations. Notwithstanding the need to control the deluge of outside casualties, the legislature perceives the need to give better help to the casualties. Thus, the legislature changed its approach in mid 2012 of ousting saved trafficked casualties

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<sup>126</sup> U.S. Department of Homeland Security. (2012).

<sup>127</sup> Cho, and Vadlamannati, (2012).

after their discharge from the administration shield homes. Casualties of work abuse are permitted to work in the nation for a long time. The work allow is given on a case-by-case premise. The chance to work in Malaysia before coming back to their nations of origin empowers the casualties to procure the misfortune salary because of abuse and imprisonment at the asylum home. This new approach forces certain conditions keeping in mind the end goal to defend the enthusiasm of both the casualties and the goal nation: (I) earlier assent of the casualties; (ii) endorsement from their discretionary missions; (iii) affirmation that the wellbeing of the casualties are not ensured if repatriated to their nation of origin; and (iv) lawful passage into Malaysia.

Alerts have been raised against liberal treatment of trafficked casualties that may cause more human trafficking inflow as more prominent number of potential casualties will go out on a limb coming into the goal nation.<sup>128</sup> Accordingly, Malaysia needs to altogether break down measures to help trafficked casualties as expanded human stream into the nation may undermine national security. Unique arrangement, for example, offering residency allow is probably going to confront household protection because of the way that human trafficking of remote casualties as work misuse has been perceived as a supporter of employment misfortunes for local people and harms to existing work assurance in the nation.<sup>129</sup> Henceforth, Malaysia needs to genuinely consider its victims' assurance approach to keep away from flood of transients who may exploit the help given to the trafficked casualties.

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<sup>128</sup> Ibid

<sup>129</sup> Ibid

There is no compensation fund or legal conceivable outcomes for casualties in Malaysia to ask for pay either from the culprits or the administration. Other than agony from physical and mental injury, trafficked casualties lose their rights to flexibility including the chance to acquire wage once they are sent to the administration protect home. Consequently, Malaysia understands the significance of making strides towards giving an open safe house home to the trafficked casualties. Such measure will add to the exertion of advancing human rights-based treatment rather than wrongdoing control approach.

### **3.4 Institutional Capacity**

Specialised institutions have been set up in numerous nations as a component of the measures to viably react to instances of human trafficking. A devoted foundation concentrating on human trafficking is a method for giving an approved stage to the officials. The organization turns into the vital grapple to arrange measures taken against human trafficking. As per the United Nations Office on Drugs and Crime,<sup>130</sup> the battle against human trafficking requires a multi-organization with adaptability and community oriented reactions. Such organization is basic given the multifaceted design of the issue including the 3P worldview. Between sectoral participation reinforces the institutional ability to incorporate a comprehensive approach from different parts of arrangement execution. This is exemplified by the United Kingdom with the foundation of Human Trafficking Center and the United States with Anti-Trafficking Coordination Team. Not just through a particular organizing body, institutional ability to address human trafficking can likewise be reinforced by building up specific court as showed in the Netherlands and by assigning specific work force as on account of Slovakia.

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<sup>130</sup> United Nations Office on Drugs and Crime (UNODC). (2012).

The United Kingdom set up Human Trafficking Center in 2006 drove by Association of Chief Police Officers. Joined Kingdom Human Trafficking Center (UKHTC) is a multi-office set-up that brings skill from different orders involving senior officers from the police, movement, Crown Prosecution Service (CPS) and Serious Organized Crime Agency (SOCA) and Her Majesty's Revenue and Customs (HMRC) (Home Office and Scottish Executive, 2007). It is capable to address all types of human trafficking and to facilitate various partners and accomplices. UKHTC is likewise entrusted to bring issues to light, give preparing and direct research with a specific end goal to enhance comprehension of human trafficking. It pushes for casualty focused approach in tending to human trafficking by cooperating with different offices, partners and NGOs. UKHTC creates conventions on victims' ID and examination administration. Together with accomplices, it attempts to enhance suitable casualty bolster arrange including arrangement for casualties to come back to their nation of origin. With different specialists under one rooftop, UKHTC has an edge in planning measures viably and giving proactive and managed approach.

Incorporating various experts in turns out to be fundamental in advancing endeavors to battle human trafficking. UKHTC even uses budgetary examination as one of the weapons to handle traffickers and the individuals who advantage from human trafficking. This is made conceivable by HMRC's secondment of its senior part to UKHTC to boost the utilization of tax assessment in a planned way to deal with the criminal

investigation.<sup>131</sup> The all encompassing measure exhibits the United Kingdoms' responsibility regarding convey a coordinated approach in battling human trafficking.

UKHTC turns into a point of convergence in moving an institutionalized between organization approach inside the implementation offices. With a specific end goal to fortify its endeavors in battling human trafficking, it has set up Learning and Development Group to constantly audit basic preparing needs including those emerging from operational exercises and victims' encounter.<sup>132</sup> This turns into a vital piece of the expert advancement for those engaged with handling human trafficking. UKHTC even gives 24-hour contact to assist forefront faculty with early distinguishing proof and referral of casualties. Not just that, it has built up a sub-bunch devoted to keeping human trafficking including individuals from government, law requirement, NGOs and different partners. Among its destinations is to give vital level bearing in the arranging and execution of aversion and mindfulness battles. Curiously, the proactive measure embraced by UKHTC isn't just led in the nation yet in addition in recognized source or travel nations as a feature of the all encompassing push to address the issue of human trafficking at its source.

The United States as a source, travel and goal nation for trafficked casualties of constrained work, obligation subjugation, report bondage and sex trafficking has stepped up with regards to shape Anti-Trafficking Coordination Teams (ACTeams) in February

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<sup>131</sup> Home Office and Scottish Executive. (2009). Update to the UK Action Plan on tackling human trafficking. Retrieved from [http://www.ungift.org/doc/knowledgehub/resourcecentre/Governments/Update\\_to\\_the\\_UK\\_Action\\_Plan\\_on\\_Tackling\\_Human\\_Trafficking\\_en\\_2009.pdf](http://www.ungift.org/doc/knowledgehub/resourcecentre/Governments/Update_to_the_UK_Action_Plan_on_Tackling_Human_Trafficking_en_2009.pdf)

<sup>132</sup> Ibid

2011. The extraordinarily made groups collect government agents and prosecutors to plan and execute composed and proactive elected between organization examinations and indictments in chose territories across the country.<sup>133</sup> For the pilot venture, six urban communities have been chosen: Miami, Florida; Atlanta, Georgia; El Paso, Texas; Kansas City, Missouri; Los Angeles, California; and Memphis, Tennessee.<sup>134</sup> To show its significance, ACTeams is put under the administration of the U.S. Lawyers and the most elevated positioning government investigative operators from significant local Federal Bureau of Investigation (FBI), United States Immigration and Customs Enforcement (ICE) and Department of Labor field workplaces.

ACTeams displays the working coordinated effort required in actualizing a key activity intend to battle human trafficking. It is in charge of creating examination and indictment for government arguments against human trafficking so as to ensure the privileges of trafficked casualties, convey the culprits to equity and disintegrate the criminal system. The structure of ACTeams incredibly upgrades coordination among government prosecutors and elected operators engaged with the examination. In particular, it likewise joins the cooperation of bleeding edge requirement endeavors and concentrated units at the Department of Justice and government headquarters.<sup>135</sup> This is key particularly for such an enormous nation with huge populace and a legislature in light of federalism including the sharing of energy amongst elected and state and additionally local government.

