

Analysis of the Legal Framework for Combatting Human Trafficking in Kenya

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ABSTRACT Human trafficking remains a critical issue in Kenya, serving as a source, transit, and destination country for trafficking victims. Despite various legal initiatives, including the enactment of the Counter-Trafficking in Persons Act of 2010, the persistence of human trafficking indicates significant gaps in the country's legal and enforcement mechanisms. This study offers a comprehensive analysis of Kenya's current legal framework, identifying critical deficiencies that undermine efforts to combat human trafficking effectively. Through a qualitative research methodology, including document analysis and case studies, the study explores how effective Kenya is in the field of anti-trafficking laws and in combating human trafficking. The findings underscore substantial weaknesses in enforcing these laws, largely due to systemic corruption, insufficient resources, and a lack of sufficient specialized training among law enforcement agencies. Additionally, the research highlights the socio-economic and cultural factors that exacerbate the vulnerability of specific groups, particularly women and children, to trafficking. These factors, coupled with inadequate victim protection measures, hinder the effectiveness of Kenya's legal framework in addressing the root causes of human trafficking. The study concludes by offering targeted recommendations for strengthening Kenya's legal response to human trafficking. These include enhancing victim protection services, imposing stricter penalties on traffickers, allocating more resources to enforcement agencies, and fostering better coordination among stakeholders, including government, local civil society, and international partners. By addressing these issues, Kenya can significantly improve its efforts to combat human trafficking, safeguard the rights of victims, and fulfill its international obligations under the Palermo Protocol.

KEYWORDS *Human trafficking, Kenya, legal framework, victim protection, Palermo Protocol.*

1. Introduction

The first part of this study provides a global overview on human trafficking, underscoring it as a severe human rights violation affecting millions worldwide, including those in Kenya. It highlights Kenya's unique challenges as a source, transit, and destination country for trafficking victims, emphasizing the need to evaluate the effectiveness of existing legal measures in combating this issue.

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The study then explores the current state of human trafficking in Kenya, including trends, statistics, and victim profiles, before assessing the international and national legal frameworks designed to address the problem. It also identifies key challenges and gaps that hinder the effectiveness of these frameworks, such as limitations in law enforcement and socio-economic factors, and concludes with recommendations for strengthening Kenya's legal response through reforms, better enforcement, and enhanced victim protection.

2. Global Overview of Human Trafficking

Human trafficking is a form of modern slavery that violates human rights. It entails exploiting people who have been duped, coerced, or forcibly removed from their homes or countries and subjected to harsh and exploitative living conditions, often for forced labor or sexual exploitation.¹

According to the Global Slavery Index (2023) report, there were an estimated 50 million people worldwide in modern slavery, that is a 10 million increase since 2016, with around 24.9 million in forced labor (compared to 12.3 million in 2010) and 15.4 million in forced marriage.² Similarly, the United Nations Office on Drugs and Crime (UNODC) report on human trafficking depicts that the prevalence of human trafficking in Sub-Saharan Africa is increasing.³ UNODC has also raised concerns on the escalating cases of human trafficking as a result of worldwide crises, conflicts, and climate emergency is aggravating trafficking risks as well. Persons without legal status, living in poverty, and who lack decent work are often the primary targets of traffickers.⁴ Moreover, the United States Trafficking in Persons report (2023) revealed that human trafficking causes harm to society by undermining the rule of law, corrupting supply chains, exploiting workers, and inciting violence. It also disproportionately affects traditionally marginalised groups, such as women, LGBTQI+ individuals, people with disabilities, and ethnic and religious minorities.⁵

¹ “Awareness against Human Trafficking,” Awareness Against Human Trafficking, accessed September 2, 2024, <https://haartkenya.org/>.

² The global slavery index 2023. Accessed February 22, 2024. <https://cdn.walkfree.org/content/uploads/2023/05/17114737/Global-Slavery-Index-2023.pdf>.

³ Global report on trafficking in persons 2022 accessed February 22, 2024, https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf.

⁴ “UN Calls for Urgent Action against Human Trafficking | UN News.” United Nations. Accessed February 27, 2024. <https://news.un.org/en/story/2023/07/1139282>.

⁵ “Trafficking in Persons Report - United States Department of State.” U.S. Department of State, December 15, 2023. <https://www.state.gov/reports/2023-trafficking-in-persons-report/>.

2. 1 Overview of Human Trafficking in Kenya

2. 1. 1 Trends and statistics

Kenya, located in East Africa, is particularly vulnerable, functioning as a source, transit, and destination country for victims of human trafficking.⁶ The government has made great attempts to solve this issue by enacting a variety of legal measures, including international treaties and domestic legislation.

