

**REGIONAL ECONOMIC COMMUNITIES AND TRANSNATIONAL CRIMES: THE
CASE OF HUMAN TRAFFICKING IN THE EAST AFRICA COMMUNITY**

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DECLARATION

This research project paper is my own effort and is from my own research inquiries and conclusions. Other information sources other than my own have been recognized and cited. Furthermore, this research project paper has not hitherto been presented for any academic degree or examination.

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This research project paper has been submitted for examination with my approval as the university supervisor.

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DEDICATION

I would like to dedicate this piece of research to my supportive family who made it possible through moral, financial and spiritual support through my academic journey. To those state and non-state institutions that are trying to save humanity through fighting the vice of human trafficking, otherwise could be referred to as “modern slavery”, your efforts will not go unrewarded. May God give you wisdom and energy to defeat the vice.

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ABBREVIATIONS

AIDS	- Acquired Immuno-Deficiency Syndrome
AU	- African Union
AU. COMMIT	- African Union Commission Initiative against Trafficking
CBOs	-Community Based Organizations
CLDs	-Commercial Living Donors
COMESA	-Common Market for East and Southern Africa
CSEC	-Commercial Sexual Exploitation of Children
DRC	-Democratic Republic of Congo
EAC	-East Africa Community
EALA	-East Africa Legislative Assembly
ECOWAS	-Economic Community of West African States
EU	-European Union
GMG	-Global Migration Group
HAART	-Trace Kenya Awareness Against Human Trafficking
HIV	-Human Immuno-Deficiency Syndrome
ICAT	-Inter-Agency Coordination Against Trafficking in Persons
ICJ	- International Court of Justice
IHRB	-Institute for Human Rights and Business
ILO	-International Labor Organization
IOs	-International Organizations
IOM	-International Organization for Migration
ISIL	-Islamic State of Iraq and Levant
ISIS	-Islamic State of Iraq and Syria
IVF	-In-Vitro Fertilization
JAES	-Joint Africa-EU Strategy
JKIA	-Jomo Kenyatta International Airport
MIA	-Moi International Airport
MME	- Migration, Mobility and Employment
NAPTIP	- National Agency for the Prohibition of Trafficking in Persons
NACOSTI	-National Commission for Science, Technology and Innovation

NCRC	- National Child Research Centre
NGO	-Non Governmental Organization
NPS	-National Police Service
OHCHR	-Office of the United Nations High Commission for Human Rights
RECs	-Regional Economic Blocs
RCK	-Refugee Consortium of Kenya
SADC	-Southern African Development Community
SPSS	-Statistical Package for Social Sciences
TIP	-Trafficking in Persons Report
TVPA	-Trafficking Victims Protection Act
TOC	-Transnational Organized Crimes
UAE	-United Arab Emirates
UKHTC	-United Kingdom Human Trafficking Centre
UN	-United Nations
UNGA	-United Nations General Assembly
UNHCR	-United Nations High Commissioner for Refugees
UNICEF	-United Nations Children's Fund
UNIHCP	-United Nations International Human Control Program
UNODC	-United Nations Office on Drugs and Crime
USA	-United States of America
VoT	-Victims of Trafficking

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ABSTRACT

Generally, the study is about the role of Regional Economic Communities (RECs) in curbing Transnational Crimes using the case of human trafficking in the East African Community (EAC). Consequently, the study examined the magnitude of the problem in East Africa Community, critically reviewed the existing legal regime and norms and concluded with a raft of recommendations to strengthen the ant-trafficking efforts by regional economic communities. The study set out two hypotheses namely that the continuation of human trafficking in East Africa Community is partly attributed to weak institutional and normative frameworks and secondly, that the human trafficking activities in East Africa shift in response to national enforcement efforts. The study that depended on both primary and secondary data used a thematic approach to present the study findings was situated within the rational theory.

While there are no clear statistical data on the magnitude of the human trafficking problem in the EAC, the member states were identified as source, transit and destination countries for victims of human trafficking. Sex trafficking to member states capital cities and coastal towns, trafficking to provide for cheap labor as domestic and farm workers are prevalent forms of internal trafficking. Further, the study established that trafficking of disabled children who are deployed as beggars across cities is a unique form of trafficking. The political turmoil, ethnic and tribal clashes, civil wars, poverty and lack of information were established to as major factors that increase the vulnerability of victims of trafficking. The ongoing political and civil wars have seen a number of underage children being recruited as child soldiers both within and outside the community. The ongoing war against the Somalia outfit, Al-Shabaab has seen many youths being trafficked to Somalia to be recruited as soldiers or be married off to the militants in case of women. While the member states have ratified a number of international and regional treaties, protocols and agreements to jointly fight the vice, the weak and uncoordinated enforcement of these legal instruments, inconsistencies in domestication of the legal instruments coupled with corruption and the deeply established criminal networks have left room for the crime to thrive. Further, the EAC free movement of people and goods policy, state sovereignty and competing interests among member states are also challenges in fighting human trafficking in the region.

The study concludes that the weak legal regime is partly the reason why human trafficking is prevalent in the community. The study further identifies the existence of the EAC structure, the EALA and the existence of a vibrant civil society as opportunities that can deepen the fight against the vice. The study recommends for the adoption of technology, strengthening of capacities, partnerships and inter-government agency coordination, strengthening of compliance monitoring mechanisms and addressing the root causes of poverty, political instability and low employment rates to reduce the vulnerability of victims and improve conviction rates of criminals while protecting and preventing possible victims.

Chapter One

Introduction and Background to the Study

General Introduction and Background to the Study

With globalization, increase in population and in economic activities across the globe, there is significant increase in the volume of exchanges across nations, regions and continents. While a majority of these exchanges are legitimate and beneficial spurring economic growth and development, a significant proportion of the exchanges are illegal, a threat to sustainable development, distorting legitimate markets and threatening healthy living.¹

Global crime actors are on a constant increase, criminal markets are sprouting across the continents allowing for exchange of illegal drugs, arms, stolen natural resources like minerals, trafficked men, children and women for prostitution and provision of cheap labor, trade in protected animal parts and human body parts. In effect, hundreds of billions of dollars of dirty money is circulating globally distorting local economies, corrupting national institutions, fueling conflicts and violence among vulnerable and exposed populations.²

Transnational crime more often than not, is properly planned and executed by organized criminal groups, who have an established market and route for the illegal products. This organization is guided and influenced by the unseen hand of the market. Therefore, the criminal group may vary in terms of composition and the activities that they are involved in, but the

¹Gallagher, Anne. "Trafficking, Smuggling and Human Rights: Tricks and Treaties." *Forced Migration Review* 12, no. 25 (2002): 8-36.

²Adepoju, Aderanti. "Review of Research and Don Human Trafficking in Sub-Saharan Africa." *International Migration* 43, no. 1-2 (2005): 75-98.

availability of market always drives this organization in terms of the actors and the activity that the group is involved in³.

While there are a number of transnational crimes that these groups engage in, the most prevalent across the world include human, drug and arms trafficking, laundering of money, selling counterfeit products like medicine, electronics and machinery. These activities have distorted legitimate markets; for instance, besides facilitating the emergence of virus strains that are drug resistant, counterfeit medicines exacerbates the health condition of sick patients⁴.

Transnational crime refers to illegal activities that are conducted across the borders of more one country. The definition of crime is similar, albeit it is conducted at the global scale. The IRITT (International-Relations-and-International-Trade-Transnational) has focused on transitional crime over the years.⁵ Nonetheless, as individuals and societies have become more connected through globalization, criminals have become more intricate as they continue to extend their activities across various countries and operate alongside legal global activities⁶.

It is important to distinguish between transitional and international crime. Unlike transnational crime which occurs across the borders of two or more countries, international crime can be, and is often conducted within the confines of a single country. Moreover, while perpetrators of transnational crime focus on financial gain, international crime involves activities such as war crimes, genocide, human right abuses and crimes against humanity, among others⁷.As indicated above, human trafficking and slavery, kidnapping, smuggling of goods, counterfeit goods,

³Lee, Maggy. Introduction: Understanding Human Trafficking." In *Human Trafficking*, pp. 13-37. Willan, 2013.

⁴ Ibid.

⁵ Payne, R. (2013). *Global Issues*. New York, New York. Pearson.

⁶ Ibid. p. 256

⁷ Albanese, J. S. (2013). Deciphering the Linkages Between Organized Crime and Transnational Crime. *Journal of International Affairs*, Fall/Winter 2012, Vol. 66, No. 1, pp. 1-16.

cybercrime, trade in stolen art and exotic animals, among other criminal activities are some of the examples of transnational crime. This study will be focused on human trafficking crimes.⁸

Human trafficking is among the various forms that make up the global modern crimes negatively impacting on society today. It is considered amongst the most lucrative of the transnational crimes rivaled only by drug and firearms trafficking. Globally, it is estimated that the criminal activity produces billions of cash annually for sophisticated illegal groups. The Reuters edition of 31st May 2018 reported that the Nigeria's Anti-Trafficking agency NAPTIP and a Russian Ant-slavery group-Alternativa, had received intelligence reports that elaborate plans were underway to transport ladies from Nigeria to Russia for sexual exploitation. This follows the relaxation of the visa rules allowing football lovers to access Russia using just a ticket and a fan pass.⁹

The illegal trade is growing exponentially; hence, the international community must urgently focus on the issue. Based on the current UNODC human trafficking trends indicate that 161 countries have been identified as being affected by the vice with 127 countries being identified as countries of origin, 98 as passage countries and 137 as endpoint states. However, Goodey argues that at the local and international levels, the actual figures are still vague¹⁰. The clandestine nature of trafficking in terms of diversity in magnitude, range, operation and level of strictness coupled with disparities in how trafficking is defined from one country to another, makes it difficult to acquire reliable data on the illegal activity.

⁸ Ibid.

⁹ Adesina, Olubukola S. "Modern Day Slavery: Poverty and Child Trafficking in Nigeria." *African Identities* 12, no. 2 (2014): 165-179.

¹⁰ Goodey J (2008), Human Trafficking. *Criminology & Criminal Justice*, 8(4), 421-442.

Based on the IOM (International-Organization-for-Migration) statistics, around 4 million of the 100 million migrants globally are undocumented, that is, migrants who have been trafficked or smuggled¹¹. Likewise, the Department of States in the US points out that there is a constantly large number of people from different parts of the globe who are in the pipeline, being warehoused by traffickers, waiting for document availability or waiting for new routes before they can be shipped to their destination the primary target being the United States¹².

Further study on human trafficking by UNODC shows only 15% of people trafficked from the East Africa region are taken to the Middle East. Otherwise, most of the victims either remain in their source country or trafficked in the sub-Saharan-region. The number of women victims of trafficking rises compared to men in Sub-Saharan Africa, UONDC reports. However, the UNODC findings are not completely accurate because they are based on reported cases, thus subject to extreme inaccuracies¹³.

In addition, according to UNODC child trafficking statistics, children between 13 and 18 years completed primary or secondary education and have nothing to do are the most vulnerable victims of the crime. The trafficking is mainly perpetuated by people well known to the children including nearest of kin, teachers and religious leaders, among others. The trafficking phenomenon has also been fueled by HIV and AIDS, which has left most children as orphans, thus leaving them more exposed to the crime¹⁴.

¹¹Sita N.M (2003), Trafficking in Women and Children: Situation and Some Trends in African Countries, UNAFRI, May 2003.

¹²Oppong, Steward Harrison. "Human trafficking through organized crime." *International Journal of Humanities and Social Science* 2, no. 20 (2012): pp 37-43.

¹³ Ibid

¹⁴ Ibid

Despite the numerous measure to curb human trafficking, the vice is still a main Trans-national threat to the East African region and global security. The vice sits among those whose prevalence is growing at alarming rates across the globe with around 700,000 aliens being trafficked/smuggled across the globe each year. Moreover, the illegal activity generates around \$ 150.2 billion per year; hence, ranking second highest source of revenue for organized crime. Currently, there around 30 million slaves globally with 80% of them being women and girls. The number of illegal aliens in East Africa is on the increase with the persons moving into major towns of different countries as they travel to other Africa nations as well as other parts of the globe while others seek to become illegal settlers through fake registrations and work permits¹⁵.

Many regional initiatives have also been implemented. Nonetheless, as these normative frameworks are being formed at the regional and national level, there is dispute over the definition of human trafficking and most national laws fail to meet the comprehensive provisions of the Protocol. For instance, some states focus on the trafficking of girls and women or commercial sexual exploitation, while omitting servitude and forced labor trafficking¹⁶.

1.1 Statement of the Research Problem

Each year, millions of children men and women globally fall prey to human traffickers for forced labor, sexual exploitation and domestic work, among others. Although the vice is dominant, human trafficking has not captured the public attention it deserves and is not one of political agenda priorities in the Sub Saharan region, and particularly in East Africa. The social and human effects of trafficking are compelling and the ensuing consequences have long-lasting implications.

¹⁵Mitchell K J, Finkelhor D, &Wolak J (2010). Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study. *Child Maltreatment*, 15(1), pp 18-36.

¹⁶ Ibid.

Besides victims being tortured and abused physically, the vice also results in emotional and psychological trauma as well as the political and economic implications of unabated crime and the effect on society and on individuals is clearly destructive and unacceptable. However, very few persons are apprehended and arraigned in court. Fewer criminals are convicted after the arraignment in courts across the East African Community member states.

The institutions mandated to fight the vice include the Immigration Departments, National Police Service (NPS), judicial officers, while some Non-Governmental Organizations (NGOs) and Community Based Organizations (CBOs) have put efforts towards arresting the menace. However, some of these institutions are either taking advantage of the desperation of aliens to aid their smuggling/trafficking or taking advantage of weak and uncoordinated legal frameworks across borders to aid human traffickers. At the same time, sophisticated trafficking/smuggling cartels collude with respective Government officials, employees of private airlines/organizations and the public transport sector alongside private employment organizations to undermine the fight against the vice by increasingly devising new modes of operations to counter heightened security checks on entry and exit points.

Impacts of the vice include influx of refugees/aliens, increased terror activities, circulation of counterfeit products, proliferation of small arms and light weapons and strain on the country's resources. All these effects have consequent implications on the East Africa's political, economic and social systems which are the key aspects that this research endeavors to address. It is against this backdrop, that it is necessary to critically look at the efforts put in place to curb this vice. To achieve this, the study focuses on analyzing the existing legal frameworks and norms in a bid to identify the challenges and opportunities for collaboration to fight transnational crimes.

1.2 Research Objectives

The main objective of the study is to examine the Role of Regional Economic Communities in curbing Transnational Crimes. Specifically, the study aims;

1.2.1 To examine the problem and magnitude of human trafficking in East Africa Community

1.2.2 To review existing frameworks and their efficacy in curbing human trafficking within the East Africa Community.

1.2.3 To examine the challenges, opportunities and prospects of regional organizations in curbing human trafficking.

1.3 Research Questions

The research will be guided by the following research questions

1.3.1 What is the extent and magnitude of human trafficking in East Africa?

1.3.2 What is the efficacy of the existing frameworks in curbing Human trafficking in East Africa Community?

1.3.3 What are the challenges, opportunities and prospects of regional organizations in curbing human trafficking?

1.4 Research Hypotheses

These study proceeds from the following hypotheses;

1.4.1 The continuation of human trafficking in East Africa Community is partly attributed to weak institutional and normative frameworks

1.4.2 The human trafficking activities in East Africa shift in response to national enforcement efforts calling for collective effort by all states.

1.5 Justification and Significance of the Study

1.5.1 Academic Justification

Academic research is important in understanding social relationships and developing answers to a number of social problems. Apart from providing intellectual satisfaction of knowledge generation, aiding in the development of a body of principles to understand a range of human interactions¹⁷, it offers a practical guidance to solve problems that are facing human interactions in society.

This study is expected to contribute to existing knowledge in the role of regional economic blocs in combating various transnational crimes. In particular, the study contributes to knowledge on human trafficking trends in East Africa giving an academic touch to various agencies involved in solving societal problems that may be contributing to the trends enhancing effectiveness in designing of the regional security architecture so as to improve human and social security in the region and the continent at large.

1.5.2 Policy Justification

Over the past two decades, human trafficking has received a lot of public attention globally. Many regional blocs have enacted policies, countries have attempted domesticating international protocols and enacting national laws to combat the crime yet many of these national policymaking and enforcement agencies have lacked adequate evidence due to limited research on the topic¹⁸.

