

**A STUDY ON THE EFFECTIVENESS OF LEGAL AND POLICY RESPONSES IN
COMBATING TRAFFICKING IN PERSONS WITH DISABILITIES IN KENYA**

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DECLARATION

I, STELLAH KWAMBOKA NYAMWEYA, hereby declare that this Research Project is my original work and has not been presented for any other academic award at the University of Nairobi or any other institution

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

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DEDICATION

I dedicate this project to the almighty God and to my family for their pivotal support and prayers during the entire period of the project

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LIST OF ABBREVIATIONS

DHS	Department of Homeland Security
ILO	International Labour Organization
RSA	Republic of South Africa
SPSS	Statistical Package for Social Sciences
TVPA	Trafficking Victims Protection Act
USA	United States of America
PWD	Persons with disabilities
TIP	Trafficking in Persons
THB	Trafficking in human beings

ABSTRACT

Human Trafficking is experienced globally and Kenya being a source, transit route and destination country for traffickers is burdened as it continues to witness the increase of victims despite having functional systems. Among those trafficked, the most vulnerable are persons with disabilities. There are diverse causes of Human Trafficking some of which have been discussed with specific regard to Kenya. This study analyzes the policies and legal framework on the punishment and deterrent measures available in Kenya as well as the societal views on trafficking of persons with disabilities. Although Kenya has legislation and a legal framework that deals with some aspects of Human Trafficking, it is in question whether they are adequate in dealing with the complexities of the said crimes. Kenya has not done enough in sensitizing the public on the issues of Human Trafficking.

An attempt has been made by many researchers to address and control Human Trafficking through studies and recommendations to various state agencies. Trafficking has become customary practice with poverty and system lapses as the root causes. This study compares Kenya's counter-trafficking in person's framework with the South African and United States' one. The study examines real life understanding, multi-level standpoints and cultural influences of Human Trafficking. Based on the strengths of qualitative and quantitative data gathering techniques used, the study formulates a holistic framework for generating new understanding and probable solutions for the problem.

The study further discusses the inadequacies of Kenya's legal framework and administrative gaps that contribute to trafficking of persons with disabilities. The counter trafficking of persons Act of 2010 was drafted with the aim of preventing, suppressing and punishing Human Trafficking and related offences. However, the said law is faced with operational challenges.

Finally, the study proposes societal and legal policy framework that can curb trafficking of disabled people. The study recommends the training of law enforcement officers, the allocation of more resources towards the fighting of the crime and the formation of special units to deal with trafficking in persons with disabilities.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction and Background to the Study

Trafficking in Persons (TIP) has of late become an international phenomenon that captures the lives of people and takes away their basic freedoms. The International Labour Organization (ILO) (2012) estimates that about 21 million people across the world have been subjected into forced labour. Out of these 21 million victims, 1.8 million came from Latin America, 3.7 million from Africa and 11.7 million from the Asia-Pacific region (International Labour Organization, 2012). The prevalence of this crime is as a result of the secrecy, cost effectiveness, high demand, profit gained by perpetrators from it and its affordability (McGough, 2013). The phenomenon has been recognized as one of crises in the world. The governments are now taking the necessary measures to fight it.

TIP starts from the recruitment of potential victims, transfer or transportation of those people, harboring or receiving them and finally taking them to preferred destinations be they within or outside a country or region. The exercise exploits children, women and men for various reasons that range from sexual harassment to forced labor. Accordingly, it has become part of modern-day slavery. It is estimated that approximately 27 million people globally are victims of Human Trafficking. A great concern is the increase in victims with disabilities.

In the Eastern Africa region, TIP is still taking place both domestically (internally) and externally (Mitchell, Finkelhor & Wolak, 2010). The internal or domestic trafficking in the region is endemic. Like in any other region, women and children are the major victims even though men also fall into this trap. Most of the girls who are trafficked are either forced into prostitution, hard labor or early marriages. In other instances, they are forced to work in farmlands or big plantations. Children are forced to herd livestock or work in fishing grounds. Women, like girls, are forced into prostitution, hospitality industry, which is underpaid or domestic labor. Men, on the other hand, are forced to work in farmlands, construction sites, hard labor or forced to engage in criminal activities (Niemi, 2010).

Despite efforts by governments to thwart Human Trafficking, individuals and groups that are most susceptible to Human Trafficking remain at risk of falling victim to this crime. In Kenya, as is the case elsewhere, persons with disabilities constitute a group that is particularly at risk of being trafficked and which continues to be relentlessly targeted by traffickers. Kenya has ratified the Palermo Protocol that seeks to prevent, suppress and even punish people who engage in Human Trafficking activities. As a result, it has enacted the Counter Trafficking in Persons Act to give local effect to this Protocol. In addition, Kenya has enacted the Persons with Disability Act, 2003 which lays down the legal framework for protecting disabled people from unlawful exploitation. These laws are similar to the laws of other jurisdictions such as USA and South Africa. These two jurisdictions have managed to address with large success the scourge of trafficking in persons with disabilities. Unfortunately, the scourge remains a persistent crime in Kenya. This paradox raises the question as to why the legal and policy responses to trafficking in persons with disabilities in Kenya seem not to be working when compared with other jurisdictions with similar laws that have curbed the crime.

This research adopts the comparative legal research method. In particular, it compares and contrasts Kenya's counter-trafficking in persons with disabilities' legal framework with similar counter-efforts in other nations globally which have been confronted with comparable problems. By comparing responses to trafficking of disabled people in Kenya to other nations globally, this study identifies and critiques the merits and shortfalls in the Kenyan context. In addition, this comparative method highlights some policy and institutional measures that could be borrowed from Africa and globally and emulated in Kenya to reform its system for tackling trafficking in persons with disabilities.

1.2 Statement of the Problem

The Kenyan government has undertaken a number of important steps towards tackling the crime of Human Trafficking in general and particularly the disabled people. These include ratification of treaties, enactment of enabling domestic law, promulgation of policies aimed at countering Human Trafficking of the disabled people and institutional reorganization of national law enforcement agencies to promote effective trial and punishment of this crime. Yet the problem of trafficking in disabled people has persisted and even appears to be

gaining apace. This calls into question the effectiveness of the legal and policy framework in the country that addresses itself to persons with disabilities as well as their enforcement. PWDs continue being exploited for various reasons including sexual exploitation, forced labour, to work in the begging industry, organ harvesting, servile marriages among others. While most of the studies in this area of research have focused on combating Human Trafficking in general, not many scholars have explored the sectional approach on trafficking of persons with disabilities. My study attempts to interrogate the effectiveness of the existing legal and policy frameworks in addressing trafficking in Persons with Disabilities with a view of identifying existing gaps between legislation and practice.

1.3 Objective of The Study

1.3.1 General Objective

The wide-ranging objective of the study is to determine the effectiveness of Kenya's legal framework and policy responses in combating trafficking of persons with disabilities.

1.3.2 Specific Objectives

Specifically, the study does the following;

1. Examines the state of trafficking in PWDs globally, regionally and locally
2. Examine the effectiveness of existing legal frameworks in Kenya in stemming trafficking in PWDs
3. Finds out whether the policy provisions in addressing trafficking in PWDs are suitable or whether more should be done to make them suitable.

1.4 Research Questions

The study answers the following research questions:

1. What is the state of Human Trafficking in PWDs globally regionally and locally?
2. What is the effectiveness of the existing legal frameworks in stemming trafficking of PWDs in Kenya?

3. What is the suitability of policy provisions in addressing the problem of trafficking of PWDs?

1.5 Justification of The Study

The study is timely because it focuses on generating new knowledge related to combating trafficking in person with disabilities in Kenya. Because of the intensity of the issue the area requires a lot of attention in the light of existing laws and regulations. The study identifies trafficking in person with disability containment mechanisms in Kenya that need to be improved and even goes ahead to propose means to improve their efficiency in combating trafficking in person with disabilities in Kenya.

From the study's finding, the necessary recommendations are identified that the national government can utilize to improve the management of security apparatus within the country. The study findings are aimed at assisting government officials and key decision makers in making relevant policies for enhancement and implementation of legislation to combat trafficking in persons with disability. This research raises awareness on the rise of trafficking in persons with disabilities, highlights what is lacking, scrutinizes current policies, and evaluates the need for more social services to cater for victims in Kenya. Further, the study exposes the scholarly research gap concerning trafficking in persons with disabilities.

1.6 Literature Review

Trafficking in persons is a billion-dollar industry. This crime competes with drug trafficking and the illegal trade in arms, and it grows on yearly basis (Goździak & Bump, 2008). The International Labor Organization conducted a study that estimated the profits garnered from Human Trafficking could exceed \$31 billion dollars (Rahman, 2011). Some of the main factors that contribute to its development and widespread include lack of awareness and high poverty levels in the country (Hall, 2013). Human Trafficking affords the opportunity for criminals to make billions of dollars in profits due to the low-risk nature of this organized crime, by capitalizing on the demand for people and the unlimited supply (Goździak & Bump, 2008). Reasons behind the rise in Human Trafficking over the years are globalization, free markets, and lack of awareness, natural disasters, poverty, corruption, and gender

discrimination (Shelley, 2003). This creates desperate situations where people exploit vulnerable populations including persons with disabilities for survival. There is also a huge demand for Human Trafficking because of the huge gain and very little investment. This section seeks to understand the state of Human Trafficking in general and narrow it down to trafficking in PWDs. It then focuses on the available legislations in Kenya that address the Vice of trafficking in PWDs and their effectiveness in stemming the vice. Finally it will address the enforcement of the legislations and the ability of enforcers to protect victims and even prosecute perpetrators.

1.6.1 Needs for Victims of Human Trafficking

An investigation addressing the needs of people who fall victims of Human Trafficking was done by Clawson and Dutch (2010). In the study they looked at the challenges, barriers, and promising practices purposely to develop information on how Health and Human Services (HHS) programs addressed the needs of those people. The victims were domestic people especially the youths. Most of the service providers together with those entitled with enforcing the law claimed that the victims needed everything implying that they were in dire need of help.

The victims' safety needs were identified as the number one set of needs by all of the people who took part in the study. As a result, this issue was assessed by law enforcers and service providers as soon as they met with victims. Housing was the next most important need to the victims of Human Trafficking. Other needs were food and clothing related. For international victims, language barrier was a major hindrance; as such, it was addressed to minimize the feelings of isolation and even facilitate effective communication. Once these needs are met, the short-term needs are met before the long-term ones are addressed (Clawson & Dutch, 2010).

Health screening in terms of evaluating dental needs, physical injuries and vaccination was also identified as an important need among the victims of Human Trafficking. Other minor needs included looking for ways to educate the children, management of financial resources where necessary, and life skill training to help them secure employment where necessary as well as looking at ways to reunify families or even repatriate them (Clawson & Dutch, 2010).

The U.S. Department of Health and Human Services (2012) provided a report that detailed some of the services that were available to victims of Human Trafficking. The report noted that those victims were unable to obtain essential resources for themselves thereby they needed social service providers to help them access those resources. This highlights the important role that social service providers play in the lives of victims of Human Trafficking. They help them to build and restore their lives because most of their needs tend to be intricate because they are offered and tackled in different jurisdictions and different service providers. As a result of this, service providers should be sensitive to their trauma levels in order to help them cope up with various challenges they encounter in the process of being trafficked.

1.6.2 Media Influence on Human Trafficking

Cooray (2014) evaluated the role that media played in combating Human Trafficking. He noted that media was a power tool in eradicating the vice because it was able to reach many people and mould their perceptions towards it in the right way. Accordingly, as media engage in investigative journalism, it should ensure that the rights of victims and survivors of the vice are not violated. In this respect, the media should play the role of illuminating the problem through responsible reporting that focus on providing accurate information, identify the victims and identities of the people who traffic others. According to United States Department of State (2017), media helps in guiding public conversation about the vice and shaping the general perceptions towards it. In spite of this, schemes used to perpetrate the vice keep on changing as perpetrators look for ways to outsmart the existing mechanisms. As a result, media vigilance may play an instrumental role in informing the members of the public and keeping them engaged on the issue. Normally, as the media engages in its rightful investigative roles, the members of the public acquire the necessary information thereby they are able to identify the perpetrators of the vice.

Austin (2016) evaluated the issue of Human Trafficking by analyzing media content from television episodes, movies and documentaries. He established that most of the media programs played and aired in USA oversimplified the issue by filling it rescue narratives. In addition, it established that even by oversimplifying the issue, the media was also able to

identify the complexities associated with the vice. Some of the issues identified in the analysis included coercive activities, the diversity of victims and violation of human rights.

Virkus (2014) carried out a study on the impact of media on Human Trafficking by comparing the way newspapers portrayed the victims and offenders. His analogy is that media is a primary source of knowledge on the vice because majority of the people have never experienced it at personal level. The analysis focused its attention mainly on three major newspapers between 2005 and 2012. The main focus was on legal status, gender and age of the offenders and victims. In addition, it evaluated whether the claims made by various groups of people were the same or different. With the help of quantitative and content analysis, the study compared the way different newspapers portrayed the offenders and victims of the vice.

Both Austin and Virkus agree that the media has the power of portraying the character of both victims and offenders. The media sets the agenda of how the public views Human Trafficking. Austin's analogy was that media oversimplified the crime of Human Trafficking to the point that its implications were distorted. Virkus' analogy is that media can construct a reality. Media tries to capture the public's interest on the social conditions of Human Trafficking for the sake of setting their agenda notwithstanding the fact of whether their perspective is misleading or distorts the truth. Both authors agree that the images the media portray of both the victims and perpetrators are largely inaccurate.

Austin argues that in as much as the media oversimplified the crime of Human Trafficking it was able to highlight the human rights concerns of the vice, its complexities and coercive activities engaged in it. Virkus on the other hand argues that media mostly portrays women and children as victims of Human Trafficking whilst men are rarely portrayed as victims. This is in contradiction to Austin's assertion that the media portrays diverse victims.

The researcher agrees with both Austin and Virkus that the media as the 4th estate creates cultural awareness of social conditions that exists and can set an agenda. The media has the capacity to reach a wider population than scholars. Journalists are in a position to portray the image of both victims and perpetrators to suit their perspective. The researcher agrees with

Virkus that the media rarely presents the diversity of victims. For instance, the media rarely portrays vulnerable groups such as disabled people who consist of diverse genders and ages of the victims of Human Trafficking.

The failure by the media to portray PWDs as victims of the vice denies the public awareness and mental image of the crime and as such the public has no idea of what can be done to fix it. Virkus argues that the image the media creates can influence policies being created. The researcher is in complete agreement with Virkus since his analogy is evidenced by facts. In Kenya the media created awareness on the discrimination of PWDs in employment opportunities and highlighted their plight in accessing public buildings and offices due to unfriendly access ways. This led to the government enacting policies requiring inclusivity of PWDs in the public service and a direction that all public buildings must provide friendly access ways for persons with disabilities.

1.6.3 Barriers to Implementing Policy

Konneh (2017) evaluated the efforts that a small community had put to combat Human Trafficking. The study's purpose was to identify the perceived barriers to implementation of the Massachusetts's policies targeting Human Trafficking on Cape Cod as experienced by social service providers and law enforcement. Findings indicated that participants perceived the key barriers to full implementation of state policy to be a lack of training, difficulties in forming and maintaining partnerships, gaps in policy, and funding deficiencies. Participants also consistently noted that vulnerable populations supply the demand for Human Trafficking, and they are among the reasons for the continual persistence of Human Trafficking.