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<sup>133</sup> U.S. Department of Justice. (2011).

<sup>134</sup> Federal Bureau of Investigation. (2011).

<sup>135</sup> U.S. Department of Justice. (2011)

The U.S. Department of Justice in cooperation with the Department of Homeland Security and the Department of Labor are in charge of the foundation of the ACTeams. Notwithstanding that, the Department of State sets up a committed antitrafficking unit inside the base camp staff of the Diplomatic Security Service. The committed unit consolidates hostile to trafficking reaction into the strategic administration.

Recognizing the significance of particular work force in taking care of human trafficking, Slovakia, which was positioned at Tier 1 in Trafficking in Persons Report 2011, embraces a methodology of including specific units inside its law implementation office.<sup>136</sup> The Slovakian police compel works a particular unit at the police central command and four specific officers all through the nation. Given the significance of having particular faculty to handle human trafficking, the Slovak Office of the Special Prosecutor additionally fuses an indistinguishable activity from it assigns a specific prosecutor for human trafficking inside the counter defilement unit.

Bringing a mixed of specialists under one office for human trafficking like UKHTC will be a perfect methodology for Malaysia to genuinely battle the wrongdoing. A research organization unit furnished with the significant ability gives the essential components to a hostile to trafficking driving force to successfully lead the arrangement usage. MAPO just has arrangement executives from Ministry of Home Affairs in the secretariat group. Be that as it may, individuals from MAPO incorporate pertinent government organizations, NGOs and specialists. MAPO individuals meet intermittently, yet the individuals who go to the meeting have a tendency to be from the higher echelon of the

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<sup>136</sup> Ibid



administrators who may not be included specifically in managing human trafficking issues. Utilizing second-hand data go from the cutting edge work force to be examined in the meeting, MAPO may lose the substance required in hunting down viable solution for the issue of human trafficking.

Not every applicable office in Malaysia set up a particular unit to deal with human trafficking as endeavored by Slovakia. The particular unit is apparent just at the police and movement base camp. The police specific unit is built up under hostile to bad habit, betting and mystery social orders division, otherwise called D7. Concerning the migration particular unit, it is set up under the authorization division. In view of the official insights of cases charged by implementation offices, PDRM and Immigration Department are among the most dynamic authorization organizations in leading operations against human trafficking with 78.3 for each penny and 18.7 for each penny individually.<sup>137</sup>

As far as particular office to deal with human trafficking cases, Malaysia has set up shield homes only for trafficked ladies, men and youngsters individually. Other than the sanctuary homes, an uncommon Session Court in Kuala Lumpur has been assigned for human trafficking cases. This is to facilitate the case hearing especially to record of confirmation that requires the trafficked casualties to be in the Court. Outside trafficked casualties need to sit tight for the account of proof before they can be repatriated. In other Session Courts, human trafficking cases need to take after standard court line, which implies the casualties need to remain longer at the asylum homes sitting tight for the

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<sup>137</sup> Ministry of Home Affairs. (2012). Data on human trafficking in Malaysia.

chronicle of proof. Without satisfactory quantities of specific courts as honed in the Netherlands, Malaysia faces the issue of case accumulation. It brings about finished crowdedness at the sanctuary homes as the trafficked casualties need to remain longer until the point that they give the chronicle of proof to help the indictment. The Legal Committee is investigating the likelihood of setting up an extraordinary court like the Special Court for the illicit remote laborers to assist the case continuing for the trafficked casualties.

### **3.5 Addressing the Demand Side of Human Trafficking**

In tending to human trafficking, it isn't adequate to just address the supply side of the wrongdoing. Thus, request lessening exertion is essential in the battle against human trafficking. Every nation must venture out recognizing the presence of human trafficking request inside its national limits. The United Kingdom has exhibited endeavors taken to build mindfulness among men who may wind up plainly potential clients of sex trafficked casualties. Strikingly, the United States has adopted a more genuine strategy by focusing on organizations that utilization constrained work including the items and the businesses.

As a component of Operation Pentameter, the United Kingdom targets men who may end up plainly potential client to sexually abused trafficked casualties including the individuals who might utilize knead parlors, saunas or houses of ill-repute. Notices have been put in men's magazines and sites to bring issues to light about human trafficking and sexual misuse. Through the ads, notices are set with respect to the hazard associated with

sex trafficking. Introductory casual examination shows that men's conduct and states of mind towards utilizing whores are influenced by the reputation methodology.<sup>138</sup>

The United States has embraced numerous endeavors through different offices to lessen the interest for business sex and constrained work.<sup>139</sup> Three offices including Department of Agriculture, Department of Labor and Department of State have teamed up to give proposals to Congress on the most proficient method to diminish the probability of bringing in horticultural items and products that are created by constrained work and kid work. As a major aspect of a multi-partner process, the Department of State and the Department of Defense have driven 60 private security organizations to maintain the standards of not taking part in human trafficking, sexual misuse or prostitution in their organization approaches and in the direct of their faculty. To guarantee the administrations gave don't include human trafficking, the United States Agency for International Development (USAID) has propelled a set of accepted rules precluding all USAID temporary workers, sub-contractual workers, grantees and sub-grantees from taking part in human trafficking, getting business sex acts or utilizing constrained work amid the time of their contract awards.

The USAID and in addition the Inspector Generals at the Department of State and the Department of Defense direct their reviews of government contracts to screen weakness to human trafficking. The discoveries and reparations are distributed as open reports. The USAID even sets up a committed substance to proactively track contractual worker

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<sup>138</sup> Ibid

<sup>139</sup> U.S. Department of Justice. (2011).

consistence with the specialist to suspend contracts and suspend contracting firms. Such a positive advance is basic in advancing authorization and controlling interest for human trafficking.

The United States additionally makes genuine move against bosses who are associated with human trafficking hones especially those including remote laborers. This is finished by the Department of Justice and the Department of Health and Human Services that lead examinations and arraignments against human trafficking including remote nationals with transitory agrarian laborers visas and brief neighborliness, sustenance administration and development specialists visas. The businesses who are observed to be liable of disregarding impermanent laborers program are disallowed from applying for future brief specialists for a time of three years.<sup>140</sup> To reinforce the security of remote laborers from being abused, the Department of Labour prohibits remote enrollment specialists from charging rural brief laborers certain expenses. It has been accounted for that scouts have been charging expenses and requires after the laborers have acquired their visas under the pretense of „service fees“. Specialists turn out to be more helpless against work misuse with expanding obligation, which is a typical strategy utilized far and wide as a control instrument. The control endeavors to address this issue by forcing a positive commitment on businesses that can prompt expulsion from taking an interest in the brief specialists program.