¹⁷ C R Kothari, Gaurav Garg, (2014). Research Methodology; *Methods and Techniques*; 3 ed. p.5-6

¹⁸Zhang, Sheldon. 2009. Beyond the “Natasha” story: A Review and Critique of Current Research on Sex Trafficking. *Global Crime* 10:178–95.

Based on this study, policy recommendations are suggested to the East African Community governments for consideration and/or implementation so as to improve the existing legal frameworks and norms in combating human trafficking. The study report also anticipates contributing to the efforts within the African Union, United Nations International Human Control Program (UNIHCP) and other ant-human trafficking related Organizations in curbing of transnational crimes for maintenance of international order and security.

1.6 Literature Review

Despite an increased international attention on human trafficking and the significant resources being invested by state and non-state actors, the numbers of the vice victims continue to be on the rise, with over 100% increase in reported victim of human trafficking between 2008 to 2016. Although the increase as reported highlights the focus of institutions in shedding more light in human security, human trafficking is still a concern across the globe as discussed in the continuing sections.

1.6.1 Human Trafficking on International Level

Globally, in 2016, most victims originated from Africa. Since 10% of persons trafficked across the globe in 2014 were citizens from the Sub-Saharan region, the Middle East and North Africa, exploitation is dominant in the continent. Consequently, the international community is being requested to emphasize on addressing human trafficking in the continent instead of dealing with the victims when they are on Europe's doorstep¹⁹.

¹⁹Mitchell T., Tones L, Finkelhor P & Wolak K (2011). Human Trafficking: Issues and Causes

Based on the European Union classification, some of the forms of human trafficking are for exploitation as prostitutes, pornography and other forms of commercial sex. Exploitation for cheap labor by adults, youth and children (domestic, agricultural, farming, fishing, bars/clubs/restaurants, garment industry, diamonds, cocoa farms, coal and other mining industries). Further reasons/purposes of trafficking of persons include begging, petty crime, burglary and collection of government subsidies. Trafficking in human beings results in forced or early marriage, trading in human organs/tissues and cells as well as kidnapping for forced military recruitment (e.g. child soldiers), ideological indoctrination and ransom demand among others²⁰.

In places like Qatar, the United Arab Emirates or Saudi Arabia, demand for trafficking of children for use as camel jockeys is high, whereas it is nonexistent in other Countries. The various human trafficking forms demonstrate the complexity of the vice and confirms its fluidity". Trafficking is both situational and opportunistic and one trafficking form may be prevalent at a certain period before being replaced by other methods later.²¹ Other forms of trafficking have emerged including using technology to advertise and recruit victims of prostitution, collecting and transfer of human eggs for IVF (In-Vitro-Fertilizations) treatment and using children who are trafficked to justify and support claims connected to government subsidies on housing and family benefits²².

Some of the forms of human trafficking include labor exploitation, for sexual and pornographic exploitation, trading in body organs/parts extraction, especially for medical

²⁰Ibid pp. 433-437.

²¹European Union, European Parliament Resolution on the Trade in Human Egg Cells, Official Journal of the European Union, C320E ,15 December 2005 (P6TA (2005) (0074).

²²Jobe, Alison. "The Causes and Consequences of re-Trafficking: Evidence from the IOM Human Trafficking Database." (2010).

transplant. Present day human trafficking occurs domestically (i.e. internal) and across the borders of different nations (i.e., externally) unlike in the old days' slave trade which was purely external. In India, for instance, 90% of the human trafficking is local while 10% occurs across borders. Sex and age are some of the trafficking determinants with male, women and children trafficking being observed in the country. Most countries that witness trafficking of people are either destination, source or transit points, or a combination of two or three of them. Macy gives an approximation that between 600,000 and 800,000 are smuggled across international borders while million others are trafficked within their own countries²³.

Globally, at least 12.3 million people become victims of people trafficking; with various categories becoming targets. However, the challenge is more prevalent among migrants in comparison to other categories of the general population. For the migrants, most of them are subjected to inhuman treatment and conditions, thus experiencing great suffering through traffickers. To maintain order and repress complaints, some migrants have been jettisoned overboard by handlers²⁴.

Victims of trafficking in the sex industry are often subjected to brutality, violence and intimidation. Brutality is highly exercised against migrants, particularly those fail to provide money for payment, by Chinese gangs and their trafficking enforcers. Notably, the perpetrators of the vice from China use tactics such as repeated rape, ransom, cutting off figures, extortion and sexual assault. Furthermore, in situations where the gangs operate as debt collectors, payment is

²³Macy R & Johns N (2011), Aftercare Services for International Sex Trafficking Survivors: Informing U.S. Service and Program Development in an Emerging Practice Area. *Trauma, Violence & Abuse: A Review Journal*, 12(2), 87-98.

²⁴ Ibid. p. 96

extracted through physical and mental coercion with victims being subjected to persecution, torture and revenge.

1.6.2 Challenges Facing International Organizations in curbing Human Trafficking

Most countries across the globe have adopted various legal enactments and regulations that seek to terminate human trafficking and slavery, promoting international cooperation and protecting victims²⁵. However, translating and enacting the legal instruments and regulations has remained the main challenge among most nations. Despite most nations embracing specific penalties for human trafficking, the understanding and interpretation of human trafficking is still vague for example, some countries have laws that accept some forms of exploitation or particular class of victims. Equally, most of legislations are not comprehensive in terms of addressing and approaching all phases of trafficking of people and balancing prosecution safeguarding the security and rights of victims²⁶.

The United Nations General Assembly adopted the UN Convention against crime on 15th November 2000, which was enacted on 23 September 2003. The convention was supplemented by the by adoption of the Palermo Protocol, which suppresses, prevents and punishes human traffickers, particularly those targeting. Concerted action against traffickers at the national level has been facilitated through institutional structure like national rapporteurs, national referral mechanisms and national coordinating structures²⁷. Despite the numerous efforts to curb the vice, it is still recognized as one of the most profitable transnational crime sectors. The progress of law

²⁵Macy R & Johns N (2011), *Trauma, Violence & Abuse: A Review Journal*, 12 (2) pp. 87-98

²⁶Weitzer, Ronald. "Human Trafficking and Contemporary Slavery." *Annual Review of Sociology* 41 (2015): 223-242.

²⁷Ibid.

enforcement has been hampered by the confusion between immigrant related crimes including smuggling and human trafficking; hence, an urgent necessity to set up minimum norms regarding the level and speed of responding by the criminal justice systems²⁸.

1.6.3 Human Trafficking in Africa

An ugly picture of trafficking of people in the Sub-Saharan region is painted by the ILO (International-Labor-Organization). Despite most human trafficking victims of African descent being found in the continent, some of them are also moved to Western Europe and other parts of the globe. Routes that run across Gambia, Cameroon, Senegal, Cote d'Ivoire, Togo, Benin, Gabon, Central African Republic and Nigeria are the main trafficking point in West Africa. The Burkina Faso, Mauritania, Chad, Mali and Niger sub-region is another route often used by traffickers²⁹. The Republic of South Africa, which is often referred as the land of opportunities is the main trafficking destination in South Central Africa. Most of human trafficking victims transported to South Africa originate from the democratic Republic of Congo, Botswana, Ethiopia, Lesotho, Tanzania, Malawi, Zambia, Swaziland and Zimbabwe³⁰.

Apart from Western Africa states where victims work through debt bondage or as slaves in the Cocoa belt, trafficked persons in the rest of Sub-Saharan Africa including South Africa are engaged as homosexuals or sex slaves and commercial sex workers; nonetheless others operate in brothels, hotels and in bars and restaurants. Moreover, other victims work under dangerous

²⁸Ali, Hassan A. Abdel. "Human Smuggling and Trafficking in Eastern Sudan." *Sudan Report* (2017).

²⁹Bratton M, van de Waal N 1998. *Democratic Transition in Africa: Regime Transitions in Comparative Perspective*. Cambridge: Cambridge University Press.

³⁰ Ibid

conditions in construction and mines and factories; while others enter the agricultural sector including fishing; street begging and others in conflict zones are used as child soldiers³¹.

Based on numerous reports, human organ harvesting among victims of people trafficking is on the rise in the Sub-Saharan region. Furthermore, African adult women are being trafficked for sexual trade in Western Europe. Based on the 2009 report by the Nigerian National Agency for the Prohibition of Trafficking in Persons and other related matters, around 10,000 women from Nigerian trafficked for sex trade in Italy. Around 60% of the victims were operated as prostitutes in the Italian sex trade at the time³².

Reports also indicate that international trafficking of young ladies from Russia, Thailand, Taiwan, Asia and parts of Eastern Europe to South Africa involving criminal gangs operating from Thailand, East Europe and Mozambique. Most of the victims from the Sub-Saharan region tend to seek for a better life. As such, the persons aim to escape from poverty, unemployment and ignorance. Traditional beliefs system and cultural values that accommodate trafficking of people as legitimate aspects of legal social structures, for instance, victims providing domestic services as house helps³³. It is tedious to confirm the numbers of persons trafficked from Sub-Saharan Africa because different agencies provide conflicting figures. This is partly because the trade is highly secretive, thus making it difficult to obtain accurate figures. Regardless, the increasing rate of trafficking in person has become an item of concern among most governments in the region³⁴.

Based on analyzed data on trafficking in persons for the last twenty years, Katuthuri points out that other African countries, European, American and Middle East countries are the main

³¹Cho, Seo-Young. "Modelling for Determinants of Human Trafficking." (2015).

³² ibid

³³ ibid

³⁴Aronowitz, Alexis A. "Trafficking and Smuggling of Persons (2001): 163-195.

destinations of children abducted from the East Africa region³⁵. According to UNICEF, sexual exploitation and sex tourism of children from the region has become increasingly alarming with approximately 30% of girls between 12 and 18 years from tourist centers along the coastal area of the East Africa region being involved in sex trade³⁶.

Mitchell notes that in the region human trafficking is a continuous process that occurs both domestically and externally. Local trafficking is endemic with women and children and to some extent men falling victim of the vice to and from the region³⁷. Forced prostitution and marriage and domestic labour are the main factors behind trafficking of girls. Boys are mainly trafficked for forced labour, livestock grazing and other farming activities including fishing and working in the plantation. The main cause of women trafficking is forced prostitution, domestic labour, and working in the hospitality industry while agriculture and manual labour, criminal activities and construction work are the main causes of trafficking among men.

In the rescue politics report, Harrison points out that majority of African states are ranked second tier countries that have made significant gains in implementing laws geared at protecting victims of trafficking. Nonetheless, such efforts have not very successful in the East African countries. In Kenya, for instance, human trafficking has been on a steady increase with traffickers targeting the less fortunate in the society. Major towns like Nairobi and Mombasa have a number of brothels employing vulnerable young girls and women trafficked from EA Community member states and others from globally³⁸.

³⁵Ibid

³⁶Ibid p. 147

³⁷ Ibid

³⁸Odhiambo, Tracy Adhiambo. "A Critique of the Role of the Government in Combatting Human Trafficking in Kenya." PhD diss., Strathmore University, 2017.

The institutions mandated to fight the vice are either complacent with the law, unable to implement and coordinate the laws across borders or taking advantage of the desperation of aliens to aid their smuggling/trafficking, or due to the sophisticated methods trafficking/smuggling cartels are using to collude with respective Government officials, employees of private airlines/organizations and the public transport sector alongside private employment organizations to undermine the fight against the vice by increasingly devising new modes of operations to counter heightened security checks on entry and exit points. This has negatively impacted in the security sector and stability of the region.

1.7 Theoretical Framework

The study relied on the rational choice theory explain why people engage in transnational crimes, specifically human trafficking, either as traffickers or as voluntary trafficking victims and why the vice is happening and recommend on possible adjustments that can deter the crime.

The proponents of the rational choice theory, Adam Smith and Gary Becker, among others, postulate that persons who commit crimes make decisions that are based on cost-benefit analysis of the crime. Criminals are not compelled to criminal activities by any special circumstances neither do they possess any special personalities than the non- offenders and they were not socialized to crime by any culture³⁹.

Gary Becker, one of the proponents, breaks down the theory into an equation highlighting elements that determine the utility or satisfaction of the offender and these elements are critical to this study. In the equation; $E_u = pU(Y-f) + (1-P)U(Y)$, p represents the probability of the offender being apprehended, f is the severity of the punishment once arrested and convicted and Y

³⁹Cornish, D. B., & Clarke, R. V. (1986). *The Reasoning Criminal: Rational Choice Perspectives on Offending*. New York: Springer-Verlag.

represents the benefits of committing the crime without being caught. The elements, probability of being apprehended and severity of the punishment are key to the study objective two that focuses on the efficacy of the existing legal frameworks while the benefits of the crime is key to attempting an explanation of the magnitude of the problem in East Africa Community.

Rational-choice theory is applicable to crime of any type, including the analysis of human trafficking as a crime and the accomplices in the syndicate. The theory assumes that before one commits a human trafficking crime, one will use his/her knowledge on existing information available to him to do a cost-benefit analysis. Such cost benefit analysis is carried out for the whole criminal process, including the consequences of prosecution. Based on cost-benefit analysis, human traffickers engage in smuggling due to the profit obtained in the illicit trade⁴⁰.

Besides, the application of rational choice theory in explaining the drivers of human smuggling activity, the theory has been applied in understanding how states try to maximize their national goals in relations to eliminating human trafficking. If and when the benefits outweigh the costs, then states are more inclined to compliance with such international treaties and agreements. In light of the Palermo Protocol the theory is of importance in understanding why states have complied or not complied with the treaty. Scholars of the rational choice school argue that both hard and soft law obligation are important in determining compliance of states with the protocol. In explaining compliance with international law, circumstances are important for they are factored in the cost-benefit analysis decision of a state⁴¹.

According to the theory, states that are more prone to trafficking of persons tend to have strong inclination towards compliance with the Palermo protocol as this can lighten their costs.

⁴⁰Wheaton, Elizabeth "Cost and benefits of human trafficking (2010): pp 113-141.

⁴¹Estourgie, Savanna. "The fight Against Human Trafficking. Why do Countries Ratify, But Not All Comply with the Palermo Protocol?" (2016).

Secondly, the theorist of rational choice asserts that degree to which domestic legal regime is in line with international treaty is likely to influence decision to implement the protocol. Accordingly, the theory states countries with significance variance between domestic law and the protocol are less likely to comply and implement the treaty.⁴² This theory was thus suitable to explain the causes of continued trafficking consequently, inform strategies that can limit human trafficking in East Africa.

1.8 Research Design and Methodology

The study concerned itself with describing the role of regional economic blocs in curbing transnational crimes more specifically the role of the East African Community in curbing human trafficking. To have a better understanding of the role played by the EAC in human trafficking the study used the descriptive approach of research since it allows for the application of both case study and survey research methods. Through the case study approach, the investigator can closely examine information within a specific context⁴³.

Case studies also facilitate exploration of current social phenomenon using a rigorous contextual analysis of a limited number of situations or events, and their connections. In this study the research used East Africa as a case study. The study endeavored to analyze both primary data and secondary data to understand the magnitude of the human trafficking problem in East Africa Community, existing legal frameworks, norms and their efficacy in addressing the problem, the challenges, opportunities and prospects in the human ant-trafficking efforts being put in place.

⁴² Ibid p.39

⁴³Jackson, S.L. (2009). Research Methods and Statistics: A Critical Thinking Approach 3rd edition. Belmont, CA: Wadsworth.

1.8.1 Data Collection

This study collected data from various primary and secondary sources. The study used both secondary sources data from journal, government reports, articles, IOM publications and research papers. The documents reviewed in the study were limited to 2000-2018 period. 2010 was used as the reference point because it marked a period that statistics from International Organizations started highlighting the problem of human trafficking and how the numbers of victims greatly increased and most East Africa Community members being source, transit or destination countries. The study also used Key interview guides to collect data from the key informant that participated in the study. Interview guide was used to collect data from respondents who are important stakeholders in the fight against trafficking of human beings in the region. Interview data supplemented the data obtained from document analysis.

Unstructured interview guide was used in the study to allow for exploration of human trafficking phenomena in East Africa. The key informants who were included in the study came from Government officials and non-government organization officers. The government officials included Judiciary officials who handle human trafficking cases, labour officials, immigration officials and boarder point police officers manning common boarders like Busia, Namanga, Lokichogio and the Moyale Boarder points. The select boarder points have been selected as they have been reported to be entry points and routes that human traffickers use for cross border trafficking. Reinforcement officers from the Nairobi County government were also included as they engage with street beggars, who, according to literature review, are largely trafficked victims who engage in street begging in exchange for food and accommodation. The non-governmental who participated in the study included informants from International Organization for Migration, the United Nations Office on Drugs and Crime among other civil society organizations.