Kenya has been designated as a source, transit, and destination country for victims of human trafficking. The country is ranked as a Tier 2 nation in the 2024 United States of America State Department Trafficking in Persons Report (US TIP Report), indicating that the government is attempting to meet the minimum requirements of the US Trafficking Victims Protection Act (TVPA). Although the government is making progress in combatting human trafficking, it has remained at Tier 2 for the past seven (7) years, indicating that significant work is necessary to attain the desired goals.⁷ Similarly, the United States of America 2024 Trafficking in Persons Report indicates that the government stepped up its efforts to protect the victims of Kenyan trafficking abroad, particularly migrant workers in Gulf countries. The government routinely solicited feedback from survivors, particularly from those exploited in Gulf States, to enhance its anti-trafficking efforts. However, the government did not meet the minimum standards in several critical areas. Protection services for victims, particularly for adults, remained scarce and inconsistent in quality.⁸

Indeed, human trafficking in Kenya is pervasive, affecting both domestic and international victims according to the 2024 United States Trafficking in Persons report. The National Crime Research Centre (2022) reports that trafficking for labor accounted for 96% and 98.3% of cases in 2020 and 2021, respectively, with foreign trafficking being the most common case.⁹

2. 1. 2 Risk Factors Contributing to Human Trafficking in Kenya

Human trafficking in Kenya is deeply rooted in a complex web of socio-economic and cultural factors that create conditions for vulnerability for populations at-risk. Studies have consistently highlighted that socio-economic challenges, such as poverty, unemployment, and lack of education, are among the primary drivers of human trafficking in the country. A comprehensive study on child trafficking identified poverty, porous borders, and high levels of unemployment, retrogressive cultural practices, systemic corruption, and a lack of community awareness about child trafficking as key socio-economic

⁶ U.S. Department of State accessed September 2, 2024, <https://www.state.gov/reports/2024-trafficking-in-persons-report/>

⁷ “Kenya - United States Department of State,” U.S. Department of State, December 7, 2023, <https://www.state.gov/reports/2023-trafficking-in-persons-report/kenya/>.

⁸ U.S. Department of State, accessed September 2, 2024, <https://www.state.gov/reports/2024-trafficking-in-persons-report/>.

⁹ Ibid.

determinants that exacerbate the problem.¹⁰ These factors create a fertile ground for traffickers to exploit individuals and communities, particularly those living in impoverished and marginalized areas.

Among the most vulnerable groups are women and children from economically disadvantaged backgrounds. Their desperate economic circumstances often make them prime targets for traffickers who offer false promises of better opportunities.¹¹ This includes prospects of employment or education abroad, which many perceive as a chance to escape poverty. Unfortunately, a lack of awareness about the dangers of trafficking further compounds their susceptibility to exploitation.¹² Victims are often unaware of the risks involved, thus in this way they will be exposed to manipulation and deception.

Cultural factors significantly contribute to the perpetuation of human trafficking in Kenya. Harmful traditional practices, such as early marriage and female genital mutilation (FGM), expose girls and women to heightened risks of exploitation.¹³ These practices not only undermine their physical and psychological well-being but also contribute to a social framework that views them as commodities or subjects to male control.¹⁴

Additionally, entrenched gender norms that prioritize male authority limit women's agency, making it difficult for them to resist trafficking or seek assistance once they are trapped in exploitative situations.¹⁵

Similarly, environmental and conflict-related displacements have exacerbated trafficking risks. As climate change displaces individuals, traffickers take advantage of these vulnerable communities. Furthermore, organized criminal syndicates rapidly recruit through digital platforms, complicating law

¹⁰ Sabastian Muthuka Katungati, "Social Economic Determinants of Child Trafficking in Kenya: A Case of Busia County," in Conference proceedings Volume 6. The collection of the presentations of the conference organized for the students of the Doctoral School of the University of Pécs, Faculty of Law, ed. Ákos László Bendes, Zsolt Gáspár, Balázs Gáti, Patrik Zsolt Joó, Nárcisz Projics, Dóra Ripszám and Dávid Tóth (University of Pécs, Faculty of Law, 2024), 166–183.

¹¹ Report-on-the-problem-of-human-trafficking-in-Kenya.pdf accessed March 8, 2024, <https://www.crimeresearch.go.ke/wp-content/uploads/2022/11/Report-on-the-Problem-of-Human-Trafficking-in-Kenya.pdf>.

¹² Rehema John Magesa, "Cultural factors associated with human trafficking of girls," Accessed August 19, 2024, <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1346&context=dignity>.

¹³. HAART, "Impact," Awareness Against Human Trafficking, 2023, <https://haartkenya.org/impact/>.

¹⁴ UNODC, "Trafficking in Persons," United Nations : Office on Drugs and Crime, 2024, <https://www.unodc.org/unodc/data-and-analysis/glotip.html>.

