

10 Years of Counter Trafficking in Persons Act in Kenya 2010-2020: Achievements, Challenges and Opportunities

#FightHumanTrafficking



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10 Years of Counter Trafficking in Persons Act in Kenya 2010-2020: Achievements, Challenges and Opportunities

How to read this Book

This book is composed of articles, interviews, and art production categorized into four parts: Prevention, Protection, Prosecution, and Partnership

.

Each contribution is marked by the symbol



- Article



- Interview



- Art

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Foreword

The introduction of the 2010 Counter Trafficking in Persons Act in Kenya was welcomed by counter trafficking activists as an enormous opportunity that, if properly and adequately implemented, could possibly change the counter trafficking in persons landscape. Indeed, the new law was not only the fulfilment of Kenya's international obligation (as a signatory to the Palermo Protocol) but also a promise of better response to the grave problem of trafficking in persons. While supportive of the Act, activists and practitioners remained cautious, fearing that it will be poorly implemented, thus having little or no impact on those affected by modern day slavery. The three-year period of operationalising the Act instilled reservations about the change it would bring in practice.

This publication evaluates the progress of implementing the Act from its inception until now (2010-2020). Publishing ten years after the Act became operational and thirteen years after it was gazetted, different authors analyse achievements and challenges in operationalising the counter trafficking in persons law. A collection of research articles, interviews, a speech and art, this publication captures the current counter trafficking in persons environment. It is organised into four key areas of action: Prevention, Protection, Prosecution and Partnership. The works in this collection demonstrate that while there still remain challenges, significant improvement is observed across all four components. Most notably, grassroots communities have become more aware and equipped with skills to better support those affected by trafficking in persons; more families are being assisted, more traffickers are being prosecuted and several networks are being established at the national, regional and international level.

At the same time, there are many challenges that need to be addressed. We often operate through stereotypes when talking about trafficking in persons. There is no consideration for survivor engagement at the policy level, prosecution is often done at the expense of protection needs and collaboration between partners does not go beyond basic activities. Those, and other challenges ought to be urgently addressed in the coming years.

This publication shows that progress was made and we are living in better times. This is a great achievement and credit goes to those who drafted and passed the Act as well as used it as a counter trafficking tool. However, challenges and gaps prevent the full realisation of what the Act can offer. We hope that the next decade will be focused on addressing those gaps so the Act can meet the expectations of its authors and practitioners who use it in daily life.

A special word of recognition should be given to those who agreed to be interviewed for this publication – their expertise as leaders of governmental institutions, faith-based organisation, those who participated in drafting the Palermo Protocol and, above all, survivors of human trafficking is precious testimony that gives a direction for all of us. We invite you to learn from their knowledge and expertise as this is the best and most efficient way to improve our counter trafficking efforts.

Finally, we have included art in each section of this publication because it is a powerful way of expressing experiences of exploitation. We face one of the greatest persistent human rights violations of our time. Trafficking in persons can be described in many ways – as a great challenge to justice, a crime that destroys human capital and shatters individual people's dreams. Some time ago UNODC Executive Director Antonio Maria Costa called trafficking in persons “a crime that shames us all”. Indeed, trafficking in persons is not just a phenomenon that affects crime statistics and destroys the lives of individuals – it is a crime that challenges our society and corrupts the world around us. The sooner we realise this and mobilise action against it, the more chances we have for our own future and the future of coming generations. We were able to end slavery and the slave trade in the past – it is our time to end human trafficking and make Kenya a safer place. It is our chance, our responsibility and also our legacy to keep this promise.

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Prevention

From Awareness to Prevention

Johanna Bögel

Introduction

Awareness raising campaigns are a popular tool against human trafficking. Both internationally and within Kenya, they are frequently-used activities under the prevention pillar of the four ‘P’s of anti-human trafficking – prevention, protection, prosecution and partnership. The intervention logic of most campaigns is straightforward: More awareness about the dangers of human trafficking will lead to a change in behaviour and reduce human trafficking cases. However, this straightforward intervention logic, while intuitive at face value, has been criticised widely among researchers and increasingly among practitioners for not leading to the desired change in behaviour among the target population (Browne, 2015; Nieuwenhuys and Pécoud, 2007; Schans and Optekamp, 2016).

This article critically examines the presumed link between awareness raising and prevention, asking to what extent awareness raising campaigns have led to the prevention of human trafficking in Kenya. It takes a dual approach, first scrutinising the internal logic of the awareness raising activities’ and how they are monitored and evaluated, and second, examining the extent to which organisations apply lessons learned across campaigns. The focus is on awareness raising campaigns implemented in Kenya between 2019 and 2021. For a comparable case selection, the author examined all prevention activities mentioned in the planning documents formulated at the annual Kenyan Civil Society Organisations (CSO) Planning Meetings since 2019. The purpose of these meetings is for anti-trafficking stakeholders, governmental and non-governmental, to jointly plan their anti-trafficking activities, which are structured according to the ‘pillars’ of anti-trafficking.

Out of 61 prevention activities held by twenty-one organisations over the period 2019–2021, 38 activities fall broadly into the category of awareness raising. This article is based on data collected through interviews with one representative involved in organising or monitoring and evaluating the prevention activities from each of five organisations, which between them implemented nineteen of those activities (see Appendix). Where applicable, it also draws on supporting documents such as evaluation reports and lessons-learned documents. Phone interviews were conducted in July 2021. Due to the availability of interview partners and the structure of the anti-trafficking landscape in Kenya, which consists of a vibrant local CSO landscape and international actors mostly implementing projects through local CSOs, interviews were conducted with local CSOs based mostly, though not exclusively, in and around Nairobi. These sources are complemented by the relevant academic and grey literature. By examining the effectiveness of awareness raising campaigns through an analysis of the campaigns’ own evaluations, this article brings together the two vibrant strands of literature in the anti-trafficking field that address, respectively, awareness raising and evaluation.

Awareness raising, prevention and levels of analysis

All awareness raising activities examined in this article either implicitly or explicitly follow the same standard intervention logic (Figure 1). For the purposes of this study, an ‘awareness raising activity’ is defined as any activity targeting potential vulnerable migrants and potential victims of trafficking that has the direct aim of increasing their knowledge of human trafficking and safe migration. The core assumption is that this increase in knowledge will prevent human trafficking, whether through safer migration behaviour or through referrals of potential victims of trafficking. Notably, this definition excludes activities such as training for law enforcement personnel, the judiciary or service providers. Examples of common awareness raising activities are school clubs in areas vulnerable to trafficking, community dialogues and forums, and the distribution of information and education materials via both classic media, such as billboards and radio, and newer forms, including social media and event days such as the World Day Against Human Trafficking.

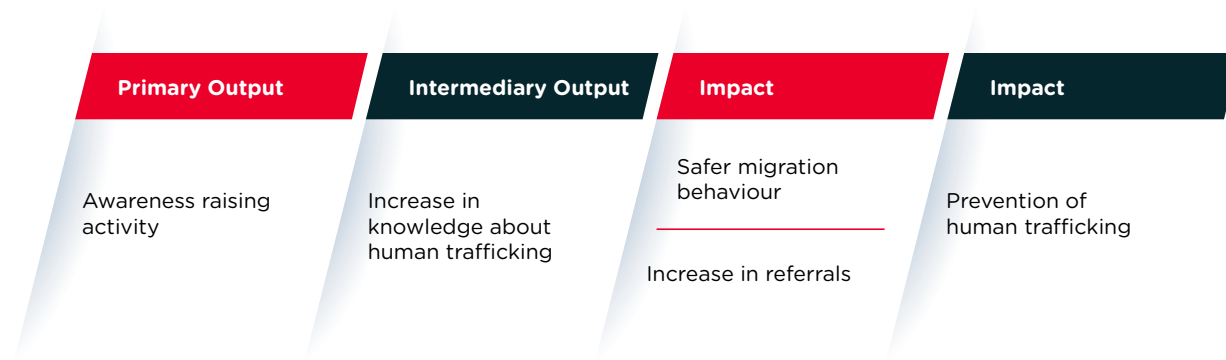


Figure 1: Standard intervention logic of awareness raising activities and level of output / impact

The standard intervention logic of awareness raising activities can be broken down into four stages, each with a different level of analysis at which monitoring and evaluation can take place (Figure 1). The primary output is the awareness raising activity itself. A standard way of measuring this is to count the number of participants or members of the target group reached. An increase in knowledge about human trafficking among participants as a result of the activity is an intermediary output, usually measured through questionnaires. On an impact level, an increase in knowledge could lead to prevention either through safer migration behaviour or through an increase in referrals of potential victims of trafficking. Both constitute a change in behaviour. The final impact, in this logic, is the prevention of human trafficking caused by either of these two changes in behaviour.