1.8.2 Data Analysis and Presentation

This research involved search for the articles, appraisal for the selected articles and a systematic method was utilized to analyze, interpret and give a summary that formed the research findings or report. The first step in analysis of the articles that was used in the study entailed document analysis. This included the use of both traditional literature review and scoping literature reviews. This helped in the selection and sorting of documents and articles that were used in the study. The second step that was used in analyzing document was content analysis. Through content analysis categories and themes emerging from the articles was narrowed down to answering the objectives.

The qualitative primary data collected was analyzed using content analysis. This entailed the following stages. Data was transcribed thereby reducing the data into manageable levels. After the transcription, the data was coded with categories developed based on the data. After the development of categories, themes were developed based on emergent categories. The themes were then used to answer the research objectives.

1.9 Organization of the Study

This study is made up of five chapters. The first chapter, introduces the social problem under investigation through a background to the study and the existing literature, outlines the study objectives, the research questions, the study design and methodology used to study the phenomenon. Chapter two investigates the extent and magnitude of the human trafficking problem in East African Community. The chapter explores the various types of human trafficking existing, factors that are contributing to human trafficking and the social, political and economic impacts of this transnational crime.

Chapter three presents and critically analyses the global, continental and regional legal frameworks and norms that are in place to help eliminate trafficking in persons in and outside the region. Chapter four explores the challenges faced by regional economic blocs, specifically the East African Community in fighting human trafficking. The chapter also explores opportunities that can be exploited to enhance and deepen the fight against trafficking of persons and the associated prospects. Chapter five summarizes the study, presents conclusions based on analyzed primary and secondary data and presents study recommendations to the study and further areas of research on related problems.

Chapter Two

The Problem and Magnitude of Human Trafficking in East Africa Community

Introduction

This chapter examines the problem and magnitude of human trafficking in the East Africa Community. The chapter also identifies the factors that promote human trafficking, the trends and the employed efforts in countering the illegal trade in east Africa community. The chapter explores the problem in a global, continental and regional perspectives, pointing out the factors that are promoting this problem and the impact of the problem globally, continental wide and at the regional level. The chapter infuses both primary data and secondary data to explain the magnitude of the problem.

2.1 The Extent and Magnitude of the Problem in the East African Community

The East African Community is made up of six countries; Uganda, Kenya, Tanzania, Rwanda, Burundi and South Sudan. While there is little statistics recorded on the extent of human trafficking in East Africa due to the secretive nature of the crime, the East Africa Community countries are classified as sources, transit routes or destinations for human trafficking victims. Individually, each country has struggled to put in place legal mechanisms to curb the crime⁴⁴.

The Trafficking in Persons report of 2017 categorizes Kenya, Uganda and Tanzania to being Tier 2 countries. These are states with governments that have not managed to completely conform to the TVPA but gradually making significant their efforts towards compliance. Rwanda is placed under Tier 2 watch list, a category that comprises countries whose governments have not

⁴⁴Mensah A., Chris. R & Osei S. "The Modern Trend of Human Trafficking in Africa and the Role of the African Union (AU)." (2017).

fully complied but have made some effort. Within the East African Community, South Sudan and Burundi are classified as tier 3 states, whose governments do not conform to the TVPA and not compliance efforts are being made⁴⁵.

The East Africa Community states are sources, provide for transit routes and are destination countries for trafficking victims. Both intra community and international movement of people takes place. Kenya, Uganda, Tanzania and South Sudan to a lesser extent play host to a number of victims who are exploited to provide for sexual services, forced labor, domestic services, work in massage parlors, restaurants and bars, street begging and vending⁴⁶.

Major cities in East African countries are hosting a number of women and children who are exploited sexually and some serving as domestic workers. In Nairobi, Mombasa, Kampala and the Tanzania coastal strip, a number of East African Community member state citizens are involved in sexual exploitation while there are a number of Nepalese and Indian women who are exploited in sex night clubs providing entertainment services, known as *Mujra* dance. These women are facing debt bondage and by dancing and through prostitution they are paying off the debts⁴⁷.

Underage children from EAC member states and from Ethiopia, Eritrea and DRC are exploited to provide labor in agricultural fields, cattle herding, mining grounds, fishing, sex tourism and hawking in the streets. The 2017 Trafficking in Persons Report indicate that majority of these traffickers are facilitated by victim's relatives, friends and close associates with promises for employment opportunities. The region is also identified to be among the origin and a transfer route in transnational human trafficking. Young women from the region are the most vulnerable

⁴⁵2017 Trafficking in Persons Report. <https://www.state.gov/documents/organization/271344.pdf>

⁴⁶Ibid.,44

⁴⁷Ibid

with promises of job opportunities in the Middle East more specifically, Saudi Arabia, Lebanon, Qatar, Kuwait, UAE and Oman where they are subjected to exploitative working conditions as domestic workers, masseuse and manual laborers⁴⁸. Gilbert, an elderly father of seven accepts during an interview that the promise for a well-paying job, as a domestic manager, in Saudi Arabia made him persuade her daughter to accept the offer so that she could help in paying school fees for her siblings. The job, salary and working conditions were not as lucrative as promised.

Employment agencies, both licensed and unlicensed, are critical in the illicit trade as they influence the trafficking of vulnerable people play by luring victims from EAC countries through promising them employment opportunities abroad. The employment agencies operate in a secret network that they are easily able to connect and move victims from one country to another. For instance, the Kenyan based employment agencies maintain offices in Uganda and Tanzania that help them recruit Ugandans, Tanzanians, Rwandese and Burundi citizens. This is despite the Ugandan Authorities banning any recruitment of its citizens to the Middle East for domestic labor in 2016, a number of Ugandans still make it through Kenya and Tanzania⁴⁹.

Recruitment of boys, young men and women to fight is also a problem in the EAC. Due to proximity to the crisis hit Somalia, a number of young men have been recruited, some forcefully while others are coerced to join criminal and terrorist groups in Somalia. In 2015, there was an increase in the number of children being recruited to non-state armed groups that are in support of the Burundian government. These recruits were picked from a refugee camp in Mahama in Rwanda. Those who were not heeding to the coercions, were intimidated, brutalized and assaulted

⁴⁸2017 Trafficking in Persons Report. <https://www.state.gov/documents/organization/271344.pdf>

⁴⁹Fitzgibbon, Kathleen. The scope of Trafficking in East Africa." *African Security Studies* 12, no. 1 (2015).

to force them join. This problem is exacerbated by national regional push-pull framework that makes trafficking syndicates thrive and evade the law enforcing agencies⁵⁰.

Based on the Refugee Consortium of Kenya (RCK), 2013, at least 50 girls aged between 10 and 15 are sold each week to operate as sex workers in the country's main towns⁵¹. The traffickers generate approximately \$40 million each year. In the East African Community, member states are increasingly becoming sources, transit routes and preferred destination for victims of human smuggling/trafficking, majority drawn from Somalia, Eritrea and Ethiopia. Others also transiting through Tanzania, Malawi and Mozambique to their preferred destinations. Whereas children from Ethiopia, Burundi, South Sudan, Somalia, Uganda and Tanzania are exploited as prostitutes or provide for cheap or forced labor in member state capital cities and urban centers, others are sexually enslaved in the East African coastal towns, Others also voluntarily migrate to seek better employment opportunities within East Africa, South Sudan, the US, the Middle East and the United States.

The key entry points of smuggled or trafficked human victims into in East Africa include Marsabit-Moyale boarder, Wajir, Mandera and Garissa, Kajiado, TaitaTaveta and Kwale Counties remain strategic exit points for aliens destined for Southern African countries and Europe. Meanwhile, aliens from Bangladesh, Yemen, Pakistan, India and Sri Lanka are smuggled through Jomo Kenyatta International Airport (JKIA), Moi International Airport (MIA) and Isiolo International airport. The Jomo Kenyatta International Airport remains the largest exit point

⁵⁰ Ibid

⁵¹Sambo (2001), Human Trafficking in Tanzania: Problem and Consequences.

utilized by traffickers since the ban by the Uganda Ministry of labor banning travel of its citizens to the Middle East for domestic labor⁵².

2.2 Factors Facilitating Human Trafficking in the EAC

A number of universal and local factors make victims vulnerable and traffickers able to facilitate the committing of the crime. The factors are numerous with each region having their own. The phenomenon is frequently influenced by economic, social, political and cultural factors. While these factors could be unique to each individual region, other factors are either common to the vice in general or are prevalent in several regions, cases or patterns⁵³.

A number of local factors can be attributed to the persistence of the problem within and outside the EAC community member states. The local factors could include poverty, Unemployment, political instability, Natural disasters, ethnic and tribal wars, economic and social stability among others. Human trafficking is also caused by lack of reasonable and realistic life prospects, social conflict and war situations, sectarian violence, oppression and the collapse of the family structure. In addition, illiteracy, gender oriented discrimination, the HIV-AIDs scourge and inadequate information also shape a favorable environment for human trafficking⁵⁴.

2.2.1 Poverty and Unemployment

Poverty is a catalyst to Human Trafficking globally where an individual desire to move in search of better opportunities. The desire to escape unemployment and poverty is one of the

⁵²Ondieki, J. "Human Trafficking and Its Impact on National Security in East Africa: A Case Study of Vice in Kenya" (2017).

⁵³ILO. Forced Labor and Human Trafficking. Guidelines for Labor Officers in Zambia. Geneva, Switzerland: International Labor Organization, 2008.

⁵⁴UNDP 2006 Kenya National Human Development Report: Human Security and Human Development-A Deliberate Choice, Nairobi p. 49

narratives used by traffickers to easily trick victims with a promise of better opportunities. Parents are reportedly to be selling off their children to offer labor in exchange of money. Victims are supposed to work to clear the debts and those who protest are threatened with violence and even death. Others marry off young children in a bid to get out of poverty while others facilitate the trafficking of their relatives in a bid to earn. A report by the Southern Poverty Law Centre indicate that majority of the trafficked persons source is countries that are with high unemployment and poverty rates while the destination countries have low unemployment and low poverty levels⁵⁵.

Poverty was cited by all the key informants as the significant contributor to human trafficking in East Africa. Poverty, it emerged from the interviews it allows the traffickers to take advantage of the people's situation by offering them "a way out of their misery". However, according to the IOM official who participated in the study, victims of human traffickers mainly originate from the poor households and individual lacking employment opportunities. Poverty, is also a major cause for domestic child trafficking as parents are forced to exchange their children to traffickers in expectation of earning income⁵⁶.

In a study conducted in Tanzania, the survey of 15% of children who work within the informal sector point out seeking for opportunities to be employed as the main cause of moving their current areas. Another research on the country pointed out that 40% of the respondents on sexually exploited children cited job opportunities and poverty as the main causes of migration from their homes communities. Lack of employment opportunities at destination point increases the pressure among children to take work that is exploitative⁵⁷.

⁵⁵Erika Wright. Poverty and Its Contribution to Human Trafficking, April 2015

⁵⁶ Interview held with Jane Cheptoo, an IOM staff on 7/10/2018

⁵⁷ UN- Forum on Human Trafficking (2010)

In the East African Community, it's only Kenya that is ranked a medium Human Development country while the rest of the countries are categorized as low human development countries. This makes the East African residents more vulnerable to human traffickers as they seek better opportunities. The statistics were affirmed with interviews conducted, that pointed to the lack of employment, poverty and lack of education as drivers of human trafficking from the victims side, victims are voluntarily willing to migrate to developed countries in search of employment while some, especially young energetic men have moved to join criminal and terrorist groups in Somalia and rebel groups in Burundi⁵⁸.

Victims who are trafficked due to the poverty levels engage in either forced labor or prostitution either within the East African Community or globally. Poverty is responsible for the number of young girls working as domestic workers in EAC country capitals, young boys working as cattle herders in Kenya and Uganda while a number are engage in mines, sex tourism among others.

2.2.2 Political Instability/ Ethnic and Tribal conflicts

Globally, traffickers have a keen interest in individuals or communities with populations that are susceptible and leading a strenuous life's. A cohesive and politically stable society cannot offer this kind of susceptibility since systems are in place that take care of the populations and check on who is coming in and going out of the state's territory. War thorn countries' citizens are always on the lookout for better options. Traffickers take advantage of political instability to traffic victims into and out of conflict zones.

⁵⁸ Interview held with Mercy Awino, an Immigration officer based at Busia border point on 8/10/2018

Trafficking into and within the conflicts zones happens when children, men and women are forcefully recruited into militias as child soldiers, domestic servants and women are sexually exploited. For instance in the conflict stricken Syria, the growing and spread of the control by Islamic States, Islamic State of Iraq and Levant (ISIL) and Islamic State of Iraq and Syria (ISIS) has seen increased trafficking of the Yazidi community who are a religious minority in the area⁵⁹.

During the interviews, armed conflict in the greater Eastern region and Horn of Africa emerged as a significant contributor to high levels of migration which facilitate trafficking. As a result, the migrant move into neighboring countries making them vulnerable to human traffickers who easily allure them. Conflicts according to an interview with a government official, results into a spike in the vice in the East African Community member states, with Kenya, Uganda and Tanzania most affected. These countries also have a significant proportion of refugees that have migrated from conflict zones in Great lakes and horn of Africa. However, one of the NGO official who participated in the study opined that Kenya has been the most affected by conflict as a cause of human trafficking because of its position geographically and as a transit route for traffickers⁶⁰.

In Africa it is not different, the Boko Haram group operating in parts of West Africa (Nigeria and parts of Cameroon) strives to enslave populations in the areas that they control. Boys are recruited as suicide bombers while women are married off to militants. Children are compelled to beg along the streets and working in a bid to raise funds for the group. Trafficking out and through conflicts zones is also facilitating human trafficking. People are attempting to flee conflict prone areas or send their children and women out of conflict areas often get themselves onto the

⁵⁹Nikita M.: Surviving Islamic State: The Plight of the Yazidi Community.

⁶⁰ Interview held with Peter Kyalo, a staff at Haart Kenya NGO on 12/10/2016

traffickers' paths. The creation of asylum seekers and escapees increases vulnerable victims of trafficking⁶¹.

The East African Community is no exception. The political crises in Somalia, Burundi and South Sudan has generated a large number of refugees who are susceptible to trafficking. Data showed that trafficking of victims from the refugee camps in Kenya, Uganda and Rwanda are most vulnerable to be recruited to join Al-Shabaab militants in Somalia, some in Rwanda have been recruited as soldiers for the Burundian opposition rebels, as domestic workers in the respective cities and as sexual workers in the regional capital cities and coastal strips. Some victims have been trafficked to the Middle East with a promise of employment and better future while some children are forced to walk on their way to the destination countries.

2.2.3 Economics of Human Trafficking

Human trafficking is an organized crime with proceeds from trafficking driving the syndicate. Human trafficking in East Africa is in most cases a racket that involves the police, judiciary officials, immigration officers and the traffickers. This was affirmed through the interview, an IOM interviewee noted that human trafficking is caused by both supply and demand factor, with the economics of human trafficking the significant drivers. Trafficking as a business it emerged involves both “sellers” and “consumers”. In addition, the trafficking business involves also “wholesalers”, the recruiters, transporters, and traffickers who profit along the value chain. While the participants in the study were in agreement that economic of human trafficking is the main pull factors, Kenya, it was observed, has some of the larger-scale organized trafficking rings

⁶¹The Global Initiative Against Transnational Organized Crimes.

in the region that spans to other East African countries⁶². These include the licensed and unlicensed recruitment agencies that have branches in EAC countries and with deep connections with immigration and law enforcing officers who facilitated smooth movements.

Just like economics, market forces of supply and demand drive the human trafficking industry. The demand for cheap labor in agricultural farms, restaurants, industries and for sexual activities does fuel the extent of the vice globally and in the EAC. Voluntary victims are more often than not promised safe working environment with good pay, promises that never materialize⁶³.

The exploiters or beneficiaries of this labor pay less than the minimum wage and with horrible working conditions with the comfort that the victims cannot report or have access to the Authorities. The victim's documents are confiscated or even defaced making it difficult for the victim to flee. Cheap labor increases the profit margins for any business that is relying on trafficked victims. The International Justice Mission estimates that 26% of the world's trafficking victims are involved in forced labor.⁶⁴

For victims who are trafficked to be exploited sexually, the availability of male exploiters ready, willing and able to pay for sex forms the first level of demand creating a market. The growth of cities, towns and urban centers contributes to residing populations that are willing and able to pay for sex. This includes the increase of pedophilic tourists who make attractive payments to women and young girls. This is a true reflection of sex trafficking in East Africa Community⁶⁵.