¹⁵ UNODC, "UNODC Launches 2022 Global Report on Trafficking in Persons," United Nations : UNODC Country Office Nigeria, 2023, <https://www.unodc.org/conig/en/stories/unodc-launches-2022-global-report-on-trafficking-in-persons.html>.

enforcement efforts.¹⁶

To combat human trafficking effectively, it is essential to address these underlying risk factors. Comprehensive programs must be implemented to tackle the socio-economic and cultural conditions that traffickers exploit. Such initiatives should focus on poverty alleviation, education access, community awareness campaigns, and the empowerment of women and girls.¹⁷ Strengthening border controls, enforcing anti-trafficking laws, and promoting community engagement are also crucial steps toward mitigating these risks and protecting vulnerable populations.

2. 1. 3 Types of Human Trafficking in Kenya

Human trafficking continues to target the weak, as evidenced by both long-standing and rising trends. According to the UNODC, girls and women continue to make up the largest proportion of recognised victims globally, accounting for 61% in 2022, and the majority are still exchanged for sexual exploitation, a long-standing trend. In parallel, the number of young individuals among acknowledged victims is swiftly and dangerously increasing, climbing by one-third in just three years. The number of females identified has risen by 38%. In certain areas, children are becoming the majority of trafficked victims.¹⁸

According to the United Nations Office on Drugs and Crime's (UNODC) Global Report on Trafficking in Persons (2022), labour trafficking has become increasingly common worldwide, surpassing sexual exploitation in certain places, notably Sub-Saharan Africa. This trend is echoed in Kenya, where forced labour accounts for the bulk of recorded trafficking cases, impacting both local and international victims, mainly in agriculture, domestic work, and the informal economy.¹⁹ Human trafficking in Kenya includes a wide range of exploitative activities, such as forced labour, sexual exploitation, organ trafficking, and child exploitation. According to recent research, these forms of behavior have become more widespread due to socioeconomic issues, environmental disasters, and international criminal activity. Sexual exploitation is another form of human trafficking, particularly among women and adolescents trafficked for commercial sex work both domestically and internationally. HAART Kenya reports a rise in child sexual exploitation, highlighting children's vulnerability to traffickers.²⁰ According to a recent report conducted by the National Crime Research Centre (2022), human trafficking is widespread in Kenya. Trafficking in the nation

¹⁶ UNODC, Global report on trafficking in persons 2022, 2022, https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf.

¹⁷ HAART, "Impact," Awareness Against Human Trafficking, 2023, <https://haartkenya.org/impact/>.

¹⁸ "Trafficking in Persons," United Nations: Office on Drugs and Crime, 2024, <https://www.unodc.org/unodc/data-and-analysis/glotip.html>.

¹⁹ Ibid.

²⁰ HAART, "Impact," Awareness Against Human Trafficking, 2023, <https://haartkenya.org/impact/>.

mainly occurred for work, sexual exploitation, and cultural purposes. Trafficking for labour accounted for 96% and 98.3% of all trafficking cases in 2020 and 2021, respectively. The report also found that foreign human trafficking was the most common case, accounting for 64.7%, followed by internal trafficking at 35.3%. The majority of victims in external trafficking were adults and young women aged 18 to 34. Children accounted for four out of every ten victims of domestic trafficking.²¹

2. 1. 4 Methods of Operandi of Human Trafficking in Kenya

Human trafficking in Kenya is characterized by increasingly intricate and adaptable tactics. Traffickers employ various deceptive recruitment methods, exploiting social, economic, and technological vulnerabilities to lure victims into exploitative situations. One common method involves deceptive recruitment practices, where victims are promised work, education, or a better life. Traffickers post fake job advertisements on social media, chat platforms, and job listing websites. The use of internet-based schemes has surged, targeting individuals desperate for employment. As reported by the National Crime Research Centre, typical tactics include fraudulent employment offers, manipulated contracts, and misleading marketing directed at economically disadvantaged women and children.²²

Another method involves family involvement and community networks, where victims are recruited by close relatives or community leaders. This is prevalent in informal settlements, where economic hardships compel families to accept risky arrangements. Family complicity is often driven by ignorance or coercion by criminal networks.²³ The prevalence of poverty-related family breakdowns exacerbates this issue, underscoring the need for enhanced family support services.²⁴

The use of recruitment agencies plays a significant role in international trafficking. Unscrupulous agencies often forge travel documents, obtain fraudulent visas, and provide falsified employment contracts, especially for those seeking work in the Middle East and Southeast Asia. Many of these agencies operate without proper legal authorization, taking advantage of weak regulatory frameworks.²⁵

²¹ Report-on-the-problem-of-human-trafficking-in-Kenya.pdf accessed March 8, 2024, <https://www.crimeresearch.go.ke/wp-content/uploads/2022/11/Report-on-the-Problem-of-Human-Trafficking-in-Kenya.pdf>.