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<sup>140</sup> Ibid

### **3.6 Preventive Measures**

The Protocol to Prevent, Suppress and Punish Trafficking in Persons obviously expresses that nations must attempt measures, for example, research, data and broad communications battle and also social and monetary activities to forestall human trafficking.<sup>141</sup> Among the basic advances are ceaseless open mindfulness programs that incorporate distinguishing cautioning signs and required reactions. Notwithstanding, open mindfulness is just a piece of counteractive action endeavors. The United Kingdom epitomizes the proactive exertion of controlling human trafficking inflow before it achieves the nation of goal. Australia, then again, has adopted an astounding strategy in using reallocated criminal advantages for help against human trafficking programs while honing open meeting to enhance administrations. Nations, for example, the United States, Georgia and Slovenia concentrate their aversion endeavors on the young. In the meantime, Slovenia and South Korea perceived the significance of contacting vagrants who are helpless of being trafficked.

Understanding that across the board comprehension of human trafficking is imperative to control the wrongdoing, the United Kingdom builds up Border Agency's Risk and Liaison Overseas Network (RALON) to recognize and decrease the dangers to its outskirts. RALON works in more than 50 areas worldwide to guarantee the individuals who are going into the United Kingdom have legitimate reports. The RALON officers' part incorporates giving exhortation to registration staff at the takeoff entryways on the records exhibited by travelers, preparing carrier staff in regards to the United Kingdom international ID and visa necessities and additionally helping aircrafts with travelers who

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<sup>141</sup> United Nations. (2000).

may have deficient documentation. RALON prevailing with regards to keeping 67,000 individuals from flying out to the United Kingdom with erroneous, fake or deceitfully got travel records.<sup>142</sup> Strong collaboration with the aircrafts and nearby outskirt control specialists empowers the United Kingdom to perceive the issue of human trafficking before casualties might be brought into the nation.

Adopting a dynamic strategy in battling human trafficking, Australia uses assets from seized criminal resources for finance against human trafficking programs. It has been accounted for that \$200,000 from appropriated criminal resources under the Proceeds of Crime Act 2002 is designated for security and counteractive action against human trafficking (U.S. Division of State, 2011). Australian government additionally consolidates open discussion to enhance administrations gave in the battle against human trafficking.

The United States gains huge ground in tending to counteractive action of human trafficking. To counteract, recognize and react to business sexual abuse of kids, the Department of Education (DOE) escalates endeavors to give instructive resources to school districts.<sup>143</sup> DOE additionally offers preparing to head of school police powers to build their insight about human trafficking. So as to build mindfulness and recognizable proof of trafficked casualties, it persistently screens school locale looking for good practices that can be dispersed to all schools across the nation.

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<sup>142</sup> U.K. Home Office. (2011).

<sup>143</sup> U.S. Department of State. (2011).

With comparable technique of focusing on the adolescent, the administration of Georgia embraces an integrative approach in its anticipation endeavors. Other than directing a broadcast meeting on human trafficking for college understudies all through the nation, Georgia presents a required trafficking course for law understudies. With the guide of worldwide givers, the administration gives preparing to secondary teachers in regards to human trafficking aversion. Through an association with NGOs, the legislature instructed more than 320 youngsters under the care of the state about human trafficking counteractive action and built up a human trafficking aversion program for optional school understudies in 2010.<sup>144</sup>

In like manner, the government of Slovenian gives financing to every week hostile to human trafficking mindfulness program to understudies in rudimentary and auxiliary schools as a component of its exertion in focusing on the youth.<sup>145</sup> The legislature likewise directs outreach program for vagrants at fringe intersections. To achieve more prominent crowd, the administration utilizes its site to bring issues to light about human trafficking.

Transient specialists are profoundly powerless against being trafficked because of different factors, for example, obligation subjugation, correspondence issues and absence of information of the goal nation. Subsequently, they tend to confront comparative issues characteristic of constrained work involving non-installment of salaries, withholding of international IDs, and working in various occupation from what is guaranteed in their

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<sup>144</sup> Ibid

<sup>145</sup> Ibid

nation of birthplace. Recognizing the powerlessness of transient specialists, South Korean government has stepped up with regards to specifically enroll outside laborers from 13 countries.<sup>146</sup> It requires the specialists to experience abilities preparing and mindfulness raising project.

It requires the specialists to experience abilities preparing and mindfulness raising project. Languages<sup>147</sup> Six comparable focuses are built up by Seoul Metropolitan City Government. Administrations gave by the focuses include: (I) instructive projects that offer Korean classes and data innovation preparing; (ii) guiding projects that give exhortation in regards to any work, legitimate or other issue identified with living in Seoul; (iii) social insurance benefits that give therapeutic registration and free medications and in addition help with entrance into the health care coverage common advantage affiliation; and (iv) welfare and social administrations that offer Korean social visit programs, social decent variety advancement projects and activities to offer help to remote groups.<sup>148</sup>

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<sup>146</sup> Ibid

<sup>147</sup> Ibid

<sup>148</sup> Seoul Metropolitan City Government. (2011).



## **CHAPTER FOUR**

### **DATA ANALYSIS, PRESENTATION, INTERPRETATION AND DISCUSSION**

#### **4.0 Introduction**

This chapter presents results of analysed primary data obtained from the respondents in relation to the human trafficking in Kenya. The chapter focuses on findings and concentrates on discoveries and elucidation of the outcomes. The uncovered data was accounted for according to the exploration destinations. The investigation likewise centered around information from auxiliary sources that included diaries, daily papers and books. Auxiliary sources for the most part looked on optional proof in regards to parts of human trafficking.

#### **4.1 Human Trafficking in Kenya**

While the concentration of the exploration in East Africa and particularly Kenya where the issue of human trafficking has gotten little consideration<sup>149</sup> Kenya is perceived as the primary wellspring of human trafficking.<sup>150</sup> A report by Awareness Against Human Trafficking (HAART) found that Kenya is a major source of transnational trafficking in persons in Africa.<sup>151</sup>

Kenya is delegated a source, travel, and goal nation human trafficking. The examination uncovered that inside Kenya, kids are subjected to constrained work in local administration, farming, angling, cows grouping, road distributing, and asking. Young

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<sup>149</sup> Madihi and Mtwana, 2002

<sup>150</sup> The US Department of State

<sup>151</sup> HAART. Human Trafficking in Kenya, 2015.

ladies and young men are likewise abused in prostitution all through Kenya, incorporating into sex tourism on the drift; now and again, their misuse is encouraged by ladies in prostitution, "shoreline young men," or relatives. Kids are likewise misused in sex trafficking by individuals working in khat (a gentle opiate) development regions, close to Nyanza's gold mines, along the drift by truck drivers transporting stones from quarries, and by anglers on Lake Victoria. Kenyans willfully move to other East African countries, South Sudan, Angola, Europe, the United States, and the Middle East—especially Saudi Arabia, Lebanon, Kuwait, Qatar, United Arab Emirates (UAE), and Oman—looking for business, where on occasion they are misused in local bondage, knead parlors and houses of ill-repute, or constrained physical work.