⁶² Interview held with IOM official, Eliud Masiga on 08/10/2018

⁶³Bales, Kevin. "Understanding the Demand Behind Human Trafficking." A paper Presented to the National Institute of Justice (2003): 15.

⁶⁴ Ibid

⁶⁵Adepoju, Aderanti. "Review of Research and Data on Human Trafficking in Sub-Saharan Africa." *International Migration* 43, no. 1-2 (2005): 75-98.

The number of sexual workers in brothels operating in cities, urban centers and along the transport corridors in East Africa is increasing creating more demand for victims. The victims are from both East African Community member states and from other countries. According to a police officer in one boarder point and a truck driver who plies the Kenya-Somalia- Uganda- Rwanda transport corridor, who participated in the study, agrees that truck drivers facilitate in the process of fulfilling the demand. The track driver, Abdullahi Asad, who transports goods from Kenya to Somalia indicated that he comes back with four Somalia women who are transferred to brothels in Nairobi and Mombasa⁶⁶.

Pedophilic tourists along the East African coastal strip increases the demand levels for sexual traffickers who have established brothels and ‘escort’ firms offering a variety of ladies to accompany tourists who pay the brothel business owners who then pay the victims. The business runs just like a legal company making the operations more complex for law enforcers. The brothel owners are well connected people and some are high government officials. This makes it easy for them to navigate through the law enforcers as it lowers the risk of apprehension and raises the profit margins of business⁶⁷.

The availability of demand for cheap labor, sexual workers and the weak institutional legal structures and norms to prevent, protect and punish human trafficking offenders has allowed for the thriving of the business in East African community cities, mines, domestic households and the coastal strips. The economics’ principles can also be utilized to fight the crime by dismantling the supply chains, increasing the probability of arrest and prosecution of criminals and push up the cost and risk of doing ‘business’ so as to contribute towards curbing the crime⁶⁸.

⁶⁶Interview held with a police officer, Eric Busuben on 12/10/2018

⁶⁷Kyle, David, and Rey Koslowski, eds. *Global Human Trafficking: Comparative Perspectives*. JHU Press, 2011.

⁶⁸ Ibid.

2.2.4 Lack of Information to the Vulnerable Communities

Lack of information to vulnerable communities is among the influencers of human trade. Vulnerable communities in most countries may take the form of marginalized communities or community in conflict regions. These communities in most occasions are excluded from the mainstream communities. This exclusion results in disenfranchising the communities from both economic resources, political and education resources⁶⁹.

Exclusion from educational resources results in lack of education and ignorance thereby leading people being ignorant about trafficking, but is not a necessary precondition. Information access is an important factor in empowering communities with information concerning their rights. Information access is a mandate of the government that in most cases fails in its mandate leaving a gap that the non-government organizations aims to fill. This sometimes results in the exclusion of certain communities who may not be reached. NGO work in facilitating access to information is quite often linked with civic education and advocacy where community members are taught their rights⁷⁰.

Another related factor to lack of information is low literacy levels, a crucial reason behind child trade as it makes victims more vulnerable for individual households and communities. Low literacy level enhances the vulnerability of community members who have less education. This is because such members access to employment opportunities and empowerment may be limited. A situation that may make them unchallenging targets for would be traffickers in societies. Lack of education increases vulnerability towards trafficking, and other social problems for that matter⁷¹.

⁶⁹Khowaja, L (2012). Women Trafficking in Asia. *The Journal of the Pakistan Research*, 62(7), 812.

⁷⁰Sochi G. (2002). Human trafficking face in different societies.

⁷¹ Interview held with IOM official, Ann Muthoni on 10/10/2018

2.3 The Impact of the Human Trafficking in East Africa Community.

The cost and impact of trafficking of people on the social, economic and political system as well as individuals concern scholars and practitioners. While human trafficking is a crime its effects are felt within a country and beyond borders in more than 100 countries significantly affected by it. This section describes, the socio-economic and political impacts associated with human trafficking.

2.3.1 Socio-Economic Impact

Attempts to measure the impact of trafficking have proved challenging over the past decades due to the hidden cost and benefits associated with trafficking business. The chief significant effect associated with trafficking relates to the lost opportunities that arise out of loss of human resources and future employability of such resources. Besides, the lost opportunity to use the human resource productively, traffickers results in loss of remittance from the victims. This is because in some a number of cases the victims are expected to pay the human traffickers the debt for being trafficked⁷².

Given the annual level of remittances to countries in East Africa as well as other countries in Africa, the lack of remittances has a potential loss on economic development of the country. According to Zimmerman & Hossain, each year, it is estimated that remittances made to countries that are categorized are US\$ 325 billion or thereabouts, thus loss of remittance through trafficking can be approximately US\$ 60 billion⁷³.

⁷²Naik, A. B. (2018). Impacts, Causes and Consequences of Women Trafficking in India from Human Rights Perspective. *Social Sciences*, 7(2), 76.

⁷³Zimmer C. & Hossain W, "Human Trafficking Understanding" *Social Science Journal*, 2011, 78(5):327–35.

Although estimation of loss of labor productivity can be approximately with some level of significant success, the same cannot be said of loss of labour attributed relating to costs. Child labour represents significant loss that can be measured in terms of generation productivity loss. Apart from loss associated with the victims, another potential loss relates to the implementation agencies in this the government or the state. The government through the various implementing agencies spend considerable amount of money on countering human trafficking. In cases where success is achieved in combating human trafficking, government will spend less money on curbing human trafficking thus implying more finances available for development⁷⁴.

Apart from foregone benefits associated with human capital and remittances, trafficking is results in social costs. The first social costs associated with trafficking relates to the direct impact that trafficking has the on the immediate family. As a result of trafficking the nuclear family and extended family may be broken down thus resulting into more psychological pain to the affected families. This has more negative effects on the children who in some instances are brought out in families where there exists absentee parent⁷⁵.

Besides the impact on the family unit, human trafficking portends significant effects on the health of the victims who can be exposed to harmful environment subjecting the victims to more harm thereby affecting their health. Human trafficking has a threefold impact at the social level. Firstly, it can result into affecting the health and human potential victims directly. Human trafficking can result into misuse of a victim as a child laborer or child slave thereby affecting their health directly⁷⁶.

⁷⁴Le, T. H. (2017). *Human Trafficking in Vietnam: Preventing Crime and Protecting Victims Through Inter-Agency Cooperation* (Doctoral dissertation, Queensland University of Technology).

⁷⁵Ibid.

⁷⁶Ibid. P. 77

Human trafficking also entails the likelihood of subjecting the victims to substance and drug abusers by their traffickers. Some traffickers force women or children to engage in drug trade or abuse thereby exposing their mental health due to the addiction associated with the use of drugs. Some of the victims are also forced to use drugs as a way of maintaining their trade, for instance women or girls engaging in sexual trade may be forced to use drug as a way of ensuring they are able to take in more clients. This in some cases results to the mental breakdown of some weapon whose recovery is hampered over their lifetime⁷⁷.

2.3.2 Political Impact

Besides the tragic impact on individuals, trafficking of people has escalated to a level its impact has been felt on both domestic and foreign policies of many countries, particularly in countries where trafficking is a major problem. Because trafficking involves migration, the first impact on trafficking in countries has been on migration policy. As a result of increased smuggling of persons, some of the countries have been faced with problem of increase in number of migrants. The consequence of this has been the rise of nationalism across countries, with government emerging in European Union states and USA with a stricter migration policy. For instance, rise of nationalism has been experience in USA with the emergence of Donald trump presidency and the new government in Italy⁷⁸. This only serves to highlight the impact that human trafficking has had in migration policies. Italy is viewed by many as the first point of entry to Europe before moving to other countries. As a result, Italy has faced significant problem that has led to emergence of nationalist government such as the government elected in 2018⁷⁹.

⁷⁷Niewiarowska, B. (2015). A Global Study of Human Trafficking Legislation: Causes and Effects. *International Relations Honours Thesis, New York University*.

⁷⁸Ibid. 7(2), 76.

⁷⁹ Ibid.

The emergence of stricter migration policies has not been a preserve of developed countries only but within the East African region. Unlike other countries in the East Africa community, Tanzania has stricter migration and labor laws attributed to fear of increased migration from other member states in the community. Because trafficking involves the movement of goods and people across international borders, one of the important issues that have emerged in the region has to do with free movement of persons and goods, with Tanzania government adopting a stricter policy even against the citizens from other member states⁸⁰.

Another political impact of the human trafficking problem relates to migration policies. The rise in smuggling across member states has attracted attention to border control policies. One of the responses to addressing human trafficking has been addressing the concern of porous borders in many countries through tightening border through strengthening border control. Many countries across the world are increasingly spending significant amounts their expenditure on tightening border to limit the smuggling of persons. Australia and USA have led in this effort. Globally and regionally, cooperation among nation states towards addressing the trade in human beings relies on actions meant to prevent movements that are deemed irregular and suspicious in nature and deter undocumented migration while promoting legislation of national and regional policies to help in this course⁸¹.

In most countries, human trafficking has been viewed as a problem of irregular migration. As a result of the definition of trafficking with regards to uneven migration, the attention of measures to curb trafficking focuses mainly on stopping illegal entry. This at times is carried out

⁸⁰Artadi, E., Bjorkman, M., & La Ferrara, E. (2011). Factors of Vulnerability to Human Trafficking and Prospects for Reintegration of Former Victims. Evidence from the Philippines. *Milano: Bocconi University*.

⁸¹Ibid.

without regard for human rights, more so in cases where arrest is carried out there exists the danger that the trafficker, recruiters and victims.

2.4 Conclusion

Human trafficking is still a problem in the East African region. However, this chapter concludes that relevant and exact statistics on human trafficking in East African community is still lacking. Despite this the chapter reveals that the three big countries in the region, Kenya Uganda and Tanzania have a tier 2 level categorization while the remaining countries have tier 3 level classification. Human trafficking is linked to many causes in the region. The critical reasons behind the rise of human trafficking are poverty and unemployment, political instability, profiteering from human trafficking. Human trafficking in East Africa has resulted to both socio-economic and political consequence across the world and in East Africa. Specifically, human trafficking has led to breakdown on families, health problems to victims, loss of remittances to a country, loss of human productivity, development of new migration policies, establishment of border control system and disregarding of human rights.

Chapter Three

The Efficacy of Ant-Human Trafficking Legal Frameworks

Introduction

This chapter critically examines the existing ant-human trafficking legal frameworks and norms that are in place to facilitate ant-human trafficking efforts by the EAC. The chapter critically examines the Palermo protocols which are products of the Palermo convention, the African Union internal and external signed agreements and other legal frameworks and norms existing within the East African Community.

3.1. International Legal Instruments and Norms

3.1.1. The Palermo Protocols

Cognizant of the magnitude and negative impact of transnational crimes to the global world and the individual countries, the United Nations General assembly via resolution 55/25 of November 15, 2000 adopted the “The United Nations Convention Against Transnational Organized Crime” as the first legal instrument to help in addressing the Transnational crimes menace. The instrument, supplemented by three protocols, came into effect in 2003 after member states signing in Palermo Italy⁸².

Ratification of these protocols by individual states is a commitment to collaborate efforts against transnational crimes by putting in place a series of legal instruments that criminalize transnational organized crimes including human trafficking, smuggling of small arms, money laundering among others. The three separate protocols; the Protocol to Prevent, Suppress and

⁸²Estourgie, Savanna. "The Fight Against Human Trafficking. (2016).

Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplement each other by addressing different transnational crimes. The study interests itself with two of the three⁸³.

As of 1 June 2005, a number of Africa countries had ratified the Palermo protocol. These countries included Benin, Burkina Faso, Gambia, Liberia, Mali, Mauritius, Nigeria, and Senegal. In addition, countries such as Guinea-Bissau, Sierra Leone and Togo have signed but not ratified while to date it is not clear whether Ivory Coast has signed nor ratified. Among the East Africa countries, Tanzania is yet to ratify it although it's a signatory while Kenya and Uganda have ratified the Palermo Protocol⁸⁴.

3.1.2 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

Realizing the need for a comprehensive approach against human trafficking especially women and children, state parties adopted this protocol in December 2003 with an aim to have in place a common definition of the crime of human trafficking and have universally agreed upon guidelines on punishing of human traffickers, protecting trafficking victims and their rights and promoting cooperation among states in order to meet the objectives of the Palermo convention⁸⁵.

Based on the Protocol human trafficking refers to the “recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion,

⁸³Ibid.p.82

⁸⁴Ankrah, Chris & Sarpong, *supra*, at 56-58

⁸⁵ United Nations Convention Against Organized Transnational Crime and The Protocols Thereto. United Nations, New York 2004

of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation”⁸⁶.

At the minimum, abuse includes the exploitation for prostitution of others or other forms of sexual exploitation, slavery or activities related to slavery, forced labor or services, the extraction of organs and servitude. Despite the victim’s consent, the Protocol points out any use of the mechanisms mentioned above is equivalent to human trafficking. Though it represents a breakthrough in the area of trafficking in persons, the Protocol is not without its limitations. First, it focuses excessively on the criminalization of traffickers to the detriment of making the protection of trafficked persons the priority. There is need for a more balanced approach in dealing with traffickers and victims of trafficking⁸⁷.

Secondly, for the comprehensive act of trafficking in persons to be established under the Trafficking Protocol, three elements that must be ascertained: These are the activities that constitute trafficking in persons, (these being the recruitment, transportation, harboring and receipt of victims); the method employed to recruit the victims (force, coercion, fraud, abduction, deception and abuse of power or of position of vulnerability) and the intention or *mens rea* which is exploitation (though prostitution of others, sexual exploitation, forced labor or services, slavery or practices similar to slavery)⁸⁸.

The purpose of the activities of the trafficker must therefore relate directly to the intention of the trafficker, and this must be for exploitation. *Mens rea* in trafficking as in many other crimes

⁸⁶Adepoju, A. 2005 Review of Research and Data on Human Trafficking in Sub-Saharan Africa, in Laczko, F. and E. Gozdzia (eds), *Data and Research on Human Trafficking*.

⁸⁷ Ibid.

⁸⁸ Ibid

is however very subjective and might therefore be very difficult to prove in a court of law. Under the Protocol, it is only in the case of trafficking in children, unlike that of adults, that only the activity (recruitment, transportation, transfer and receipt) and the purpose (financial or other profit through exploitation) are relevant. The means of trafficking are not⁸⁹.

Thirdly, although the Trafficking Protocol includes measures to protect trafficking victims, the parties to the protocol have been given leeway to choose whether to place victim protection as their priority. The basis of the trafficking Protocol lies on the foundation that states would domesticate the protocol as this would help in the enforcement of the protocol and allow of cooperation of different states in curbing human trafficking⁹⁰.

Despite the protocol's definition of exploitation, there is however no standard or universal definition of what constitutes exploitation. The worldview of what the terms "prostitution of others", "sexual exploitation", "forced labor" and "slavery" entails is varied. The problem with the definition of prostitution was likewise experienced during the drafting of the Palermo Protocol where different stakeholders defined the same set of facts differently depending on their interests and ideologies. In some countries for example, prostitution is not regarded as a criminal offence whereas in others it is expressly prohibited. What constitutes forced labor is another controversial issue⁹¹.

The reality in many families especially in Africa and in Kenya in particular is that child labor is often employed in order to add to the family income in order to maintain a reasonable level of sustenance. Some forms of labor have also often been relegated to women and therefore they

⁸⁹ UNODC (2008). Strategies Against Human Trafficking: The Role of the Security Sector, USA

⁹⁰ Abebe, Tsion Tadesse. "Migration Policy Frameworks in Africa." (2017)

⁹¹ Pearson, E. Human Traffic, Human Rights: Redefining Victim Protection, Anti-Slavery International, London, 2002

would be expected to perform certain activities albeit against their personal choice. This may be viewed by some as forced labor⁹².

Regardless of these clarifications, the understanding of the element of forced labour continues to vary from community to community across the globe. Fourthly, the Protocol does not stipulate how trafficked persons are to be identified as belonging to this category. On this point, the Canadian Refugee Council stated that, "If authorities have no means of determining among the intercepted or arrested that is being trafficked, how they propose to grant them the measure of protection they are committing themselves to? Identification of trafficked persons is important in order to be able to protect them from immediate expulsion where they may have valid reasons for remaining within a certain state for reasons of security including seeking of asylum⁹³.