²² Report-on-the-problem-of-human-trafficking-in-Kenya.pdf accessed March 8, 2024, <https://www.crimeresearch.go.ke/wp-content/uploads/2022/11/Report-on-the-Problem-of-Human-Trafficking-in-Kenya.pdf>

²³ HAART, “Impact,” Awareness Against Human Trafficking, 2023, <https://haartkenya.org/impact/>.

²⁴Ibid.

²⁵ UNODC, “UNODC Launches 2022 Global Report on Trafficking in Persons,” United Nations : UNODC Country Office Nigeria, 2023,

In addition to these tactics, online and digital exploitation has become increasingly common with the rapid expansion of internet access. Traffickers leverage social media and online employment platforms to directly contact potential victims, bypassing traditional recruitment methods. The anonymity afforded by digital platforms allows traffickers to operate discreetly, which further complicates detection and enforcement efforts.²⁶

Traffickers also utilize diverse transportation and movement tactics, employing both legal and illegal means to move victims. Some are trafficked across borders as ordinary travellers, while others are transported through covert routes. These operations often indicate the involvement of organized multinational crime syndicates.²⁷

Despite Kenya's anti-trafficking legislation, policy and enforcement gaps persist. Corruption, insufficient resources, and poor interagency collaboration hinder the effective implementation of laws. Law enforcement agencies struggle to keep pace with the evolving strategies of traffickers, which highlights the urgent need for comprehensive and technologically advanced monitoring systems.²⁸

2. 1. 4. 1 Profiles of Victims and Traffickers

Victims of human trafficking in Kenya range from children to adults, with many young women being lured abroad with false promises of employment. According to the National Crime Research Centre study (2022), it was observed that 40.3% of the Agency officials were familiar with cases of victims of domestic human trafficking in their localities while 44.2% knew of cases of victims of external human trafficking in their localities respectively.²⁹ Furthermore, the study established that main categories of victims of external human trafficking reported by at least one out of ten of either the members of the public or Agency officials were those of: women reported by 40.4% of the members of the public and 30.8% of the Agency officials); youth (reported by 21.7% of the Agency officials and 19.6% of the members of the public); men (reported by 20.8% of the Agency officials and 14.4% of the members of the public; and children (reported by 19.3% of the respondents.³⁰

One study in the United States of America observed that, while there is no universal trafficker profile, traffickers frequently exploit a position of trust with their victims, either by taking advantage of a child's age or by using coercive

<https://www.unodc.org/conig/en/stories/unodc-launches-2022-global-report-on-trafficking-in-persons.html>.

²⁶ Ibid.

²⁷ Ibid.

²⁸ HAART, "Impact," Awareness Against Human Trafficking, 2023, <https://haartkenya.org/impact/>.

²⁹ Ibid

³⁰ Report-on-the-problem-of-human-trafficking-in-Kenya.pdf accessed March 8, 2024, <https://www.crimeresearch.go.ke/wp-content/uploads/2022/11/Report-on-the-Problem-of-Human-Trafficking-in-Kenya.pdf>

techniques.³¹ In Kenya traffickers take advantage of victims both domestically and internationally, often through unregulated employment agencies and recruitment organizations. Traffickers exploit Somali women and girls in sex trafficking in brothels in Nairobi and Mombasa, bring children and persons with physical disabilities from Tanzania and other neighboring countries to exploit them in forced begging and often coerce foreign victims to serve as facilitators to further such trafficking schemes.³²

2. 1. 5 Impact of Human Trafficking on Victims

Victims of human trafficking in Kenya suffer from a range of severe physical, psychological, and social impacts. Physically, victims often endure abuse, malnutrition, and severe health issues due to the harsh conditions they are subjected to during their exploitation.³³ Psychologically, they may experience trauma, depression, and anxiety, which can have long-term effects on their mental health. This shows that the victims of human trafficking are exposed to severe health hazards and thus require immediate support. Additionally, according to the National Crime Research Centre report {2022}, the kinds of treatment and conditions which victims of human trafficking were subjected to were: sexual abuse and forced prostitution (reported by 25.4% of the members of the public); starvation and confinement in rooms without basic amenities (reported by 22.2% of the Agency officials and 17.6% of the members of the public); hard labor (reported by 22.2% of the Agency officials and 12.1% of the members of the public); assault (reported by 18.7% of the members of the public); and confiscation of travelling documents as reported by 15.1% of the Agency officials.

For instance, in 2018, an established businessman brought twelve Nepalese women and girls into Kenya. At another occasion, detectives from the Transnational and Organized Crime Unit of the Directorate of Criminal Investigations, with assistance from their Embakasi counterparts, recently rescued sixty victims of human trafficking aged 14 to 50 years at an apartment in Tassia Estate in Embakasi, Nairobi County, and arrested three Somali suspects on suspicion of being part of a larger human trafficking syndicate operating across the Horn of Africa.