Clawson, Small and Myles (2014) noted that response to the needs of victims of Human Trafficking was faced with many challenges and barriers. They observed that some of those barriers emanated from lack of knowledge and public awareness concerning the vice as well as the differing definitions and perceptions towards the victims of the vice. To make the matter worse, the victims themselves are in most cases reluctant to regard themselves as victims. As such it is always impossible to address the issue the way it should be addressed because there are few self-referrals of the vices. In addition, it is always impossible to find

and reach the victims of Human Trafficking because most of them are taught to fear the people who enforce the law and in most cases most of them come from countries with high levels of corruption. Furthermore, the victims do not present themselves in the public light because they fear the possible repercussions of doing that from their offenders (Bales, 2014).

Besides the above, the complexity of the victims' needs also complicated the process of offering efficient services to those people (Van Leeuwen, 2014). Some of the challenges include poor training on handling victims, inefficient reach out methods, incompetence in cultural practices, inadequate resources and effective follow-up services, staffs' inability to respond and identify emotional problems among the victims and lack of confidentiality (Mark *et al.*, 2016). Other problems among the agencies that provide services to the victims include safety concerns, inefficient monitoring and poor coordination among them (Lyons & Rogers, 2014). Others include affordable medical care, secure housing and translators where necessary (Clawson *et al.*, 2014).

1.6.4 Combating Trafficking in Persons with Disabilities.

Policies are normally implemented by governments when there are issues of concern. As a result, when problems arise, governments develop plans to resolve them. In doing so, it must make sure it has clear and concise goals it wants to accomplish, develop alternatives, and then assess the impact the decision will have on the people because everyone's rights need to be respected (Gauchat, 2012). Once a plan has been developed, the execution and application of law comes through the three branches of government; legislative, executive, and judicial (United States House of Representatives, 2014). Gauchat's (2012) study on public trust in science in USA supported the argument that the policy making process at times can be a struggle between officials and citizens. This is due to the difficulty by the two sides to agree during the policy making process due to personal interests vis-à-vis the desired outcomes.

1.6.7 Legal and Policy Response Globally

The United States has led the forefront in combatting Human Trafficking, allowing other countries to follow their example. The United States has all the resources to conduct research to better equip them for a huge task such as the obliteration of slavery (Chuang, 2010). The

anti-slavery movement was what led the initiative to begin developing laws that would end slavery. It was the Civil War between the United States and the Confederate states from year to year, and Abraham Lincoln's Emancipation Proclamation of 1863 that began to eradicate slavery back in the 1800s (The Library of Congress, 2014). It would be the 13th amendment to the United States Constitution that eradicated slavery whereas the 19th amendment gave women rights to vote (The Library of Congress, 2014). The term trafficking was not yet introduced until the 1904 International Agreement for the Suppression of the White Slave Traffic, which was followed shortly by the 1910 International Convention for the Suppression of the White Slave Traffic (Sasaki, 2012). These were the first legislative laws passed.

During the 1990s, President Clinton's administration began efforts to combat Human Trafficking, partly due to the realization that people were being smuggled into the United States. There were a growing number of men and women trafficked into the country and even forced to work in sectors ranging from domestic work to sexual slavery (Chuang, 2010). Clinton developed a policy framework that was referred to as "three P's", which stood for prosecution of trafficking, prevention of trafficking, and protection of trafficked persons (Ross, 2014). Congress passed the bill for anti-trafficking that was ratified into law by the president as Trafficking Victims Protection Act (TVPA) 2000 (Stolz, 2010).

During the Bush administration, the act and Office to Monitor and Combat Trafficking in Person(s) (J/TIP) were expanded further. In 2002, President Bush endorsed the goals set out by the Protection Act by signing the National Security Presidential Directive 22 (Fong & Berger Cardoso, 2010). This permitted federal agencies to increase their efforts and collaborate in order to combat trafficking (Global Issues, 2003). President Barack Obama continued Bush's efforts by raising awareness, creating laws with harsher punishments for traffickers, and providing recovery services for victims. He even went ahead to declare the month of January as the Human Trafficking awareness month. During this month, events take place to help raise awareness among the general public (Kloer, 2011).

TVPA, which is a federal statute, seeks to protect people living in USA who were smuggled illegally into the country to work under forced labor (Crane & Moreno, 2011). With the help

of this act, the victims have certain benefits and privileges to help them recover from bad practices. Nevertheless, to obtain such benefits, they have to confront their traffickers by testifying against them in courts of law. The main goal of the statute is to eradicate Human Trafficking in the world by ensuring that the victims have access to essential resources and that offender face law according to the magnitude of their crimes (Chakraborti, 2014).

The TVPA also provides the necessary tools to arrest, prosecute, and punish criminals to the fullest extent of the law because it is now a federal crime (George, 2012). As a result, the offenders are found guilty, they are punished in accordance to their crimes. The Act is renewed on continuous basis to make sure that its contents are streamlined with changes within Human Trafficking. However, since this is a new law and there are no existing precedents to follow, prosecutors find it difficult to indict ‘johns’ on any charges of trafficking (Ren, 2014). They have little or no guidance on how to prepare and win their cases. Thus, in fear of ruining their reputation, prosecutors choose to charge ‘johns’ with a lesser crime (McGough, 2013).

The office that monitors Human Trafficking in USA was established by the TVPA act. It works towards eliminating modern slavery as outlined in the constitution (Sanchez & Stark, 2014). The office thereby investigates the acts of Human Trafficking that occurs internally and externally with a view to arresting the offenders, raising awareness through numerous campaigns, and providing recovery services (United States Department of State, 2014b). The police task force is the other initiative developed by the office within the police departments across the country. The people who work in this department receive special training to help them to identify and rescue victims, as well as, investigate traffickers.

In Malaysia, the anti-trafficking in persons ATIP Act was developed in 2007. Back then the act focused solely on issues related to Human Trafficking. It stipulated that trafficked people were not liable to prosecution on grounds of illegal entry into the country with fraudulent documents. Even though the country received international recognition for developing the act, the national government faces a lot of criticism because the country remains a hotspot for trafficking human beings. This decision was taken by the US government that relegated the country to Tier Three. In response, the Malaysian government took measures to strengthen its

border securities and cooperation with other agencies. In addition, it took measures to foster good relations with other partner members, engaging in rigorous public campaigns, and other measures that could reduce Human Trafficking activities within the country (Government of Malaysia 2010). As a result, a Human Trafficking report that was released by the government identified the country as Tier 2. Among the many measures that the government undertook included prosecuting and convicting more people who engaged in Human Trafficking, and introducing mechanisms aligned to 3P paradigm that was propagated by the United Nations (UN) that focused on preventing the acts of Human Trafficking and ensuring that the perpetrators of such acts were prosecuted in courts of law.

In China, the Criminal Law in the country prohibits activities such as purchase of abducted people, forced labor and prostitution, luring under-aged children into prostitution, abduction and other activities related to Human Trafficking. The law was amended in 2015 to strengthen some of its provisions (Quanshu, 2014). The Ministry of Public Security (MPS) is largely the one responsible for eradicating Human Trafficking related activities in the country. Accordingly, it works with other bodies and ministries to ensure that no human is trafficked in the country. To help it work effectively, it has several agencies and departments within government to help it fulfill its mandates (Quanshu, 2014).

In Saudi Arabia, the government has a Royal Decree M/40 titled “Suppression of the Trafficking in Persons Act” (Decree M/40) that was passed in 2009 (Trafficking in Persons Report, 2009). The decree consists of 16 articles that define what constitutes and does not constitute Human Trafficking together with factors that aggravate it. The decree defines an imprisonment not exceeding 15 years or fine not more than 1 million riyals (USD 266,621.21) as the appropriate fine for acts related to Human Trafficking. In some instances, both of them might be implemented jointly. Nonetheless, the sentencing processes are subject to severity of aggravating factors. The fifteenth article of the decree provides a limited list of protection to victims of Human Trafficking implying that it is not dedicated much to protecting them. This explains why most of measures taken to protect the victims of Human Trafficking in the state are criticized largely for failing to provide favorable conditions.

Though there are challenges in the implementation of law related to Human Trafficking, governments are working hard to remain on the top on combating the vice. This helps in motivating other nations to work on combating Human Trafficking.

1.6.8 Legal and Policy Responses in Africa

South Africa's ratification of the 2000 Palermo Protocol aimed at suppressing, preventing and punishing trafficking related activities especially among children and women obliged the country to pass relevant legislations that addressed themselves to Human Trafficking. As a result of this, an act aimed at preventing and combating the vice was signed into law in 2013. The act was known as Trafficking Act. Even though it is yet to be implemented in full, it is the first one to address the vice comprehensively and holistically in the country. The Act establishes the offence related to trafficking and such related offences, creates penalties for trafficking, protects victims of trafficking and recognizes the role played by organised crime networks in child trafficking. The Act generally aims at preventing and combating all forms of trafficking ranging from sexual abuse to forced labor. Although South Africa passed interim legislation in the form of Chapter 18 of the Children's Act 38 of 2005 (that will be regarded as "Children's Act" going forward) and Section 70 and 71 of the Criminal Law (that relates to sexual and related issues), the Amendment Act 32 of 2007 (that will be regarded as "Sexual Offences Amendment Act" going forward), both statutes present certain challenges.

The process of prosecuting children related issues can sometimes be challenging. Some of the challenges related to this process include misclassification of the issues and efficient identification of victims and suspects. In addition, the lack of resources and skilled people working in this area is also another huge challenge. As regards resources, the lack of adequate facilities that address the needs of children amicably is the biggest challenge. Other challenges related to investigative processes, enforcement of the right laws, lack of skilled prosecutors together with investigators who can address Human Trafficking issues in the right way. Unless these challenges are addressed, prosecutors may not be able to prosecute their cases effectively.

Because the issues of Human Trafficking are relatively new to South Africa, there are no case laws in the country together with precedents that can be relied upon to provide directions for other cases. This acts as another challenge for prosecutors because they do not know what they should do at local level. As a result, they operate with little or no efficient guidelines of prosecutorial processes implying that they learn on trial and error basis. Furthermore, they rely on other common laws and statutes to build their cases.

Adepelumi (2015) noted that the Nigerian government had the strongest anti-trafficking practices within its law enforcement arm of government. The anti-trafficking law that was developed in the country in 2003 was amended in 2005 to prohibit Human Trafficking acts and define more penalties for people who engaged in those activities. The penalties included 5-year imprisonment term for people found guilty of the act and a fine that did not exceed about US\$ 645 or both for offences related to forced labor. The penalties were not strict because they allowed offenders to pay cash penalties instead of spending time in prisons. For sexual related offenses, the law preferred between 10 and 15 years of imprisonment or fines not exceeding US\$ 1,250 or both.

In Ethiopia, Human Trafficking was not given adequate attention by the government until recently. The 1957 Penal Code which was in force until 2004 had no provision on Human Trafficking despite the serious challenge posed by the practice (US Department of State, 2010). The present Criminal Code, on the other hand, incorporates provisions which criminalize Human Trafficking. However, the law failed to adequately deal with the matter as it failed to address various issues associated with Human Trafficking. For example, the law criminalizes Human Trafficking if it is carried out for the purpose of exposing individuals to forced labour. Consequently, the law cannot be used to criminalize Human Trafficking that is carried out for other purposes other than forced labour such as sexual exploitation, slavery or removal of organs. Apart from dealing with criminalization of the conduct, the law does not comprise other essential aspects such as prevention methods and victims' protection.

In Ghana, the Government has implemented several programs, legislations and policies that address themselves to Human Trafficking issues. One of such initiatives is the Human

Trafficking Act, 2005 (Act 694), which was enacted in 2005. This act provides the legal framework for preventing and suppressing Human Trafficking activities in the country by defining penalties for people who engage in the vice, initiating measures aimed at protecting and safeguarding the welfares of victims. Out of this framework, a Human Trafficking Secretariat (HTS) that was managed by 13 board members was established. Its overall goal is to sensitize the members of the public about the issues related to Human Trafficking, curbing the vice and developing environments under which the vice could be eliminated by impeding its gains.

This implies that African nations have legislations on combating Human Trafficking. However, the legislations have not been used to a great extent and also some are unachievable, which results to the amendments from time to time. It is important for the governments to work together with other stakeholders to combat Human Trafficking.

1.6.9 Legal and Policy Response in Kenya

There was advocacy and awareness creation by senior management officers who sought to increase awareness about the issue among the members of the public; the government during the Day of the African Child in June 2006 had a theme on child trafficking. As a result of this effort, an action plan for the country aimed at combating Human Trafficking (NPA, 2011-2015) was developed to give directions relating to the execution of the Counter Trafficking in Persons Act. The strategic plan 2008-2013 in the Ministry of Gender and Children included counter trafficking of children as a priority area to be funded in the recurrent budget. The Ministry of Foreign Affairs in liaison with development partners held a brief training for the six newly appointed ambassadors on counter trafficking in persons (Ministry of Foreign Affairs, 2009).

The act puts in place various mechanisms that address themselves to issues on Human Trafficking. Prosecution has been made to those found to be trafficking children. In addition, frameworks have been developed to protect children from being trafficked. Regional guideline, 2012 for victim assistance to trafficked persons has been developed. National children policy has been developed. As a result, the report that was released in 2008 indicated a significant improvement on issues related to Human Trafficking in the country.

This was largely due to investigative mechanisms that had been put in place. In 2014, the country was identified as Tier 2 country in fighting vices related to Human Trafficking. A Tier 2 position indicated that the government in general had not addressed all issues related to the vice. This was largely because most of the efforts remained uncoordinated to make significant contribution to eliminating the vice in totality.

The national plan for combating Human Trafficking activities is centered on 3Ps that focus on preventing, protecting and prosecuting issues related to the vice. To date, the approach remains embedded in the national frameworks and efforts implemented by the government. The US government also uses such an approach that is based on the UN's procedures to avert, overpower and penalize trafficking physically (Palermo protocol and the U.S. TVPA). In Kenya an effective fight against organised crime requires a response to the organised crime features of trafficking. The current legal framework is inadequate in this regard.

1.7 Theoretical Framework

Many researchers have addressed trafficking in persons in attempts to control it. It is essential to decipher the phenomenon behind trafficking in persons and how it has become customary practice. Various theories are thereby needed to elucidate issue of trafficking in persons and its growth over the years. The theories used for this study are Kingdom's multiple streams theory, Marxist and demand theory, and Victimology theory. These theories are fundamental to the research as they help illuminate the contributions and the shortcomings of Kenya's counter-trafficking in person's framework as compared with South Africa and the United States.

1.7.1 Multiple Streams Theory

Multiple streams theory is a system that has been used worldwide to aid with the policy formation process. The three streams; problem stream, policy stream, and political stream, were noted by Kingdon in 1984, who analyzed the process of making decisions in public policy (Kingdon, 1984; Protopsaltis, 2011). The three streams work together to push a public policy issue from debate to decision to changing public policy. This study will apply the multiple streams theory in order to comprehend the manner in which policies are

implemented in combating trafficking in people with disabilities in Kenya. It is common sense that Human Trafficking and slavery infringe on human rights. Various theories help in demonstrating the way changes in public policies help in combating processes aligned to Human Trafficking practices.

1.7.2 Demand Theory

The theory of demand was developed in 1871 by Walras, Menger, and Jevons (Moscati, 2007). Demand, one of the fundamental principles of economic theory, is when consumers are willing to pay for what they desire at any given time (Riley, 2012). Demand theory illustrates the correlation between the demand for goods by the consumer, and the prices for those goods. If the goods are unavailable, the demand and price for the goods could increase. Market demand totals what everyone in the market craves (Riley, 2012). Demand theory identifies the need for slaves to satisfy the desires of the consumers (Lutya & Lainer, 2012).