The Palermo Protocol however does not have this minimum standard. There is a great need to create a comprehensive legal definition of trafficking in persons that will establish it as an international crime and a human rights violation". Lastly, this Protocol only applies to those states that are party to it. In some countries such as Kenya, international conventions only get the force of law after they have been domesticated into legislation. Whereas its final provisions may not be perfect, the Palermo Protocol has been a great achievement to the international community in the area of development of legislation regarding trafficking in persons. It is hoped that Kenya shall take active steps towards its codification into domestic legislation⁹⁴.

⁹²Malcolm N. Shaw, *International Law, Fourth Edition*, Cambridge University Press, 2000.

⁹³Freeman Michael, *Human Rights: An Interdisciplinary Approach*, Cambridge Polity, 2002.

⁹⁴Derks A., *Combating Trafficking in South-East Asia: A Review of Policy and Program Responses*, Migration Research Series, No.2. 10M, Geneva, 2000.

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

Since its inception, the Smuggling of Migrants Protocol has garnered considerable support worldwide. Following its adoption in December 2000, 112 states signed it on the day of adoption with a further 40 states ratifying it within 2 years. Although over 60 states have ratified it, the protocol has gained considerable support among countries in Europe and Latin America. However uptake by Asian and African countries has been slowed with majority the countries yet to sign and ratify⁹⁵.

While human trafficking is a separate crime from immigrant smuggling, the two crimes can overlap and victims of smuggling turned to victims of human trafficking when being exploited either sexually or on forced labor. Smuggling involves the provision of fraudulent services, transportation and /or documentation, to an individual to make an illegal entry to a state⁹⁶.

The Protocol against the smuggling of migrants by land, sea and air was adopted by the general assembly in January 2004 with an objective to provide for cooperation among state parties in preventing and combating smuggling of immigrants and protect the rights⁹⁷ of those smuggled.

Fraudulent transportation and falsification of documents is a key element in human trafficking as traffickers take advantage of gullible officials to falsify travel documents and transport their victims to various destinations. A number of trafficking victims have also been arraigned in courts as illegal immigrants instead of being treated as victims of trafficking.

Generally, laxity in implementation and enforcement of this protocol and the overall Palermo protocol can be attributed to the broad definition of the crimes, dependency of sovereign

⁹⁵Ibid. p 72

⁹⁶ Khalid Koser. International Migration: A Very Short Introduction. 2nd Edition

⁹⁷ Ibid.

states to implement and lack of a common interpretation of the protocols. Disagreement about the broad wording of Human Trafficking by the Palermo Protocol has seen a number of signatory countries create their own definitions making implementation of the protocol across boundaries difficult. One hundred and forty-seven countries signed the Palermo protocol that requires them to “uphold and enforce the Protocol’s trafficking definition” but most countries have adopted narrower definitions reducing the number of convictions than when they could have fully adopted the Palermo definition or had a broader one⁹⁸. Three conflicting issues have created differences in the implementation of the Palermo protocol; If consent by the victim is relevant, where the victim was trafficked and whether the victim was compensated for the activities he/ she was involved in.

Although the Palermo protocol disregards the victims’ consent, many countries consider this aspect to be a determinant towards a human trafficking conviction⁹⁹. For instance, in a case where a woman agrees to be hosted in a brothel and offer sexual services and receive compensation in return, some signatory countries may not consider that as sexual human trafficking since she gave her consent. The Palermo protocol on the other hand, focusing on the act, method of trafficking and the aim ignores the victim and concerns itself with the perpetrator, will disregard the consent at treat this case as a human Trafficking offence. The United States of America (USA) for instance, in its definition on sexual human trafficking cannot convict an individual if consent to be trafficked was given by the victim¹⁰⁰.

Differences in definition of the area of transportation has also made the implementation of the protocol difficulty. While the protocol recognizes both intra-national and International transportation of victims, some countries do not consider international human transportation and

⁹⁸Dempsey et al., “Defining Sex Trafficking,” 144-45.

⁹⁹ Ibid. p. 148

¹⁰⁰ Ibid. p. 146.

only consider the crime to be committed when the victim crosses national borders. Compensation of the victims also affects proper implementation of the protocol. The differences in requirements makes it mandatory for other offences to be established by the prosecution in order to achieve conviction. This is despite the protocol ignoring the presence or absence of victim compensation.

These inconsistencies in legislation call for an international discussion to ensure common understanding to increase the number of convictions of the Human Traffickers. Article 5 of the protocol requires that each country that is a signatory should adopt the definition as it is in the protocol and legislate to ensure its enforcement¹⁰¹. Countries are slowly putting up legislations that are reflective of the protocol's definition with continuous improvement as the awareness of human trafficking is increasing. As recently as July 2013, Sweden made changes to its Human Ant-Trafficking laws to include international human trafficking¹⁰² and other forms of human tracking.

In terms of enforcement the protocol only depends on the goodwill of the signatory countries. The UN lacks an enforcement agency that can monitor that individual states comply to the requirements of the protocol. The Palermo protocol lacks explicit punishments for human traffickers and related criminal offences at different levels. The respect for individual state sovereignty, the anarchical nature of the international system makes it difficult to monitor the efficacy of the protocol at the individual country level¹⁰³.

Another major limitation that has risen on Palermo protocol is the reservation of some state parties on some of the articles of the protocol. To date, 19 state parties have made reservation after

¹⁰¹United Nations, Office on Drugs and Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, 4

¹⁰²Ibid., 261-62

¹⁰³Kelemen and Johansson, "Still Neglecting the Demand," P. 278.

ratification. However, most of the reservation by member states have been made in regard to Article 20(3) of the Protocol, with states objecting to the jurisdiction of the International Court of Justice (ICJ). Apart from this other reservation that have been made relates to state capacity obligations and national sovereignty matters¹⁰⁴.

Besides, formal reservation made by member states, conflict has emanated on the Protocol's protection obligations on one hand and country's requirement for stricter border measures. The protocol fails to strike a balance on this issue, a situation that has led to many state parties which are signatories to the protocol to wait upon their ratification. Related to this limitation is the perception of the protocol, with some scholars arguing that the Smuggling of Migrants Protocol is an instrument is geared at serving the interests of the wealthy western countries by fortifying their borders¹⁰⁵.

Jane Cheptoo, a program officer working with IOM, agrees that the lack of an enforcing agent limits the level of compliance of individual states to these protocol and even the state legislations are only reflective of the original intention and largely meant to address the relevant context which varies among nation states¹⁰⁶. The inadequacy of capacity among the law enforcing agents also contributes to vague charges being preferred on trafficking suspects and largely contributes to prosecution of the victims of trafficking despite the protocol focusing on protecting the victims, alludes a senior prosecution official at the Moyale law court.

¹⁰⁴Schloenhardt, Andreas, and Hamish MacDonald. "Barriers to Ratification of the United Nations Protocol Against the Smuggling of Migrants." *Asian Journal of International Law* 7, no. 1 (2017): 13-38.

¹⁰⁵ Edward J. Schauer. "Human Trafficking Frameworks." No 3 (2012): 114-143.

¹⁰⁶ Ibid.

3.2 Continental Legal Frameworks and Norms

3.2.1 The Migration Policy Framework for Africa

The idea and need for a comprehensive framework on Africa migration was conceived and mooted during an ordinary session of the council of ministers in Lusaka, Zambia in July 2001. The concern about migration trends that that are both legal and illegal, voluntary and involuntary of people and services needed urgent attention. The council of ministers agreed on a number of themes that needed regulation among them; labor migration, border management, illegal migration, forced displacement and inter-state cooperation and partnerships. A policy framework addressing these concerns was considered and adopted during the ninth ordinary session of AU executive council in June 2006¹⁰⁷.

The policy framework outlines guidelines for governments and regional economic communities in formulating regulations at both the national and regional level to regulate migration in the nine themes. Among the recommendations, individual Countries are encouraged to strengthen coordinated and integrated policies, laws and approaches against illegal immigration, human trafficking, labor exploitation and protection of victims' rights¹⁰⁸.

The policy frameworks also recommend for establishment of common measures by regional economic communities that can facilitate legal migration while dismantling the existing criminal syndicates that are involved in both human trafficking and smuggling. Regional consultations are also recommended as a means to achieving regulate the movement of people, labor and services across borders. Regional economic communities are also encouraged to work

¹⁰⁷The Migration Policy Framework for Africa Ex. CI/276 (ix)

¹⁰⁸ Ibid.

together towards adopting a comprehensive information repository to facilitate information sharing especially on trends, patterns on human smuggling and trafficking. The repository should also contain a database for all human smugglers and traffickers operating in the regional economic communities (RECs)¹⁰⁹.

Despite the comprehensiveness of the policy and the energy behind its development, it has contributed little to achievements in solving the problem that it was intended to solve. The framework is non-binding in nature and scope therefore can only be implemented at the pleasure of individual nations. Lack of implementation, monitoring and evaluation strategies has made it difficult for its impact to be measured. The policy's implementation is at the mercy of individual states at the regional economic communities but without resource mobilization strategies towards its implementation is jeopardized since these regional economic communities also lack sustainable resources¹¹⁰. However, the policy in its call for interstate cooperation and partnerships calls on all nations to offer technical assistance to each other on the realization of the objectives. But overlaps in membership of regional economic communities also affects efficiency of resource use and creates challenges in coordination¹¹¹.

3.2.2 The African Common Position on Migration and Development

The AU Executive Council attending its eight ordinary session on January 2006 sitting in Khartoum adopted a decision, Ex. CI/Dec.264(Viii), to convene a meeting that brings together development and migration experts to explore ways that Africa as a continent can manage migration, both legal and illegal, to mutually benefit both the destination and the origin countries.

¹⁰⁹ Ibid.

¹¹⁰ Economic Commission for Africa "Regional Integration frameworks in Africa"

¹¹¹ Mengistu. Regional economic communities in Africa. Journal of international affairs Vol 12(3) (2015).

The decision came about after an extensive debate surrounding the migration numbers in the world. Africa accounts for 25% of the world immigrants, both illegal and illegal. More than 80% of African migration takes place in Africa, intra-regional (mainly within West, East and southern African regions) and inter-regional¹¹².

Migration routes in Africa are constantly evolving and changing. In recent years the eastern route (Gulf of Aden migration route) has witnessed increased numbers of migrants, particularly from the Horn of Africa, moving to the Gulf countries and beyond. Similarly, there has been an increase in movement on the northern route, which is traversed by migrants from mainly West and the Horn of Africa to go to Europe, via the Sahara Desert and the Mediterranean Sea¹¹³.

The push-pull framework in Africa is skewed making populations vulnerable for trafficking, smuggling and some willing migrating to seek for better opportunities, working conditions which are not available. The unfavorable push-pull framework can be attributed to the mismatch between the population growth and the availability of resources, the inadequacy in technology to maximize exploration of the available resources and the political environment¹¹⁴. The political situation in Africa is characteristic of poor governance, nepotism, elite capture of the state, corruption, violation of human rights among others. In response to these misfortunes and lack of adequate African institutions to address these issues individually and collectively made it necessary for the African Union to push for a common stand on migration and development.¹¹⁵

The common position that was adopted outlined the steps that should be undertaken at the national, continental and international levels to address the push and pull factors that are affecting

¹¹² Ibid

¹¹³ Alan N, Protection of Human Rights of Traffickers, June 2009

¹¹⁴ The African Capacity Building Foundation. Occasional Paper no. 5 2006

¹¹⁵ Abebe, Tsion Tadesse. "Migration Policy Frameworks in Africa." (2017).

African countries. The policy was cognizant of the fact that migration, smuggling and trafficking of persons does not only take place across borders but also within national borders especially from the underdeveloped rural homes to the cities and towns in search of better opportunities and some are exploited in the pretext of work.

Among the recommendations made by the experts at the continental level; they called for finalization of the strategic framework for migration regulations to ensure that states, sub-regional and regional communities regulate migration by enacting processes and policy measures that can help fight illegal migration while punishing smugglers and traffickers¹¹⁶.

The AU also, held the view that it was necessary for countries, sub-regional and regional organizations to commit resources towards research on migration and development so as to provide credible information at the disposal of national, sub-regional policy makers to improve on the policies¹¹⁷. Besides research, the council encouraged neighboring countries to seek and complete cooperation agreements through bilateral and multilateral legal instruments that can enable them better manage the movement of people, labor, goods and services.¹¹⁸

The common position policy identified the crucial role of sub-regional and regional economic communities across play to manage both illegal and illegal migrations within and outside the continent. This policy is not a legal instrument and cannot be implemented but it is an essential reminder to regional organizations and economic communities that human trafficking and smuggling when properly managed it can be beneficial to both the origin and destination countries but if not well managed then it will be detrimental and have a destabilizing effect to countries and

¹¹⁶ The African Common Policy on Migration and Development, Ex. CI/277 (IX) June 2006

¹¹⁷ Ibid.

¹¹⁸ Achiume, Tendayi E., and Loren B. Landau. "The African Union Migration and Regional Integration Framework." (2015).

the victims. It called for a link among the source, transit and destination countries to ensure effective management of migration¹¹⁹.

3.2.3 The Ouagadougou Action Plan to Combat Trafficking in Human Beings.

The action plan initialized in 2006 aimed was tailored to provide for comprehensive guidelines targeted at addressing human trafficking at stages of prevention, protection, prosecution and partnership. The African Union Commission Initiative against Trafficking (AU. COMMIT) raised awareness on the action plan propelling its implementation. The AU Horn of Africa Initiative, which was launched in 2014, builds on these efforts and drives dialogue and concrete initiatives that address human trafficking, smuggling and irregular migration, within and from the Horn of Africa region. Moreover, Agenda 2063's First 10 Year Implementation Plan calls for the empowerment of women, youth and children and to end child labor exploitation, marriages, trafficking and soldiering by 2023. The Ouagadougou action plan focuses on prevention, awareness-raising, and victim protection and assistance¹²⁰.

As the world moves towards more restrictive migration policies, irregular migration is on the rise, which involves human trafficking and the criminal networks associated with it. The protection of migrants, especially women and children, from human trafficking is vital in the promotion of migrant's human rights, regular migration and security. The core element of trafficking is the rights of the victim are abrogated during trafficking process. It is also necessary that any measures taken to identify, track and prosecute human traffickers also respects the rights

¹¹⁹ Ibid

¹²⁰ Pearson, E. *Human Traffic, Human Rights: Redefining Victim Protection*, Anti-Slavery International, London, 2002

of the victims. Child trafficking presents particular challenges in Africa, and special requirements should be considered to ensure protection of and assistance to child victims of trafficking¹²¹.

3.2.4. The Joint Africa-EU Declaration on Migration and Development

The EU-Africa declaration on migration and development adopted at the Tripoli meeting led to the establishment of the European Union (EU)-Africa Partnership on Migration, Mobility and Employment (MME). The main aims of the declaration in relation to human trafficking were to “extending support for building institutional capacity and developing projects in countries of origin and transit to combat illegal migration, implementing the Joint Africa-EU Action Plan to Combat Trafficking in Human Beings, Especially Women and Children; encouraging cooperation in all domains in the fight against illegal or irregular migration; Cooperating to develop border control measures and Cooperating in carrying out information campaigns”.

While this partnership has bolstered the EU-Africa relations and facilitated financial support to Africa and African countries through the Joint Africa-EU Strategy (JAES) tool launched in 2007¹²², political and competing interests have derailed the progress of the cooperation. For instance, during the Valletta summit of 2015 that was to discuss the European migration crisis, African leaders perceived the summit as a European affair, where the European leaders were focused on migration, security and readmission whereas the African leaders were more interested in development and better governance.

¹²¹IOM (2014). Counter-Trafficking Training Manual, : International Organization for Migration, 11 Belgrave Road, London

¹²²*The Africa-EU Strategic Partnership. A Joint Africa-EU Strategy*, 2nd EU-Africa Summit, Lisbon, 9 December 2007, http://www.africa-eu-partnership.org/sites/default/files/documents/eas2007_joint_strategy_en.pdf.

Internal African wrangles have also been cited as derailing the realization of the objectives. In 2014 for instance, South Africa did not attend the Brussels summit in protest against an invitation extended to Morocco, a non-member of the African Union. While the implementation of the EU-Africa partnership has been happening in the midst of rapidly changing socio-political and economic contexts and the objectives still valid¹²³, there is need to review and incorporate short term measures against human trafficking to contribute to the long term objectives set¹²⁴.