The victims had been trafficked from two countries that borders Kenya with the aim of selling them as slaves overseas against their will and had been ferried

³¹ Alyssa Currier Wheeler, "Trafficker profile according to US Federal Prosecutions," *Anti. Trafficking Review* 18 (2022): 185–198. <https://doi.org/10.14197/atr.2012221813>.

³² Ibid.

³³ National Referral Mechanism for assisting victims of human ... Accessed August 19, 2024. <https://www.socialprotection.go.ke/sites/default/files/Downloads/NRM-Guidelines-for-Kenya-law-res.pdf>.

to the location.³⁴ Further victims are often driven to deserted hotels where they are forced to work in ‘fraud factories.’³⁵

3. Human Trafficking Legal Framework

3. 1 Key International Conventions and Protocols

Kenya has ratified several international treaties aimed at combatting human trafficking, including the Palermo Protocol, which supplemented the United Nations Convention Against Transnational Organized Crime. This means that by ratifying these international instruments, Kenya has committed to aligning its domestic laws with international standards. This includes implementing measures to prevent trafficking, protect victims, and prosecute offenders. The Palermo Protocol outlines measures for prevention and protection. Thus the United Nations Palermo Protocol, which became part of the United Nations’ Crime Convention in December 2000, serves as the foundation for today's worldwide anti-human trafficking framework. Article 2 of the Palermo Protocol recognises its primary goals in the provision of protection to victims of trafficking, prevention, and fighting human trafficking. It is organised into four key areas of action: Prevention, Protection, Prosecution and Partnership.³⁶ The Palermo Protocol was adopted and opened for signature, ratification and accession by resolution 55/25 of 15 November 2000 of the UN General Assembly. Currently, a total 117 countries are signatories to and 182 are members of the Palermo Protocol since 2000 respectively.³⁷ The Palermo protocol has set proper modalities for the member states to ensure alignment of the policies and laws to combat human trafficking.

Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children define human trafficking as follow:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation,

³⁴ Mohamed Ahmed and Brian Ocharo, “Trafficked for Sex: How Nepalese Girls Are Lured into a Life of Slavery in Kenya,” Nation, June 28, 2020, <https://nation.africa/kenya/news/trafficked-for-sex-how-nepalese-girls-are-lured-into-a-life-of-slavery-in-kenya-179222>.

³⁵ “East Africa’s Youth Scammed by Promises of Overseas Work,” ISS Africa, accessed September 8, 2024, <https://issafrica.org/iss-today/east-africas-youth-scammed-by-promises-of-overseas-work>.

³⁶ Annex II protocol to prevent, suppress and punish ..., 2021, https://www.unodc.org/res/human-trafficking/2021the-protocol-tip_html/TIP.pdf.

³⁷ “UN, United Nations, UN Treaties, Treaties,” United Nations, accessed September 8, 2024, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-a&chapter=18.

*forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*³⁸

3. 2 National Legal Framework

3. 2. 1 The evolution of legislation on human trafficking in Kenya

Human trafficking in Kenya has a wide variety of implications for people's physical, emotional, and social well-being. Addressing human trafficking involves a holistic approach that takes into account survivors' health and psychological needs, as well as the social elements that contribute to the crime. Prior to the Palermo Protocol and the passing of the Counter-Trafficking in Persons Act of 2010, Kenya dealt with human trafficking under the Children Act of 2001 and Sexual Offences Act of 2006. As a result, the crime of human trafficking was not fully defined and was considered as a serious organized crime.³⁹

Kenya ratified the Palermo Protocol in 2004. In 2007, the Kenyan government collaborated with the International Organization for Migration (IOM) to prepare a national action plan to combat human trafficking in Kenya with prevention, protection, and prosecution being the primary cornerstones.⁴⁰ However, at the time, there was no legal mechanism in place to prosecute traffickers or enact rules. As a result of the absence of legal instruments, efforts to develop municipal laws to fill the vacuum increased between 2008 and 2010. Between 2008 and 2010, Kenya had a *dualist legislative system*.⁴¹ After the promulgation of the new Constitution of Kenya 2010, as per Article 2(6), Kenya became a *monistic state*, by virtue of which international law would automatically become an integral part of the laws of Kenya from the time of ratification.⁴² Therefore, domestication by means of a separate law is no longer necessary.⁴³ This evolution reflects a growing recognition of the complexity and seriousness of human trafficking.

³⁸ United Nations, Protocol to prevent, Suppress and Punish Trafficking in Persons Especially Women and children, supplementing the United Nations Convention against Transnational Organized Crime | OHCHR, accessed March 2, 2025, <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

³⁹ "United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000).