The Government of Kenya does not completely meet the base guidelines for the end of trafficking; be that as it may, it is endeavoring critical endeavors to do as such. The Counter-Trafficking in Persons Advisory Committee (admonitory panel) met routinely and started building up an information gathering component to enhance following of against trafficking endeavors over Kenya's 47 districts. The consultative advisory group set up and actualized its yearly work design; its achievements in 2015 included creating standard working systems for prosecutors and preparing roughly 50 coaches from key hostile to trafficking authorities. The legislature announced generously expanded trafficking indictments and feelings. In 2015, the legislature recognized 153 kid trafficking casualties in just three of Kenya's 47 regions. The legislature created national referral instrument (NRM) rules to help partners in alluding potential casualties of trafficking to administrations. The Ministry of Labor (MOL) grew new approaches for

Kenyans looking for business openings abroad to guarantee their work contracts conform to particular models set inside the service. The legislature did not give sufficient defensive administrations to grown-up casualties subjected to trafficking inside the nation or recognized in circumstances of constrained work or prostitution abroad. In September 2015, a MOL taskforce gave an answer to the bureau secretary inferring that incompetent laborers were the most powerless against abuse and made proposals for approaches to address this issue and in addition approaches to manage enrollment offices, particularly unregistered ones.

The truth of the matter is that the nation is yet to completely consent and actualize the worldwide principles by the United Nations archive. Subsequently, trafficking in people has been perceived to be an issue in the nation.<sup>152</sup> Kenya has set up applicable enactment to forestall demonstrations of human trafficking in the nation and over its global outskirts. Notwithstanding passing Counter-Trafficking in Persons Bill toward the start of the decade, and which wound up noticeably operational two years after the fact in October 2012, the Act has been ineffectively executed. The shortcomings in enactment execution could be a contributing variable to the apparently high rate of human trafficking in Kenya. The law is adequately impediment in controlling human trafficking in Kenya and by expansion, the global field. It gives stringent disciplines to indicted for upto 30-year imprison term or a fine of 20 million Kenyan Shillings that is equal to roughly USD 200,000 in January 2015.

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<sup>152</sup> Fong, 2004.

Much the same as other worldwide situation, instances of sexual misuse rank most elevated (60.9%) on the rundown of human trafficking in Kenya. This could be credited to the authorization concentrate on sex trafficking offenses when the 2010 Act initially became effective in 2012. This is in spite of the way that the 2010 Act has effectively perceived work trafficking that incorporates constrained work, subjugation or bondage even before the alterations of the Act in 2010 were made. With the revisions, there is a move towards a more extensive requirement that incorporates work trafficking. Constrained work cases rank second with 31 per cent.

Certain social components including high joblessness rate 40%, and a high number of graduates originating from the colleges every year and subsequently looking for occupations were observed to contribute in making Kenya one of the wealthiest wellsprings of relocation and along these lines high probability for human trafficking. As per United States Department of State , in the vicinity of 20,000 and 30,000 individuals relocated looking for greener field in the Middle East in 2006.

Different issues referred to as assuming a tremendous part in human trafficking in Kenya incorporate destitution and globalization. These two are portrayed as push factors for human trafficking. The case is like different nations in the sub-Saharan Africa where social indecencies, for example, destitution, joblessness, and broken homes are considered purposes behind trafficking in people. Traffickers frequently take the upside of the casualties of these social indecencies and ingrain them with unlimited any desires

for a superior future and urgency to bait them into being trafficked.<sup>153</sup> In Kenya, push factors driving individuals to relocate to different districts incorporate need or deficient instruction and constrained work openings. As joblessness takes off in the nation, so does the quantity of youthful Kenyans searching for circumstances abroad increment drastically. It isn't astounding in this way that some of uneducated and employment looking for youthful Kenyans fall helpless against exercises of human trafficking.

According to a UNODC study on human trafficking, only 15% of trafficked individuals in East Africa get themselves the Middle East. Different casualties remain in their nation of cause or trafficked in the sub-Saharan-area, such dazzling measurements has made the Middle East the concentration of the media. As indicated by UNODC, the quantity of ladies engaged with human trafficking is more noteworthy to that of men of all VoTs in sub-Saharan Africa. The issue with the UNODC insights is that they construct their proof in light of every single detailed case making it conceivable of outrageous mistakes.

It is critical to take note of that there are different sorts of human trafficking that shows in Kenya other than grown-ups for constrained work as talked about in this section. Many taught and uneducated Kenyans keep on seeking for employments crosswise over universal fringes prompting movement. Accordingly, this prompts expanded and unreported number of individuals helpless against human trafficking violations. The following fundamental factor to consider in the investigation is the way that, Kenya is going up against the colossal test of worldwide fear based oppression that has prompted another type of human trafficking. There are reports that Al-Shabab, a Somali

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<sup>153</sup> Ibid

psychological oppressor gathering, is currently enlisting youngsters from Kenya and attracting them into the group.<sup>154</sup>

Accessible proof demonstrates that the fear assemble is currently selecting school going kids younger than 18 in a few territories of the nation. The measurements add to another roughly 20,000 youngsters trafficked yearly in Kenya. As opposed to for psychological militant exercises, kids are being trafficked to give residential work and in ventures, for example, agribusiness, the angling business or for sex work.<sup>155</sup>

## **4.2 Types of Human Trafficking in Kenya**

There exist a few types of human trafficking in various parts of the world. This is primarily controlled by the idea of interest that exists in the goal nation or area. Kenya partakes in every one of these structures being a dynamic individual from the global framework. Each general public of the world offers in a single shape or the other particularly in this period of worldwide interconnectedness.

### **4.2.1 Labour Trafficking**

Schmidt, (2008) focuses that, constrained work is a type of human trafficking that happens as deceitful businesses exploit existing holes in the legitimate structure and law requirement offices to misuse helpless and unpracticed specialists. In extra the specialists weakness increments to constrained work hones because of an abnormal state of joblessness, separation, destitution, wrongdoing, debasement and political clash. The

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<sup>154</sup> Haslam, 2015

<sup>155</sup> Migiro, 2014.

workers are more defenseless contrasted with others. In any case, there are people who are powerless against constrained work in their country. For instance, female casualties of fortified work, particularly young ladies and ladies are constrained into local subjugation while young men and men end up being compelled to work in the angling and mining industry.

Constrained work is a sort of human trafficking did in Kenya however harder to distinguish, examine and assess when contrasted with sex trafficking. The sort of trafficking may not really include comparable criminal systems with other transnational trafficking structures, for example, sexual misuse. Trafficking of such kind includes people who are liable of constraining one or numerous household hirelings into extraordinary works for a specific period.<sup>156</sup>

As far as criminal cost, utilizing trafficked work gangs generally safe of arraignment to managers. At the point when legitimate work is costly than trafficked work to businesses, there are extra costs included including physical, criminal and psychological costs. For instance in the event that it gets to be open that a firm uses trafficked work, there is a conceivable loss of economic wellbeing and To the extent criminal cost, using trafficked work posses for the most part safe of arraignment to administrators. Right when authentic work is expensive than trafficked work to organizations, there are additional costs included including physical, criminal and psychological costs. For example if it gets the opportunity to be open that a firm uses trafficked work, there is a possible loss of monetary prosperity and in like manner wage. Nevertheless, due to the coercive and

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<sup>156</sup> Schmidt, 2008

secret nature of human trafficking, it remains troublesome for honest to goodness forces to summon chiefs who use trafficked work US Department of value (2003). Gatekeepers may every so often coincidentally energize trafficking of their children when their own specific occupations have failed in light of the way that they have the wisdom that sending them away may ensure their necessities are met. Women tend to have few business decisions and be paid lower pay driving them to seek out opportunities to move. These are a part of the social money related factors that mistreat women.<sup>157</sup>