Although both the Migration policy framework and the African Common Position on Migration and Development (African Common Position) has significant bearing on human smuggling in Africa. These frameworks are beset with fundamental weaknesses that range from institutional, conceptual and political facets. First and foremost, these frameworks have been developed to guide the migration framework in Africa. However, the frameworks provide minimal mechanism to allow for monitoring of these mechanisms across member states in Africa. Thus the states places little obligation on the AU countries to implement and account for the policy framework¹²⁵.

Another limitation of these frameworks relates to less emphasis on evidence based action as opposed to human rights protection. One major criticism that these frameworks have faced is that they put more emphasis on human rights frame, to which there exists many frameworks at the domestic level and international level. On the contrary, critics argue that what African countries need is frameworks that guide on evidence based action through provision of concrete policy solutions¹²⁶.

¹²³African Union Commission, *Agenda 2063. The Africa We Want*, September 2015, https://au.int/Agenda2063/popular_version

¹²⁴Abebe, TsionTadesse. "Migration policy frameworks in Africa." (2017).

¹²⁵ Ibid

¹²⁶Ibid.

Another limitation to the AU Migration Policy Framework relates to lack of clarity on how to strike the balance between migrant rights and national security. Migration has been acknowledged as posing a national security threat to most countries in Africa. However, the existing framework fails to provide the right balance on how to encourage member countries to protect migrant's rights and protect member states national security¹²⁷.

3.3 Regional Legal Instruments and Norms

3.3.1. EAC Anti-Trafficking in Persons Bill, 2016

The East Africa Community does not have in place a common legal instrument for prevention of human trafficking, protection of victims and punishing of the traffickers despite the crime being rampant in the region. The member states, ranking lowly in the US State department on Trafficking in person's report, rely on national ant-trafficking laws. Kenya and Uganda are categorized as Tier 2 states (states that have not fully complied with the Trafficking Victims Protection Act's (TVPA) requirements. The United Republic of Tanzania is ranked a tier 2 watch list where states whose governments have not fully complied with the requirements of the TVPA but efforts are being made but there is no proof that Significant effort is being made. Burundi, Rwanda and South Sudan are considered Tier 3, a tier that includes states whose governments are not making effort towards the TVPA¹²⁸.

Recognizing the depth of the problem and the lack of legal instruments, the Legal Rules and Privileges committee of the East African Legislative Assembly (EALA) compiled public opinion from across the region to consolidate a bill that can address the disparities. The report

¹²⁷Ibid

¹²⁸ Ibid.

generated from the public hearings, among other things, ascertained that the crime of trafficking in persons is prevalent in the region.¹²⁹

The EALA in 2016 enacted the EAC ant-trafficking in persons bill with an objective to provide for a common legal framework for preventing human trafficking, punishing the traffickers, protecting the rights of victims and fostering cooperation and collaboration from across the regional organization in fighting human trafficking¹³⁰. The bill that is waiting to be assented by the East African Community heads of states, will become a law for the community and take precedence over the separate national laws that are in existence.

Successful enforcement adoption and enforcement of this bill, once it becomes law, largely depend on the political will of the member states since the EAC lack an enforcement agency. This calls for cooperation and partnership with border and migration management being at the core of the bill. However, frequent border spats among EAC countries cast aspersion on the successful implementation of EAC anti-trafficking bill 2016.

Majority of the respondents especially the law enforcing agents and border security monitors are not aware of the contents of this bill although they allude to knowing that the bill does exist. A lot of sensitization and capacity building is needed for effective enforcement of the law once operational. Elisha Omondi, a migration consultant feels that lack of sensitization coupled with inadequate capacity amongst the law enforcing agents will halt the ambitions of the bill since they law enforcers and police officers are the ones who develop charge sheets and

¹²⁹ IOM (2014). Counter-Trafficking Training Manual.; International Organization for Migration, 11 Belgrave Road, London

¹³⁰ The East African Community. Press Release.<https://www.eac.int/press-releases/574-1003-488-assembly-enacts-anti-trafficking-in-persons-bill>

defective charge sheets will give room for accused traffickers to manipulate the law and escape prosecution¹³¹. Other judicial officers agree with this take.

3.3.2 The EAC Immigration and Labor Department

At the core of the establishment of the East Africa Community is integration. Article 104 of the treaty sought to put in place mechanisms that will allow for integration of labor, free movement of goods and services across member state borders and allow for the establishment and residence of citizens within the community¹³². To achieve this milestone, the Protocol for Establishment of the East Africa community Common Market was effected in 2010 calling for, among others, adoption of common and standard travel documentation across borders within the regional economic community and harmonization of the labor policies, laws and national legislations to allow for free movement of labor across the region. The department of Immigration and Labor was established as key institution to coordinate the processes that lead to integration¹³³.

Unfortunately, as the integration efforts come with positive benefits, scrupulous individuals work alongside the legal mechanisms to conduct other illegal businesses such as trafficking of human beings. Issuance of fraudulent and falsification of travel documents, uncoordinated border management and lack of harmony in labor policies has seen a rise in the number of persons trafficked either within the region or outside the region. An interview with a migration official in Kenya reveals that a number of Ugandan and Tanzania children are exploited in homes in the capital cities of Uganda, Kenya, Tanzania and South Sudan in the pretext of

¹³¹ Interview held with Elisha on 10/10/2018

¹³² Ibid.

¹³³ Ibid

employment, while some individuals take advantage of the child adoption laws to exploit these underage citizens in production and service provision.¹³⁴

Uncoordinated and uncontrolled border controls is blamed for the upsurge in trafficking outside the region since traffickers monitor and explore to use the least risky routes to get their victims out of the region. A universal travel document has also eased the making of counterfeits and faking stamps. From the data collected from the immigration desk at the JKIA, all the cases identified were using documents that have fake stamps and that were gained very easily. While the quick and easy issuance of travel documents is aimed at easing business transactions, the department should do more to regulate and monitor those officials cooperating with traffickers to draw illegal benefits.

3.4 Conclusion

Despite the legal frameworks and norms that have been adopted globally, at the continental level, regional, sub-regional and national levels, trafficking in human beings still continue to be a problem globally. Studies reveal that migrant smuggling and trafficking can be prevented through various mechanisms including creating awareness to the vulnerable population who form majority of the trafficked victims on the risks associated with the exercise, the existing laws and their rights, labor policies working and living country of destination. The low rate of prosecution for trafficking of person gives an indication on the complexity of the process thus the traffickers escape the wrath of the law despite the laws being very strict and harsh to the perpetrator.

¹³⁴Tendayi & Landau, *supra*, at 58

Various local and international organizations have invested heavily in the fight against trafficking in persons (TIP). International Organization on Migration, National Crime Research Centre, United Nations Office on Drugs and Crime, Awareness Against Human Trafficking and International Labor Organization have documented TIP-related cases and pushed for legal measures to the perpetrators of the crime and improved on the protection of the victims. Moreover, they have done commendable job in formulation of laws, technical assistance and provision of capacity building sessions to the public, institutions involved in combating human trafficking and to the victims of human trafficking. The governments have also tried in instituting legal measures that define human trafficking, prosecute those involved in human trafficking and cooperate with other partners to ensure the victims of human trafficking are safely and correctly integrated with their families and the society¹³⁵.

The existing legal frameworks at the global level lack an enforcement agency to ensure that nation states comply with the requirements. At the East African Regional level, the lack of a regional legal framework, awaiting the assent of the EAC ant-trafficking Act, 2016, could be partly blamed for the continuation of human trafficking in the East Africa. The institutions charged with ensuring implementation of the frameworks are also easily compromised to turn their backs on the crime.

¹³⁵ Ibid.

Chapter Four

Challenges, Opportunities, and Prospects in Curbing Human Trafficking in EAC

Introduction

This chapter explores the challenges facing regional economic blocs in curbing human tracking and the opportunities to fight human trafficking. Although the challenges, opportunities and prospects vary with regions, the chapter explores a number of unexploited opportunities that can be adopted not only by the East African Community but also other regional entities. Human trafficking is a malt-faceted crime that needs cross boarder collaboration and multiple approaches to curb.

4.1 Challenges in Combating Human Trafficking by the East African Community

4.1.1. The EAC Free Movement of Persons and Goods Policy

Another emergent finding that came out of the study was on the EAC free movement of persons and goods. The study findings indicated that the interviewees from NGO's were in agreement that the free movement of persons and goods has facilitated human trafficking. Although free movement of persons and goods emerged as a contributor to human trafficking, some of the interviewees from the government, particularly the immigration officials disputed the notion that free movement of goods and persons is a challenge to curbing human trafficking¹³⁶. Since the signing of the Treaty for East African Cooperation in 1999 between Kenya, Uganda and the United Republic of Tanzania, free movement of people and goods as been one of the key cooperation elements. The three member states sought to put in place measures to facilitate free

¹³⁶ Interview held with Peter Gitahi, a government official, Immigration on 6/10/2018

movement of people, labor, good and services and residential and establishment rights¹³⁷. The Protocol on the Establishment of the EAC common markets as adopted in 2009 provides for the right to cross boarder movement of persons, joint border management units, relaxation of labor and service movement restrictions and harmonization of the policies¹³⁸.

The Treaty for the Establishment of the East African Community, EAC, in article 104 of the Treaty allows for eased cross boarder movement of persons, Labor Services, Right of Establishment and Residence. The substantive article postulates “Partner States agree to adopt measures to achieve the free movement of persons, labor and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community¹³⁹”.

While this is an important component towards economic growth of the region as a slight relaxation of cross boarder movement policies allowing for an increase in the work force by three percent can lead up to individual state and East African Community gains significantly, traffickers are taking advantage of this policies to advance illegal transactions alongside the legal businesses¹⁴⁰.

Besides, free movement of people and goods, lack of an effective integrated border management unit was also cited by the government officials and NGO officials as one of the challenges that has affected strategies for human trafficking. According to one immigration official who participated in the study, Kenya has poor border control system with its neighboring countries. A situation that has only served to bolster the efforts of human smuggler through Kenya as an exit

¹³⁷ EAC, Immigration and Labor. Available from <http://www.eac.int/sectors/immigration-and-labour> (accessed 25 Sept. 2018).

¹³⁸ East African Community, Protocol on the Establishment of the East African Community Common Market (2009). Available from http://www.minecofin.gov.rw/fileadmin/templates/documents/Common_Market (accessed 10 Sept. 2018).

¹³⁹ The Treaty for the Establishment of the East Africa Community 2006-1999

¹⁴⁰ Ibid

point. Although the government officials acknowledged that border control has improved considerably over the past few years. It was evident from the government official and other NGO official that lack of integrated border control system was seen as limiting the efforts to curb human smuggling. However, it emerged from the findings that most informants were of the view that lack of integrated border system is strengthened through corruption. For instance, many of the victims arrested while been smuggled when arrested only secure their release through corruption. This shows that lack of effective border system on its own is not seen as a challenge but only in conjunction with others¹⁴¹.

Kenya has espoused in the protocol is being utilized by trafficking syndicates operating between Kenya and Tanzania, using Kenya as a country of destination or transit, targeting children living with disability who are used to beg for money in Nairobi streets for their handlers and in return get free shelter and food. Through the porous borders, these children are transported in buses and enter Kenya through the border towns like Namanga border¹⁴². Once in Nairobi, these innocent kids who were promised of better living conditions in Kenya citing presence of care agencies for people living with disabilities, are stashed in rented rooms from where they are transported to the capital city each morning to beg for money from well-wishers. The business is lucrative as it can fetch up to Ksh. 3000 (\$30)per child in a day¹⁴³.

The right to residence makes it difficult for individual states to establish victims of human trafficking especially in instances where the victim's consent and compensation for the services is established. This encourages trafficking of young boys to be deployed as farm boys, young girls

¹⁴¹Interview held with Immigration official on 4/10/2018

¹⁴² The African Report on Migration, July 2013.

¹⁴³ Ibid

to be deployed as house girls and a number of voluntary human trafficking of women who are held in brothels for sexual services.

Interview data established that the situation is worsened by high poverty levels and the high cost of living especially when child living with disability is involved. Reuben, a 15-year-old with crippled limbs who is a comfortable victim of human trafficking begging for money in the streets in Nairobi was abandoned by his Tanzanian mother since the cultural beliefs considered him a bad omen to the family. The circumstances make him feel comfortable that his handlers are providing shelter and food in exchange for the money he collects and submits every day in the evening after a sunny day on the streets. While he may have expressed his consent towards the exploitation, the consent of an underage is irrelevant in the prosecution of human trafficking cases under the Palermo protocol¹⁴⁴.

In the first 3 weeks of the month of September 2018, the Kenyan Immigration department desk at the Jomo Kenyatta International Airport (JKIA) reported a total of 81 immigrants; 71 Ugandan citizens, 10 Tanzania citizens and 7 Burundi Nationals being trafficked to Oman and the Middle East. This can be attributed to the free movement of persons' policy being exploited by traffickers.

4.1.2 Non-compliance in the Domestication of International, Continental and Regional

Legal Instruments

Based on the study findings, this research advances that despite the existence of a number of laws, policies and international instruments that exists human trafficking is still a challenge in

¹⁴⁴The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

East Africa. In explaining the challenge of human trafficking, it was revealed by the Non-governmental organization, particularly the two officials from IOM that the greatest challenge relates to domestication of international legal instruments and guidelines¹⁴⁵. In this regard, another official from an NGO that participated in the study responded that “although Kenya has adopted the international legal instruments with some countries, there still exists the challenge of domesticating these instruments into national laws and ensuring their implementation¹⁴⁶. According to the judicial officials who participated in the study the main focus of East African States has been on detecting and prosecuting traffickers, identifying, protecting and assisting traffickers and victims and preventing the occurrence of human smuggling.

There are different treaties, policies, laws, agreements and international instruments that strive to prevent human trafficking that individual states have subscribed to at different levels. However, the practice still occurs to date. There is a challenge in the domestication of international legal instruments and guidelines that are aimed at ending slavery and human trafficking, protecting victims and promoting international cooperation. Further, adoption of the international legal instruments has been effected by some countries, including East African Member states but translating these instruments into national laws and ensuring their implementation still pose a challenge¹⁴⁷.

Disparities in domestication of the global treaties have emerged in the application of various concepts in determining whether a trafficking crime has been committed. The victims’ consent for instance has been disregarded by some state while some have adopted it as per the

¹⁴⁵Interview held with Jane cheptoo, an IOM staff on 7/10/2018

¹⁴⁶Interview held with an NGO official on 5/10/2018

¹⁴⁷IOM (2014). Counter-Trafficking Training Manual,; International Organization for Migration, 11 Belgrave Road, London <http://unitedkingdom.iom.int/sites/default/files/IOM-CTManual.pdf>

Palermo protocol¹⁴⁸. For, instance the United States of America laws consider Human Trafficking to have taken place in the absence of the victims' consent. Disparities in the area of transport has also featured in legislations. Some states consider human trafficking to have taken place only if the victim crosses country borders with little attention being given to cases of Intra-national human trafficking. This is the unfortunate case with the East African Community. Much attention has been given to International Human Trafficking but little attention given to Intra-regional human trafficking which is rampant¹⁴⁹.

An official from the Judiciary who participated in the study was of the opinion that the challenges of domestication of international instruments has been compounded by the difficulties in adoption of specific penalties against trafficking in persons. This he argued it challenging due to existence of different understanding on the term human trafficking across countries in East Africa. Thus in the view of judiciary official who participated in the study the existing legislation are not comprehensive in addressing all the forms and categories of human trafficking and protecting rights of victims across all the member states in East Africa community¹⁵⁰.

This was corroborated from the literature that indicated that the adoption of specific penalties against trafficking in persons has been effected in all the EAC member countries but with existing diversity with regard to the definition, interpretation and understanding of the term human trafficking. Legislations by the different EAC member states have failed in having a comprehensive approach in addressing all aspects of human trafficking as espoused by the EAC policies. This hinders the development and collective approach to ensuring victims are protected, traffickers are prosecuted and further Human Trafficking activities are prevented¹⁵¹.

¹⁴⁸Dempsey et, al., "Defining Sex Trafficking," 144-45.

¹⁴⁹Ibid. Pg.146

¹⁵⁰Interview held with Judiciary official on 3/10/2018

¹⁵¹ Ibid

Suffice to say, the principal responses by states and Governments to trafficking in persons since the adoption in November 2000 of the protocol to prevent, suppress and punish trafficking in Persons, especially women and children vary from one country to the other¹⁵² globally, including among the EAC state members. This lack of a common understanding, attitude and concerted efforts by EAC state members towards Human Trafficking raises the need for more research and data collection on all forms of trafficking in order to develop tailored and effective anti-trafficking strategies as well as the subsequent monitoring of such interventions in order to make the desired impact¹⁵³.