How are awareness raising activities in Kenya evaluated?

How do the organizations carrying out these awareness raising activities evaluate their success? And what constitutes a meaningful evaluation? The Maryland Scientific Methods Scale (SMS) is one of the most authoritative methods of assessing the robustness of evaluations (Farrington et al., 2002). It was originally developed in a crime prevention setting and is thus easily applicable to anti-trafficking and has indeed been widely used in this context (see Bryant and Landman, 2020; Davey, 2016). It comprises a scale from 1 to 5. At the highest level of evaluation, level 5, impact is measured by conducting a randomised control trial to compare the beneficiary group to a control group. In contrast, a level 1 evaluation consists of testing either the same group before and after the intervention, or the group that has experienced the intervention with another group that has not. For an evaluation to be considered of 'sufficient' quality to be valid (level 3 and above on the scale) requires at a minimum a comparison of the beneficiary group before and after the treatment (in this case, the awareness raising activity) and a comparison of this group with a comparable group who did not receive the treatment at the two points in time.

Do anti-trafficking actors in Kenya evaluate their awareness raising activities? If so, what is it that they evaluate and at what 'level' – output or impact? Where are the evaluations placed on the Maryland SMS? And who is carrying out the evaluation and for whose benefit?

Of the nineteen awareness raising activities analysed, fourteen had been monitored or evaluated or the organisations were planning to do so once implementation advanced. Out of these, eight were evaluated at output level only, either counting the number of participants or people reached by a campaign or, in addition, testing participants' increase in knowledge about human trafficking. Only five activities were measured on their intermediary impact and none of the evaluations measured a potential change in the number of trafficking cases directly. This finding in the Kenyan context is in line with observations made at the international level. Davy (2016) compared forty-nine anti-human trafficking interventions globally and found that 'only a small number of these ... have been evaluated and an even fewer number have been evaluated rigorously' (p. 1). While the overall proportion of interventions being evaluated seems to have increased (Gallagher and Surtees, 2012), a closer look at the type of 'evaluation' used reveals that what are described as evaluations are often a variation of monitoring.

It is not unusual for stakeholders to offer examples of output monitoring mechanisms when asked

about the evaluations of their activities (see e.g., Bryan and Joudo, 2016; Davy, 2016). Yet, output monitoring can come at the expense of an actual impact evaluation: 'Because monitoring is confused with evaluation, it is sometimes used instead of or to the exclusion of evaluation' (Davy, 2016, p. 13). One innovative approach, taken in a campaign consisting of several activities (activity 3.1), was to examine how many of the participants were returning participants who had attended two or more events. This measured participants' level of interest or commitment to learning more about the topic rather than simply tracking turnout. However, it still stopped short of measuring whether this commitment to learn led to any change in behaviour and to a decrease in trafficking. In four other cases, attendance figures were complemented with a survey testing participants' increase in knowledge about human trafficking. This was a good step beyond counting the overall participation. If well-designed, such surveys can measure how successful an activity is in transferring information and understanding to participants. In three cases, the post-activity survey was accompanied by a pre-activity survey, placing it at level 1 of the Maryland SMS. But since an increase in knowledge assessment does not capture a change in behaviour, it still constitutes a form of monitoring on the (intermediary) output level, rather than an evaluation of impact.

In all five cases where monitoring and evaluation takes place on impact level (1.1, 4.1, 5.1, 5.2, 5.3), all of which are ongoing campaigns, organisations monitor the number of referrals from target communities, either compared to a specific baseline or as changes over a period of time, usually the previous twelve months. All three interviewees explained that they monitor fluctuations in referrals and follow up with qualitative research in case of any significant change. In all cases, the organisations have either followed or plan to follow this impact monitoring with a formal evaluation at the end of implementation or at regular intervals throughout the campaign. These evaluations compare the number of referrals before and after the activity implementation. They do not employ control variables to account for external influences that might have led to an increase in referrals, thus placing them on level 1 of the Maryland SMS (although activity 5.1. is an outlier that potentially ranks higher, as I will go on to discuss). Notably, all five measure the number of referrals, not any changes in migration behaviour or vulnerability to trafficking, even though in all cases a change in migration behaviour was expressed as an explicit part of the activity logic.

A closer look at the activities that are not evaluated or monitored at all is also instructive. A good case in point is activity 5.4., which the interviewee explained was one of the more experimental awareness raising activities that they had implemented and did not have a defined target group. The organisation is considering upscaling the original activity and is trying to evaluate it ex post. Designing an evaluation, however, is much harder after the activity has been implemented than when it has been built in from the start. The lack of a defined target group makes it particularly hard to consider what needs to be measured. An overview of all reviewed activities shows that it also makes an activity much less likely to be evaluated. Out of the five activities not evaluated, four did not have a defined target group (see Appendix). In the one case where a target group was clearly defined but no evaluation took place, this was due to stalled activity implementation.

In addition to the definition of the target group, it is useful to consider who does the evaluation and how. One activity (1.2) follows an evaluation process that involves project staff gathering testimonials from participants about which positive changes their interventions have led to. Such testimonials can potentially be good tools to show where activities have had a positive impact and why. However, as the focus is only on positive impact stories, any activities without impact or even negative impact or unintended consequences are left out. Additionally, there are a myriad of potential biases in staff members selecting and interviewing beneficiaries about the impact of their activities. While potentially useful for internal discussions within the organisation or as a starting point for an evaluation, this approach alone does not constitute a full-fledged evaluation.

To avoid these issues of subjectivity, it can be useful to employ an external evaluator. This was the case for activities 3.1, 3.2 and 5.1. An external evaluation is generally preferable since it mitigates biases on the part of both the evaluator and beneficiary. In the case of activity 5.1, an external evaluator tested the knowledge about human trafficking acquired by the beneficiaries and compared it with that of a comparative group, potentially placing the evaluation in level 2 or 3 of the Maryland SMS, depending on the details of the evaluation, which were not available to the author. The interviewee (5) explained that the purpose of the external evaluation had been to assess the impact of a specific awareness raising activity that the organisation planned to continue

implementing in the future. They reported that the continued implementation had benefitted greatly from this learning opportunity.

Activities 3.1 and 3.2 were also evaluated externally. In these cases, the interviewee (3) explained that the knowledge that there would be an external evaluation after the implementation had led the team to introduce an informal continuous learning and improvement process. This informal process focused on monitoring, learning and improving the overall performance of the activity. This combination of an informal and internal mechanism with a more formal and external evaluation process led to a much better overall outcome:

It made it all more impactful than if we had just decided to end the entire project with yet another informal meeting. ... I think that [the] combination [of an internal and an external evaluation] was a lot better than just having one formal or one informal one in the end. Combined, the two really added some value ... I wish we could get to do more of this combination of formal and informal evaluation. (Interview 3).

How do organisations learn from one activity to the next?

Monitoring and evaluations are clearly important learning opportunities. But how do organisations learn from one activity to the next? Are lessons learned incorporated when first designing an activity? Are they formulated after activities? If so, what types of lessons learned are formulated and how are they distributed?