#### **4.2.2 Bonded Labour**

Reinforced work suggests a type of human trafficking that utilizes intimidation or power. This type of human trafficking utilizes obligation or a commitment to hold people groups under oppression. In the lawful clique, this is alluded to as "obligation servitude." or "fortified work". This demonstration of vanquishing others is criminalized in numerous nations, for example, U.S. law. Likewise, the exercises are incorporated as a type of abuse related with human trafficking in the United Nations Protocol to Prevent and Punish those included.<sup>158</sup>

In the convention, ladies and kids are protected by the convention since they are more helpless when contrasted with others. Over the world greater part of representatives, move toward becoming casualties to obligation subjugation when enrollment specialists or traffickers unlawfully misuse an underlying obligation the workers accepted as being a piece of the terms of business. At the point when representatives sign the business

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<sup>157</sup> Kamala .E.E.Lusinde, J.Millinga, J.Mwaitula, M.J Gonza, M.G Juma, Tanzania children in prostitution: A rapid assessment,2001 ILO-IPEC, Geneva

<sup>158</sup> Belser, 2005.



contract, they acquire the obligation like conventional frameworks of reinforced work.<sup>159</sup> For instance, such sort of human trafficking was available in South Asia oppresses huge quantities of individuals from age to age. The interest for modest work over the world is high. Individuals are hunting down occupations crosswise over outskirts a large number of miles a long way from home frequently fall casualties of duplicity and in the end get deceived into constrained work, residential subjugation, sexual misuse and numerous others clarified in the investigation. Likewise numerous others particularly in Kenya are jobless and living their lives in destitution.<sup>160</sup>

Bonded labour comes because of an assortment of causes and among them are neediness, absence of or insufficient instruction, out of line social relations deficient implementation of work laws and government's unwillingness to change the present state of affairs among others. There are social explanations behind fortified work also; a desire that kids should add to the monetary and social survival of the family or group, shortage of land and presence of expansive families. In urban setting causes go from liquor addiction, deterioration of families and joblessness may lead kids going to the lanes, getting to be workers or take part in prostitution. In this way reinforced work is because of verifiable, social, monetary and social variables. The investigation additionally contends that while the nature of popular government is some of the time traded off by social imbalance and insufficient political commitment, just practice itself is an imperative apparatus in wiping out these obstructions and it has developed in a few examinations in dialogs of human

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<sup>159</sup> Doezema, (2002)

<sup>160</sup> Haslam, 2015.

rights, whose infringement like kid work and fortified work bargains the honesty of majority rule government.<sup>161</sup>

### **4.2.3 Involuntary Servitude**

Individuals are considered losses of programmed enslavement when they before long convinced that any undertaking to escape from their current condition would in all probability result in certifiable physical harm to them or others, for instance, family, colleagues. In such conditions the setbacks are kept in a state of subjugation through constants threats or misuse of the nation honest to goodness methodology. In such cases the setbacks are low-gifted specialists and budgetary homeless people from less made gatherings or countries to more made spots. Various setbacks drive forward through physical and verbal misuse, experience denial of business contract, and made to consider themselves to be prisoner or slaves.<sup>162</sup>

As per Belser and Andress<sup>163</sup> a couple of encroachment related to contracts and testing conditions that the delegates get themselves got in don't in themselves constitute programmed subjugation. In any case, impulse and threatening of setbacks, physical compel push the experts to continue giving work may change over a situation into a kind of human trafficking of obliged work. The wages realized by laborers for the suggested advantage of working outside the country can place losses in a situation vulnerable against commitment subjugation. Regardless, these costs alone don't constitute commitment programmed subjugation or subjection. Exactly when these costs are

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<sup>161</sup> Dreze, and Amartya Sen. 2002

<sup>162</sup> García, (2008): 1-8.

<sup>163</sup> Belser, and Andress. 2009.

merged with the components of immense abuse, it can transform into a sort of commitment bondage.

#### **4.2.4 Involuntary Domestic Servitude**

Private laborers are gotten in oppression through physical, sexual, or mental abuse. In this particular kind of human trafficking, adolescents are the most vulnerable. This is the most difficult to recognize in light of the way that private oppression occurs in private tenants, which are now and again unregulated or researched by open forces. For example, there is an insatiable demand in some wealthier countries of the Middle East and Asia for private employees who overall get the chance to be loss to conditions of programmed oppression.<sup>164</sup>

There are reports of abuse of family unit workers and some have come to fruition to passings and this has pushed the Kenyan government to make a move. The organization gave a travel blacklist to this effect in June 2012, with the sole purpose of shielding Kenyans from moving to the Middle East countries for nearby work. In any case, paying little respect to the blacklist, Kenyan women continue being enrolled and given family unit occupations reliably. These women dismiss the blacklist and open themselves to the threats of confinement and strike in organization regions in the Middle East and this challenges the assembly to secure them outside its ward while it's yet to realize structures of confirmation for nationals working in nearby organization part in these countries. The women included indicated major level of guideline as they can read, make and convey in

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<sup>164</sup> Ibid

English and along these lines could fathom terms and conditions going before movement. In any case, these terms are not respected in the objective countries.<sup>165</sup>

These women go up against firm competition locally from school educated graduates for the uncommon openings for work available in Kenya and thusly pick to search for modestly higher paying occupations abroad at the peril of being manhandled. Their level of preparing, nonappearance of work in Kenya and enthusiasm for family masters in the Middle East effects them to move searching for better wages. Notwithstanding the way that it's not just for Kenyan private masters in the Middle East alone, family workers are displayed to threats of sexual, physical, mental misuse, non-portion of wages, sustenance and absence of rest. They can't beat these challenges in light of vernacular block, nonappearance of data of close-by laws and containments from moving uninhibitedly.<sup>166</sup>

How private function is disengaged from general deceivability, experts have weak if any social interchanges which could some way or another or another assistance them vent out their disappointments. Exactly when in their supervisors house, they are required to act in yielding and don't have the agree to clearly talk with their chief. Moreover, most are compelled by cash related necessities to search for function as nearby masters in these Middle East countries yet can't do comparable occupations in their neighborhood countries.<sup>167</sup>

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<sup>165</sup> Dugbazah, 2012.

<sup>166</sup> Fong, 2004.

<sup>167</sup> Ibid

Individual assentions occasionally give some affirmation however, as it were, leave a work sending country like Kenya subject to the recipient countries to maintain those two-sided understandings and henceforth this can be unfit if not completed by tolerating country specialists. Kenya can use such assentions to mastermind better working conditions like slightest wages, hours of work, terms of organization, step by step rest, and perfect to keep their universal IDs with the Middle East governments. Despite dismissal of family authorities in the regions work laws, private workers are required to sign necessary business contracts which on a fundamental level should offer security however eventually they don't given that the exchanges are between two private social occasions and the experts have less organizing powers and capacity to see their understandings maintained.<sup>168</sup>

Bolster for local specialists can be found in ILO Convention 189 and suggestion<sup>169</sup>, they see family go about as superior to normal work and meriting law affirmations and sets out work measures for private workers, for instance, slightest wages, rest hours and the choice of where to live and this has conferred governments to look at this work portion really. Straight Cooperation Council countries have joined undertakings to oversee nearby workers quandary in the zone and in a meeting in Bahrain in 2013, they agreed on a bound together Gulf contract for private authorities. The draft outlines the rights and obligations to a master and moreover repercussions for crack of their assentions.<sup>170</sup>

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<sup>168</sup> Clawson, 2006.