4.1.3. State Sovereignty and Competing Political and Economic Interests.

Global, continental and Regional legal instruments and norms do not have clearly defined enforcing agencies. Their implementation solely depends on the political will of individual states that are sovereign. International treaties such as the Westphalia treaty, also recognize state sovereignty and upholds the principal of non-interference in the operations of countries by other countries or international organizations or Intergovernmental Organizations. The prohibition of intervention "is a corollary of every state's right to sovereignty, territorial integrity and political independence¹⁵⁴". This makes it impossible for Regional economic blocs to implement check on a state's compliance to its international commitments. Human trafficking being a transnational crime requires concerted efforts that are collaborative by the states of origin, transit countries and destination countries. The cooperation is critical for conviction of traffickers to be achieved.

¹⁵² UNODC (2012). Comprehensive Strategy to Combat Trafficking in Persons and Smuggling of Migrants <https://www.unodc.org/documents/human->

¹⁵³ IOM (2014). Counter-Trafficking Training Manual: International Organization for Migration, 11 Belgrave Road, London <http://unitedkingdom.iom.int/sites/default/files/IOM-CTManual.pdf>

¹⁵⁴ Oppenheim's International Law, p 428

According to some of the participants in the study the challenge of regional competing interests has made it difficult to have effective coordination among member countries in East African community. To the participants in the study, efficient and effective efforts to curb human trafficking requires a coherent multi-sectorial and multi-disciplinary approach. This is only possible in absence of states pursuing individual goals at the expense of regional goals of the East African community¹⁵⁵.

Unfortunately, in the EAC, competing commercial and political interests have overshadowed collaboration efforts towards curbing of human trafficking in the region. This situation is behind the delayed signing of the EAC Human Trafficking Act 2016, by the heads of state. While the heads of states have met over commercial and trade talks, the passage of the bill into law has not made it into the priority list of the region¹⁵⁶. The laxity will also be caused by the overlapping membership in regional organizations making heads of state reluctant to sign the bill into law. The overlaps make commitment a cause a near impossibility especially in situations where one country is a member of two regional blocs. For instance, the republic of Tanzania is both in the SADC and EAC blocs, while Kenya, Uganda and Burundi and are members of the EAC and COMESA. These different trading blocs due to, vested competing commercial interests have enacted different trading and migration policies and individual states are bound to be reluctant in helping one state achieve its interests when those interests are not relevant to a particular state. Unless, Human trafficking is seen and considered a regional problem¹⁵⁷, then states will not voluntarily work towards curbing the crime. For instance, Kenya has allowed East Africa Community state members to access Kenyan markets freely and make investments but not all

¹⁵⁵ Interviews with Key informants held between 4/10/2018-7/10/2018

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

states within the East Africa Community have allowed other members to invest in their markets freely. This is because their interests will not be served by fully opening their markets for completion¹⁵⁸.

4.1.4 Corruption in the Human Trafficking ‘Business’

The world Bank defines corruption as “the abuse of public power for private benefit.” Transparency International defines corruption more broadly as “the misuse of entrusted power for private gain.” Corruption can take a grand form involving high level officials with a greeter negative impact on governance and service delivery of take a petty form where small bribes in order to ignore duties, facilitate transactions or simply turning a blind eye on actions¹⁵⁹.

Corruption emerged as the major challenge faced in curbing human trafficking in East Africa with all the key informant agreeing that corruption is a main challenge. Despite the agreement of respondents on corruption as a challenge, different patterns of corruption emerged from the key informant. Accordingly, all the interviewees were of the view that the most significant form of corruption relates to complicity of public officials across the stages of trafficking. However, the immigration officials who participated in the study were of the view that most trafficking in Kenya happens through illegal border post thus not making them complicit but other security organs¹⁶⁰.

Corruption is evidence at every stage of Human Trafficking. From recruitment of the victim, transportation across borders and in exploitation. During Transportation, corruption aids in the movement of the victim within a country and across borders without detection or to blind

¹⁵⁸Odhiambo & Adhiambo. *supra*, at 38.

¹⁵⁹ Ibid

¹⁶⁰ Interview held with Immigration Official on 6/10/2018

officials from checking the documentation of the individual in transit. When the victim gets to the destination and exploitation starts, the traffickers rely on corruption to cover against detection by law enforcers of to silence the victim. The US department of state attributes this to glaring conviction statistics that indicate that one out of ten cases detected result into a conviction¹⁶¹.

Institutions that are responsible for the fight in Human Trafficking are weakened by corruption. Paying off police officers, court officials, Immigration officers and other public service officers renders the institutions ineffective despite existing legal instruments and norms. The officers are able to turn a blind eye towards the activities or even participate in them. Corruption activities lower the risk of traffickers being caught by the law enforcers. This coupled with the high profits associated with selling victims for sexual, labor and even organ exploitation has helped create a “Low Risk/ High Returns” scenario which motivates the traffickers to expand the business. The rational choice theory as propagated by Gary Becker postulates that a criminal, just like any rational thinker will assess the risk involved against the potential benefits before committing a crime. Corruption lowers the possibility of traffickers being caught while it facilitates quick returns¹⁶².

Another form of corruption that emerged in the study related to exploitation of victims after escape or rescue. One official from IOM reported that some of the victims after the rescue and deportation of victims, some government official give threats to victims forcing some to part with bribes to save themselves. For instance, in some cases victims are held in airports after deportation till bribe is paid by family members.¹⁶³

¹⁶¹Transparency International: Breaking The Chain: Corruption and Human Trafficking. Sept. 2011

¹⁶² Ibid

¹⁶³Interview held with IOM Official on 5/10/2018

Human Trafficking within the East Africa Community is thriving on corruption. US department of state data shows that most origin and transit countries have high corruption rates in the Corruption Perceptions Index. Boarder point checks are not effective due to lack of modern equipment for screening of the citizens crossing borders and due to greed among the enforcement officers. The African Report in 2013 established that border police patrol officers receive bribes to facilitate the business of the human traffickers and immigration officials at the common boarder points are bribed¹⁶⁴ to regularize documents that are then used for travel to international destinations¹⁶⁵.

The traffickers are internationally connected to law enforcing agencies making it difficult for any conviction¹⁶⁶ once arrested. An interview with a City County of Nairobi, Kenya, enforcement officer indicated that it is difficult to arrest the situation- returning the children trafficked from Tanzania to the streets of Nairobi for begging, since once arrested the children and the traffickers quickly conspire to bribe the police and prosecutors and they are never arraigned in court. Deportation attempts are futile since a number of officers are bribed to frustrate the processes and immigration officers are involved in regularizing of documents. The relatives to the trafficked victims have also been bribed or promised tokens in order to keep quite or to withdraw cases from courts¹⁶⁷.

All the cases that were detected by the Kenyan Immigration department clearance desk at the JKIA shows that victims had fake entry stamps on their documents while some had irregularly

¹⁶⁴ Ibid.

¹⁶⁵Weitzer, Ronald. "Human Trafficking and Contemporary Slavery." *Annual Review of Sociology* 41 (2015): 223-242

¹⁶⁶Amy Farrell & Rebecca Peffer, 2014, Policing Human Trafficking: Cultural Blinders and Organizational Barriers, *The Annals of the American Academy of Political and Social Science* (AAPSS 653), Vol. 653, No. 1, p. 46

¹⁶⁷Mordeson, John N., Sunil Mathew, and Davender S. Malik. "Human trafficking: Source, Transit, Destination Designations." In *Fuzzy Graph Theory with Applications to Human Trafficking*, pp. 181-208. Springer, Cham, 2018.

stamped documents. This could be an indicator that a number of immigration officials and border management units are compromised to irregularly clear victims or collaborate with traffickers to have fake stamps on the victims.

4.2. Opportunities and Prospects for the EAC in Curbing Human Trafficking

4.2.1. Existence of a strong Civil Society against Human Trafficking

Out of the 12 million individuals who are stuck in forced labor conditions, a fifth of them are victims of Human trafficking. Human trafficking for coerced labor is among the most lucrative illegal businesses globally today. Human trafficking for coerced labor can be prevented through creating awareness to the vulnerable population who form majority of the potential migrants on the risks associated with the exercise and the working/ living conditions and stay in their country of destination. International Organization for Migration has been in the forefront in the fight against human trafficking¹⁶⁸. The organization considers trafficking as a coercive and exploitative process starting with recruitment in the place of origin and continuing with exploitation in the places of transit and destination. The organization apply an approach that looks at various dimensions of human trafficking from prevention of the trafficking process from the time they are identified as vulnerable for trafficking, recruitment and assisting the victims of human trafficking when they are established and reintegrated with their families or community members.

The study findings revealed that majority of the key informants who participated in the study were in agreement that Kenya in partnership with international organization and bilateral donors have engaged in creating awareness on human trafficking through both social media, mass

¹⁶⁸ IOM (2014). Counter-Trafficking Training Manual, : International Organization for Migration, 11 Belgrave Road, London <http://unitedkingdom.iom.int/sites/default/files/IOM-CTManual.pdf>

media and public barazas. According to one government key informant, the existence of strong and vibrant civic society can be tapped into to create more awareness on human trafficking. The human trafficking strategy framework (2013-2017) prioritizes awareness as a way to curb human trafficking. In line with the strategy, the government of Kenya, for instance, through the ministry of labour has over the past years engaged in increased sensitization and awareness creation through partnership with the civil society.¹⁶⁹

According to national action against human trafficking strategy framework awareness creation in Kenya and among the East African Community member states focuses raising awareness on: “deception and means used by traffickers to conduct trafficking of persons, identifying fraudulent employment advertisement, where and how to seek for help for potential victims, the impact of media reporting, in particular on sensitizing the media on how to report a potential human trafficking cases, how a smuggled migrant may become a trafficked victim and methods of reducing trafficking in the tourism sector in the country”¹⁷⁰

Further the study revealed that since 2014, significant efforts have been made also by the non-governmental organizations in creating awareness against human trafficking. For instance, one of the NGO officials mentioned that a local NGO, awareness against human trafficking (HAART) has conducted many workshops to create awareness on human trafficking in Kenya.¹⁷¹ This was further affirmed through the organization website that stated that “since its foundation HAART has conducted hundreds of grassroots workshops, reaching more than 20,000 people and in 2014 alone HAART reached more than 6,000 people. Most of the workshops take place in impoverished areas and many of the participants lack education and employment opportunities,

¹⁶⁹ Interview held with Paul Bitok, a government official on 06/10/2018

¹⁷⁰ National Action Plan Against Human Trafficking Strategy Framework (2013-2017)

¹⁷¹ Interview held with NGO officials on 5/10/2018

making them vulnerable to traffickers. In addition, HAART particularly targets young people as they are more at risk of becoming victims of trafficking. Many of the workshops are held outdoors or in sheds to reduce costs for venue”¹⁷².

A survey conducted by the National Child Research Centre (NCRC) in 2014 identified lack of awareness as a contributing factor to human trafficking across the globe. However, the same study acknowledged that presence of civic society can be tapped into to create awareness. The work of awareness creation in East Africa has been led by IOM. The IOM has been conducting informational campaigns especially in sub-Saharan countries where most of the victims of human trafficked come from¹⁷³. The campaigns expound on the dangers of human trafficking and illegal migration and is majorly offered to children in schools, women of child-bearing age in the urban set-up and in rural areas through community organized groups, mass media and sensitization meetings in a move to reduce the number of potential recruits into forced labor, sexual exploitation. EAC has an opportunity to partner with these IOs to create awareness among citizens of the dangers and risks involved in human trafficking. Family and relatives can also be made aware of the unending agony and trauma of having a relative trafficked for forced labor or sexual exploitation¹⁷⁴.

Among the resolutions from the Global Economic Symposium 2010, the symposium recommends that each individual state and region should create an independent anti- trafficking ombudsman and associated international ombudsmen to objectively target vulnerable populations especially countries of origin and provide information on the risks involved in trafficking and exploitation. The report portends that higher levels of information among the society, public and

¹⁷²<https://haartkenya.org>

¹⁷³ UNODC (2012). Comprehensive Strategy to Combat Trafficking in Persons and Smuggling of Migrants <https://www.unodc.org/documents/human->

¹⁷⁴ Ibid

private sectors reduces chances of making wrong choices and also improves tolerance among communities to shun exploitative tendencies. The EAC community can utilize the existing structures to put in place such a network of ombudsmen to help facilitate in creating awareness and reporting of human trafficking cases¹⁷⁵.

Besides creating awareness, the IOM provides technical assistance in the drafting of new counter-trafficking legislation and/or assists in the review and upgrading of national policies, legal frameworks and migration management structures needed to introduce or enhance counter-trafficking systems. This is in line with a challenge that many countries face to overcome human trafficking that is lack of institutional capacity to institute or draft and enforce counter-trafficking policies and framework¹⁷⁶. Creating awareness targeting the community members who are most vulnerable to the vice coupled with presence of enhanced legal instruments and norms helps improve the resilience of the community members to pinpoint at the dangers of human trafficking and can as well help others not to engage or being entangled into the human trafficking process¹⁷⁷.

Another key finding that emerged from the study concerned the potential role that civil society can play in capacity building of various agencies involved in human trafficking. Over the past few years' civil society has provided increased capacity building to government and its agencies as way of curbing human trafficking. As a result of increased capacity building against human trafficking in Kenya has led to prosecution of over 700 cases of human trafficking in Kenya in 2017, a significant increase from the 70 cases prosecuted in 2015¹⁷⁸. This was corroborated

¹⁷⁵ Ibid

¹⁷⁶Roza Pati (2012) *Combating Human Trafficking Through Transnational Law Enforcement Cooperation: The Case of South Eastern Europe*, in *Policing Across Borders: The Role of Law Enforcement in Global Governance*, Springer, United States

¹⁷⁷Sally Cameroon & Edward Newman, (2010) *Trafficking in Humans, Social, Cultural and political dimensions*. United Nations University Press. Tokyo.

¹⁷⁸ Interview held with judiciary official held on 6/10/2018

through the National plan of action against human trafficking 2013-2017 that has enable the government in partnership with various stakeholders to “strengthen the capacity of criminal justice practitioners including law enforcement officials, prosecutors and judges, customs officers, immigration officers, tourism industry workers, labor inspectors, and any other protective and social services officials to accurately identify those at risk of being trafficked and those trafficked victims”¹⁷⁹.

4.2.2 Existence of the East African Legislative Assembly

The East African Legislative Assembly is a legislative arm of the East African Community with a mandate to, among others, debate on matters affecting the community and meet respective country National Assemblies over common issues that need common legislation. According to one government official, East Africa community treaty provides framework for partnership in combatting human trafficking. The existence East African Legislative Assembly provides platform for enacting of laws and act that can be ratified by member states strengthening fight against human trafficking.¹⁸⁰.

State compliance to International, continental and regional treaties and laws coupled with state sovereignty has been a hindrance to the implementation and enforcement of such instruments. The presence and mandate of the EALA enables the members to consult with member country National Assemblies over matters of common interest to the community. This is an opportunity that can be exploited to ensure compliance and compatibility of National legislations with community legislations on matters of common concern like the trafficking of human beings within

¹⁷⁹National Action Plan Against Human Trafficking Strategy Framework (2013-2017)

¹⁸⁰ Interview held with government official on 4/10/2018

and outside the community. Concerted efforts together with a common legal instruments across board will ensure weakening and ultimate elimination of the trafficking networks.

4.4. Conclusion

Human trafficking is a global problem that is operated by highly secretive networks. The secretiveness is enhanced by a number challenges that need to be addressed by the EAC in order to improve the prospects of increasing prosecution, protecting victims and preventing the crime.

The EAC open boarder policy comes with its challenges and there is need to cautiously be implemented so as not to open a window for human traffickers to exploit especially when routing their victims. The policy allowing free movement of people not only facilitates legitimate businesses but also the illegitimate businesses. This policy coupled up with corruption among boarder control officials, law enforcement officers and community members enable traffickers easily navigate and transport victims across borders. The study identifies extensive use of bribes that make courts ignore the human trafficking crimes, law enforcers turning a blind eye on the crime, immigration officials issuing irregular travel documents and in silencing victims and their relatives in any attempt to seek justice.