1.7.3 Victimology Theory

Mendelsohn, also known as the father of Victimology, introduced the term victimology in his 1956 article, though it was first coined in 1947. Mendelsohn examined the relationship between offenders and victims and came to the conclusion that some victims were involved in their offense (Mendelsohn, 1956). Mendelsohn suggested that institutes be created that were dedicated to victimology. The purpose of these institutes was to better investigate why certain populations are subject to victimization, advance the study of victimology, and improve overall practices on a global level (Wilson, 2009). From there, governments across the world embarked on new initiatives to better serve victims with recovery services and prevent more individuals from becoming victims. Trafficking victims are constantly victimized and exploited by their traffickers. Understanding the populations that are targeted and why they are being targeted can aid in the reduction of people being forced into slavery, as well as, implementing quality programs that can better serve trafficked victims. The theories are interrelated in that Marxist and Demand Theory emphasizes on the existence of Human Trafficking in the society. Victimology Theory explains the role of government in determining the individuals vulnerable to Human Trafficking. The Multiple streams theory touches on how policies can be created and utilized to combat Human Trafficking.

1.8 Research Methodology

1.8.1 Research Design

The research used a mixed method research design. A research that makes use of mixed method is largely focused on evaluating real-life problems with multiple perspectives and cultural issues that affect it. As a result, rigorous qualitative and quantitative approaches are applied in data analysis to evaluate the frequency and magnitudes of various constructs. This method is important because it draws on the strengths of both types of analysis to strengthen the outcomes of the study. This design is therefore suitable in determining the effectiveness of Kenya's legal framework in combating trafficking of people with disabilities.

1.8.2 Data Collection Method

In collecting data, Secondary data collection method was employed. The secondary data was collected from published documents, including articles by scholars, reports by institutions, governments and non-government organisations and other databases that relate to Human Trafficking in the country. The data was analysed in the thematic area of study.

1.9 Conclusion

This section has outlined a background to the subject of trafficking in persons with disabilities, situates it within the Kenyan context, and articulates the problem to be addressed by the present research. The section also offers a conceptual clarification of Human Trafficking as distinctive from related concepts of smuggling and slavery. The research methodology part provides the main methods utilized to select research participants in terms of sampling frames and techniques utilized.

CHAPTER TWO

TRAFFICKING IN PERSONS WITH DISABILITIES

2.1 Introduction

This chapter addresses the state of Human Trafficking in general, the push and pull factors that see to the continual thrive of the vice. The chapter interrogates the status of trafficking in PWDs and discusses the global, regional and local perspectives of trafficking in PWDs.

From a general viewpoint, it is rather obvious that Human Trafficking violates human rights of the people who are smuggled for various reasons (Oppong, 2012). The main factors that contribute to this vice include high levels of poverty, corruption and unemployment. For the disabled people, business opportunity is among the main factors because there are no intervention measures in place right now (Goodey, 2008). Every year, thousands of people fall victims of this vice locally and outside of the country. As a result, almost every country is susceptible to the vice of Human Trafficking activity because it acts either as a transient, originating or destination country (Goodwin, 2016).

According to Harrington (2005), Kenya is ranked in the second tier countries amongst the governments that have so far made effort to combat the acts of Human Trafficking. The main legislation that safeguards the interests of smuggled people in the country is the Trafficking Victims Protection Act of 2000. The Act centers on the main purposes of combating Human Trafficking by punishing the traffickers and even ensuring that it does not occur at all cost. As part of complying with the act, Kenya enacted the Anti-Human Trafficking Law and Section 14 of the Sexual Offences Act. Both acts prohibit tourist related acts of child abuse. However, this has not helped much in curbing the vice in the country (Harrington, 2005 pg. 175-206).

Consequently, the provision of additional training related to identification and respond to trafficking crimes to all levels of government officials particularly law enforcement officials and establishment of an official process of referring trafficking victims for assistance is critical. According to Leman and Janssens (2008), poverty, gender and age are among the main factors that promote Human Trafficking activities in various countries. Further, Leman and Janssens (2008) propound that children and persons with disability are among the

vulnerable group because of influence from those in government, families and teachers whereas women are susceptible to the vice because they are often traditionally viewed as belonging to a weaker sex; are excluded from decision making circles and poorly represented in the political arena. Moreover, the gender-based violent activities related to Human Trafficking are associated to cultural and social conditions related to women (Leman & Janssens, 2008).

Kothari (2008) indicates that even though all cases of trafficking in persons with disabilities have their unique traits, most of them follow similar patterns. He argues that most of those people are normally abducted or recruited through some forms of mechanisms that appear genuine, then they are transferred through transit countries or regions before they are taken to destination countries (Kothari, 2008). If the processes are ended prematurely, the victims are rescued and they receive some form of support from countries of destinations or at the place of their rescue.

As part of the solution, victims might be returned to their countries of origin or relocated to other countries where they receive further support (Masudi, Ishum & Parmentier, 2010). A study that evaluated the mental and physical impacts of Human Trafficking in Europe established that 60 percent of victims had either experienced sexual or physical violence before they were trafficked (Masudi, et al., 2010). The study identifies vulnerability as among the main factors that contribute to victimization of victims of Human Trafficking at the start of trafficking processes. Nevertheless, these are not the only factors that contribute to high numbers of Human Trafficking activities.

The study further argues that when countries termed as either destination or origin in the light of the United Nations Human Development Index, the countries that ranked at the top of preferred places of destinations had high levels of human development whereas the ones that acted as places of origin were least developed. Accordingly, it might be argued that the victims of Human Trafficking normally come from poor countries.

Kothari's analogy is that TIP is transnational in nature; this is contradicted by the 2018 UNODC report which shows that there is a national nature to TIP where victims are exploited in their country of origin. The report showed that majority of TIP victims had been

identified in their country. This clearly indicates a need for research on internal trafficking in persons.

2.2 Push and Pull Factors

These are the main root causes for the continual rise in the illicit trade in human beings both nationally and transnationally.

2.2.1 Poverty

Poverty is cited as the main cause of Human Trafficking and migrant smuggling in the world. These usually happen to the poor in the society and are as such extremely vulnerable and are easy preys to the traffickers. Most victims of Human Trafficking are lured on the basis of employment opportunities and better lives by the traffickers: rarely will you find victims who were forced and or threatened but they exist (IOM, 2008).

Most victims are usually taken to the urban centres for the sake of exploitation both in the labour market and sexually. These victims meet the traffickers on own effort or by the effort of family members or friends. Other victims are introduced by their peers who have already been recruited and they usually seek a livelihood to benefit themselves with a possibility of boosting their incomes through remittances or a flat fee after being recruited. These are mostly children and women victims. For the children, they could be trafficked to benefit their relatives even though some parents also inadvertently end up facilitating the trafficking of own children (IOM, 2008).

2.2.2 Porous borders and free movement of people

Kenya's borders with her neighbours are all porous and as such are easily accessible and crossed through informal and unguarded routes. This makes Kenya a favourite transit route for traffickers and smugglers. Further, the East African community has opened its borders to its citizens to allow free movement for the purposes of opening the region to economic integration and development; a fact that the traffickers and smugglers have taken advantage of. (Society for International development in the GHEA 2012)

2.2.3 Armed Conflict

Conflicts in the region such as in the Sudan, South Sudan, Somalia, Burundi, The Congo, and northern Uganda have created a significant population of refugees. This group is vulnerable and therefore a ripe ground for recruitment by traffickers (SID 2012)

2.2.4 Supply and demand

Kenya has a demand for cheap labour particularly in the domestic work and economic activities such as agriculture, fishing, mining among others which has provided market for the traffickers and smugglers. There is also demand of children and women in the tourist hubs for the purposes of sex tourism and also due to tough laws on some crimes such as paedophilia which has seen criminals migrate to countries such as Kenya and as such providing a market to traffickers.(IOM 2008)

Internal Human Trafficking increases when people living in rural areas are trafficked to urban areas. Life is very expensive and it is not commensurate with the wages and as such most people cannot afford to pay the legally laid down wages for domestic servants. Therefore, they turn to cheap but illegal labour like employing children for much less which is usually paid directly to the person who brought the child. In some areas, vulnerable children such as the HIV/AIDS orphans in Nyanza province are forced to work in dangerous Gold mines in exchange for food and very low payment. (US Department of State TPR 2013)

In the coastal area of Kenya children are sometimes pushed into prostitution to receive payment for sex from tourists which has attracted sex criminals such as paedophiles to Kenya since there is enough supply and low risk of being caught due to the laxity of action from the law enforcers who are not well trained in identifying victims of trafficking. This demand of cheap labour and high presence of sex tourists has increased the demand of victims which has led traffickers to work in sustaining their illicit business and has seen the increased cases of Human Trafficking.

2.2.5 Corruption and bribery among law enforcers and other public officials

The ills of corruption and bribery are high in Kenya and this usually affects the justice and judicial system. The law enforcers are bribed by the traffickers in order to get safe passage.

Sometimes the law enforcers are given a fee in order to be complacent. The court officials are also involved in corruption in that they alter court records and testimonies in order to make the case weak (Trafficking in persons report 2012).

2.3 Global Perspective of Trafficking In Persons with Disabilities

Even though slave trade was abolished in the 19th century, Trafficking in Human Beings (THB) is widespread in the modern society. It thereby acts as one forms of slavery and is among the most degrading crimes in the history of men following the freedom of movement practiced widely in different parts of the world (Foot, 2010). As a result of the freedom of movement, many people have thereby become preys of the negative consequences of uncontrolled movement of human beings. Accordingly, THB might be regarded as a dark side of the widespread globalization (Hu 2011; Ramo, 2011).

Trafficking in human beings affects about 127 countries in the world today. These countries act either as hosts, origin or transients or even a combination of all of the three activities (Salett, 2006). As early s 20th century, THB has been viewed as expanding at different fonts and levels. Globally, it is estimated that between 600,000 and 2 million people are trafficked every year (ILO, 2005, US Department of States, 2010). About 80 percent of these people are normally perceived to be either girls or women whereas 50 percent of them are children. The ILO suggests that more than 2.4 million people are at one time or the other subjected into involuntary exploitation. In line with this, the U.S. Department of State estimates that thousands of people are always in the pipelines of being trafficked by traffickers whose primary target destination is the United States waiting for either documents to be processed or new routes to open up (Aronowitz, 2009).

Trafficking in person with disabilities is at the moment becoming a worrisome social phenomenon because it affects many people. The ILO program on children contends that out of 8.4 million of disabled people who are exploited throughout the world, 1.2 million of them are victims of THB. This estimate corroborates with the one from UNICEF (Gallagher, 2002). According to Hu (2011), the different forms of PWDs include; commercial sexual exploitation, debt bondage, forced begging/peddling, forced labour, unintentional servitude and servile marriage.

In the United States, Shelly (2010) established that vulnerable people were at risks of THB, but those with mental problems were at higher risks. From this finding, it is possible that human traffickers might target people with disabilities so that they can control their social benefits.

In USA, the National Human Trafficking Hotline (2015) identified about 2,116 people being at high risks of being trafficked out of the many rescue calls they made to the body within a period of 24 months. During the same period, other people with disabilities were also identified as being at high risks of being trafficked. Most of these people were targeted so that they can be forced into begging out of sympathy (United Nations, 2016). The first of such cases in USA involved 55 Mexican people who were deaf. The victims were forced to sell trinkets or beg along the streets of New York. The THB of disabled activities may extend to other activities which are not linked to trafficking. For instance, in the Henry's Turkey Service many of disabled people were moved to Iowa to eviscerate turkeys in 1970s and 1980s. The disabled were paid \$60 on monthly basis, but they lived in deplorable conditions (Reid, 2018).

Human Trafficking has also occurred in other states in USA. Some of them have involved horrific sexual abuses. In Missouri, women with mental problems were forced to engage in commercial sex to pay drug debts. In Kansas, similar acts were discovered and as a result a jury was found guilty of operating such a home (Oram, 2015).

In Ukraine, disabled new born babies are trafficked for human organs. Furthermore, persons with albinism are being trafficked for body parts, which are normally sold to witchdoctors (United Nations, 2016). In the Pakistani city of Karachi, people with disabilities are highly targeted by traffickers. Others are smuggled to neighboring countries to beg. Most of these people come from Sindh with Iran being the preferred destination. A survey that was carried out by a humanitarian NGO established that poor parents received about Rs 10,000-20,000 (US\$117-235) in lump sum and shares of money obtained from begging in exchange of their disabled children who are moved to Iran. Most of these people beg outside the mosques or shrines (The New Humanitarian, 2011).

A review of 54 sex trafficking cases identified in Florida between 2007 and 2014 showed that about a third of these cases entailed girls with mental problems. On average, most of these girls were aged between 15 years, but their respective mental age equivalents were equal to children aged between 7 and 10 years. The analysis showed that human traffickers targeted these girls because they were unaware of sexual exploitation and even the danger that faced them. In fact, most of them had little knowledge on romantic and sexual abuses. Some of them did not differentiate boyfriends from sex traffickers. In spite of this, those with less severe mental challenges understood some of these issues, but they were exploited because they did not know how they could escape it or even their rights. To make the matter worse, majority of them were threatened so they did not have a way out of it (Reid, 2016).

Franklin and Smeaton (2017) reviewed the risks of sexual exploitations on children for UK's children with learning disabilities. The survey data was obtained from social services and local authorities supporting such children. Both service providers and children were interviewed. Four main factors were identified as increasing the risks of exploitation among these children. Some of those factors related to inability to develop their social skills so that they could be independent, the fact that most of them were rarely listened to, social isolation and lack of education. Others related to parents' inability to read signs of sexual abuses among those children.

Human Trafficking generates huge sums of money for people who engage in it. It is estimated that they make up to \$9.5 billion (Wyler & Siskin, 2010) and \$32 billion (ILO, 2005). Sex industry is said to account for the largest share of this money (Hughes, 2005). In spite of this, scholars in this field of study claim that most of these data are not based on comparable data (Lange, 2011; Macklin, 2003). Accordingly, most of the data utilized in this field of study is unreliable. This is attributed to the fact that the exercise tends to be secretive; as such, it might not be possible to estimate the figure with high levels of accuracy. To counter the problem of THB, Laczko (2002) claims that researchers need to develop efficient tools for collecting reliable data. Even though significant progress has been made to bridge the gap and challenge, the information gap is still wide; hence, the need for further effort (Laczko & Gramegna, 2003).

The widespread of THB is facilitated by the high demand and supply of vulnerable people especially the disabled ones. In any global economy, which is competitive, the demand for such people is driven largely by the demand for cheap labor (Aronowitz, 2009). For sex trafficking to thrive, sexual services have been made so accessible and readily available. In addition, the vice is complicated by the fact that most of the victims do not speak about it. These complexities complicate the processes of identifying and combating the vice. Globalization is the other factor that complicates it because it is possible for people to move from one country to the other because of international borders, which are opened up for traders and travelers. This is facilitated by efficient transport and financial infrastructures. Furthermore, the technological developments have also played an important role in facilitating the free flow of information. In addition, it has facilitated financial services across borders and movement of people than has ever happened before. Even if THB might not be regarded as an outcome of globalization, the exercise involves integration of diverse activities, which are parts of globalization. As such, it is regarded in the current study as part of it (Mirkinson, 1997).