<sup>169</sup> ILO, 2008.

<sup>170</sup> Ibid

#### **4.2.5 Forced Child Labour**

According to Doezema<sup>171</sup>, national laws and universal associations demonstrate numerous underage kids may legitimately connect with giving administrations, for example, light work. Different universal laws target destruction of youngster work by countries over the world. The entanglement and trafficking of underage youngsters in constrained work constitute one of the most exceedingly awful types of tyke work in the globe. Regardless of the place and the sort of misuse, kids subjected to abuse, for example, peonage, automatic subjugation, and obligation servitude among others utilizing scares, extortion or is a casualty of trafficking in people.

The U.N Permanent Forum for Indigenous Issues<sup>172</sup> demonstrates that on the planet, indigenous individuals stand a unique hazard with respect to tyke work and this can be because of high neediness levels among indigenous individuals got from past and on-going dispossession of land and assets that prompts disturbances of their vocations and low instruction levels. These elements go about as drivers that push these groups to wind up wellsprings of kid work inside and past their limit. Indigenous individuals in Kenya are principally seekers, gatherers and pastoralists. Their jobs are shaky and the survival alternatives are step by step getting to be noticeably restricted. It is seen that to a substantial degree, the National strategy and lawful structures in Kenya are coldhearted to their necessities and this prompts advance minimization of these groups and their youngsters progress toward becoming tyke workers as a rule.

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<sup>171</sup> Doezema, (2002)

<sup>172</sup> UN- Permanent Forum for Indigenous Issues, 2nd Session, New York, 2003

According to ILO<sup>173</sup>, most child labourers are working in unsafe working conditions and the aggregate number of constrained kid workers is expanding despite the fact that it is prohibited by the law. They are powerless against sicknesses and do battle with long haul physical and mental torment. They take part in this work for survival for themselves and that of their families. Not all work is fierce, some may give fruitful learning openings however not if the work opens these youngsters to stretch, human trafficking, explicit exercises and prostitution. Numerous associations have tried endeavors to control constrained tyke work; be that as it may, it's far reaching all through the world and difficult for low wage nations to boycott youngster work. The investigation proposes instruction is the way to enable the youngsters to remain from constrained child labour.

In Kenya, there are associations working towards tending to the issue of constrained youngster work. They for the most part work in urban focuses, ghettos and business ranges. U.N offices, for example, UNICEF and ILO have as of late attempted a few endeavors to address the issue through ILO-IPEC, in a program named the Time Bound Program on disposal of tyke work in 15 Kenyan regions (Project record. As per Bass constrained kid work in the created world keeps on decreasing while it's the inverse in the creating scene in view of high rates of joblessness, quick populace development, expansion, destitution, awful administration, debasement, low wages and ailing health.

In Kenya, the constitution does not restrict kid work, rather it defines sorts of light work completed by youngsters, for example, assisting in family unit tasks, cultivates inasmuch as work is done after school hours and does not meddle with tutoring, physical and moral

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<sup>173</sup> International Labour Organization, 2013.

improvement of the tyke. Kids' Act 2010, characterizes tyke in Kenya as a man beneath 18 years old and youngster work implies work of kids in the age gathering of 5 to 14 years with or without installment. Segment 56 of the Children's Act, 2010 forbids utilizing a kid underneath age 13 in any type of undertaking yet permits work of kids from the ages of 13 to 26 years for light work and characterizes those of 16 to 18 years as employable.

#### **4.2.6 Sex Tourism**

According to Oyuke,<sup>174</sup> Kenya is rapidly turning into a sex tourism goal. 40% of remote visitors utilize the web to get to data about Kenya, and this medium has been utilized to promote Kenya abroad to potential sex vacationers as explicit pictures of minors include on the locales. Clarke, keeps up that in spite of the fact that information is difficult to find, local people on the Kenyan drift assess that one of every five single ladies going to drift from rich nations are in sex seek and these figures are higher when you take a gander at the male guests. The high destitution level among have groups and vacationers looking for sex experiences turns into a meeting point for sex tourism to flourish.

The high destitution levels in have groups in Kenya and development in tourism area has brought about negative impacts among them sex tourism. In 2006, the administration of Kenya under the service of home issues and UNICEF discharged disturbing report on the size of sex tourism and sexual abuse of youngsters at resorts in Mombasa, Malindi, Kwale and Kilifi. The report demonstrates that 30% of young ladies matured 12 to 18 years including 15,000 are associated with low maintenance, easygoing sex work. 2,000

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<sup>174</sup> Oyuke, 2007



to 3,000 young men and young ladies are allegedly in full time sex work lasting through the year. 59% of their customers are outside vacationers while 41% are local people. The basic guests abusing these youngsters are Germany (14%), Switzerland (12%) and Italy (18%). Exertion outfitted towards tourism advancement are without an appropriate defensive instruments for kids in the facilitating groups and this is a calamity given the high neediness levels in these groups that will push helpless kids to unlawful sex and sexual abuse. There are arrangements and enactment measures with a goal to straightforwardly and by implication check the bad habit yet they have not been successful as they neglect to focus on those more than 18years of age who are dynamic members in the sex tourism industry. The adequacy of these approaches is additionally debilitated by their inability to give effort and support to address the reasons for sex tourism among kids in Kenya.<sup>175</sup>

The UNCRC Report,<sup>176</sup> recognized that the advancement of tourism have with it the issue of sex tourism in beach front resorts and that sex sightseers focusing on kids are on the expansion. The report prescribed the legislature to embrace a standard study to uncover the size of the issue and this offered ascend to various enactments like the Children Act to manage the issue of sex tourism including the youngsters. The report demonstrated that more than 17million of Kenyan populace are youngsters and the administration recognizes that such a high extent of kids had social-financial ramifications as far as arrangement of essential administrations. Additionally, high neediness levels and HIV pandemic had prompted an expansion in the quantity of kids living under hardship. Be

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<sup>175</sup> UNICEF and GoK 2006

<sup>176</sup> United Nations Committee on the Rights of the Child, 2006

that as it may, the report neglected to give budgetary assignments for preventive projects for the assurance of kids living in these conditions. To control sex tourism, the administration in association with partners in tourism division started to set up a set of principles and did preparing of tourism staff on the most proficient method to deal with the casualties of sex tourism. Sex tourism is very lucrative than advertise installment for easygoing work. This has come about to sex tourism turning into a wellspring of business for families unequipped for getting enough pay to survive.

#### **4.3 Policy Implementation**

In 2010, Kenya passed counter trafficking up close and personal making it a wrongdoing to participate in human trafficking, yet the test has been in the poor execution and this has provoked to little impact on decreasing human trafficking. Nevertheless, the lawmaking body has increased colossal ground in raising open regard for human trafficking and in 2007, the Kenyan government made the National Steering Committee to fight human trafficking under the administration of Home Affairs. Regardless, the Act has been incapably executed.