Noncompliance with international treaties and non-compatibility of national legislations with international laws is another challenge faced by the EAC in fighting Human Trafficking. Non-compatibility leads to multiple interpretations and definitions of the human trafficking crime an act that reduces the chances of achieving conviction of a trafficking suspect or protecting the rights of a victim. Noncompliance with international treaties leads to conviction of the wrong people especially in cases where a victim is prosecuted of illegal migration or any other charges instead

of being treated as a victim. The State sovereignty and principle of noninterference also makes it difficult for enforcement of these international legal instruments.

Despite these challenges, the EAC has opportunities that can be capitalized to help in curbing the vice. Sustained sensitization campaigns of the rights of communities, risks involved in trafficking and the tricks employed by traffickers can improve self-awareness of vulnerable individuals to reduce vulnerability. An informed community is able to read early warning signs and report such cases at the earliest opportunity.

Inter-agency collaboration across the community can enable law enforcers track the trafficking trends and interrupt the movement. While some countries in the EAC are source countries, others are destination and transit countries. An interagency collaboration together with adoption of scientifically informed research can facilitate interruption of these movements and enhance protection and prevention while increasing on prosecutions.

Adoption of technology and partnerships with private entities is another opportunity window worthy exploration by the EAC. Trafficking for labor rampant both in small scale and large scale. The private sector exploits victims knowingly or unknowingly. Partnering with them will reduce cases of trafficking for labor services especially in the mining, agriculture, fishing, tourism and entertainment industries. Collaboration between actors; UNODC, HAART, ILO, IOM, governments agencies and individuals and adopting new and modern methodologies gives hope to the EAC and other regional economic blocs in preventing the vice, protecting the vulnerable groups and punishing criminals.

Chapter Five

Summary, Conclusion and Recommendation

Introduction

This chapter discusses the summary, draws conclusions from the findings, and makes recommendations. This study sought to examine the role of Regional Economic Communities in Africa in curbing Transnational Crimes focusing on the role of East African Community in fighting human trafficking. The study examined the magnitude of the problem of trafficking in persons in East Africa, reviewed the existing legal frameworks and norms, and examined the challenges and opportunities for Regional Economic Communities (RECs) in curbing human trafficking. The study set out two hypotheses; the continuation of human trafficking in East Africa Community is partly attributed to weak institutional and normative frameworks, and that the human trafficking activities in East Africa shift in response to National enforcement efforts and examined them within elements of the Rational Choice Theory, elements that attempt an explanation of why traffickers decide to engage in human trafficking activities and why victims make voluntary choices to be trafficked.

5.1 Summary

The first objective of the study was limited to examining the problem and magnitude of human trafficking in East Africa community. From the findings of the study, the Eastern Africa is affected by both internal and international trafficking, with states in East Africa community categorized as tier 2 and 3. Kenya, Uganda and Tanzania belong to Tier 2 while South Sudan and Burundi are classified as tier 3. Further review on the push factors that contribute to the problem of human trafficking indicated that both individual and societal factors contribute to the problem in the region. However, the study findings revealed that the magnitude of the problem in Eastern Africa is worsened by societal factors that include poverty, unemployment, conflict and wars and

economics of human trafficking. Internal and regional migration is common and entrenched in the region. These findings concur with the results of Shelley who asserts that economic and political reasons are the dominant drivers of human trafficking in Sub-Saharan Africa.¹⁸¹ additionally, the study showed that human trafficking has resulted to health problems, loss of remittances, loss of productivity, revision of migration policies, establishment of new border control measures and human rights violation among countries.

The second objective of the study focused on reviewing the existing frameworks and their efficacy in curbing human trafficking within the East Africa Community. Based on the second objective, the study demonstrated that there exist international legal instruments, continental legal instruments and regional legal instruments. At the level of international legal instrument, the study established that the Palermo Protocols; the protocol to prevent, suppress and punish trafficking in persons, especially women and children and the protocol against the smuggling of migrants by land, sea and air have been ratified by majority of the EAC member countries. However, the study also found out that Palermo protocol has limitation in regards to the states that have ratified it, with some states that have ratified it raising formal reservation on certain clauses. This aligns with the findings of Odhiambo who established that states in Africa like Gambia and Algeria have raised reservations on certain clauses of the protocol further highlighting the limitation of the protocol.¹⁸² At the continental level the study established the following instruments: the migration policy framework for Africa, the African common position on migration and development, the Ouagadougou action plan to combat trafficking in human beings and the joint Africa-EU declaration on migration and development. Across the East African region, the study established

¹⁸¹ Shelley, Louise. *Human trafficking: A global perspective*. Cambridge University Press, 2010.

¹⁸² Odhiambo & Adhiambo. *supra*, at 38.

that EAC Anti-Trafficking in Persons Bill, 2016 and the EAC Immigration and Labor Department are the key instruments in countering human trafficking.

Although the study indicated that there exists a number of legal instrument that have been put in place to curb human trafficking. The study also revealed that most countries are yet to domesticate these treaties in their national laws. Additionally, the countries that have domesticated these laws, the study showed still faces the challenge of implementation. The legislations also need to properly address the areas of prevention, protection and prosecution. While the passing of national laws by some countries to curb against human trafficking is laudable, the study demonstrated there is still exist significant challenge in regard to implementation, with stakeholder laxity a common problem among some of the states in prosecuting crimes making trafficking in persons a low risk high returns venture This concurs with the findings of Elzbieta who suggested that although significant progress has been made in regard to domestication of the protocol, the protocol is still facing implementation challenges even in countries that have domesticated it.

The third objective of the study was aimed at exploring challenges, opportunities and prospects of regional organizations in curbing human trafficking. In regards to the challenges that faces strategies to curb human trafficking the study showed that four main challenges dominate. There were found to be EAC free movement of persons and policy, noncompliance in domestication of international, continental and regional legal instruments, state sovereignty and competing interest among members' states in EAC and corruption in member countries. Additionally, the study revealed that these factors are not challenges in their own way but also relate with each other in limiting the fight against human trafficking in East Africa. These conforms

to the results of Abdel, who concluded that non domestication of the protocol and corruption are some of the challenges limiting regional fight against human trafficking in the horn of Africa.¹⁸³

With regard to trafficking in persons, the East African region needs to implement fully the current legislations put in place to deal with this issue. The legislations also need to properly address the areas of prevention, protection and prosecution. While the current legislations are indicative of efforts to prevent human trafficking, an issue arises in implementation. There is laxity among stake-holders responsible for implementing the legislations and prosecuting the crimes. Despite the existence of significant challenges in the fight against human trafficking, the study found out that opportunities and prospect exists that when tapped on can enhance the fight against human trafficking. Chief among the opportunities that exists the study existence of strong and vibrant civic society and existence of East African Legislative assembly.

5.2 Conclusion

Human trafficking is a vice that has infiltrated the sensitive security systems in Kenya through corrupt individuals in various sectors hence making the vice complex to solve. Most of the victims of human trafficking are children, women and youths forced into this crime due to promises and coerciveness of better lifestyles in the countries of destination. East African member states continues to suffer from the problem of human trafficking. In light of the existential problem of human trafficking in East Africa and the study objectives. The study makes the following conclusions.

¹⁸³ Ati, Hassan A. Abdel. "Human Smuggling and Trafficking in Eastern Sudan." *Sudan Report* (2017).

From the study findings, it can be concluded that human trafficking problem exists at varied levels in Eastern Africa region. Although human trafficking is still a problem in East Africa region, the study concludes that East African Community member states unique geographical and social-economic position makes them a source of trafficking and a transit point for human traffickers. Further the study shows that countries that are more unstable or conflict prone are worse off than countries with politically stable environment. The study suggests that the leading push factors that influence human trafficking problem in East Africa relates to economic, social and political factors. Both socio-economic and political consequences are occasioned by human trafficking in the region.

This study concludes that a number of legal instruments have been established at the international, continental and regional level to fight against human trafficking. However, the study shows that despite the existing of different legal instrument in international system, most countries are yet to fully translate them into national laws. For the countries that have translate the international instruments into national laws implementation of such laws is still hampering the effectiveness of legal instruments.

Although significant efforts have been made to fight against human trafficking in the region. The study concludes that there still exist institutional challenges, political challenges, poor legal structures and low levels of enforcement. Against the prevailing challenges, the study demonstrates that opportunities relating to existence of strong and vibrant civic society and existence of East Africa legislative assembly can be tapped into the fight against human trafficking.

5.3 Recommendations

5.3.1 Addressing the Root Causes of Human Trafficking

The study findings indicated that human trafficking is still a problem in East Africa, with varying magnitude, the three dominant economies of East Africa, Kenya Uganda and Tanzania are categorized under Tier 2 while the remaining countries are categorized as Tier 3¹⁸⁴. Further assessment revealed that economic causes are the main push factors to human trafficking, with unemployment and poverty identified as promoting human trafficking. This call for government to establish empowerment programs that will provide employment and income opportunities to youths. Although some governments in East Africa such as Kenya has made significant progress in developing such programmes. For instance, youth empowerment fund, women entrepreneurship fund and Uwezo fund. This programmes have not proved successful in limiting human trafficking activities. This calls for specific empowerment programmes to be developed that focus on vulnerable areas/communities thus lowering exposure to human traffickers.

The study also recommends that the local, national and regional governments implement policies to that can guide labour migration which is one conduit through which the human trafficking occurs in East Africa. Further policies should be developed by the regional governments to boost local industries and economic development. In this regard, the study suggests the need to create an enabling environment that will allow for creation of more business and employment opportunities.

¹⁸⁴ Ibid

Related to unemployment as a driver of human trafficking, literacy also emerged as important factor that encourages migration and smuggling¹⁸⁵. To address this the study recommends for both short term and long-term prevention measures that is geared towards making education at all levels, particularly lower levels affordable in rural and semi-urban areas. Education curriculum across the countries in East Africa needs to be revised and introduce human rights framework component. This will make pupils and students aware of their rights and ills of human trafficking at the earlier stages thus developing their resilience to human traffickers.

The study findings also showed that armed conflict and tribal based conflicts are drivers of human rights. To address this there is need for approaches to curbing human trafficking to be integrated based as opposes to specific focus. Proposed integrated approaches also include conflict resolution and management as strategies of curbing human trafficking.

5.3.2 Strengthen Regional Implementation and Monitoring Mechanisms

The study findings showed that the domestication of anti-trafficking laws in East Africa is varied. However, the existence of East African community emerged as an opportunity that when tapped into can enhance measures put in place to curb human trafficking. This calls for the establishment of regional mechanisms to strengthen regional implementation and monitoring mechanisms as a way of improving national implementation in member countries. In this regard there is need to establish regional forum that would help in facilitating information exchange as well as helping in monitoring. Such forums will also help in moving the debates from domestication and implementation of legal structures, as much as they are good to developing and promoting evidence-based policy required to curb human trafficking.

¹⁸⁵ Ibid.

5.3.3 Strengthening of Capacities, Partnerships and Coordination

The study findings revealed that there exists difficulty in tracking and prosecution. Therefore, this poses a challenge to effectively counter human trafficking and prosecute human trafficking perpetrators. This also poses protection concerns for victims of trafficking (VOTs) as they can easily be mistaken for smuggling cases. It is necessary to have focused capacity building for the relevant stakeholders on relevant national and international conventions and laws, such as the Counter Trafficking in Persons' Act 2010, Sexual Offences Act 2006, Children Act 2007, Employment Act 2007, Victim Protection Act 2014 and Citizenship and Immigration Act 2011. There is a need to strengthen capacity of all relevant ministries and agencies involved in counter human trafficking. Furthermore, it is important to train frontline border officers, community members and volunteers to be trainers themselves, and to have community monitors on human trafficking within the communities especially along the borders. It is also recommended to employ competent translators at police stations and in the judiciary to help in solving language barriers in communication with victims of trafficking.

Based on the study findings, it emerged that the East African Community Treaty offers strong opportunity for strengthening the partnership to curb against human trafficking¹⁸⁶. This is because the basis of regional community is to enhance “cooperation in the handling of cross border crimes, provision of mutual assistance in criminal matters including the arrest and repatriation of fugitive offenders and exchange of information on national mechanism for combating criminal activities¹⁸⁷. This lays a basis for curbing trans-border trafficking of persons.”

¹⁸⁶ Ibid

¹⁸⁷ Ibid

The East African Community's activities and policies are coordinated by the EAC secretariat whose headquarters are based in Arusha, Tanzania. The Mandate of the secretariat, which is the executive organ of the community, is to ensure that regulations and policies that are adopted by council ministers from respective member state are implemented and provide strategic guidance on the implementation of such policies.

To combat trafficking in persons, actors need to unite and face human trafficking from all dimensions and develop effective strategies to fight this organized crime¹⁸⁸. This can only occur through partnership and inter-agency coordination across various sectors and countries. Partnerships and coordinating bodies “need to focus on bringing together local, national, regional, and global networks, and representatives of civil society, government, the private sector, labor unions, media, and faith-based organizations hence help to fully leverage a wide range of counter-trafficking interventions.

The presence of the EAC Secretariat offers an opportunity that can be explored to coordinate different state and non-state actors to deploy a number of strategies to curb Human Trafficking. Integration of both global and continental agencies like the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) and the Global Migration Group (GMG) that focus on coordinating issues and efforts related to human trafficking and human migration, non-state actors like the IOM, UNODC and other state organs will increase the chances of traffickers being arrested making the illegal business a riskier venture that it is currently.

¹⁸⁸ UN, Permanent Forum for Indigenous Issues, 2nd Session, New York, 200; High Level Panel and Dialogue on Indigenous Children and Youth, submission by ILO

5.3.4 Adoption of Scientific Approaches

Trafficking of human beings for labor, sexual or for organ donation takes the mode of a supply chain network where victims who are the supply move through a network to meet demand for cheap labor, sexual demands and other illegal exploitative acts. This movement leaves a trail of data that can be traced by use of data analytics and be of help to law enforcing officers in establishing trends in the distribution of traffickers, the exploiters and victims of human trafficking¹⁸⁹. Identification of trends and the people at risk can inform policies and other prevention efforts to fight the menace, while analysis of the existing trends can help law enforcement officers to disrupt the flow of trafficking components at the source which is a key step towards eliminating the vice.

This mechanism is not available in the EAC. The reliance on the traditional strategies of combating the crime has left the government lagging behind the traffickers. Little research is being done on the magnitude, impact and patterns of human trafficking in East Africa. Although resources are needed for frequent research and adoption of modern techniques, the existence of an East African Community with governance structures is an opportunity towards coordinated research and resource mobilization towards research. A scientific approach is key to interrupting the human trafficking cycle and provision of critical information towards victim protection, trafficker punishment and prevention of human trafficking.

¹⁸⁹ European Journal of Operational Research. Volume 256, Issue 2. June 2017

5.3.5 Areas for Further Research

There is need for more studies that will focus on structural factors that lead to human trafficking in the region, Additionally, examine the process of inter-collaboration among both non state actors and state actors in the region and establish the factors limiting implementation of anti-trafficking laws in the region.

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APPENDICES

Appendix 1: Key Informant Schedule

Hello, I am conducting a study on Regional economic communities and transnational crimes: A case of Human Trafficking in East Africa community. As a key persons engaged in the handling of human trafficking in Kenya, your participation in this study will be of great assistance in making this study a success. Your participation is voluntary and all answers will be treated with confidentiality.

Key Informant's Background Information

Which organization/institution do you work for? ____

What is your position/designation in the organization (e.g Police Officer, Program Officer, etc)?

For how long have you stayed in this locality? _____

Human Trafficking in East Africa community

1. What do you understand by the term human trafficking?
2. For what purposes are persons trafficked in internal/external human trafficking?__
3. Please list the main factors contributing to external human trafficking in East African Community?
4. What intervention strategies have been used to address human trafficking in East African Community?
5. Generally speaking, how effective are these intervention strategies in addressing human trafficking in East Africa community/Kenya? Use the following codes and circle your selected response for intervention strategy: 1. Very Effective; 2. Effective; 3. Not Effective;

4. Not Effective at all; 5. I don't know. Note these strategies can be at the following stages prevention, protection, prosecution and capacity building.

6. In regards to the above mentioned intervention strategies, are there opportunities that exists for enhancing the effectiveness of the strategies.

1. Yes 2. No

(b) If yes, please explain

7. What are the major challenges faced in preventing and combating Human Trafficking in Kenya and East African Community?

8. What are the possible solutions to the major challenges faced in preventing and combating human trafficking in Kenya and East African Community?

9. What are the best practices in preventing and combating trafficking in human beings? ____

THANK YOU FOR YOUR PARTICIPATION