THB might be regarded as a highly profitable venture because it requires little initial capital to set it up and in some instances it entails minimal risks. In addition, it might be regarded as possessing comparative advantage over other abusive activities such as drug trafficking. The simple reason is that with proper documentation it might be possible to traffic human beings silently and repetitively (Bales, 2005). However, none of the factors identified in the current study can thrive on their own especially for disabled people without high levels of corruption within countries involved in transiting the people and laxity within the law enforcement agencies (Shelley, 2010). In the light of this, Shelley (2010) claims that for criminality to thrive, the perpetrators have to cultivate trust and relate closely with those mandated with enforcing the law. In making this argument, Shelly (2010) is concerned about the thriving networks within the actors of Human Trafficking and political orders in their respective countries.

2.4 Regional Perspective of Trafficking in Persons with Disabilities

Over 200 years from the time slave trade, which saw many Africans suffer with their families away from home, was abolished in USA in 1807, millions of the same people are still

enslaved in their home countries. Most of these people are normally children and women who are vulnerable to the vice (Thipanyane, 2015). It is unfortunate to note that the pursuit of wealth linked to influence and power coupled with huge sums of money obtained from the vice similar to the one propagated in the 16th century continue to spur in 21st century (Thipanyane, 2015).

Numerous African countries like Sudan, DRC Congo and Mauritania are the leading countries in the world with high levels of Human Trafficking. According to a report that was released in 2014, about 15 of the African countries made the list of the countries that engaged in Human Trafficking. Mauritania led the list with over 150,000 people in a small population of 3.8 million people whereas DRC Congo and Nigeria ranked among the top ten countries with high numbers of trafficked people (Fitzgibbon, 2003).

The manifestation of problems related to Human Trafficking was manifested in Africa in 1990s when conflicts arose among many countries. In this respect, the widespread of inter-territorial conflicts among many African countries and disabled people is thereby not coincidental. Most of conflict-induced acts of human tracking among disabled people emanated from wars witnessed in Uganda, Liberia, Mozambique, Sierra Leone, DRC Congo and South Sudan among other countries that were torn by war. A review of the literature indicates that trafficking of disabled people follow patterns of lawlessness, instability and insecurity.

In West Africa, Human Trafficking affects about a third of the countries in the region (UNICEF, 2003). IOM (2002) and Truong (2006) address issues that contribute to Human Trafficking of women in the region to West Europe. They claim that the trafficking of these people especially those with disabilities expanded slowly since 1980s to reach to its current levels. Most of these activities are linked to erosion of social practices especially those elated to taking care of the vulnerable and poor people. This is largely facilitated by search for livelihoods outside of local communities. The ILO-IPEC (2002) the demand for child in Sub-Saharan Africa (SSA) is facilitated by intra-state conflicts. The conflicts increase the demand for child labor, commercial sex, service in soldiers, servitude at local level and service industry. In some instances, they are adopted into families, taken for ritual offerings or removal of body organs.

Truong (2006) contends that discussions related to Human Trafficking in African countries particularly those related to women, children and persons with disabilities reveal tensions at varying levels. The first thing is that the terms such as “consent”, “sale”, “abduction” and “trafficking”, which are largely linked to Human Trafficking have several meanings and interpretations to different groups of people. The author observes that the consent provided by parents to people accused of trafficking disabled people is normally controversial. As a result, if the process could be criminalized, then penalties could be preferred on larger communities (Truong, 2006).

The second thing is that tension between traditions and human rights practices contributes significantly to the apprehension between the rights of victims and their interests especially in laws developed in different countries. In other instances, the unclear definition of the term Human Trafficking in certain judicial systems complicates the policies developed to address the vice and the manner in which such practices are handled. The third thing is that application of legal norms from western countries is normally weak in African countries and other underdeveloped economies. As a result, most of those economies are still struggling to incorporate such practices within their judicial systems. These challenges complicate the process of protecting the interests of disabled people on issues related to Human Trafficking. Veil (1999) claims that most of cultural and social practices in SSA influence the way people are trafficked in Africa. In SSA, trafficking in person with disabilities is a cross border issue that disrupts the ways of life and systems of livelihood.

In Southern and Eastern parts of Africa, the acts of Human Trafficking affect about a third of the countries (UNICEF, 2002). Most of the perpetrators are normally local people with close connections with other people living outside of their countries. Molo Songolo (2000), which is an organization that fights for children based in Cape Town, suggests that commercial sex has increased the number of children trafficked within South Africa. One unique thing to note is that most of Human Trafficking networks in the continent are linked to sexual practices in the world. Most of the countries affected by this challenge include Lesotho, Mozambique, Angola and Malawi. Those outside of Africa include Russia, China, Taiwan, and Thailand (IOM, 2003b). A review of the practice within South African context indicates that demand for trafficked people and vulnerabilities are some of the factors that increase the

demand for disabled people in the vice. As a result of this, girls are more vulnerable than boys for commercial sex and the fact that they can be abducted easily than boys.

The Sub-Saharan Africa has its own challenges related to Human Trafficking. Narrowing down to the East African sub-region, the three main types of Human Trafficking include child trafficking for the sake of forced labor and domestic related jobs, women trafficking for commercial sex purposes within the region and such practices outside the region (IOM, 1996). Human Trafficking may occur at different levels ranging from forced labor to manipulative practices within domestic work as well as sexual practices (UNODC, 2009).

Normally, the exercise requires a third party especially one linked to gangs that infringe on the right of victims. About half of the countries in SSA have in one way or the other encountered Human Trafficking challenges. Some of those practices related to children or women. In western and central parts of the continent that have high numbers of Human Trafficking, over 70 percent of the countries in the region identify the vice as a major problem in comparison to 33 percent of countries in Southern and Eastern part of the continent (TIP Report, 2010).

The issue of Human Trafficking in SSA is deep-rooted largely due to poor economic conditions. Normally, the high levels of poverty within rural areas force poor families to give up their children to traffickers in pretence of providing them with better lives or job opportunities (IOM, 1996). A review of the literature indicates that majority of the people affected by poverty live in shanties under deplorable conditions in desperation. On the other hand, unemployment among adults contributes largely to poverty that acts as a pull factor towards Human Trafficking.

Similarly, family breakups resulting from unemployment, death or divorce bring about abandoned children compounded with HIV/AIDS orphans. These groups of children grow up into youth lacking the basic needs, protection and care of parents and poverty which renders them susceptible to traffickers. In Senegal, for example, religious leaders who act as teachers of moral practices force orphans to beg for food and money in streets. This exposes such children to abuse practices from adults thereby they are easily driven to prostitution, drug abuse and crime. Street children, most of who are a product of armed conflict, rural-urban

migration, unemployment, famine, broken families and poverty, are susceptible to traffickers (TIP Report, 2010).

In Nigeria, most of the girls and women trafficked are meant for sexual exploitation. For instance, a girl who was trafficked out of the country across three countries for sexual exploitation was rescued recently. The girl who was a school going child was lured on her to school only to be taken to Chad. From here she was taken to Cameroon before she ended up to Gabon. The rescue mission involved multi-national agencies (Munyi, 2012).

The trafficking of body parts for albinism, which are used as magical portions and other such activities, is a huge business in different parts of the world especially in Africa. Irin news (2016) asserts as the acts were many in Malawi where about 17 of such cases were reported and 66 abductions were made. Most of the killings carried out by the perpetrators of such abductions are meant for traditional medicines practiced by witchdoctors. Burundi, which has high number of people with albinism has for a long time suffered from such abductions until the issue was contained lately. Nevertheless, as the fight against similar abductions increase in Tanzania, the number of such cases is rising in Burundi once again. A good case study is an attack that was launched in 2012 by 6 men who were armed heavily. A child with albinism that was abducted in the process was later found dead with parts of body removed for witchcraft. Similar incidences have been reported in other parts of the country involving people with albinism. Accordingly, in the last 10 years, about 21 murder cases of people with albinism have been reported even though 13 of them have escaped the attack. To make the matter worse, the graves of such people have been robbed their bodies for the same extortion (Bell, 2008).

Because of high levels of insecurity and porous borders in Africa, human traffickers are chancing on the existent lacuna, to pervade continuous actions of trafficking in persons with disabilities. For instance, Nigeria, which is known for Human Trafficking, traffickers take advantage of insecurity, failed identity systems and poor documentation to traffic people. in that country, visas are normally acquired through corrupt means whereas some of them are falsified with the help of those serving in ministries of foreign affairs (Salihu and Ajio 2009; Carling, 2006). Porous borders in Nigeria and Ghana enable traffickers to recruit victims easily. As a result, in rural areas where poverty levels are high, disabled children are

recruited easily. Adesina (2014) reports that most incidences of trafficking within a country are done from rural to urban areas. The final destination of trafficked individuals, for instance, the African child, depends on intended form of exploitation. However, for female victims, Italy acts as the preferred destination for victims from Nigeria. Accordingly, those not able to get to Europe find their ways to North Africa (Carling, 2006). Okujuwon, (2008) explained, that the estimation by Italian authorities indicates a figure of about 10,000 trafficked persons in Italy.

According to Adesina (2014), actors in the African trafficking industry are a group of people who in certain cases, are supported by prominent national figures within a government or outside of it. These people include the people who transport victims and the ones who recruit them. Also included are immigration workers who aid this group of people making up the trafficking industry with paperwork, as well as pimps and brothel owners. Equally elemental in this trading mechanism are health practitioners who provide some protection and specialized services to victims.

2.5 Kenyan Perspective of Trafficking In Person with Disabilities

Kenya hosts over 350,000 refugees who are on the verge of rising to insecurity in South Sudan and Somalia. Additionally, close to 300,000 people were forced to leave their places of residence by political tension that erupted in the country in 2007/8, thus consequently becoming susceptible to various forms of abuses including smuggling and Human Trafficking. Because the country borders most of the countries which are vulnerable to Human Trafficking, it is thereby regarded as a hub for such practices. Up to now, Kenya acts as a destination, source or transit for people trafficked for various reasons. The two main forms of trafficking in the country include international and domestic trafficking.

Domestic trafficking related to people who are abducted and exploited internally. This includes the different forms of exploitations carried out in the processes of looking for employment opportunities. On the other hand, international trafficking deals in victims across international borders. Most of these people are taken to other parts of Africa, America or Europe (Karanja, 2012). Human Trafficking for sexual exploitation is among the most common forms of exploitation and it affects children and women. In the same breath, there

are many illegal immigrants in the country whose health outcomes are overlooked most of the time. At the moment, the government has focused much of its attention to labor related migrations (Karanja, 2012).

A report by Kigai (2013) indicated that majority of disabled children from Tanzania were brought to Kenya to engage in forced begging. For instance, more than 100 disabled persons are ferried and sneaked at the Kenya-Tanzania border daily to be used as professional beggars in the coastal city of Mombasa. The disabled persons are smuggled into Kenya in the pretext that their welfare will be looked into and that they would benefit from alms. The rise in the trafficking of handicapped persons from Tanzania is high because of corruption. On the border, bribes are paid to allow illegal migrants enter the country with temporary passports.

The money that the beggars collect every day is handed over each day to their handlers. The national bureau of statistics indicates that unemployment is responsible for high rate of begging in the country (Malinowski, 2019). Bribes are even paid to local county police officers to release disabled children arrested as they beg for money. Even though the physically able children are able to outsmart police crackdowns, most of the disabled children caught in the processes of begging have to bribe the city council officers to avoid prosecution.

At the moment, the estimate of Human Trafficking incidences is at 200,000 cases, but the figure could be slightly higher because of unreported cases. The national police force puts the figure at 150,000 even though most of them might be cross-borders for people in the process of relocating to other countries. The National Crime Research Centre (2015) identified child trafficking as the highest form of trafficking at 39 percent. Most of these children were trafficked for prostitution (25%) and forced labor (31%). The East African community has taken stringent measures to eradicate the vice by ensuring that proper vetting is conducted at every stage. However, it is not 100 percent effective.

2.6 Global Response to trafficking in Persons with Disabilities

Evidence from previous studies shows that efforts have been made by various groups whether from government or private institutions to combat trafficking. A further review of

the literature shows that anti-trafficking efforts started extensively in the 19th century. From this time, more effort has been made to ensure that the members of the public are protected from the vice at international and regional levels. From the time the first agreement was made in 1904 to the time the 1949 convention was adopted, much of the focus was centered on prostitution. Even if such practices could be traced to slave trade, the agreements made before put more emphasis on races and gender. The fight against prostitution was supported largely by international bodies through convention. In the recent time, attention has been turned to the Palermo Protocol to extend the scope of agreements beyond sexual exploitation.

From 2000 when that protocol was ratified, several measures aimed at combating trafficking have been initiated at regional, continental and national levels. One of such efforts was initiated in UEA in 2007 that later led to establishment of an UN convention (Aronowitz, 2009). This led to emergence of UN Global Initiative to Fight Human Trafficking (UN.GIFT). Other several conventions have been developed. Most of them perceive Human Trafficking as a serious problem thereby focus on developing mechanisms to address it. In addition, they encourage member states to partner with each other to intensify the fight against the vice.

A forum that was convened in Vienna adopted the UN.GIFT partnership framework that sought to fight trafficking from a global perspective. It expanded the framework to include 3Ps focused on preventing, protecting and prosecuting traffickers. Alongside the 3Ps, it introduced a fourth P that sought to encourage member states to partner with each other in the fight against trafficking. This framework guides most of initiatives implements across the globe. This extends to the laws they enact, the cooperation they develop with each other and strategic policies they adopt among other things (Aronowitz, 2009).

In spite of the above, counter-trafficking laws have been developed at various levels across the world. The US government on its part has developed a Trafficking in Persons (TiP) reports that provides the number of people trafficked every year in each country. Various bodies such as UN police Division, Interpol and UK SOCA liaison officers are some of the institutions developed at regional and local level in various parts of the world (Bowling, 2009). Locally, specialized units have been developed to coordinate efforts made by governments and other players and even report trafficking incidences. Almost every country

has its own specialized unit in the ministry of foreign affairs or police force that addresses itself to Human Trafficking. Private players also provide expert advices to these bodies and units to strengthen their efforts.

In Africa, regional governments have developed collective measures by making legal reforms to their administrative processes. For instance, in 2000 about 21 countries from central and west of the continent signed a convention aimed at protecting children from trafficking. The ECOWAS also signed a similar convention among its 15 member states. The convention encouraged member states to make legal reforms in their national frameworks to criminalize trafficking. An Ouagadougou Action Plan was also signed by African states to combat the trafficking of children and women. In spite of this, there exist various variations in the bilateral agreements signed among member states. This affects the way various governments implement their laws on trafficking.

In Southern parts of the continent, most of the countries with the exception of South Africa are yet to develop anti-trafficking laws into their national laws. As a result, when confronted with trafficking challenge they rely on immigration laws rather than anti-trafficking ones. As a result, the victims of trafficking are criminalized at the expense of traffickers.

In contrast to those countries, Kenya has several laws that criminalize Human Trafficking. Accordingly, even though sufficient support is yet to be provided to victims of trafficking, victims are encouraged to provide evidence against traffickers. The victim protection bill for instance supports victims by providing them with food, psychological care and safety as they collaborate with government agencies in prosecuting traffickers.

As highlighted in an earlier case, it should be clear that countries that do not sign international protocols on Human Trafficking do not address the challenge of trafficking fully. Largely, this is because they rely on domestic laws that do not criminalize Human Trafficking. In such countries it would be difficult to invoke international anti-trafficking laws because they have not signed them.

Human Trafficking is regarded to be a broad subject, but the ILO-IPEC suggests that the definition should not be viewed as complex or even confusing. This suggestion is aimed at enabling various players to interpret the term independently so that a better understanding of

the problem can be developed. UNICEF (2003) is of the view that the variation in definition is a socio-economic as well as a political issue that emanates from various forms of responses that actors take towards trafficking. Based on the above complexity, then there is need to contextualize the issues related to Human Trafficking.