Although interviewee 3 was enthusiastic about the value of combining formal and informal evaluation of activities 3.1 and 3.2, the arguably crucial part of the evaluation as an opportunity for improvement was missed as the final report of the external evaluator only went to the donor. The implementing organisation did not receive the evaluation report. This arguably rendered a learning opportunity into a box-ticking exercise: 'The evaluation wasn't for our learning, it was for them [the donor] to monitor their milestones', the interviewee recognised. Whether or not local CSOs have an activity externally evaluated depends largely on whether this is required and funded by the donor (interviewees 3, 5). This means that the donor's understanding of an external evaluation and whether or not they see it as a learning opportunity is all the more important. As one interviewee put it:

One important point is to understand the purpose of an evaluation. It is one of these things where people think an evaluation is about someone coming to police you and tell you that you have done something poorly. But we need to understand what an evaluation really is and that it means to understand the gaps. Even if it shows that everything went badly, it is fine – but now you know and at least you have a chance to do things differently ... and then take action to improve upon it. It is about us being able to learn and to continue learning and for us to be able to adapt. ... Otherwise, we miss out on so much. [An evaluation] is about openness and getting out of one's comfort zone. (Interview 5).

Interviewee (5) was not sufficiently familiar with the lessons learned process for activities 5.2 and 5.3 to give full information. Of the remaining seventeen activities, it is striking that only activities 3.1, 3.2 and 5.1. were preceded by a review of relevant lessons learned within the organisation. In all three cases, these lessons learned were from similar activities implemented previously in their own organisations. In the case of activities 3.1 and 3.2, the incorporated lessons learned related to the process of organising the activities and the division of work between staff members, rather than to content (i.e. what had worked in previous activities). Activity 5.1. included lessons learned that related to both content and administrative/organisational topics.

Fourteen activities were designed and organised without any systematic incorporation of previous learnings. In most cases, a review of relevant lessons learned was not foreseen as a step in the activity design process. In activities 2.1 and 2.2, the organisation had expanded to a region where they had not worked before. They approached organisations working in these communities on non-anti-trafficking activities to ask them to share their lessons learned. However, the organisations refused to share insights into promising approaches to working with the local communities: 'They seemed a bit reluctant because human trafficking is a sensitive topic, but we really needed an entry point to these communities', the interviewee (2) explained. 'We ended up creating it all from scratch'.

All interviewees stressed that their organisations place importance on continuous staff learning and encourage their staff to participate in national, regional and international learning opportunities, such as best practice calls, trainings and webinars. However, a systematic review of available lessons learned relevant to the design of a new activity was conducted in only a few cases. This is particularly relevant as several interviewees (1, 3, 4) mentioned that staff turnover between activities can pose real challenges to learning from previous implementation.

Despite this pattern of not including lessons learned in the activity design process, in most cases lessons learned were formulated after implementation. For fifteen of the seventeen activities, the implementing organisations had formulated and captured lessons learned or were planning to do so after the activity had been implemented. In the two cases where no lessons learned were formulated, this was either because implementation had stalled (activity 3.3) or because it was an experimental activity design with no defined target group or monitoring approach (activity 5.4). Consequently, anti-trafficking CSOs produce more lessons learned after an activity than they incorporate when designing a new one.

This discrepancy is related to how lessons learned are captured and distributed. The activity overview shows that most lessons learned are captured as part of the activity reports and are either not open to distribution at all or only upon request (see Appendix). Only three activities, 3.1, 3.2 and 5.1, captured lessons learned in a separate document, which was internally distributed in the case of activity 5.1 and went to the donor only in cases 3.1 and 3.2. In only six cases (activities 1.1-1.6) were activity reports, including the lessons learned, made available upon request to interested stakeholders outside the implementing organisation. While all organisations included in this study formulate lessons learned after implementation, they ‘drop the ball’ when it comes to proactively distributing these lessons further.

A further weakness is the type of lessons learned that are formulated. While very few lessons learned documents were available for analysis in this study, interviewees indicated that lessons learned follow a certain pattern. Most seem to be administrative in nature, focusing on workflow, organisation of activities and logistics (interviews 1, 3, 4). Fewer focus on ‘content’ issues, for example, whether certain types or formats of messaging are received better and are more effective in changing the behaviour of the target group than others. Where lessons learned did include content-related lessons, these seem to focus more on positive lessons than on aspects that did not work (interviews 2, 3). This indicates a missed learning opportunity for organisations. ‘Lessons that initiatives are unsuccessful are arguably as important as more positive learnings; it is therefore important that a safe space is created where these findings can be shared’ (Bryant and Landman, 2020, p. 130).

Does greater awareness lead to a change in behaviour?

Since most lessons learned focus on administration and logistics, few discuss whether messaging is effective in changing behaviour or reducing vulnerability to trafficking. Furthermore, while organisations commonly monitor the attendance and human trafficking knowledge of participants, any monitoring and evaluation of behavioural change is rare. While some activities are measured for the increase in number of referrals, none are measured for their impact on changes in migration behaviour or vulnerability to trafficking. This leap from an increase in knowledge to a change in migration behaviour is where monitoring, evaluations and learning become blurry.

Research literature suggests that this is the point where the intervention logic starts to crumble. An increase in knowledge about human trafficking does not necessarily lead to a decrease in trafficking. Schans and Optekamp (2016), for example, analyse successful mass information campaigns on topics such as road safety and anti-smoking, and then compare these with the approaches of thirty-three anti-trafficking campaigns worldwide. They identify certain prerequisites to public awareness raising if it is to successfully lead to a change in behaviour, which are often lacking in anti-trafficking campaigns. First, a campaign must identify a well-defined target group, which is difficult in an anti-trafficking campaign as potentially everyone can become a victim of trafficking. As we have seen, the presence of a well-defined target group is also essential for monitoring and evaluating the activity. Second, information must come from a source that is seen as credible and the message must influence the worldview of the target group. Many potential victims of trafficking are more likely to trust information about migration and life abroad from sources such as social

networks, diaspora and the media than information provided by CSOs. Finally, and perhaps most importantly, the target group must be in a position to act upon the information received. This is often a fundamental flaw in anti-trafficking campaigns, since they assume that irregular migration, which puts the migrant at risk of becoming a victim of human trafficking, is an individual choice. Yet, Browne (2015) demonstrates that migration is often a 'collective' rather than an individual phenomenon and, in many cases, is not a real choice but the only alternative in the face of push factors at home and the absence of regular pathways.

Crucially, many of the interviewees themselves discussed the missing link between increased knowledge about human trafficking and a change in migration behaviour and vulnerability to trafficking (interviews 1, 3, 5). One stated:

After a prevention activity we had some time ago - we thought we had done a good job - a participant walked up to us and said: 'Even if I know, so what? Even if you have told me all about human trafficking, one, I can't afford a lot of the resources you talked about and, two, the scary thing happening in the destination doesn't scare me as much as my current situation'. (Interview 3).

Another interviewee discussed the missing link between awareness raising and a change in migration behaviour in similar terms:

Some of these points have already been proven. What is prevention? What should qualify as prevention? We are realising more and more that just sharing information is not enough. We need to be able to do more for it to actually lead to prevention. There are a lot of findings on this out there already but it really is something we still need to think about'. (Interview 5).

This missing link is particularly relevant given that some academic research indicates that a poorly designed awareness raising campaign can actually increase the risk of trafficking (Nieuwenhuys and Pécoud, 2007; Schans and Optekamp, 2016). These studies have found that some campaigns encourage would-be migrants to 'be smart' by painting a simplistic picture of 'naïve' victims of trafficking falling into the hands of organised crime gang members. This creates the impression that irregular migration is not an inherently dangerous undertaking, but rather that irregular migrants are somehow too naïve and therefore become victims of trafficking due to their personal shortcomings. It also misrepresents the potential first points of contact with a trafficker by representing traffickers as 'the scary stranger from abroad' rather than as a neighbour or somebody from the personal network of the potential victim of trafficking. This can have a collective effect on people facing a migration decision, who assume that 'trafficking won't happen to me'. This potential risk makes it all the more important to target awareness raising campaigns well, to learn from previous lessons learned from inside and outside the implementing organisation, and to not only monitor the output of the activity but also examine changes in behaviour and, ultimately, whether vulnerability to trafficking decreases.