⁴⁰ "Tackling Human Trafficking through a National Plan of Action," International Organization for Migration, accessed September 8, 2024, <https://www.iom.int/news/tackling-human-trafficking-through-national-plan-action>.

⁴¹ "Legislating the counter-trafficking in persons act - ANPPCAN, 2015, <http://www.anppcan.org/wp-content/uploads/2014/11/Legislating-the-counter-trafficking-in-persons-act.pdf>.

⁴² The constitution of Kenya , 2010 - Nairobi, accessed September 2, 2024, <http://www.parliament.go.ke/sites/default/files/2023-03/The Constitution of Kenya 2010.pdf>.

⁴³ Ibid

Analysis of the Legal Framework for Combatting Human Trafficking in Kenya

The table below lists both national and international regulations used to safeguard against human trafficking in Kenya before the enactment of Counter-Trafficking in Persons Act, 2010.⁴⁴

The Constitution of Kenya, 2010	
The Penal Code, Cap. 63 (Kenya Law, 1970)	The United Nations Convention Against Transnational Organized Crime, 2000 (UNODC,2000)
The Children Act, (Kenya Law, 2022)	Palermo Protocol (UN Protocol to Suppress and Punish Trafficking Persons, Especially Women andChildren (UNODC, 2000)
The Sexual Offences Act, 2006 (Kenya Law,2006)	The Protocol Against the Smuggling of Migrantsby Land, Sea and Air (UNODC, 2000)
The Witness Protection Act, 2006 (KenyaLaw, 2006)	Convention on Elimination of all forms of Discrimination against Women (CEDAW), 1979.(UN, 1979)
Refugee Act of 2006 (Kenya Law, 2006)	The UN Convention on the Rights of the Child(UNCRC), (OHCHR, 1989).
The Employment Act, 2007 (Kenya Law,2007)	ILO Convention 138: Concerning the minimum agefor admission to employment, ILO, 1973)
The Victim Protection Act, 2014 (Kenya Law,2014)	ILO Convention 190: Concerning the prohibition and immediate action for elimination of the worstforms of child labour, 1999. ILO 1999)
The Constitution of Kenya 2010; (Kenya Law, 2010)	African Charter on Human and People's rights(OAU, 1981)
Kenya Citizenship and Immigration Act, 2011(No. 12 of 2011)	African Charter on the Rights and Welfare of the Child (ACRWC) of 1990. (OAU, 1990
Data Protection Act 2019	The East African Community Treaty (2006)

The Counter-Trafficking in Persons Act No. 8 of 2010 is the foundation of Kenya's domestic legal framework against human trafficking. The Counter Trafficking in Persons Act took effect on October 1, 2012 as announced in a gazette notice and established Counter Trafficking in Person Advisory Committees, which are responsible for giving advice to the Minister of Labor and Social Protection on inter-agency operations to combat human trafficking by implementing preventative, protective, and rehabilitative programs for victims. Additionally, the Act established the National Assistance Trust Fund for Victims

⁴⁴ “10 years of counter trafficking in persons act in Kenya,” 2023, https://bettercarenetwork.org/sites/default/files/2023-08/10_years_of_counter_trafficking_in_persons_act_in_kenya_2010-2020_achievements_challenges_and_opportunities_06_07_2023_small.pdf.

of human Trafficking.⁴⁵ However, despite this clear strategy, not much has been done to fully implement the committee structures in every county to help in combatting human trafficking.

Under the Act, human trafficking is defined as follows:

Section 3(1) provides as follows:

“(1) A person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of— threat or use of force or other forms of coercion; abduction; fraud; deception; abuse of power or of position of vulnerability; giving payments or benefits to obtain the consent of the victim of trafficking in persons; or giving or receiving payments or benefits to obtain the consent of a person having control over another person.”⁴⁶

Section 3(5) provide as follows:

“(5) A person who traffics another person, for the purpose of exploitation, commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.

(6) A person who finances, controls, aids or abets the commission of an offence under subsection (1) shall be liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.”⁴⁷

Section 5 provides for the offence of promotion of trafficking of persons as follows:

“A person who—

(a) knowingly leases, or being the occupier thereof, permits to be used any house, building, or other premises for the purpose of promoting trafficking in persons;

(b) publishes, exports or imports, any material for purposes of promoting trafficking in persons; or

(c) manages, runs or finances any job recruitment agency for the purposes of promoting trafficking in persons;

(d) by any other means promotes trafficking in persons, commits an offence and is liable to imprisonment for a term of not less than twenty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life.”⁴⁸

⁴⁵ Counter-trafficking in persons act, accessed September 8, 2024, https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Counter-TraffickinginPersonsAct_No8of2010.pdf.

⁴⁶ Ibid

⁴⁷ Ibid.

⁴⁸ Cap. 61 accessed September 8, 2024, <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.+61>.