2.6 Conclusion

This chapter has established that trafficking of persons with disabilities is a global crisis due to their vulnerability. The causes of Human Trafficking are universal with some regions being the pushers and others pullers and in some cases being both the pushers and pullers. As discussed in this chapter, governments are in the process of curbing the vice through various agencies and intervention methods. Of great importance is the need for synergy and regional cooperation as Trafficking in Persons happens with the knowledge of the very people who should help prevent or secure borders. There is need for states to cooperate and develop strategies such as creating a network between states' criminal justice systems in order to curb and deny Human Trafficking perpetrators a hub to operate from. This cooperation can take the form of cross boarder policies. For example, if Kenya was to stop the trafficking of persons from Tanzania, it needs the cooperation of the Tanzanian government alongside that of other state agencies along the Human Trafficking corridor. In short, there has to be counter Human Trafficking legislation, law enforcement which includes the Police and Immigration officers' awareness amongst the target group.

The ever increasing demand for vulnerable people to be exploited in the labour industry is driven by the demand for cheap goods and services. There's need for the states of the world through organizations like the United Nations to set the minimum prices to consumables and make them uniform as this will make demand for cheap labour go down. Further, states need to carry out regular impromptu checks on manufactures and large farms in order to nab perpetrators in the act.

In Africa civil strife has greatly contributed to the Human Trafficking menace. Civil wars have created a vulnerable population which has become a fertile hunting ground for traffickers. Africa, as a whole, needs to address the grievances of its citizens and embrace

democracy in order to create peace and stability. This will help reduce the vulnerable population susceptible trafficking and therefore deliver a big blow to traffickers.

CHAPTER THREE

LEGAL FRAMEWORKS AND HUMAN TRAFFICKING IN KENYA

3.1 Introduction

This chapter interrogates the effectiveness of the existing legal frameworks in combating trafficking of persons with disabilities in Kenya. The chapter specifically looks at the legislative provisions both domestic and international instruments, their applicability in Kenya, the policy responses and their enforcement in stemming trafficking in PWDS.

The legislative section covers the legislations in the constitution of Kenya and international provision such as the UN Convention on the Rights of Persons with disabilities (CRPD) and The Palermo Protocol. The section on policy responses covers the actions taken by the government of Kenya in response to the rising cases of trafficking in persons. The section on state of the existing legal frameworks on trafficking of PWDS looks at the effectiveness and problems in the legislation on trafficking of PWDS.

Kenya is regarded as a country of origin, destination or transit of victims of trafficking (Adepoju, 2015). As an originator, local people who are culpable are taken to other countries in the region, continent or other parts in the world. In African and European nations, Kenyans are trafficked for sexual exploitation or domestic labor. As a transit, people from neighboring countries are first brought to the country en-route to Middle East or South Africa. Finally, as a place for destination, people coming from outside the country are settled in different parts of the country (Adepoju, 2015).

3.2 Policy Responses

Significant efforts have been made in Kenya to brazen out Human Trafficking. Some of those efforts include legislation, measures that can be taken to identify victims easily and efficient prosecution processes. The first of such laws was passed in the country to facilitate the process of convicting the perpetrators of the vice. The law offers greater support to victims in the processes of providing evidence that could be used against the traffickers. The Victims' Protection Act is one of such laws. It provides the victims with psychological care,

food, and medical support among other forms of support to encourage victims provide sufficient evidence that can be utilized against perpetrators.

However, even though the national act that counters trafficking was enacted in 2012, the number of successful prosecutions that have been implemented in the country is low. This is because of the threshold set for evidence to qualify to prosecute perpetrators. Most of the children in the country are targeted for the vice so that they can work in homes, big farms, beg in the streets or work in the fisheries industry. Others are trafficked for sexual tourism along the coast. Because of the level of trauma most of the children are normally unable to provide evidence that can be relied upon to prosecute perpetrators. Normally, the processes of obtaining such evidence from such people prove effective when victims are offered emotional support and when they are protected. Therefore, if they could undergo intensive counseling, then they would be able to provide accurate information that could be utilized in the courts of law. As an illustration of what lack of such support can do, out of 43 cases reported by Cradle since 2009, only few of them have been able to fetch convictions.

The Government of Kenya also developed the National Plan of Action for combating Human Trafficking 2013-2017 (GOK, 2013). The framework was a response to the following factors. Kenyan government does not entirely conform to the minimum principles for the eradication of Human Trafficking. A report that was released in 2008 showed that the national anti-trafficking efforts had improved significantly because effort had been directed towards investigation processes. In 2014, a similar report identified the country as Tier 2 in the watch list. Generally, tier 2 implied that the national government had not put more effort to combating Human Trafficking. Largely, this was because much of effort had remained uncoordinated lacking effort to develop environment that could eradicate trafficking.

The security forces in the country have invested in technology to promote the national capacity to fight the vice by providing mechanisms that could be utilized to gather data related to the vice. In light of this, the country is part of international conventions that focus on combating the vice. These conventions help in sharing information and developing mechanisms that secure borders. As a result, most of investigative agencies in the country are able to thwart criminal activities related to trafficking before the activities manifest

themselves into criminality. In addition, training conducted on judicial and police officers together with punitive legislation have played critical roles in eradicating Human Trafficking.

3.2.1 The National plan of Action for Stemming Trafficking in Persons

The NPA was developed to help the national government streamline its efforts geared towards fighting Human Trafficking with the United Nation's (UN) plan. Accordingly, effort is geared towards suppressing and preventing activities that could result to Human Trafficking by punishing the perpetrators of the vice (Njeru, 2011). In light of this, the general focus of the plan was to develop a national atmosphere that could foster cooperation among various parties involved in fighting the vice.

In line with UN's practices, the plan focuses on three measures. The first one aims to prevent activities related to Human Trafficking. The second one addresses itself to protection of people who fall victims of the vice. The third one focuses on prosecuting the perpetrators of the vice (Miruka & Oluoch, 2011). The same measures are implemented by other countries across the world in their agencies mandated with issues related to foreign affairs.

A private institution known as Awareness against Human Trafficking organization (HAART) was established in 2010. Its focus was to prevent trafficking by increasing the level of awareness among the members of the public, prosecuting perpetrators of the vice, ensuring total adherence to policies and protecting victims. From the time it was developed, it has proved that Coast, Nairobi and Western part of the country are the most affected areas. It has also went ahead to provide insights of the issue in the country and guidelines that propose ways that can support victims (Mwangi, 2014).

The African Network for the Prevention and Protection of Child Abuse and Neglect (ANPCANN) is yet another private institution mandated with evaluating the plight of victims and assessing the extent that Human Trafficking has spread in the country. To achieve its mandate, it collaborates with local communities in its fight against the vice (Kaunga, 2008). Since 2007, it has addressed itself to East African region with a special focus to Moyale, Loitoktok and Busia (Oyewumi, 2011).

Kenya has also signed international conventions that focus on combating trafficking of people. In line with this, it signed the UN Convention on the Rights of the Child (UNCRC) in 1990. Kenya is obligated to take measures whether bilateral or multilateral to ensure that children are not abducted, sold to other people for trafficking or exploited for any other manipulative purpose (Ochieng, 2012). The mandates of the convention were implemented in the country in 2001 when a definition of the term child was adopted from it. Overall, it was evident that even though by signing the inherent treaties meant that the country was ready to implement the mandates of the convention as a whole, it was clear that developments were inadequate and dilatory. Clearly, the national government did not commit itself to preventing child trafficking before 2001 and before 2013 the penalties for the perpetrators were not as harsh as the convention required them to be.

Another similar convention that sought to ensure that the perpetrators of the vice were prosecuted immediately and that fast actions were taken against child labor was signed in 2001 (ILO Convention No. 182). This convention required the national government to implement measures that could eliminate and prohibit all forms of child labor with immediate effect. Some of the measures included ensuring that there was no sale or trafficking of children in the country. State agencies were also encouraged to take part in developing mechanisms for combating trafficking (Touzenis, 2010). Doing so was expected to help them identify areas of risks and take precautionary measures.

A similar convention, but with focus on women was also ratified. The treaty encouraged member states to take requisite measures such as suppressing all forms of exploitation on women, prostitution and even developing legislation to protect women (Oucho, 2006). In line with this practice, the Rome Statute was developed and given power within the international court to address all issues related to trafficking in women. In addition, all forms of exploitation relating to women were defined to help the court pronounce itself on various issues related to exploitation of women.

Kenya acceded to the Hague Convention on the Rights of Children in 2007. By signing it, the national government was supposed to recognize and protect the rights of children. In addition, it was supposed to ensure that all children in the country remained in the care of their parents or families so that they could not be exposed to any form of exploitation (Oram,

2010). It was hoped that by implementing it the national government would be able to protect children living in the country and even eliminate child labor.

Although the convention appreciated that inter-country adoption of children would be good for certain children, it encouraged adoptions that were regulated. It recognized that unregulated adoption could expose children to all forms of exploitation. In addition, it recognized that unregulated adoption from various countries such as Somali had exposed children to trafficking for personal gains. Accordingly, it encouraged countries engaging in inter-country adoption to conduct the exercise in the interest of children meaning that their rights were to be protected and promoted (Wekesa, 2013).

3.3 Statutes and Legislations

This section looks at the statutes and legislation of trafficking in persons in Kenya.

3.3.1 The Constitution of Kenya

The national constitution under Article 2 (5) and (6) provides that conventions and treaties ratified by the national government were part of national laws. As a result, the above conventions and treaties are part of the national law; as such, they should be applied in the legal processes. The fourth chapter of the constitution that addresses itself to bills of rights consists of freedoms and fundamental rights. Some of these rights form the basis of protecting children and women from Human Trafficking. The most notable ones are right to freedom from discrimination, equality and life. Others relate to human dignity, protection from slavery, and protection of victims among others. The Article 59 (2) (g) of the constitution creates a commission mandated with promoting, respecting and developing culture of human rights in the country. One of its functions is to ensure total compliance with mandates from conventions and treaties on issues relating to human rights.

Under the constitution, it is possible to interpret and apply the bill of rights. However, this can only be carried out by tribunals, courts of law or other institutions given power to do so by the constitution. The main tasks of these bodies is to promote values develop democratic societies on the basis of human dignity, freedom and equity (Article 20 (4) (a).)

The Article 260 of the Constitution defines the forms of physical impairments together with mental, sensory and psychological impairments that define disabled people. It recognizes that the government has the responsibility of promoting the well-being of its citizens. Accordingly, disabled people have equal rights with other people meaning that they should not be mistreated or even undermined on the basis of their physical impairments. This is in relation to the fact that the rights of such people are similar to those of other people and they are even outlined in the constitution for clarity. Accordingly, disabled people should enjoy the rights that other people enjoy without any prejudice or discrimination.

Article 6 (1) (a) provides that certain circumstances shall be considered as severe trafficking in persons. This shall be considered to exist if the trafficked person is a child or a disabled person (Hossain, 2010). Article 48 of the Constitution indicates that the national government will be mandated with making sure that all people have access to justice. This includes the disabled people. In addition, it outlines that in case of fees, the fee should be reasonable so that justice cannot be impeded. In this respect, the courts of law should ensure that justice is accessible to everyone regardless of his/her physical condition. In addition, they should ensure that justice is not delayed and is administered in the right way.

The Article 20(4) gives freedom to everyone including PWDs. As a result, the right should not be denied anyone or without just cause. Similarly, no one should be detained without being tried, subjected to corporal punishment without being heard first or even degraded in any way. All people should not be subjected to servitude because they are free. As a result, judicial processes should be conducted in line with rule of law. The PWDs enjoy this right and process because their rights are safeguarded by national constitution.

The above rights address themselves to a variety of abuses executed on victims of Human Trafficking. In spite of this, there is need to harmonize these rights because of various reasons. Firstly, the constitution is broad-based and as a result it does not clarify issues by digging deeper into them. For this reason, there is need to develop more laws to clarify issues of concern, which are not clear in the constitution. Secondly, the constitution only provides the framework by setting basic principles. In the above case, it provides the bills of rights that need to be elaborated by acts of parliament. The constitution also provides protection for persons with disability and children.

3.3.2 The Persons with Disabilities Act CAP 133 Laws of Kenya

The PWDs Act was enacted in 2003, but revised in 2012 to align it with the constitutional provisions and domesticate the CRPD.

Section 7 of the Act obliges the National Council for PWDs to register PWDs. This section envisioned a situation where the government will have a PWDs data and as such be able to plan and offer services tailor-made for PWDs. The national council has been in place since 2004; its main mandate is to formulate policies and measures that aim to achieve equal opportunities for PWDs. The council has offices in all the counties but the registration process is tedious and unfriendly to persons with disabilities. The process is ideal for a country where all the PWDs have guardians who are willing to register them. The process requires the PWDs to have a number of documents including, Medical Assessment report from the Government Gazetted Hospitals, Copy of Passport/ ID card, Copy of Birth Certificate, Proof of lawful residence in Kenya, Copy of parent's/legal guardian certificate of registration, certificate of good conduct for children above 18 Years (wikiprocedure.com/index.php/Kenya)

The council fails to take into account some of the cultural believes in Kenya which are skewed towards PWDs where the PWDs are viewed as a curse and bad omen which should be hidden from the public (KNHCR CRPD report 2016). Further, the process is prohibitive to victims of Human Trafficking since they lack the required documents.

The Act in all its provisions is concerned with addressing inclusivity of PWDs in the society and the public service. It mainly focuses on discrimination and the prevention thereof. The Act in all its provisions is silent on the issue of trafficking of PWDs or even abuse yet PWDs fall under the vulnerable group of persons and therefore are more susceptible to Human Trafficking. The implication is that the issue of trafficking of PWDs is not well addressed in Kenya legislations and yet the PWDs are the most vulnerable for trafficking. There is need for the government to come up with a law that protects PWDs from trafficking.

3.3.3 The Children's Act 2001

There is no doubt the issue of Human Trafficking affects children to a large scale. The children's Act 2001, which acts as the major law that protects children, it protects children from trafficking. It thereby entitles children to certain rights to ensure that they are not subjected to different forms of abuses, neglect or even exploited. In spite of this, the act sets very lenient punishments on people caught violating children's rights. In its Cap 141 it provides that punishment would not exceed a jail term of more than one year and that fine would not exceed Ksh. 50,000 even though both terms could be applied jointly. Given the magnitude of the damage that trafficking causes on children, then the penalty is not severe; as such, it might not deter people from trafficking children. On children with disability, the Act is exclusive that such people should be handled with dignity and that they would be offered special care, training for free and even education. Nevertheless, it does not pronounce itself on issues related to trafficking of such people.

3.3.4 The Sexual Offences Act 2006

This Act's Cap 62 (a) addresses itself to the plight of children and women. It goes deeper to cover issues related to sexual exploitation and even providing punishments for people who would be accused of such practices. In addition it covers the sanctions against the offense and even external jurisdictions. It defines perpetrators as the people who would be involved in any way in organizing, transporting or even committing sexual offenses. Upon conviction, it claims that perpetrators would be liable to jail terms not exceeding five years and fines not less than 2 million. Even though the punishment depends on the severity of the crime, there exists a lacuna in its interpretation and application to different cases. This is based on the various cases that have been handled before. The Act only provides protection for prostitution of persons with mental disabilities. Therefore, it does not cover all persons with disability.