Conclusion

Most CSOs in Kenya do have a monitoring and evaluation process for their awareness raising activities. However, most organisations monitor the output level of their activities, not the impact. They do so mainly by counting the number of participants, while some also test participants' increase in knowledge about human trafficking. In those cases where the impact of activities is monitored and evaluated, this is done by measuring the change in number of referrals from the target community. No organisation that participated in this analysis measures the potential change in migration behaviour or vulnerability to trafficking of the target community. Most evaluations were on level 1 of the Maryland SMS. Whether an activity is evaluated depends on the presence of a clearly defined target group. Most organisations evaluate internally. Evaluations through external experts depends largely on donor funding. A crucial factor is whether the implementing organisation - and the donor - see an evaluation as an opportunity to learn and improve.

While almost all CSOs discuss, formulate and capture lessons learned from activities after implementation, few systematically review and incorporate relevant lessons learned before designing the activities. Thus, they deprive themselves and especially their new staff of valuable learning opportunities. Lessons learned seem to focus mostly on administrative and organisational processes. Few lessons learned focus on whether messaging is effective. There was insufficient

data to properly analyse the nature of all lessons learned but the interviews indicate that, where lessons learned relate to the ‘content’ of an activity, they focus on what worked rather than on what did not. Finally, most interviewees were well aware that an increase in knowledge about human trafficking does not necessarily lead to a change in migration behaviour and decreasing vulnerability to trafficking.

Based on the implications of these findings, the author has formulated a number of recommendations for CSOs, researchers, and donors in order to improve the effectiveness of activities aimed at prevention.



Recommendations for CSOs

After donor funding, an organisational culture of learning seems to be the second most important determinant of whether CSOs in Kenya conduct evaluations and at which level (interviews 3, 5). While many CSOs are committed to learning and encourage their staff to participate in learning events, high staff turnover can make this insufficient if it is the only way learning is facilitated. Crucially, CSOs should review relevant learnings before designing an activity. Wherever possible, they should also approach other organisations directly to learn from their related experiences. As a starting point, facilitating learning between related activities could be included as a standing agenda point in annual activity planning meetings. Having a more structured exchange of lessons learned between organisations and making sure they are considered before designing an activity, rather than seeing their formulation as the last step in the process, could be useful for prevention.



Recommendations for researchers

Although it has been beyond the scope of this study, it would be insightful to examine to what extent these findings would also hold true for the other pillars of anti-trafficking. It would also be useful to further examine the role of the Kenyan Government in the prevention of human trafficking. Both the Counter-Trafficking in Persons (CTiP) Secretariat and the Kenya National Commission of Human Rights implement prevention activities themselves. The CTiP Secretariat in particular has an important role to play in coordinating prevention activities in Kenya.



Recommendations for donors

1. It is important to realise that there has so far been little evidence that awareness raising on the dangers of human trafficking alone will lead to a change in migration behaviour. Often, the basic intervention logic of increased knowledge about human trafficking leading to safe migration behaviour is predetermined by the donor. It is then passed on to implementing CSOs who will often have a greater understanding of what might and might not work but have little influence in the basic premise of the intervention logic. Engaging in an open dialogue with CSOs early on could help donors to take insights from the ground into account as they formulate their funding priorities.

2. It might be tempting to fund activities that are easily monitored at the output level, such as the number of participants at an event or even the increase of knowledge about human trafficking. But donors should resist the temptation of making this the ultimate yardstick of an activity’s success when it might not lead to the expected impact. Other approaches to intervention might be more promising. Awareness raising about human trafficking with the aim of changing migration behaviour is one approach, but by no means the only one. A further examination of awareness raising to increase community referrals, as indeed many of the interviewed CSOs did, might also be promising. As might be more precisely defined target groups, such as returnees at risk of re-trafficking. If receiving countries want to increase safe migration behaviour, opening more legal pathways could also have a big impact.

3. It has been demonstrated that whether donors fund an external evaluation will often determine whether such an evaluation – and often any evaluation at all – takes place. It is therefore important for donors to fund evaluations and to ensure that this is done in way that supports organisational learning and the improvement of future activities, rather than as a box-ticking exercise. Donors also have an important role to play in encouraging CSOs to share lessons learned, including what

did not work in a specific activity. For example, they could fund a review of relevant lessons learned before the design of an activity; in addition to funding the capturing of lessons learned after an event, they could fund their further distribution.

4. Crucially, there is also a need for donors to fund further research into what types of activities are effective in preventing human trafficking and to ensure that the latest research findings inform their activities and are distributed to implementing organisations. Promising approaches that donors could build on already exist. The Freedom Fund, for example, has established a database of 'promising practices' in anti-trafficking interventions all over the world. Ensuring that research findings make their way into intervention design is, ultimately, a question of linking research with practice.

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Appendix: Activity Overview

General		Evaluation					Learning			
Activity	Year of Implementation	Defined target group?	Evaluated?	How is success measured?	Level of analysis	Comment	Lessons learned contributed to activity design?	Lessons learned formulated after the activity?	Types of lessons learned	Distribution of lessons learned after the activity
1.1	Before 2019, ongoing	Yes	Yes	Increased number of referrals from target community compared to baseline.	Impact	Funded project implemented by multiple partners	No	Yes, in reports	Administrative: positive & negative. Content: -	Reports, including lessons learned, are distributed to interested implementing partners
1.2	Before 2019 until 2020	Yes	Yes	1. Number of participants. 2. Beneficiary testimonials on impact.	Output + internal discussion		No	Yes, in reports	Administrative: positive & negative. Content: -	Not formally; reports available upon request
1.3	Before 2019, ongoing	Yes	Yes	Number of participants.	Output	Team discussion	No	Yes, in reports	Administrative: positive & negative. Content: -	Not formally; reports available upon request
1.4	Before 2019, ongoing	Yes	Yes	Number of participants.	Output	Ad hoc feedback from participants	No	Yes, in reports	Administrative: positive & negative. Content: -	Not formally; reports available upon request

Appendix: Activity Overview										
General		Evaluation					Learning			
Activity	Year of Implementation	Defined target group?	Evaluated?	How is success measured?	Level of analysis	Comment	Lessons learned contributed to activity design?	Lessons learned formulated after the activity?	Types of lessons learned	Distribution of lessons learned after the activity
1.5	Before 2019, until 2020	No	No	No monitoring.	-		No	Yes, in reports	Administrative: positive & negative. Content: -	Not formally; reports available upon request
1.6	Before 2019, until 2020	No	No	1. Number of participants. 2. Media coverage.	Informal discussions of output		No	Yes, in reports	Administrative: positive & negative. Content: -	Not formally; reports available upon request
2.1	Before 2019, ongoing	Yes	Yes	1. Number of participants. 2. Questionnaire to test understanding.	Output + intermediary output		Attempted to learn from other organisations in that area but met with reluctance	Yes, in internal meetings / minutes	Administrative: positive & negative. Content: positive & negative.	No further distribution
2.2	Before 2019, ongoing	No	No	No monitoring.	-		Attempted to learn from other organisations in that area but met with reluctance	Yes, in internal meetings / minutes	Administrative: positive & negative. Content: positive.	No further distribution