3. 4 Implementation and enforcement of Legal Framework

3. 4. 1 Responsible Institutions

Several institutions are tasked with combatting human trafficking in Kenya, including the National Police Service, the Judiciary, the Office of the Director of Public Prosecution and various non-governmental organizations. The Counter-Trafficking in Person Advisory Committee plays a central role in coordinating efforts.⁴⁹

Studies have shown that enforcement of anti-trafficking laws remains challenging in Kenya. Factors such as corruption, lack of resources, failure of victims to testify and insufficient training hinder effective implementation.⁵⁰ Case studies reveal inconsistencies in the prosecution and conviction of traffickers.

3. 4. 2 Legal Protections and Support Services

Kenya has established several legal protections and support services for trafficking victims. For instance, the National Assistance Trust Fund⁵¹ for Victims of Human Trafficking is designed to provide financial assistance and support services to survivors.⁵² Nevertheless, these services are often underfunded and lack the necessary resources to be fully effective. Victims frequently face challenges in accessing these services due to bureaucratic hurdles, lack of awareness, and inadequate geographical coverage.⁵³

3. 4. 3 Victim Assistance Programs

Victim assistance programs in Kenya are crucial for the rehabilitation and reintegration of trafficking survivors. At the same time, these programs often fall short of meeting the needs of victims. The reliance on civil society organizations to provide most victim services, including shelter, legal aid, and counseling, has led to inconsistencies in the quality and availability of support.⁵⁴ Moreover, the government's inadequate financial support for these initiatives further

⁴⁹ Ibid.

⁵⁰ Kkienrm, "Trafficking in Persons & Smuggling of Migrants Module 9 Key Issues: Challenges to an Effective Criminal Justice Response, Trafficking in Persons & Smuggling of Migrants Module 9 Key Issues: Challenges to an Effective Criminal Justice Response," accessed September 8, 2024, <https://www.unodc.org/e4j/zh/tip-and-som/module-9/key-issues/challenges-to-an-effective-criminal-justice-response.html>.

⁵¹ "National Referral Mechanism for assisting victims of human," accessed September 8, 2024, <https://www.socialprotection.go.ke/sites/default/files/Downloads/NRM-Guidelines-for-Kenya-law-res.pdf>.

⁵² Counter-trafficking in persons act. Accessed August 19, 2024. https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Counter-TraffickinginPersonsAct_No8of2010.pdf.

⁵³ U.S. Department of State. Accessed August 19, 2024. <https://www.state.gov/reports/2023-trafficking-in-persons-report/kenya/>.

⁵⁴ Ibid.

undermines their effectiveness. Strengthening victim assistance programs through increased funding, better coordination, and capacity building is essential for improving outcomes for survivors.⁵⁵ In my opinion, the government has the responsibility to take the fore front to combat human trafficking in Kenya.

4. Challenges and Gaps in the Legal Framework in Combatting Human Trafficking

Kenya has made significant strides in the fight against human trafficking through the establishment of legal frameworks such as the Counter-Trafficking in Persons Act, 2010. However, various challenges and gaps continue to undermine the effectiveness of these laws.

4. 1 Identification of Gaps and Loopholes

Despite the enactment of comprehensive legislation to combat human trafficking, several gaps and loopholes remain. One notable issue is the narrow definition of trafficking, which may not encompass all forms of exploitation. For example, the Act predominantly focuses on trafficking for sexual exploitation and forced labor, potentially overlooking other forms such as organ trafficking and forced marriage. Additionally, the penalties prescribed under the law may not always be proportionate to the severity of the crimes. The United Nations Office on Drugs and Crime (UNODC) has highlighted that the inconsistent application of penalties in the handling of different cases can undermine the deterrent effect of the law.⁵⁶ Similarly, a study by Kenya Law Reform Commission concluded that the failure to implement Section 15(1) of the Counter-Trafficking in Persons Act has resulted in inadequate protection services for victims of trafficking.⁵⁷ According to the United States Counter-Trafficking Report, 2024, protective services provided to victims were insufficient, with non-governmental organisations stepping in to fill the gaps. Moreover, women are disproportionately affected by a lack of victim support and protection services. Further Sections 3(5) and 3(6) of the Counter-Trafficking in Persons Act criminalise human trafficking (including for labour or sex) and impose really harsh penalties, but also allow an option for a fine and hence undermine the prosecution's intended goals. Article 3(5) reads as follows: “A person who traffics another person for exploitation commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.”

⁵⁵ Ibid.

⁵⁶ An introduction to human trafficking: Vulnerability, impact ..., 2021. https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf.

⁵⁷ Strengthening gender equality in law, 2024, <https://www.klrc.go.ke/images/images/downloads/strengthening-gender-equality-in-law.pdf>.