3.3.5 The Victim Protection Act 2014

In relation to Human Trafficking, The Victim Protection Act No. 17 of 2014 was established to provide victims with protection. The main focus was providing them with information and supporting them so that they could be repatriated to their countries of origin, giving them

special protection, connecting them with the right people and even compensating them where necessary. Special protection was provided for in the Counter Trafficking in Persons Act, (No.8), 2010. Nevertheless, there are no structures from the government to help victims acquire all these things. As a result, there are minimal prosecutions of perpetrators of the vice because victims are unwilling to come out for fear of their safety. To address this challenge, the government should develop the requisite structures. Otherwise, the issue might be unresolved forever.

3.3.6 The Counter Trafficking in Persons Act 2010

Kenya enacted the Counter Trafficking in Persons Act of 2010 to domesticate the Palermo Protocol.

The Act under section 3(1) defines trafficking offence as a process that entails recruiting, harboring, receiving, transferring or even transport other people for the sake of exploitation through a) abduction, b) abuse of one's power, c) issuing payments to allure victims into trafficking, d) coercion or force/threat, e) deception, f) fraud, g) receiving payments or benefits to have control over another person.

Section 3(2) of the Act disregards the consent that trafficked people offer at the point of being lured into exploitation. The section further provides that recruitment and transportation of children for the sake of exploitation is the same as Human Trafficking even though the action omits some of the issues addressed in subsection (1).

Section 4 defines the acts that promote child trafficking in the name of adoption or guardianship as Human Trafficking so long as children are exploited.

In the whole Act, section 15 is the only section that considers the persons with disabilities. It provides support for such people and mandates ministers for respective ministries to design mechanisms for protecting those people in collaboration with advisory committees. In so doing, the gender, special needs and age of the victims are considered.

The Act provides that an advisory committee should be established towards the implementation of the act. The committees' primary function is to provide advices on what

needs to be done to prevent, combat, rehabilitate and protect victims of trafficking. Accordingly, it develops the courses of actions that should be implemented nationwide.

The Act has provided for stiff penalties for the crime of TIP hence it is the most suitable Act to be used in charging offenders involved in TIP. To improve the protection of person with disabilities, Kenya signed the UN Convention on the Rights of PWDs.

3.3.7 The UN Convention on the Rights of Persons with Disabilities (CRPD)

The Government signed this convention in 2007, but ratified it in 2008. In line with Article 2 (5) and (6) of the constitution, the Kenyan courts can refer to the convention as they make decisions relating to Human Trafficking in the country.

The Convention is a human rights instrument which adopts a wide categorization of PWDs and re-affirms that disabled people are entitled to all fundamental freedoms and human rights. It pronounces itself on the application of rights to PWDs and identifies various adaptations that should be made in applying the rights. It thereby specifies where the rights should be enforced.

Article 15 of the Convention clarifies that PWDs should not be tortured or even treated inhumanly. By this provision, the CRPD protects the PWDs from treatment that is synonymous with what is apportioned by human traffickers. Sub-section one further clarifies that medical examinations should not be conducted on anyone without his/her consent. This section protects the PWDs from being used as Guinea pigs. Further, the PWDs are protected from being trafficked for the purpose of organ harvesting disguised as medical research.

Sub-article 2 provides that the party states shall take all effective legislative administration and social measures to protect PWDs from being subjected to inhumane practices, torture or punishment. By this Article, every party state is required to formulate laws which will see to the domestication of the CRPD and to create awareness of the same through civic education and other societal measures.

Article 16 provides for freedom from abuse, exploitation and violence. Human Trafficking is among the most egregious forms of exploitation and abuse. The CRPD comes out strongly in protecting the PWDs from exploitation and abuse and as such from being trafficked. The

article further provides that party states shall support PWDs including through provision of information and education to help them recognize, report and avoid incidences of exploitation, abuse or violence. Additionally, it commits member states to developing laws aimed at protecting vulnerable groups from exploitation and violence. This includes the PWDs who are among the vulnerable people. Article 17 of the convention provides that disabled people should be respected like other people.

In the light of the above, it is evident that Kenya as a country has taken positive measures towards protecting and promoting the rights of PWDs. Some of these measures include social protection programs that have been developed in the country, inclusion of PWDs in government institutions, and performance contracting practice that has been introduced into the government. Nevertheless, even in the presence of these developments, the problem still persists. To some extent, the problem persists because some of the measures are yet to be implemented. For instance, there has been no implementation and monitoring of certain issues contained in the various conventions even though various bodies have been developed. In addition, disability has for a long time been viewed as an equality matter even though it is a cross-cutting issue that deserves more attention. Furthermore, PWDs have not been involved extensively in making important decisions at whatever level. More importantly, even though there has been some form of representation for PWDs in parliament and other bodies, processes that promote consultation have not been developed.

3.3.8 The Palermo Protocol

This protocol focuses on preventing; suppressing and punishing TIP especially those related to children and women. It was developed in 2000, but was implemented in 2003. It in a way supplemented the UN Convention against Transnational Organized Crime (UNTOC). In Kenya, it was ratified on 5th Jan, 2005. This protocol marked a vital transition into the current practices against Human Trafficking. Accordingly, it clarifies certain issues related to the vice in the country.

Its third article defines Human Trafficking as the process that entails recruiting, harboring, receiving, transferring and even transport other people either by force, abduction, coercion, deception, and abuse of power for the sake of exploiting the people involved. The act seeks

control over other people so that they can be exploited. Exploitation in this case includes prostitution, slavery and forced labor among other forms of abuse.

The Protocol defines Human Trafficking in a way that encompasses a wide variety of offences that are committed by traffickers. The fact that the term trafficking is used which connotes movement does not necessarily mean that for trafficking to occur a victim has to be moved out of a country or place of origin (Trafficking in Persons Report, 2019). The Palermo Protocol is the basis upon which governments have built policies that criminalise Human Trafficking and even go ahead to stop traffickers, promote cooperating among various players and protect victims.

The protocol addresses itself to children, people with disability and women. The main reason is that these are the people who are exposed to the vice more so persons with disability on a large scale (Waugh, 2018). Its third article states that the rights of children and persons with disability should be considered with special attention because they commit member states to addressing them with such attention.

With regard to human rights, the protocol encourages member states to facilitate the safe return of victims to their places of origin without any form of delay. Kenya has yet developed the right mechanisms to facilitate such practice (Zimmerman & Hossain, 2010). This practice though should be extended to victims with or without proper documentation.

The member states to the protocol are supposed to penalize the perpetrators of the vice with proportional fines and jail terms to their conducts (Jobe, 2010). Even though Kenya has developed several laws that criminalize Human Trafficking, the problem lies largely on the implementation of the existing laws. Accordingly, this area needs to be addressed going forward. As regards to stopping trafficking, the protocol encourages member states to share relevant information and provide requisite training in line with domestic laws.

The protocol advises the approach of “three P framework” when dealing with Human Trafficking. The Ps stand for Protection, Prevention and Prosecution. Protection is concerned about the various practices and policies put in place to ensure that victims are handled compassionately and that they receive all forms of support to help them recover from trauma.

While the protocol struggles to develop a comprehensive model for trafficking, member states are not mandated under the law to provide victims with services.

Apart from the above, it is quite clear that even though the protocol is concerned about barring trafficking, it does not provide the specific measures that member states should take to prevent it. Accordingly, because there is variance in what defines the vice, countries develop their own mechanisms. As such, they differ from one country to the other. In this respect, there are three models utilized to prevent the vice. The first one focuses much of its attention on developing legal framework by way of criminalizing all activities related to trafficking. The second one focuses its attention on promoting and enforcing migrants' rights. These rights include protecting migrants from exploitation and forced labor. The third one focuses its attention on basic human rights; as such, treats anything that is contrary to them as violation of human rights.

The process of identifying, going ahead to arresting and prosecuting are related to prosecution defined by the protocol. This task is related to those mandated with enforcing the law in collaboration with judiciary. Even if the victims require additional services, the main ones lie under prosecution of traffickers. As a result, if effort would be concentrated in his area, it would be possible to eliminate trafficking (Postmus, Kynn, Steiner & Negin, 2016).

The problem with the Palermo protocol is that the victim's consent is irrelevant. Most of the countries which are signatory to this protocol consider consents to be important aspect of judicial processes. Accordingly, when women agree to be housed in brothel for commercial sex, they do not regard them as victims of vice on ground that they have signed employment contracts. The protocol disregards such consents so long as victims are exploited. This is largely because the protocol focuses much of its attention on the act as opposed to traffickers. Nonetheless, countries such as USA put more emphasis on consent; thereby traffickers are rarely convicted in the presence of such consents.

Further, the protocol does not apply its rules across borders thereby intra-trafficking is considered to be legitimate. This means that sex trafficking cannot be considered a criminal offense if it occurs across borders. Largely, the protocol does not distinguish between compensation and non-compensation. This enables other forms of exploitation to develop

under its watch. Accordingly, unless a member state is party to other conventions, it might be impossible to prosecute traffickers. Because of this accounts of capturing, harboring and recruiting might not be sufficient to prosecute traffickers in certain countries. Accordingly, even most of the countries that are compliant with the protocol have not been able to eliminate trafficking on the basis of protocol alone. Largely, Kenya is yet to deal with the challenge of trafficking exclusively. The main reason is that there lacks comprehensive law to address the vice amicably as the Palermo protocol has demonstrated.

The Palermo Protocol largely focuses on dealing with perpetrators. Nevertheless, from victim's viewpoint, it provides limited help thereby leaves room for development (Piotrowicz, 2008). This then leaves victims at the mercy of member states because it is upon them to decide what to do about the unaddressed areas. As a result, there is no uniformity in tackling the issue because the protocol only aims at eliminating the vice by fighting traffickers. In so doing, it does not acknowledge the rights of victims who need to be protected. Another challenge is that the protocol exposes victims to more challenging issues because those mandated with protecting them might harm them even more. Because of this it becomes almost impossible to eliminate trafficking under the protocol due to its shortcomings. Accordingly the national governments enacted the Counter Trafficking in Persons Act 2010.

3.4 State of the Existing Legal Frameworks on Trafficking of PWDS

Even though the Counter Trafficking in Persons Act 2012 was enacted to be part of national law, the country is regarded as a Tier 2 for failure to implement measures that can combat trafficking (TIP Report 2019). From the time the act became lawful in the country, few successes have been made in convicting traffickers because of the high threshold of evidence required to prosecute them (Jurist, 2014). In 2018, the government introduced technology in the process to track data related to trafficking. In addition, it vetted 45 recruitment agencies in the country to make sure that they complied with the law (Nagel, Zwahlen & Schlesinger, 2018).

In addition, funds have also been allocated for victim assistance. Labour laws attached to the national missions based in UAE, Saudi Arabia and Qatar. The law seeks to protect people

working in these countries, but the government is yet to implement minimum standards in various areas (Nagel, Zwahlen & Schlesinger, 2018).

The stakeholders in criminal justice face challenges related to identifying, responding and comprehending issues related to trafficking. Studies show that the stakeholders hold various misconceptions towards trafficking because they view victims as illegal immigrants (Love, Hussemann, Yu, McCoy & Owens 2018).

This is the case in Kenya where authorities treat victims as criminals. In addition, little effort has been made to protect adults. Processes in criminal justice task the system with identifying, categorizing and even responding to issues of trafficking (Jordan 2002). It is therefore important to train the justice system actors the nature of Human Trafficking as well as how they should respond to the same including how to handle victims of TIP.

Investigations processes are never conducted in the right way because of fraudulent practices and documents. In addition, the victims are tried under the immigration law as opposed to that related to anti-trafficking, which spells stiffer penalties on traffickers (Odhiambo *et al.*, 2018).

Even though the government insists of law enforcement, the incomplete data that is readily available complicates the process of assessing what the government has done. The first section of Counter-Trafficking in Persons Act of 2010 criminalizes the acts of trafficking foreigners for labor and commercial sex. It also spells a penalty of over Ksh. 30 million and 30 years of imprisonment to people found guilty of this offense. By allowing traffickers to pay fines as opposed to serving jail terms, then the penalty ceases to be severe because some of them can afford the fine. The 14th and 15th sections of the act criminalize child prostitution and prescribe a jail term of over 10 years. Because there is no fine then the penalty is stringent. At the moment, the number of such cases in courts of law is high, but most of those cases are handled under the 2006 Sexual Offenses Act (Bales, 2012).

In spite of the above, corruption remains a major problem in the country permeating issues related to Human Trafficking. Because of this traffickers are able to fake documents or find their way out of the court by bribing police officers or those serving in the judiciary. However, there are no reports of ongoing cases against government officials involved in

Human Trafficking (Lee, 2012). In 2017, the police force incorporated Human Trafficking in its training curriculum. As a result, certain NGOs in the country trained police officers on this issue with the hope of improving the way they combat trafficking and differentiate it from other forms of crimes (Migiro, 2018).

There is minimal information about the trafficking legislations of PWD. The PWDs trafficking legislations are referred to as severe trafficking in persons; which is a category of children and disabled persons. Therefore, the legislation protecting trafficking of children can be applied to the trafficking in PWDs. However, the government should put in place special legislations specifically for PWDs so that there issue can be treated more effectively.

3.5 Conclusion

Kenya Counter Trafficking in Persons Act, 2010, in Section 3(5) stipulates penalties on perpetrators of Human Trafficking. It states that a person found guilty of this crime should be imprisoned for a period not exceeding thirty years or a fine not less than 30 million or both. The fact that the Act has given an option of fine or a maximum sentence but no minimum sentence if a person is found to be guilty is bound to be abused by rogue judicial officers. Further, trafficking in Persons is a very lucrative trade which provides funds to perpetrators. This means the perpetrators can easily pay up the fine imposed on them and this will not serve as deterrence to perpetrators.

Although Kenya has made substantial efforts to fight Human Trafficking, it is still ranked under tier 2 since it has not complied fully with other regulations that seek to combat Human Trafficking. In particular Kenya has done nothing in safeguarding PWDs from the menace of trafficking in persons. PWDs are considered to be a vulnerable group who, due to its vulnerability, is more susceptible to traffickers. This group should be accorded the same protection as that given to other vulnerable groups such as children. In all of Kenya's legislation, no significant attention has been given to trafficking of PWDs yet Kenya has given significance to other vulnerable groups involving women and children. The PWDs have been left hence this fact has increased their vulnerability.

The National Council on PWDs has the mandate of registering PWDs. The process and requirements for registration are very prohibitive to victims of trafficking who lack any form

of documentation. The council should reconsider the process and requirements needed for registration and instead carry out vigorous civic education to all members of the public on the need of registering PWDs. They should conduct a country wide registration with the help of the local administrative targeting all PWDs. The exercise should be akin to the census where PWDs will be registered where they are found regardless of whether they have homes or not. This exercise is likely to help identify victims of Human Trafficking.

CHAPTER FOUR

EFFECTIVENESS OF LEGAL AND POLICY RESPONSES IN ADDRESSING THE PROBLEM OF TRAFFICKING OF PWDs IN KENYA

4.1 Introduction

The chapter evaluates the appropriateness of the legal framework and policy responses in addressing the challenge of trafficking PWDs in Kenya. It has first addressed the policy responses by interrogating their appropriateness in curbing trafficking in PWDs. The chapter has also delved into the effectiveness of the policies in advising development of legislation to curb Human Trafficking. It also interrogates the efficiency of the legislation that deals with trafficking in persons in curbing trafficking of disabled people in the country.

The second part of the chapter looks at the effectiveness of enforcers and institutions put in place to deal with trafficking crime. The chapter also examines their ability, knowledge and understanding of the policies and legislations concerning Human Trafficking. It has also interrogated their suitability and preparedness in rescuing and handling of victims of Human Trafficking. Finally, it looks at the challenges facing the war on trafficking people particularly the PWDs.