Appendix: Activity Overview

General		Evaluation					Learning			
Activity	Year of Implementation	Defined target group?	Evaluated?	How is success measured?	Level of analysis	Comment	Lessons learned contributed to activity design?	Lessons learned formulated after the activity?	Types of lessons learned	Distribution of lessons learned after the activity
3.1	2020	Yes	Yes	1. Number of people reached, number of returning participants, % females 2. General feedback form without knowledge assessment.	Output + general 'satisfaction' with the activity	External evaluation was a donor requirement	Yes, organisation /division of work	Yes, internal meetings with lessons learned + formal meeting with an external evaluator at the end	Administrative: positive & negative. Content: positive.	Final evaluation report capturing lessons learned went to the donor, not to organisers
3.2.	2020	Yes	Yes	1. Number of people reached, % females. 2. General feedback form without knowledge assessment.	Output + general 'satisfaction' with the activity	External evaluation was a donor requirement	Yes, organisation /division of work	Yes, internal meetings with lessons learned + a formal meeting with an external evaluator at the end	Administrative: positive & negative. Content: positive.	Final evaluation report capturing lessons learned went to the donor, not to organisers
3.3	2019	Yes	No	No monitoring.	-	Undefined aim, implementation stalled	No	No	No	No
3.4.	2019	Yes	Yes	Open feedback from participants on anything.	General 'satisfaction' with the activity	The same group of people was trained repeatedly on the same topic	No	Yes, in reports	Organisational: negative. Content: -	Internally and informally

Appendix: Activity Overview

General		Evaluation					Learning			
Activity	Year of Implementation	Defined target group?	Evaluated?	How is success measured?	Level of analysis	Comment	Lessons learned contributed to activity design?	Lessons learned formulated after the activity?	Types of lessons learned	Distribution of lessons learned after the activity
4.1.	Before 2019, ongoing	Yes	Yes	1. Number of participants. 2. Referrals from target group.	Output + Impact	Monitoring & evaluation was a donor requirement	No	Planned after implementation as part of the report	-	No
4.2.	Before 2019, ongoing	No	(Yes)	-	-		No	Planned after implementation as part of the report	-	No
4.3.	Before 2019, ongoing	Yes	Yes	Number of people reached.	Output		No	Planned after implementation as part of the report	-	No
5.1	Before 2019, ongoing	Yes	Yes	1. Number of participants. 2. Pre & post knowledge test 3. External evaluator measured improved understanding compared to a randomised control group. 4. Number of referrals. 5. Open feedback from target group.	Output + intermediary output + impact	External evaluation was a donor requirement	Informally through staff, not deliberately	Yes, Lessons Learned discussed informally + formally on an annual basis, captured in evaluation reports	Administrative: positive & negative. Content: Positive & negative.	Internally

Appendix: Activity Overview

General		Evaluation				Learning				
Activity	Year of Implementation	Defined target group?	Evaluated?	How is success measured?	Level of analysis	Comment	Lessons learned contributed to activity design?	Lessons learned formulated after the activity?	Types of lessons learned	Distribution of lessons learned after the activity
5.2.	Before 2019, ongoing	Yes	Yes	1. Number of participants. 2. Pre & post knowledge test. 3. Number of referrals. 4. Open feedback from target group.	Output + intermediary output + impact		-	-	-	-
5.3.	Before 2019, ongoing	Yes	Yes	1. Number of participants. 2. Pre & post knowledge test. 3. Number of referrals. 4. Open feedback from target group.	Output + intermediary output + impact		-	-	-	-
5.4.	2020	No	No	No	-		No	No	No	No

'Investigate Where You Are Going'

Interview with Collins Otieno Obwar

What is your advice for those who have just arrived or are planning to leave?

What I'd say is that traveling abroad isn't bad. It's actually very good depending on the money you've been offered and also your family background because what inspired me was my family background. You must investigate extensively about where you're going. The most important thing is the contract. For us, what tied our hands was the contract. The contract wasn't signed so we assumed that part. We were like: 'How many dancers have gone and come back with money?' We were not the first ones to go for that job. There are those who've been abroad for ten years, so we were not taking it seriously. One of our group members went to Dubai with the same person three times, just like [another person has] been there five times, so we figured we could trust their experiences. Going isn't bad, but before you leave make sure you have some security at home in case something happens there [so that] you can get the assistance you need.

We got your case from Facebook and the media, but what about those who don't have access to Facebook, who can't say anything even when they are there?

Some people are stressed. I can also say others would rather not talk about it considering what I've been through. [...] I had a friend who is in Saudi Arabia. She sent me a direct message and told me [...] she has lost contact with the person who brought her there so she's not even working at her designated place. She's somewhere else and she also doesn't have a passport. [...] She said she'd been to the embassy but the embassy was behaving like the one in Dubai. You see the embassy is aware of what we are going through and I'll hold them accountable for this. You find that someone is going through problems, they are being tortured and they try reaching out to the embassy and the embassy doesn't respond appropriately. That's why I think some Kenyans would rather not speak about it because they feel like they tried to reach out and nobody helped. [...] The biggest problem is not that they don't want to talk. Maybe there are those with no phones and there are those who have been locked up and can't leave and there are those who have gone to the embassy and tried sending emails, but nothing has happened.

Based on your experience what needs to be done to protect those who are planning to leave or those who are there right now?

All jobs have to be taken into consideration. [...] Even domestic workers and watchmen have to be taken seriously because a lot of Kenyans are going through a lot of problems. It would be very nice [if there was] an institution to oversee this and safeguard workers in terms of their rights and to make sure that they're not mistreated where they're going. [...] There are agencies, but agencies look for work and make sure you've gone for that work and they don't care much after that. [...] But there are documents that you can have. For example there's a union for domestic workers. There's a certain document that if that person has it will protect them. [...] This letter needs to be taken up to the embassy and a copy left there and I think it will help a lot. [...]

Do you have any more suggestions?

[I would] like to thank HAART Kenya. You helped me a lot. I think if you didn't come through I wouldn't be where I am because when we came you were the first people to give us hope. Life must go on. [...] I have no questions just to say that HAART should continue doing the work it does and continue supporting other people and to give them hope. The [counselling] sessions with Sophie really helped. [...] Even when I didn't have any money, after speaking to Sophie I would get an idea and found that my stress was reducing.

Trafficking of Persons Living with Disabilities: Public Awareness of Forced Begging in Kenya

Augustine Bahemuka, Faith Ondeng and Elias O. Opongo

Introduction

Trafficking in persons, more commonly known as human trafficking, is considered one of the most organised crimes threatening modern society (Cockbain, Bowers, and Dimitrova, 2018). Victims of trafficking in persons are subjected to various forms of exploitation, among which sexual exploitation and forced labour are the most reported. According to the United Nation's Global Report on Trafficking in Persons, 2020 (UNODC, 2020, p.10), sexual exploitation accounted for 50 percent and forced labour 38 percent of the global cases of trafficking in persons. Other forms of exploitation included baby selling, forced begging, forced criminal activity and organ removal (p. 11).

In 2000, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) was adopted to supplement the UN Convention against Transnational Organised Crime and its Protocols (see UNODC, 2004, pp. 5-51). The Palermo Protocol provided the 'first internationally agreed-upon definition of trafficking in human beings' (Gozdziak and Vogel, 2020) and was widely lauded as a landmark step in the fight against human trafficking. As expected of all State Parties, Kenya passed the Counter Trafficking in Persons Act, 2010, which mirrored the Palermo Protocol. However, the US Department of State (2021), which identifies Kenya as a country of origin, transit and destination for victims of human trafficking (p. 331), still ranks Kenya as a Tier 2 country that 'does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so' (p. 328). Sexual exploitation and forced labour in domestic servitude are prevalent according to the Irish Centre for Human Rights (2020). As a country of destination, the Kenyan Ministry of Labour, Social Security and Services (2014, p. 2) reports that persons from other African and Asian countries have been identified as victims of various forms of exploitation within Kenya. As this article will discuss, this includes exploitation of people living with disabilities (PwD) for forced begging.