Under section 3(6), the offence of sexual exploitation attracts a penalty of 30 years imprisonment or a fine of at least Ksh 30 million (USD 296,300).⁵⁸ It should be noted that human trafficking is a well-coordinated organized crime. Additionally, the crime is lucrative and the option of fine provides a lee way for the traffickers as they are able to afford it and carry on with the illegal business. In my view this section should be repealed and it should remove the option of the fine.

4. 2 Challenges faced by criminal justice system agencies in combating human trafficking

Law enforcement agencies in Kenya face numerous challenges in effectively combatting human trafficking. The National Crime Research Report established that challenges to combat human trafficking included weak counter-trafficking legal and law enforcement frameworks; inadequate resources affecting counter-trafficking efforts; corruption among concerned public officials; economic challenges of unemployment,⁵⁹ high demand for cheap labor, and poverty and accompanying vulnerability; socio-cultural hindrances, particularly retrogressive cultural (including religious) beliefs and practices, lack of patriotism and/or selfishness/individualistic tendencies. These results show that the government and non-state actors have the role to strengthen the criminal justice system to operate properly in order to fight human trafficking.⁶⁰

According to a US report on human trafficking in Kenya, the government lacks a centralized law enforcement data collection system for human trafficking, limiting its ability to collect and disaggregate national statistics. As an example, in 2023, the government increased its data collection efforts and reported on 22 cases; including five sex trafficking, five for labour trafficking, and 12 for other types of trafficking. This is in comparison to the government investigating 111 cases in 2022; however, the 2022 data may have included other crimes because the government did not provide disaggregated data. The government reported charging 19 trafficking cases, which included an unknown number of suspects—three sex trafficking cases, five labour trafficking cases, and 11 cases of unspecified types of human trafficking.⁶¹

Judicial courts also struggle with challenges that impede the effective prosecution of human trafficking cases. These include case backlogs, which delay the delivery of justice, and the lack of specialized knowledge on trafficking issues among judges and prosecutors. The complexity of trafficking cases, which often involve

⁵⁸ Ibid.

⁵⁹ Ibid

⁶⁰ Report-on-the-problem-of-human-trafficking-in-Kenya.pdf accessed March 8, 2024, <https://www.crimeresearch.go.ke/wp-content/uploads/2022/11/Report-on-the-Problem-of-Human-Trafficking-in-Kenya.pdf>.

⁶¹ U.S. Department of State, 2024, <https://www.state.gov/reports/2024-trafficking-in-persons-report/kenya/#:~:text=The%20government%20identified%201%20trafficking,in%20unspecified%20forms%20of%20trafficking.>

multiple jurisdictions and legal systems, further complicates the judicial process.⁶² For instance, in 2023, the government reported securing the convictions of at least three individuals involved in forced labor trafficking. Two of the convicted traffickers were sentenced to five years in prison, with one also fined 30 million Kenyan shillings (Ksh) (\$243,210), while the third individual was acquitted. Notably, no traffickers were convicted under the 2010 Anti-Trafficking in Persons Act, in contrast to 2022, which saw nine convictions, including three under the same law.⁶³ Courts continued to impose varying sentences on convicted traffickers, often offering the option of imprisonment or a fine.⁶⁴

The conviction rates for human trafficking cases in the country remain disproportionately low compared to the number of reported victims. This underscores the need for all stakeholders to intensify efforts to combat human trafficking and to enhance support for criminal justice agencies.

5. Conclusion

This paper intended to reveal that while significant progress has been made, substantial gaps and challenges persist. The Counter-Trafficking in Persons Act 2010 provides a solid foundation, but its effectiveness is hampered by issues such as inadequate enforcement, limited resources, and socio-economic factors that exacerbate vulnerability to trafficking. To address these challenges, it is essential to enhance the legal framework through comprehensive reforms, including stricter penalties, better victim protection mechanisms, and increased funding for enforcement agencies. Additionally, there is a need for more robust training programs for law enforcement and judicial officials, improved coordination between national and international stakeholders, and greater public awareness campaigns to prevent trafficking.

In conclusion, I observe that combatting human trafficking in Kenya requires a multifaceted approach that integrates legal reforms, effective enforcement, and support for victims. By addressing the identified gaps and challenges, Kenya can strengthen its response to human trafficking and better protect its citizens from exploitation.

⁶² “News / Articles,” Anti-trafficking Judicial Bench Books in Uganda and Kenya - International Association of Women Judges, accessed September 9, 2024, https://www.iawj.org/content.aspx?page_id=5&club_id=882224&item_id=83956.

⁶³ U.S. Department of State, 2024, <https://www.state.gov/reports/2024-trafficking-in-persons-report/kenya/#:~:text=The%20government%20identified%20201%20trafficking,in%20unspecified%20forms%20of%20trafficking.>

⁶⁴ Ibid.