4.1.1 Interrogation of policy and legislation responses

The government of Kenya provides different policies and legislations that address themselves to Human Trafficking, below is an interrogation of the suitability of the said policies.

4.1.2 Suitability of 2013-2017 National Action Plan (the Plan)

Kenya's National Action Plan was formulated in order to develop an atmosphere of cooperation between various parties involved dealing with Human Trafficking (National Action Plan strategic plan 1). The plan takes the 3Ps approach of Prevention, Protection and Prosecution. On Protection the plan aims to rescue, recuperate and reintegrate victims of Human Trafficking. Its strategic priorities include direct assistance to victims by promoting sensitization of the public on guidelines for identification of victims and capacity building through training of service providers and other stakeholders in areas related to combating Human Trafficking.

The Plan has strategic priorities that cut across and they include; availing of data so as to meet the reporting obligations and case management and developing a standardized system that could be utilized to collect data relating to perpetrators and victims of Human Trafficking.

A national action plan developed in 2016 was implemented fully by the government in 2017. The plan outlines the conditions that employment recruitment agencies in the country should observe for them to be registered to recruit Kenyans willing to work abroad. The requirements include letting the Kenyans willing to work in various countries about air tickets, medical examinations, administrative costs, prospective wages and visa fees. In addition, the labor ministry required labor contracts provided by agencies to be signed in the presence of government officers working from the ministry and Kenyan citizens to register with respective embassies in the host countries.

In spite of the above, a lot of effort from the government centers on barring perpetrators from entering the country rather than arresting and prosecuting the ones already in the country. In this respect, the ministry of foreign affairs focuses much of its attention on training newly recruited employees on area areas related to anti-trafficking and vetting employment contracts signed between domestic workers and Kenyan diplomats to ensure that they are legally binding. Similarly, those posted abroad for diplomatic missions are also trained on such issues.

An interrogation of the Plan paints a grim picture; it is true that the country has made a lot of headway since the creation of the policy but much of its strategies are yet to be accomplished. Cases at hand include the fact that the government never owns a rescue centre for victims of trafficking and instead fully relies on Non-governmental institutions such as HAART Kenya for this service. The shortfall of this arrangement is that the government is forced to operate under the rules of the institution and cannot have the control of the victim in cases where they are needed for the purpose of being witnesses during prosecutions. The second case is that there is no data on the number of victims of Human Trafficking, leave alone a data on PWDs victim category. Furthermore, there is no data available on successful prosecution of Human Trafficking cases or ongoing prosecution of cases.

4.1.3 Suitability of Counter-Trafficking in Persons Act of 2010

This act focuses much of its attention on enabling the country to implement its obligation of countering organized crimes in form of Human Trafficking by preventing and suppressing it and even punishing its perpetrators in line with UN practices. The act addresses itself mainly to children and women because most of them are vulnerable to the vice. Accordingly, it seeks institutional mechanisms that can protect trafficked people and ensure that traffickers are punished whenever they are caught (Ryan, 2012).

In 2017, there was an increase in the number of Human Trafficking cases prosecuted that were reported in the country in comparison to the number of such cases that were reported in the previous year. This demonstrated that those responsible had a better understanding of applicable laws and practices in prosecuting traffickers. Largely, the increase was as a result of the fact that the government had digitized its mechanisms especially in areas related to collecting and reporting the number of people trafficked or even abducted in all parts of the country. As a result, there was data that could be relied upon to track the progress of the issue. The report indicated that there were about 35 cases under investigation in comparison to 530, which were reported in 2016, majority of which related to smuggling. Out the cases reported, the government indicated that it had initiated 9 investigations on sex related issues. In comparison to 2016, the government was able to report 281 prosecutions, but all of these were related to smuggling implying that nothing was done in Human Trafficking (Feingold, 2018).

By the end of 2017, the national government though did not report any conviction related to Human Trafficking. As a result, the nine cases that were under investigation were still ongoing in comparison to 105 convictions made in 2016. One notable thing is that most of those convictions centered on violation of immigration laws and exploitation of victims because such crimes were easier to prosecute and prove (Belser, 2018).

Trafficking in persons in Kenya is at times confused with the smuggling of persons, mostly for labour or sexual exploitation. Most of the people who pass through the Court system and/or the borders are always in search of better employment opportunities and the rouse is always that they are advantaged to cross borders for the same to be guaranteed. They are thus

received in the country on the deception of better employment opportunities, only to be exploited for labour and sex. Almost all victims of Human Trafficking may state that they were lured to the traffickers by their friends, families and/or acquaintances with promises of better futures, but very few note that they were threatened or coerced (Poulin, 2013).

Hon. Christine Mukami Njagi, a Senior Resident Magistrate at Jomo Kenyatta International Airport Law Court, noted that from the cases she has handled at the various stations such as Kwale County and in Nairobi County, the victims usually note that they were in search of work or marriage opportunities and were informed of opportunities available in either Kenya and/or in the Arab countries of Saudi Arabia and Oman. They would then travel to Kenya, be hosted within a residential area with others, documentation would be processed and they would then be transported and/or hire a vehicle to bring them to the airport. Since they would have no idea where to proceed and may draw attention to themselves they would be arrested and charged in Court.

Most of the magistrate's experiences with smugglers are in the case of Ethiopians being crossed through the borders. They are transported in vehicles across the borders either at Mandera or through Lunga Lunga, and they are then housed in small enclosures before they try and find their way out of the country to South Africa, which is noted to be the ideal destination for better employment terms.

When they are arrested most of them are charged Under Section 53 of the Kenya Citizenship and Immigration Act, Act No. 11 of 2011. The offence is noted at Section 53 (1) (j). Under this article, it is unlawful to enter the country without the rightful documents. The next article (53 (2)) asserts that any person found guilty of this crime would be fined a penalty not exceeding Ksh. 500,000 or imprisoned for a period that does not exceed three years or serve both.

In the case of Muhammad Asif v Republic [2017] eKLR, Republic of Kenya, in the High Court at Machakos, Criminal Appeal 82 of 2017, Honourable Lady Justice P. Nyamweya stated as follows when she allowed an appeal against the State in this case. "I am convinced that this is not a proper case for retrial. I have in this regard particularly noted the concession by the Prosecution that no evidence was brought in relation to the offence of trafficking

against the Appellant. In this regard, for a person to be charged under section 3(1) (d) and 5 of the act, the evidence should show that the accused person has:

- Recruited gone ahead to transport and even transfer victims by way of exercising control over that person; and
- Through violent means or threats or others forms coerced or even abducted, deceived or even abused powers to exploit vulnerable people by way of either giving payment to have control over the person; and
- Done this to exploit the victims or facilitate their exploitation.

The offence of trafficking in persons addresses itself to trafficking as a continuum; thus, addressing one of the above stages is sufficient. Therefore, different groups of people might commit the trafficking crimes. The offence is thus formulated to ensure that all people involved in it are captured in the process. This means that those initiate the process as well as those who exploit victims are able to be held to account.

In the appeal, the evidence of PW1, PW2, PW3, PW4 and PW6 was that the Appellant kept eight persons in a rented house, for which each person paid him ten dollars a day for accommodation and food. This evidence points to the act of harbouring persons, which is one of the aspects of the offence of trafficking people. However, there was no evidence adduced as to any other purpose for which the Appellant was harbouring the persons, and the witnesses PW1, PW2 and PW3 clearly indicated that the person who was to transport them to Brazil was one Kashif, and the purpose for which they were going to Brazil was also not shown. There was thus no evidence that demonstrating that the Appellant personally intended to exploit any victims, or that he knowingly facilitated exploitation by another person.

In the case of *Joseph Fundi & another v Republic* [2013] eKLR, that was held in the High Court of Kenya at Embu Criminal Appeal No. 26 of 2013, *Consolidated Criminal Case No. with 29 of 2013*. In this case *Joseph Fundi and Karem Mukami* were charged in Count I with offence of trafficking victims for sexual exploitation in contrast to section 18(1) (b) and section 18(2) of the Sexual Offences Act No. 3 of 2006. The particulars of the charge were as follows: On 12 October 2010 at Gichegere Village, Gichegeri sub-location within Embu County, jointly intentionally arranged the travel of MN from Kimangaru to Gichegere

believing that the said MN would likely be defiled by Joseph Fundi after the journey. On Count I the 2nd Appellant was sentenced to 15 years in jail. The appeal was allowed, as there was no evidence to support the charge.

From the review, the problems in counter trafficking prosecutions are: lack of proper representation of the victims of trafficking leading to re-victimization of the victims of trafficking by being charged for offences such as prostitution or being illegally present in Kenya; and lack of interpreters for the victims who are normally charged with offences under the Kenya Citizenship and Immigration Act.

4.1.4 Suitability of Sexual Offenses Act of 2006

This act was developed as a result of the high number of sexual violence witnessed in the country particularly those targeting women as vulnerable group of people. It thereby sought to ensure that sexual violence related complaints were reported and investigated so that victims could be served with justice. In this respect, it devoted much of its attention on ensuring that laws were written and rewritten to address themselves to sexual offenses so that such offenses could be thwarted and even minimized. In the light of this, it redefined most of sexual related offenses such as rapes and defilement. In addition, it introduced new offenses that were not included in the law before (Alemica, 2013).

For instance, in 2014, Simon Harris, a foreigner of Herefordshire, was found guilty of five counts of sexual assault and three counts of indecent assaults after successful trials. The foreigner was accused of abusing minors young as nine years. During the prosecution, the foreigner was described as a sexual predator and was sentenced to 17 years and four months in prison in a Birmingham Court after abusing vulnerable young Kenyan street children in Gilgil town (Jurist, 2014).

A Dutch national was convicted for sex offences in 2018. He had been charged with abusing sexually young children in the country who were living in an orphanage, which he ran. Though this came to the limelight, the person responsible was not prosecuted in the country because there was no sufficient information relating to trafficking issues in orphanage in the country at that time. In addition, it was almost difficult to prove that the perpetrator intended to manipulate the young girls (Jurist, 2014).

In some instances, it is normally impossible to prove cases related to Human Trafficking because victims' testimonies are the only evidences that can be used to prove such cases. In such cases, it is at the discretion of courts to determine whether such testimonies suffice to prosecute the perpetrators or not. In such instances, it would be important to note that the evidence might not be able to stand on its own to prosecute the perpetrators of trafficking because of disconnect in the flow of evidence. This affects cases presented under common law where courts are not involved actively in the processes of gathering evidences. Accordingly, it would be the responsibility of prosecutors to gather evidence and present it to courts of law. This might be challenging in countries with high levels of corruption because the process might be corrupted in the process of gathering evidence. In such systems, the failure of prosecutors to gather sufficient evidence might be seen as his/her inability to use skills rightfully to create pictures that courts of law can believe to convict perpetrators of trafficking. As a result of this, the defendants might be exonerated whereas in other instances, the cases might not be presented before courts of law for lack of sufficient evidence (Akaha, 2011).

In a case that involved *Kenneth Kiplangat Rono v. Republic* (2010) that was held in a court of appeal at Nakuru, the defendant was able to appeal his case. Even though the victims had managed to testify against on accounts of child trafficking, the court reversed the decision of the high court on accounts of evidences that were presented to it. The court observed that the prosecutor had failed to call all witnesses to present their evidences. In addition, it observed that there was no medical evidence to support the case and that the government did not provide the exact age of the girl. The court in making its decision believed that the prosecutor could have provided the exact age of the girl, but he failed to do so.

It would be worth noting that the testimonies provided by people who interact with victims could be important in prosecuting the perpetrators of trafficking. For instance, a person served by the victim or the person who lives in victims' neighborhood could be relevant in such cases. Similarly, people working in law enforcement agencies could also be important in prosecution cases relating to Human Trafficking. The evidences in form of testimonies presented by these people could be used in courts of law if it would not be possible to get hold of victims for one reason or the other. Alternatively, they can be utilized to enrich the

cases in the presence of evidences provided by victims. In the same way, the evidence could also be utilized to secure acquittals. The evidence provided in the next part could act as food for thought in the process of gathering evidence (Shelley, 2014).

In a case of *George Hezron Mwakio v. Republic*, (2010) eKLR, which was presented in a Mombasa-based Criminal Appeal 169 of 2008, a police officer testified that he met the victim and defendant in Tanzania. At the time the police met them, the defendant claimed that he was husband to the victim even though the victim insisted that she had been abducted. On this account, the appeal was not granted on the basis that the defendant had defiled the victim and was engaging in child trafficking destined for sexual exploitation.

In some instances, expert testimonies are allowed in the Kenyan jurisdiction. In Mwakio's case, the court relied on testimony provided by doctor to deny the defendant an appeal to the court ruling. The testimony was in line with victim's claim that she had been raped. In making its decision, the court noted that defilement and rapes were both conducted in darkness. As such, there was unlikelihood of eye witnesses; thus, the evidence provided by the doctor was sufficient to strengthen the case.

In some instances, the failure by states or prosecutors that victims were minor has also led to acquittal of defendants. This occurs when prosecution is conducted under child trafficking as opposed to Human Trafficking that involve grown-up people. In addition, it occurs when applicable laws only criminalize child trafficking or addresses itself to adult trafficking. In such cases, the age of victims are considered in making decisions. In this respect, Kenneth Kiplangat's case was dismissed because the age of the victim was never provided.

Therefore, testimonies play a crucial role in the decisions made in court about Human Trafficking. Lack of testimonies lead to dismissal of cases hence the defendant is freed.

4.1.5 Suitability of the Persons with Disability Act 2003

Although enacted in 2003, the Act was amended in order to align it with the CRPD. The CRPD extensively addresses the issue of protecting PWDs from violence, abuse and exploitation yet the Act is silent on the protection of PWDs from the said vices. Further the Act has no provision on educating the PWDs the way they could recognize, avoid and even

report incidences of abuse, violence and exploitation hence the Act falls short in the requirement of states to protect PWDs. It fails to make provisions for protecting PWDs from abuse, violence and exploitation. It is more concerned about discrimination and inclusivity. The Act falls short in addressing trafficking of PWDs and does not meet the standards of the CRPD.

4.1.6 Suitability of the Palermo Protocol

The Palermo Protocol became a domestic law in Kenya by virtue of Article 2 (5) and (6) of the constitution. The protocol defines Human Trafficking and the ingredients that constitute the vice. It is the bedrock on which countries rely to formulate their own laws. The Protocol is a soft law which lacks an enforcement mechanism thus giving states a choice on how to formulate their own laws (Gallagher 2015). Scholars have argued that the Protocol lacks a human rights approach and that it should take an approach where the causes of Human Trafficking should be addressed. The protocol is seen as criminal law whose main focus is on the perpetrators (Ross 2014). These Scholars fail to notice the human rights angle embedded in protecting victims and prevention crimes and only focus on the social, economic and political forces behind Human Trafficking. Ross argues that this Focus by the Scholars on the forces behind the vice and human rights standards waters down the obligation of the states to prevent the crime of Human Trafficking.

The researcher agrees with Ross on the basis of the protocols' approach of prevention. A party state will have to address the forces behind Human Trafficking to curb the crime of Human Trafficking and by so doing the state will address the human rights standards. Further, the requirement to protect victims is a human rights aspect and not a criminal aspect, as such, the protocol is appropriate in its role as a bed-rock on which counter trafficking laws are embedded.

The Protocol as a domestic law fails to prescribe the kind of punishment that should be meted on perpetrators.