The fragile sanctioning execution could be a contributing segment to the obviously high rate of human trafficking in Kenya. The law is satisfactory in evading human trafficking in Kenya and by extension, the worldwide field. It gives stringent orders to arraign for upto 30-year detain term or a fine of 30 million Kenyan Shillings in January 2015. Financial aspects for the most part supplements law requirement, social research and

criminal value and practices by analyzing the choices made by individuals and relationship in the human trafficking market.

The fuse of enthusiastic costs of criminal direct interfaces budgetary viewpoints with criminology. Money related models are used to display work markets and in this way the market for human trafficking made by free market movement of exploitable work. This models rely upon doubts. Components like degradation, social gauges can be difficult to illustrate. Given that fiscal models are an adjustments of reality, the dismissal of particular determinants or variables from the model may not thoroughly elucidate human trafficking market in its diverse quality and thus law prerequisite associations have a troublesome errand seeing all elements in this criminal development for inspirations driving examinations, arraignment and conviction.<sup>177</sup>

The Kenyan constitution does not forbid each one of the sorts of human trafficking per say anyway it criminalizes trafficking of adults and adolescents for sexual mishandle through the Sexual Offenses Act 2006 which agrees disciplines like those of attack to the liable gatherings. Regardless, Employment Act 2007 hoodlums obliged work and has appropriate statutes concerning work Trafficking in individuals. Kenya Counter Trafficking in Persons Act, 2010 article 3(5) has disciplines for individuals found subject of human trafficking. Regardless, paying little mind to the augmentations made by foundation of Sexual offenses charge, the Employment show of 2007 and Counter Trafficking Act in people 2010, one may express that the Kenyan constitution domain 14 subsection 4 on citizenship sort of limits the augmentations made on tyke trafficking as it

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<sup>177</sup> Ibid

sees a kid found in Kenya who is under 8 years of age and whose nationality and watchmen are not known as a neighborhood by birth.

#### **4.3.1 Agencies Working on Human Trafficking**

In Kenya, there are affiliations working towards watching out for the issue of obliged tyke work. They by and large work in urban concentrations, ghettos and business ranges. U.N workplaces, for instance, UNICEF and ILO have starting late tried a couple of tries to address the issue through ILO-IPEC, in a program named the Time Bound Program on transfer of adolescent work in 15 Kenyan area.<sup>178</sup> Two-sided assentions rarely give some confirmation however, as it were, leave a work sending country like Kenya subject to the recipient countries to execute those corresponding understandings and along these lines this can be inadequate if not influenced by getting country specialists. Regardless of evasion of family unit experts in the areas work laws, neighborhood workers are required to sign mandatory business contracts which on a fundamental level should offer security yet eventually they don't given that the courses of action are between two private social affairs and the pros have less masterminding powers and capacity to see their understandings maintained.<sup>179</sup>

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<sup>178</sup> ILO- IPEC/ Government of the United States of America 2004

<sup>179</sup> Clawson, Dutch, and Cumming, 2006.

### 4.3.2 Methods Used by Perpetrators to Recruit Victims of Human Trafficking in Kenya

The study sought to establish the methods used by human trafficking to perpetrate their heinous act. This was necessary in order to understand the modus operandi of the traffickers.

**Table 4.1: Methods Used by Perpetrators to Recruit Victims of Human Trafficking in Kenya**

<b>Factors</b>	<b>Percentage</b>
Promise of job opportunities	26
Promising lot of money to victims and parents / guardians	12
Luring and deception	11
Misleading Friendship	14
Coercion/Force/Abduction	9
Promising good life	7
Video Chat	8
Family Arrangements	6
Secretly transport the victims	7
<b>Total</b>	<b>100</b>

The investigation in the above table uncovered that there are numerous techniques utilized by human traffickers to get the casualties into their hands. These techniques extend from tempting the casualties with guarantees of employments, great life and

bunches of cash. The examination likewise found that traffickers can utilize compel or pressure casualties. The examination likewise found that web is utilized to draw casualties to fall into the traps of human traffickers.

## **CHAPTER FIVE**

### **KEY FINDINGS, CONCLUSION, RECOMMENDATIONS AND AREAS FOR FURTHER RESEARCH**

#### **5.0 Introduction**

This chapter presents the key findings, conclusion, recommendations and areas for further research. The presentations are captured in the sub-sections as discussed below.

#### **5.1 Implementation Process**

To assess the implementation process, the study examined actions and decisions taken by the government bureaucrats when enforcing the human trafficking policy. The study revealed that the policy is implemented by enforcement officers in collaboration with officers in the NGO sector. In Kenya, the 2010 Act is the sole human trafficking policy; it outlines the departments with the responsibility to enforce itself. Under the Act, those charged with the implementation responsibility are police officers, immigration officers, customs officers, maritime officers and labour officers.

Conventionally, labour officers were not responsible for handling human trafficking issues, for effectiveness their service was deemed necessary considering their familiarity with labour issues that address labour trafficking. In Kenya, the study revealed that the frontline personnel in human trafficking matters are the enforcement officers. They deal with the victims' fast hand, as such they are key influencers of the implementation process of the policy. Legal officers are critical in facilitating the enforcing officers as they provide the legal aspect of the operationalization of the policy.

The study also revealed that Kenya has policy administrators whose role in the implementation process is to ensure comprehensive implementation of the policy. The administrators bring together all the stakeholders in the implementation process.

## **5.2 Human Trafficking Policy**

The study revealed that in Kenya, the process of identifying, protecting and prosecuting victims is solely guided by the Anti-Trafficking in Persons Act 2010 in Kenya. Before the amendment of the 2010 Act, Kenya did not have any laws in place to criminalise the trafficking in persons. The overall goal of the Act is preventing and combating human trafficking and smuggling of migrants. Before amendment, the Act only dealt with human trafficking in general.

## **5.3 Human Trafficking Phenomenon in Kenya**

The findings of this study reveals that majority of the government bureaucrats are aware of the human trafficking phenomenon and even the forms of human trafficking. It was revealed that most Kenyans are trafficked for sexual exploitation and domestic servitude. However, those trafficked into Kenya were mostly for sexual exploitation purposes. The study established that human traffickers exploit the desperate situations of the victims by offering to provide a better life e.g through offering a well-paying job. The destination point for internally trafficked persons was revealed to be Nairobi and Mombasa. Externally, the victims are mostly sent to the Gulf and Europe.



Lack of awareness was found to be one of the contributing factors to victim vulnerability besides poverty and unemployment in Kenya. It was also noted that weak enforcement of the ant trafficking in persons Act also contributes to human trafficking in Kenya.

#### **5.4 Gaps in the Implementation of the Human Trafficking Policy**

Finally, the study sought to establish the potential gaps in the implementation of the human trafficking policy. The study established that the enforcement officers are well versed with the phenomenon. It was also revealed that the enforcers learnt human trafficking through training. All the enforcement officers were found to have a training on counter human trafficking. In any case, on singular classification of law authorities it's just the Directorate of Public Prosecution (DPP) and provincial Interpol Bureau authorities that were altogether prepared on counter human trafficking. The examination set up that exclusive (33%) of the police agents were prepared on counter human trafficking. It was additionally noted from the examination that a large portion of the migration and youngster insurance unit authorities are not prepared on counter human trafficking in Kenya.