Significant global and national efforts in legislation, research and prosecution have been made to counter sexual exploitation (Cockbain, et al., 2018; Gozdzia and Vogel, 2020; see also Matekaire in this volume). However, the relative lack of focus on other forms of exploitation has allowed them to thrive. Forced begging, cited by the UNODC as one of the 'other forms' of exploitation has consistently increased over the past ten years, and yet remains underreported. It accounted for 1.5 per cent of all cases of exploitation detected in 2018 (UNODC 2020, p. 11) and is most prevalent in North Africa and the Middle East (p. 35). Studies have identified children as a group vulnerable to exploitative begging due to various precipitating factors, including pervasive poverty, dysfunctional families and abusive or absent parents (Fuseini and Daniel, 2018; Owusu-Sekyere, Jengre and Alhassan, 2018). In a Europe-based study, physical disability has also been revealed as a significant risk factor (Tamaş et al., 2013), not only among disabled minors, but also adults (Weatherburn and Tamaş, 2016). A study carried out in Zimbabwe found that 57 percent of the beggars in Harare were disabled (Rugoho and Siziba, 2014). Media reports also highlight an increase in the number of disabled beggars in some urban parts of Kenya (Kigai, 2013; Otieno, 2017). Yet even though disability has been cited a risk factor for exploitative begging, people living with disabilities are less commonly mentioned in the UNODC's recent global reports on trafficking in persons.

Forced begging, unconsented labour, has become a serious social and moral concern in Kenya, particularly in reference to PwD. It has received increased media and public attention in recent years, with a particular focus on disabled children (Brook, 2018; Kigai, 2013; Otieno, 2017), not least due to the burgeoning number of disabled beggars on the streets and pavements in various cities and urban centres who are reported to have been trafficked from neighbouring countries. Nevertheless, the exploitation of PwD through forced begging, including adults, has remained under-researched and under-reported (Wanjala, 2019b). Against this background, and in light of the commemoration of ten years of the Counter Trafficking in Persons Act, 2010, this article highlights the prevalence of forced begging in Kenya. It also assesses public awareness about

trafficking in PwD as this, we suggest, is critical in fighting against this crime. It first provides a conceptual analysis of forced begging and an overview of its dynamics in Kenya, based on a review of the existing research literature and relevant media reports. It then presents the results of a field-based survey conducted by the authors to capture public perceptions of forced begging among people living and working in Nairobi, in particular their awareness of the vulnerability of disabled persons to exploitation through this illegal practice. It concludes with some reflections on the implications of the study's findings for future counter trafficking efforts.

Definition of Terms

Trafficking in Persons

The terms trafficking in persons and human trafficking are used interchangeably in this article. Under the Article 3(a) of the Palermo Protocol, trafficking in persons is defined as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Forced Begging

This study understands forced begging as a form of forced or compulsory labour as defined in Article 2(1) of the ILO Forced Labour Convention, 1930: 'all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily'. In other words, persons trafficked for exploitation through forced begging carry out this activity involuntarily under threat and intimidation. The disabled beggars are equally in desperate situation of need and are often lured into begging by the 'hostage takers' for survival. These circumstances constitute the 'restriction of human freedom, violation of human rights, and the exact opposite of decent work or human development' (Belser, 2005, p. 2). While this definition does not comprehensively address the process of consent on the part of the disabled beggars, it deduces, based on the circumstances of the vulnerability of PwD, that that their reduced options for survival subjugates their consent to exploitation by their exploiters.

Persons with Disabilities (PwD)

The UN Convention on the Rights of Persons with Disabilities (United Nations, 2006) conceives PwD as those who possess 'long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'. Persons who present with a physical disability are the main focus of this article.

Forced Begging: A Conceptual Analysis

Begging is a phenomenon that has existed throughout recorded history. Ancient religious texts such as the Jewish scriptures refer to beggars who sat at the entrances of places of worship. Begging is also universal in that it is found in wealthier countries (Tamaş et al., 2013), as well as poorer states in the global south. It is a visible socio-economic and physical problem in cities across Africa (Rugoho and Siziba, 2014), although the UNODC (2020, p. 35) holds that North Africa and the Middle East account for the highest number of detected cases. Begging is associated with poverty, unemployment, rural-urban migration (Owusu-Sekyere et al., 2018, p. 2) and religion (Fuseini and Daniel, 2018). It is considered to be a quick, informal means of obtaining money. People living with disabilities who beg as a means (or partial means) of survival are the most visible beggars and face a plethora of challenges, which include social exclusion, pervasive poverty and lack of employment opportunities.

Beggars survive on the benevolence of the public and sometimes the support of charity organisations, depending on how they are perceived. According to Groce, Loeb and Murray (2014, p. 3), beggars who are unable to meet their basic needs are perceived by the public as deserving poor, while those who are capable of doing some work to survive, but choose not to work or opt for begging, are seen as undeserving poor. Most of the 'deserving' beggars are people living with disabilities. They are tolerated by society to a considerable extent, since giving to them appeals to

religious values such as charity and almsgiving, as well as to socially valued attitudes of compassion and kindness. In contrast, Groce et al. argue, the public associates ‘undeserving’ beggars, who have the capability to work since they are not disabled, with laziness and unwillingness (p. 3).

Undeserving beggars have been associated with criminal and anti-social behaviour, including drug and alcohol abuse, but are also seen as victims of crime where they have been used by others seeking to make profits (Groce et al., 2014, p. 4). For instance, one study of begging in Ghana reveals the phenomenon of ‘begging entrepreneurs’, a group of adults who recruit migrant children to beg in Kumasi city and pay them for the service rendered (Owusu-Sekyere et al., 2018, p. 6). While begging is a means to a livelihood for these children, they are vulnerable and open to exploitation and abuse (p. 7). In some instances, there is a blurred line between voluntary begging, where people choose to beg as a means (or partial means) of survival, and exploitative begging, which is linked to organised crime in which gangs organise groups of beggars, including people with disabilities, and exploit them for their own profit by using them to beg for money.

Charles Kirchofer (2010) conceptualises organised begging as a pyramid, with beggars at the bottom, handlers in the middle and ringleaders at the top. In this analogy, forced begging is a ‘business with a hierarchy’: the victims at the bottom collect money from the public, the handlers collect that money from the beggars, and the ringleaders receive all of the income. The ringleaders also determine locations and sites for begging and recruit beggars, which it is believed ‘all too often entails human trafficking’. In such circumstances of forced begging, victims live in conditions of slavery under constant threat of ill-treatment, violence and/or death (Kirchofer, 2010, p. 7). Despite the identification of forced begging with minors in global overviews of the problem, Weatherburn and Tamaş (2016, p. 68) argue that, in Romania, adults who present any form of vulnerability – for instance low education levels, disability or destitution – are also at high risk of exploitative begging. They also find a specific correlation between disability and exploitation through forced begging (pp. 65, 68). As we will go on to discuss, this correlation is also evident in Kenya.

Understanding the factors that lead people with disabilities to beg is critical if the purposes of international instruments such as UN Convention Against Transnational Organised Crime and UN Convention for the Rights of Disabled Persons are to be achieved (Groce et al., 2014, p. 1). The reported global increase in forced begging has been attributed to a range of factors, including poverty, social discrimination and lack of alternatives (Tamaş et al., 2013). However, it is also important to consider the impacts of laws and policies surrounding begging. A study conducted in the two EU member states of Romania and Belgium, for example, observes that de-criminalisation or non-criminalisation of begging ‘reduces the risk of apprehension of traffickers’, making forced begging a ‘low-risk and high-profit’ form of exploitation (Weatherburn and Tamaş, 2013, pp. 65–66). In order to counter human trafficking for forced begging, it is therefore necessary for the relevant agencies to develop victim identification mechanisms that differentiate between victims of forced begging and voluntary beggars (p. 68). This is also important if authorities are to avoid what Anti-Slavery International (2014) has referred to as ‘secondary victimisation’, that is when victims are treated as criminals rather than being identified as victims.