4.1.7 Suitability of the Convention on the Rights of PWDs

Just like the Palermo Protocol the Convention is domesticated by virtue of Article 2(5) and (6) of constitution. The Convention provides for protection of PWDs from diverse forms of

exploitation, violence and abuse. It also calls for Gender and Age sensitive support including education to PWDs to enable them to avoid, recognize and report incidences of all forms that are manipulative in nature. The Convention does not have any prescribed sentence for perpetrators of abuse of PWDs. The convention seeks to protect, promote and make sure that human rights are enjoyed equally by all people regardless of their physical or mental status (Article 1 of the Convention)

It is intended to complement existing international human rights treaties by requiring party states to respect, protect, and fulfill the rights of PWDs. It assists states by clarifying steps to be taken in order to ensure PWDs enjoy their rights to the same extent as other people. The provisions of the Convention are appropriate to address the vice of Human Trafficking in PWDs and as a bedrock for formulation of domestic laws, it is suitable.

4.2. Suitability of Enforcers and Institutions

This section interrogates the suitability of the enforcers in handling Human Trafficking cases and victims.

4.2.1 Police and immigration officers

The law enforcers at local level and police officers play a very important role in eradicating different forms of tracking, but training to equip them with requisite skills has lagged behind for a long time (Mapp, Hornung, D'Almeida & Juhnke 2016). In this respect, it is quite needful to train police officers on Human Trafficking indicators.

Legislation alone has proven insufficient in the war against Human Trafficking, local law enforcers should thereby be able to use applicable laws to identify incidences of Human Trafficking so that they can offer the necessary support or take rightful actions (Farell 2014). Human Trafficking is an organized and clandestine trade with complex networks. The local enforcement officers are better placed in unraveling them since they have close ties with the communities they serve (Farell, Mc Devitt & Fahy 2008). In this respect, police officers should receive trainings relating to issues that define Human Trafficking, the way they can help victims and steps to take to ensure that investigations and prosecutions are carried out in the right way (Farell & Pfeiffer 2014).

In Kenya a major setback in the war on trafficking of persons is that the local law enforcement officers lack sufficient knowledge in identifying trafficking victims and sometimes end up causing secondary victimization to the victims. This is exacerbated by immigration policies and administrative practices (Crime Research Center Report 2015).

4.2.2 Prosecutors

There is need to train Prosecutors on how to effectively handle cases involving TIP (Crime Research Center Report, 2015). This is so as to ensure the prosecution does not further traumatize trafficking victims. During prosecutions victims' cooperation is very crucial for an effective prosecution. On the other hand the process can be very traumatizing on the victim due to the involvement of the trafficker. Further a victim who is a witness is required to relive the trafficking experience during the case preparation and hearing this can cause psychological torture on the victim (Hussemann, Owens, Love, Yu, McCoy, Flynn & Wood, 2018). It is therefore important for prosecutors to be trained how to handle traumatized victims.

4.2.3 Judicial officers

The judicial officers have a duty to ensure appropriate measures are taken in order to protect people who suffer from trafficking. Article 6 of the Palermo protocol recommends measures which party states must take in victim protection. The measures include protecting the identity and privacy of victims as well as provision of information to relevant court and administrative proceedings, providing victims with appropriate reintegration assistance to aid their recovery, consideration of gender, special needs and age of victims when providing assistance, and providing for physical safety of victims.

The judicial officers have the mandate to order institutions to handle victims of trafficking effectively. The courts have the responsibility of protecting the victims of trafficking during the criminal justice process. Recent research opines that victims of trafficking face heightened procedural hardships when engaging with criminal justice process because of misconception regarding their victimization. Many studies show that criminal justice actors do not understand the causes and consequences of trafficking and may view survivors as illegal immigrants (Love, Hussemann, Yu, McCoy & Owens 2018). The criminal justice

system remains the primary mechanism for identifying, classifying and responding to Human Trafficking. In Kenya the judicial officers can invoke the Victims Protection Act in protecting victims. The judicial officer need to acquire relevant training on areas related to identifying victims of trafficking, this will enable them to guide prosecutors and investigators on how to handle the victims when they are taken to court, judicial officers can advise other criminal justice players on the steps to take when handling victims of TIP.

4.2.4 Counter trafficking advisory committee.

As already noted, Human Trafficking in general is a crime with diverse effects on the victim. The suffering goes beyond the moment as some victims suffer Post Traumatic Stress Disorder (PTSD). That said, the government of Kenya through the counter trafficking advisory committee has stepped in to tackle the crime of trafficking of persons. This paved way for the National Action Plan to combat Human Trafficking (2013-2017) which has the main function of developing the National Referral Mechanism (NRM) guidelines for assisting victims of trafficking (VOT).

In the said guidelines, there is much focus on protection and assistance of the victims. This has been narrowed down to physical care, psychosocial support, health care, legal assistance and empowerment. These measures handle the emotional and physical anguish suffered by the victims. There is definitely a lack of policy framework to deter the perpetrators and criminals involved. This lays ground for recurrence of the crime as the safety of the rescued victims cannot be guaranteed. This is mainly so because most victims are lured into trafficking by prospects of a better life. Rescue does not cure the desire for better livelihoods especially where poverty is the main catalyst.

4.2.5 National Council of Persons with Disabilities

This state corporation was enacted by an act of parliament to handle issues related to disabled people. Its aim is to ensure that these people are handled in the right way and that their rights are upheld at all times. This mandate is derived from the Act and includes: developing as well as formulating policies and measures that could ensure equal opportunities to PWDs; making sure that during national census the number of PWDs is obtained accurately; ensuring that public buildings are constructed in manner that are friendly to these people;

ensuring that PWDs are not discriminated against; ensuring that rehabilitation programs for these people are developed at local level; and making sure that PWDs and institutions that take care of them are registered.

From this mandate, it can be deciphered that there is no policy framework for the protection of PWDs against trafficking. With PWDs as a target for Human Trafficking, the NCPWD should put in measures to safeguard their interests and protection. As things are currently, one would wonder if as a body there is awareness of the rampant Human Trafficking of the PWDs. Preparedness and suitability in handling the problem could only arise where there is knowledge and understanding.

4.3 Conclusion

This chapter has interrogated the issues of trafficking in Persons with Disabilities. It has been established that Law enforcement agencies should train all their agents on Trauma. The agents should be trained to identify and aid traumatized victims. This is likely to change the victims view towards law enforcement and foster trust thus leading to collaboration in investigative and prosecution processes relating to perpetrators of Human Trafficking. Further in the training, special attention should be given on how Law enforcement agents can identify and aid PWDs victims whether they understand they are in bondage or not.

The Government should allocate more resources to agencies fighting Human Trafficking such as a well-trained human resource. It should also build rescue centres in all counties and sub counties for the purpose of rescuing and sheltering victims of trafficking rather than keeping them in police cells due to lack of accommodation. The shelters should be built with special focus on PWDs.

The law enforcement agencies should create special units within their agencies whose main focus should be dealing with Human Trafficking. These special units should mainly comprise of investigators, prosecutors and counselors. The units could form a multi-agency task force to counter trafficking, which should be able to offer all round aid to victims and prosecution of perpetrators. This special task force should be given special training on how to apply the existing laws in curbing trafficking and how to handle victims especially PWDs while making sure their dignity remains intact. The study therefore recommends that there is need

for creation of cross border policies to address cross border trafficking of PWDs between Kenya and its neighbors: there's need for civic education on the importance of registration of PWDs : law enforcement officers at local level should be trained on how to recognize and rescue victims of trafficking: the counter trafficking advisory board should ensure creation of rescue centers in every county in Kenya where victims of trafficking can be sheltered immediately after rescue: finally, the ministry of education needs to introduce Human Trafficking in schools so that students can have knowledge on trafficking and be able to avoid being victims of it.

CHAPTER FIVE

FINDINGS, CONCLUSION AND RECOMMENDATION

This study had set out to find out why the problems of trafficking in persons with disabilities continue to persist despite the efforts made to curb it. The study has discussed the state of Human Trafficking in PWDs globally, regionally and locally. It has also looked at the efficiency of the existing policies and legal framework in stemming trafficking in PWDS in Kenya. The study has examined the suitability of the legal framework, policy provisions and the ability of the enforcers to interpret and apply the said provisions. The study also gives recommendations on what ought to be done to enhance the war against trafficking in persons in particular the PWDs.

From the review of literature the study has established that Human Trafficking is a multibillion dollar crime that continues to occur because of the push and pull factors that are universal. It has also established that while some countries have push and others pull factors, there are those that have both the push and pull factors. The countries act as either places of origin, transit and destination for victims and it has been established that Kenya falls in all these categories. Chapter two of the study established that some of the transient push and pull factors comprise of poverty, porous borders and free movement of people, armed conflict, supply and demand factor, corruption and bribery of government officials. Poverty is a condition that creates vulnerability in people and makes them easy prey to traffickers due to the lure of a better life and prosperity. Porous borders and free movement of people have made Kenya a hub for traffickers who take advantage of the free movement law and unmanned porous borders to transport victims freely. Armed conflict has seen the rise of a vulnerable population of foreigners in Kenya. This population made up of refugees fleeing their countries forms a fertile ground for traffickers. The demand and supply factor has made Kenya a favorite ground for traffickers since the country has a steady supply of vulnerable groups and demand for cheap labor in domestic work, agricultural sector and sex tourism.

Corruption is a cancer that has widely affected the Kenyan society. Human traffickers have networks with rogue government officials who facilitate clearance and movement of victims of trafficking as well as offer protection to perpetrators. The study has established that trafficking of persons has been exacerbated by globalization which has seen the formation of

transnational trafficking networks. The study in chapter two further shows that vulnerable people are at risks of being trafficked, but PWDs are targeted because of additional vulnerability. PWDs are trafficked both nationally and internationally in many forms that include forced labor, sexual exploitation, organ harvesting, servile marriages and forced begging. A multipronged approach that entails apposite economic and social practices is thereby needed to address the pull and push factors that promote Human Trafficking related activities.

The study in chapter two under Global Perspective of Trafficking in Persons establishes that the data that is readily available on the vice is unreliable because it is not based on concrete evidence. The variability in data is attributed to factors such as lack of uniformity in international standards that address the issue and the clandestine nature of the crime. Several global reports indicate that PWDs are likely to be vulnerable to traffickers than their counterparts without disabilities yet there is no global or country estimate on trafficking in persons with disabilities.

The study under the African Perspective on Trafficking in PWDs establishes that in Africa there exists tension between human rights norms and traditions. Particularly in relation to women, children and PWDs. Consent provided by parents to perpetrators of human trafficking is normally controversial. In some African countries, early marriage is allowed provided that consent is sought from the fathers. In other African cultures, a debt can be paid by marrying off girls and women. In short, girls and women are considered property.

In chapter three the study establishes that Kenya has made tremendous efforts in confronting Human Trafficking. The efforts include; enactment of legislation and formulation of policies. The policies have incorporated the 3 Ps approaches of prevention, protection and prosecution. The Kenyan laws provide for fundamental rights and freedoms which protect its citizens from exploitation and abuse by perpetrators. The study establishes that although Kenya has laws countering trafficking in persons generally, it does not have specific provisions referring to trafficking in PWDs. The legislation has made specific references to vulnerable groups that include children and women yet it has left out PWDs. This silence on trafficking in PWDs by the legislation is worrying and can be interpreted to mean that

disabled people are not regarded as vulnerable group that can be in danger of being trafficked.

Corruption and bribery of government officials has been identified as one of the push and pull factors that facilitate the growth of TIP yet in all the counter trafficking legislations there are no stipulated penalties for government officials involved in the facilitation of TIP. Further the counter trafficking in persons Act at face value seems to stipulate harsh penalties to perpetrators of TIP. A jail term of 30 years or a fine that is not less than 30 million seems to be harsh. In reality by giving the option of a fine the harshness of the sentence is scaled down. This provision is likely to be misused by rogue judicial officers. Further TIP is a very lucrative trade where perpetrators can easily raise the fine of 30 Million. Moreover such a sentence is yet to be pronounced in any Kenyan court over the offence of Human Trafficking.

The study in chapter four evaluates the appropriateness of the legal framework and policy responses in addressing the problem of Trafficking in PWDs. The study establishes that Kenya has a national action plan which sets out strategies to fight TIP but an interrogation of the said Plan paints a grim picture since most of the strategies are yet to be accomplished. The study also interrogates the suitability of the enforcers of legislation. The study establishes that the enforcers are not well versed with the legislation provisions and are not well equipped with the knowledge relating to issues related to Human Trafficking.

The findings of this research show the gaps in legislation and enforcement when tackling trafficking in PWDs. The legislation concerned with PWDs does not recognize trafficking as a threat to PWDs. However, TIP may not be eradicated by simply developing penal codes and law enforcement agencies. Accordingly, the process of criminalizing the act would be necessary even if it would not be sufficient.

In the light of the above, the anti-trafficking laws should acknowledge that trafficked people should be given all forms of protection. As a result, the laws on health, those related to protecting children, immigration and labor should be amended and reviewed to encompass all issues that relate to Human Trafficking. This would provide a legal framework that would be utilized to minimize the widespread of the vice. The implementation process should also be enhanced to make sure that it would address itself to relevant issues. In this respect,

Kenya should develop a comprehensive legal framework that would ensure that Human Trafficking activities would not thrive in the country because perpetrators would be punished accordingly and victims protected appropriately. This means that the said framework should combat factors that contribute to Human Trafficking, enable citizens with mechanisms that could thwart the development of the vice and develop measures that could address themselves to cheap labor. Those responsible for enforcing the law should therefore be efficient with no corrupt deals among them and the perpetrators of the vice.

As a country Kenya has developed a legal framework to fight the vice, but the challenge remains in areas related to investigation and prosecution of perpetrators and provision of post rescue services to the victims of Human Trafficking. Traffickers have a powerful grip on their victims to the point where the victims look up to them as gods. This phenomenon works for the benefit of the perpetrators since the victims are often unwilling to come out and speak against them. In aggravating cases the victims sometimes tend to refuse rescue services rendered to them. Services such as provision of basic needs which include food, clothing and shelter are a challenge in Kenya and the government needs to step in and up in the provision of these basic needs to protect the rights of victims.

The criminal justice system players are not well trained on areas related to handling victims of trafficking. In addition, the local law enforcers are unaware of legal provisions that counter trafficking Act; as such, they prefer charging perpetrators under the Citizenship and Immigration Act. Further due to their limited knowledge on how to identify victims of trafficking they end up charging victims instead of rescuing them. The Law enforcement agencies ought to be trained on areas of handling victims and creating trust between themselves and the victims. Victims can only cooperate with the investigative and prosecution agencies in situations where they trust them.

All in all the criminal justice stakeholders need to be trained on understanding, identifying and taking action related to trafficking in persons cases. This training will help eradicate misconceptions on the view of victims as illegal immigrants or being accomplices in own victimization processes.

Recommendation for Further research

There is need for further research on trafficking of PWDs with a gender component. This area has not been extensively researched on. When applying a gender perspective in the trafficking of PWDs the researcher will be looking at the effects of added vulnerability to an already vulnerable group and its relation to TIP.

Research on cultural inhibitions to the war on trafficking in person should be done this will be able to analyze how traditional cultural practices are interrelated with TIP. This can advise on negative cultural practices or show how cultural practices can be used to instill the protective approach in Human Trafficking.

There is need for research on why there is no data on global or country estimates on victims of Human Trafficking with disabilities. The research should generate a recommended international standard of method of collecting data on trafficking victims with disabilities. This way we can have a universal method of data collection and might achieve having a uniform data

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