It was built up that larger part have not dealt with a human trafficking case. It rose up out of the investigation cases including human trafficking were arranged rapidly in under one moth bringing about few feelings. It was uncovered that regardless of the administration putting other law authorization intercessions, for example, capture and indictment in the official courtroom culprits of human traffickers, the arrangement is as yet not viably actualized.

The findings revealed that while handling human trafficking issues, the enforces face a number of challenges. Key among the challenges was found to be legislation, lack of capacity, and poor training. The court process was also found not to be efficient in handling human trafficking cases, this was mainly due to lack of specific courts handling human trafficking cases.

## **5.5 Conclusion**

In comparison to other countries, Kenya has not done much in terms of progress in improvement in the fight against human trafficking. The enactment of the 2010 Act is a major step towards the fight against human trafficking in Kenya. The Act proposes framework upon which the issues relating to trafficking in persons is concerned. From the study, Netherlands approach in handling human trafficking issues was found to be very effective, Kenya could gain from learning from best practice to inform certain changes that can be help improvement of the implementation process. The findings of this study help in the advancement of knowledge on human trafficking policy implementation. The revelations of these study on the situation of human trafficking in Kenya paint a bad picture, there is need to reevaluate Kenya's approach to include the involvement of all stakeholders in the handling of issues relating to human trafficking.

## **5.6 Recommendations**

Based on the findings the study recommends that future studies should focus on ways of incorporating a multi-stakeholder approach in handling human trafficking issues.

The study also recommends the need to devolve the enforcement of anti-trafficking Act at the county level to help deal with county specific issues.

## **APPENDICES**

### **APPENDIX 1: INTERVIEW GUIDE**

#### **Human Trafficking Situation**

- a. How would you describe the human trafficking situation in Kenya?
- b. In your opinion, what kind of problems arises due to human trafficking in the country?
- c. What are the types of human trafficking exist in Kenya?
- d. Who are the victims of human trafficking? How did they become trafficked?

#### **Human Trafficking Policy**

- a. What are the policies regarding human trafficking?
- b. What are the policy objectives? Are the policy objectives clearly stated?
- c. What is the role of your organisation in fighting human trafficking?
- d. What is the working definition of human trafficking as interpreted by your organisation?
- e. What kind of activities related to human trafficking policy are you involved in?
- f. What is your opinion regarding human trafficking policy in Kenya?

#### **Implementation**

- a. How long have you been involved in the implementation of human trafficking policy?

- b. What role do you play in the human trafficking policy implementation?
- c. Do you need any specific knowledge to handle human trafficking? What kind of training have you received to deal with human trafficking problem?
- d. What kind of mechanisms is established to implement the policy?
- e. What programmes are being conducted to address human trafficking?
- f. What are the resources made available for the bureaucrats?
- g. What type of information is being shared inter/intra agencies?
- h. Is there any kind of resource sharing among various agencies (i.e., loans, grants, contracts, or secondment of personnel)?
- i. Have there been any joint activities among various agencies (planning, data gathering, service delivery, monitoring, training, or supervision)? If yes, please elaborate.
- j. What is the level of cooperation between all the relevant organisations (government agencies, NGOs, etc.)?
- k. Is there any international collaboration? Please elaborate.
- l. Do you have flexibility in implementing the policy? What are the examples of actions based on your own initiative instead of following the existing rules?
- m. How do you respond to changing conditions when handling the problem of human trafficking?
- n. How do you rank human trafficking policy implementation in terms of work priority?

- o. What are the main factors affecting human trafficking policy implementation?
- p. How could the policy implementation be improved?

## APPENDIX II: RESEARCH AUTHORIZATION LETTER



### NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION

Telephone: 020 400 7000,  
0713 788787,0735404245  
Fax: +254-20-318245,318249  
Email: dg@nacosti.go.ke  
Website: www.nacosti.go.ke  
When replying please quote

NACOSTI, Upper Kabete  
Off Waiyaki Way  
P.O. Box 30623-00100  
NAIROBI-KENYA

Ref. No. **NACOSTI/P/17/45849/19170**

Date: **26<sup>th</sup> September, 2017**

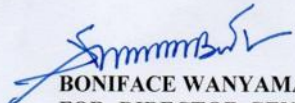
Juliet Akinyi Ongoma  
University of Nairobi  
P.O. Box 30197-00100  
**NAIROBI.**

#### **RE: RESEARCH AUTHORIZATION**

Following your application for authority to carry out research on "*The efficacy of the immigration department in controlling human trafficking: Analysis of counter trafficking in persons act 2010,*" I am pleased to inform you that you have been authorized to undertake research in **Nairobi County** for the period ending **26<sup>th</sup> September, 2018.**

You are advised to report to **the County Commissioner and the County Director of Education, Nairobi County** before embarking on the research project.

Kindly note that, as an applicant who has been licensed under the Science, Technology and Innovation Act, 2013 to conduct research in Kenya, you shall deposit **a copy** of the final research report to the Commission within **one year** of completion. The soft copy of the same should be submitted through the Online Research Information System.

  
**BONIFACE WANYAMA**  
**FOR: DIRECTOR-GENERAL/CEO**

Copy to:

The County Commissioner  
Nairobi County.

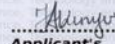
**APPENDIX III: RESEARCH PERMIT**


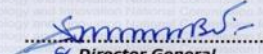
**THIS IS TO CERTIFY THAT:**  
**MS. JULIET AKINYI ONGOMA**  
**of THE UNIVERSITY OF NAIROBI,**  
**30191-100 NAIROBI, has been permitted**  
**to conduct research in Nairobi County**

**Permit No : NACOSTI/P/17/45849/19170**  
**Date Of Issue : 26th September,2017**  
**Fee Received :Ksh 1000**

**on the topic: THE EFFICACY OF THE**  
**IMMIGRATION DEPARTMENT IN**  
**CONTROLLING HUMAN TRAFFICKING:**  
**ANAYSIS OF COUNTER TRAFFICKING IN**  
**PERSONS ACT 2010**

**for the period ending:**  
**26th September,2018**

  
.....  
**Applicant's**  
**Signature**

  
  
.....  
**Director General**  
**National Commission for Science,**  
**Technology & Innovation**



**CONDITIONS**

1. The License is valid for the proposed research, research site specified period.
2. Both the Licence and any rights thereunder are non-transferable.
3. Upon request of the Commission, the Licensee shall submit a progress report.
4. The Licensee shall report to the County Director of Education and County Governor in the area of research before commencement of the research.
5. Excavation, filming and collection of specimens are subject to further permissions from relevant Government agencies.
6. This Licence does not give authority to transfer research materials.
7. The Licensee shall submit two (2) hard copies and upload a soft copy of their final report.
8. The Commission reserves the right to modify the conditions of this Licence including its cancellation without prior notice.



REPUBLIC OF KENYA



National Commission for Science,  
Technology and Innovation

RESEARCH CLEARANCE  
PERMIT

Serial No.A 15958

CONDITIGNS: see back page