In a study carried out among five European Union member states, Anti-Slavery International (2014) found that victims who are trafficked are often forced to commit petty crimes, such as cannabis cultivation, ATM theft, pickpocketing and prostitution. Trafficking of persons for the perpetuation of criminal activities has also attracted increased attention in other parts of the world, including East Asia and Central America. It comprised about 5 per cent of detected cases of human trafficking in 2018 (UNODC 2020, p. 50) and includes perpetuation of the crime of trafficking itself. In Kenya, for example, the US Department of State reports that foreign victims of human trafficking ‘are coerced to serve as facilitators or middle persons to further trafficking schemes’ (2021, p. 331). Anti-Slavery International notes that secondary victimisation of such individuals is a violation of their rights as victims of crime and compromises their rights to assistance and support (2014, p. 76). Moreover, a failure to recognise traffickers’ use of force and coercion against victims makes forced criminal exploitation a low-risk, high-profit venture for traffickers. Weatherburn and Tamaş (2013, p. 66) argue that a human rights approach should be taken by governments tackling forced begging to avoid such secondary victimisation.

Hence, while begging has a long history as a voluntary practice carried out for individual survival, criminal gangs also organise groups of beggars whom they exploit for their own economic ends in

what some reports have been described as the ‘begging industry’ (e.g., Kigai, 2013). It can be difficult to differentiate between voluntary and exploitative begging as the situations in which the two groups operate are more or less similar. Equally difficult is to assess the consent process and whether those begging have been coerced or chosen to do so freely. Proper identification mechanisms are therefore needed to distinguish victims of forced begging from voluntary beggars and criminals. This is essential if relevant authorities are to provide support and assistance to victims, and avoid cases where victims are themselves treated as criminals, including as offenders of the crime of trafficking in persons.

Forced Begging and the Trafficking of PwD in Kenya

Eudias Kigai (2013) reports Kenya as ‘one of Africa’s top destinations for beggars’ owing to the influx of beggars visible on the streets of various urban centres in the country. According to Kigai, Kenya’s strategic position in the Great Horn of East Africa region and high economic progress have made it a country of destination, transit, and harbour for human trafficking (see also US Department of State 2021, p. 331), and facilitated the perpetuation of the ‘lucrative begging industry’ in urban centres such as Nairobi, Mombasa, Nakuru and Kisumu. People living with disabilities, including both children and adults, are the most exploited in forced begging due to their vulnerability (Wanjala, 2019b). A contextual analysis of forced begging demonstrates its different forms, the recruitment, routes and locations used, and the pull and push factors that facilitate it.

Forms of Forced Begging

Despite its illegality, forced begging is perpetuated in broad daylight in Kenya’s urban centres. Victims can be seen on busy streets and pavements and at the entrances of buildings such as supermarkets and large shops. There is no accurate data available on the number of victims of forced begging in Kenya (Wanjala, 2019a) owing to the highly organised and coordinated nature of this crime. But reports suggest that exploitation of PwD through forced begging in Kenya takes different forms, from street begging to the hiring of disabled children and PwD to solicit funds from western donors. Street beggars can be seen seated or crawling on the streets and pavements sometimes under the scorching heat of the sun. To avoid public attention and suspicion, they are carried and dropped off by their handlers as early as 5.00 am, when it is still dark; the handlers then keep watch over the beggars from a distance during the course of the day (Wanjala, 2019a). In other instances, PwD are moved around by their handlers in wheelchairs along busy road junctions and to streetlights to beg from waiting motorists. Kigai (2013) reports on (women) traffickers who ‘hire’ disabled children from shelters that ‘illegally’ keep victims of forced begging. These women can be seen carrying around disabled children disguised as their mothers in order to beg for money from sympathetic passers-by. PwD are also sometimes used by their traffickers to solicit funds from western donors, which the traffickers then use for their own selfish needs, sometimes abandoning the victims (Brooks, 2013).

In some cases, traffickers involved in forced begging are ‘victim-perpetrators’, that is, they are themselves victims of human trafficking who have been coerced into acting as facilitators or middlepersons (US Department of State 2021, p. 331). In 2019, for instance, The Standard newspaper in Kenya reported a story of one Tanzanian young man who was convicted for human trafficking (Chepkoech, 2019). Pleading before the court, the young man revealed that he had himself been lured by a businessman with promises of good employment in Kenya. He would later come to be a wheelbarrow pusher of a disabled victim of trafficking. This victim-perpetrator phenomenon raises serious concerns in the fight against human trafficking. It means that the ringleaders of the cartels responsible for perpetuating forced begging stand a low risk of being apprehended, since the people they have trafficked have themselves committed criminal offences and are therefore unlikely to cooperate with law enforcement authorities (Weatherburn and Tamaş 2013, p. 66). Yet, they can still accrue high financial benefits.

Recruitment, Routes and Locations Used for Trafficking PwD

Recruitment of victims of human trafficking is both internal (domestic) and external. Within Kenya, victims are trafficked from rural areas to urban centres, while external recruitment involves the trafficking of victims across borders with neighbouring countries. Media reports indicate that majority of PwD trafficked for forced begging are victims of external recruitment. Their countries of origin include Uganda, Burundi, South Sudan, the Democratic Republic of Congo, Eritrea and, most notably, Tanzania (Brooks, 2018; Kigai, 2013; Otieno, 2017). In 2013, the Kenyan Police arrested

two men for smuggling thirty-two disabled persons into the country from Tanzania under the pretext of ‘alms purposes’ from which the victims would also benefit (Ombati, 2013). In 2017, The Standard newspaper in Kenya reported a story of victims of forced begging in Nakuru; one woman revealed that she was part of a group of twenty disabled persons smuggled from Tanzania in a lorry carrying fruits (Otieno, 2017). The US Department of State (2021, p. 331) also observes an increasing number of children and PwD trafficked from Tanzania and other neighbouring countries into Kenya. Article 3 (a) of the Palermo Protocol provides for various means of recruitment, including threats, coercion, abduction, fraud, deception and abuse of power. Reports indicate that most PwD are recruited by means of deception; they and their parents, in the case of children, are lured with promises of better opportunities in Kenya (Chepkoech, 2019; Otieno, 2017).

The major routes used to traffic PwD into Kenya are the border points of Sirare, Nyamanga and Oloitoktok (Wanjala, 2019a.) Kigai (2013) reveals that once at the border, bribes are given to immigration and Kenya Revenue Authority (KRA) officials to grant illegal entry to the victims without temporary passes. Traffickers then transport the victims to different destinations where they are received by the exploiters, who are notably situated in urban regions, including Mount Kenya, the Central Rift Valley, and western and coastal counties (Brooks, 2018). In the Nairobi area, forced begging has become commonplace. PwD begging is evident along busy streets, pavements and at traffic light junctions in the Central Business District (CBD) and urban centres such as Ruaka, Rongai, Kariobangi, Githurai, Parklands and Westlands.

Key Drivers of Trafficking PwD in Kenya

The underlying causes of human trafficking can be broadly grouped into push and pull factors. Push factors are basically intrinsic to the lives of victims and originate from the conditions in which PwD live, including poverty, unemployment, rejection and discrimination, and dysfunctional families. Pervasive poverty and high levels of unemployment make PwD vulnerable to exploitation by ill-intentioned people who disguise themselves as sponsors. In 2020, the Institute of Development Studies (IDS) carried out a situation analysis in Tanzania which revealed that, as one of the poorest and most marginalised groups of people in society, PwD ‘are more likely to be vulnerable to all kinds of shocks’ (Rohwerder, 2020, p. 4). This is exacerbated by the limited job opportunities available to PwD, who may be considered unsuitable for employment due to their disabilities. Persons living with disabilities also suffer from different levels of social violence through stigma and discrimination in their families and communities. This hinders them from fully enjoying their rights and participating in the social life of the community, hence exposing them to risk of exploitation (Rohwerder, 2020, p. 4).

Pull factors for trafficking in PwD are largely extrinsic to the lives of victims but work in favour of the traffickers. They include traffickers taking advantage of a quest for better opportunities among PwD, the relaxation of immigration policies for East Africans, governmental reluctance to address the trafficking of PwD and low levels of awareness among the public. People living with disabilities are vulnerable because they are naturally forced to depend on others in order to carry out certain tasks. This situation makes them prone to exploitation through deception by ill-intentioned people who lure them with promises of better opportunities in Kenya, including employment, a better life and treatment for their disabilities (Otieno, 2017). This is illustrated in the story of a blind boy who was trafficked from Tanzania by a woman trafficker with false promises of taking him for treatment in a Kenyan hospital. Unfortunately, the boy was told by the woman that he had to beg in order to raise the funds for treatment (ANPPCAN and Terre des Hommes, 2017, p. 16).

In addition to exploiting the aspirations of vulnerable people, Brooks (2018) opines that large criminal networks have also taken advantage of the government’s relaxation of immigration policies for members of the East African Community. This follows other efforts taken in the region to foster integration, such as the establishment of the EAC Common Market Protocol (2010) and regional bodies including the Common Market for Eastern and Southern Africa (COMESA) and Inter-governmental Authority for Development (IGAD). These have eased the movement of East Africans and goods across borders. The Society for International Development (2012, p. 4) notes that traffickers have manipulated this free flow to their advantage. According to Stop the Traffik – Kenya, a coalition of civil society organisations fighting against human trafficking in Kenya, the government has not paid adequate attention to addressing the root causes of human trafficking, which include poverty and lack of education (2020, p. 17). In a report on human trafficking in the

Greater Horn of East Africa region issued in 2012, the Society for International Development (2012, pp. 3, 8) also highlights low levels of awareness among the public as an obstacle in efforts to combat human trafficking.

In contrast to the largely hidden crime of human trafficking for forced begging and other forms of exploitation, the physical presence of PwD begging in Kenya's urban centres is highly visible. But how do people who live and work in these areas perceive the beggars who they see on the street? Why do they think PwD engage in begging? How aware are they of the vulnerability of PwD to exploitation? And do they have ideas about how the exploitation of PwD for forced begging might be stopped or curbed? The remainder of this article discusses the results of a survey conducted by the authors to explore these and related questions.

Data Collection and Findings on Forced Begging

This study is premised on the assumption that public awareness about trafficking in PwD is critical in fighting against this crime, since it is members of the general public who give money to street beggars. High levels of awareness about forced begging by PwD among the general public will make more exposure of the crime of forced begging; reduce incidences where public may unknowingly support the crime in view of assisting beggars; and also increase pressure on the government and concerned agencies to act.

This study applied the random sampling technique to cover selected urban locations in Nairobi, which are known target spots for street begging. These include: Umoja, Imara Daima, Ruaka, Eastleigh, Kamukunji, Ongata-Rongai, Dandora and Fedha Estate. The survey was conducted online in order to ensure the health and safety of the respondents and researchers in light of the COVID-19 pandemic. A questionnaire with both closed and open-ended questions was administered to members of the public via email and social media. Out of the fifty questionnaire copies distributed, thirty-two were filled and returned. Respondents had various occupations, which can be broadly categorised into four groups: business and self-employed (4), academics, researchers and students (10), financial and legal institutions (15) and peace practitioners in NGOs (3). Given that this research was conducted online, levels of information technology was a key factor in sample selection. The researchers also conducted two key informant interviews. Key informant 1 is an expert practitioner in countering human trafficking in Kenya while Key informant 2 is a corporate woman living with disability, who were able to provide informed opinions on, respectively, the trafficking of PwDs for forced begging and the opportunities available to PwD in Nairobi, based on their professional and personal experiences. No other interviews were conducted due to time and logistical constraints. All data was collected in June 2021.

The questionnaire and interview guide had five questions, covering respondent's perceptions and opinions on street beggars, the population groups most vulnerable to forced begging, the drivers of exploitation of disabled people through forced begging, the reasons why PwD engage in begging, and strategies to eradicate or reduce forced begging.

Perceptions on street beggars

The public perception of street beggars is a significant determining factor in whether they will be given money or any other support by sympathisers. Groce et al. (2014, p. 3) identify two kinds of public perception of street beggars – deserving (unable to meet basic needs of life) and undeserving (able to work but choose not to). Beyond this categorisation, this study also sought to identify the level of public awareness and understanding that begging can be an exploitative phenomenon. Respondents were therefore asked to state their opinion on people who beg on the streets by selecting one of the following options: poor and unable to meet basic needs, being used by others to beg and, lazy and do not want to work. A majority of the respondents (53 percent) were of the opinion that people begging on the streets are being used by others to beg, while 44 percent perceived those begging on the streets to be unable to meet their basic needs. Only 3 percent of the respondents expressed the opinion that beggars on the streets are lazy people who do not want to work (see Figure 1).

Reasons for street begging

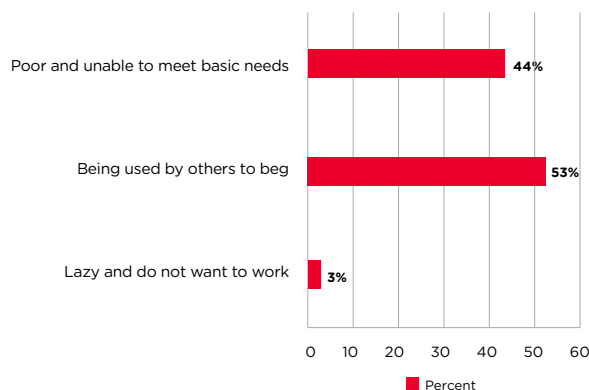


Figure 1: Perceptions of street beggars. Source: Study findings, 2021.

In a follow-up question, respondents were then asked to provide open-ended comments, which were analysed to determine the primary way that street beggars are perceived. Three respondents (12 percent) considered forced beggars as deserving, five (19 percent) undeserving and ten (38 percent) as exploited (see Figure 2).

Responses to street beggars per category

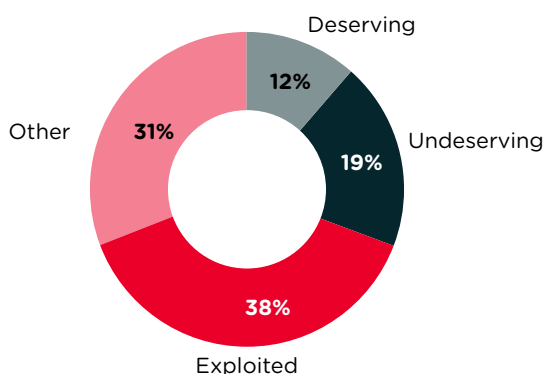


Figure 2: Responses to street beggars by category. Source: Study findings, 2021.

Respondents who perceived street beggars as deserving were of the view that, although it is not a good thing, beggars are in actual need and have found no other option. Their comments suggest a degree of public awareness that, as Owuse-Sekyere et al. (2018, p. 7) put it, beggars are ‘exploiting the economic opportunities within reach to make money’. For example, a consultant in Nairobi noted that street begging ‘is a business’, while another businessperson in Nairobi stated that this practice had become a ‘culture in the cities’.

In contrast, among the respondents who considered street beggars as undeserving, some clearly believed that beggars did have other options. A teacher from Umoja in Nairobi, for example, held that beggars have abilities and talents which they can use to get their daily bread, while a university student in Nairobi considered street begging to be ‘uneconomical’ and held the view that beggars can acquire some technical skills as a means of earning money. As would be expected, some of these respondents considered beggars to be workshy and lazy. One resident of Fedha Estate in Nairobi expressed the opinion that street begging is an easy way of getting money without engaging in hard work. For one student respondent, the shrewdness of some beggars shows that they are being lazy and dislike work. A university student in Eldoret reflected on the impact of begging, which, they felt, ‘kills the victim’s esteem making them find no reason to live’. Even though this student categorised beggars as undeserving, their use of the term ‘victim’ suggests some awareness that begging can be exploitative, which enslaves the victims.

A significant number of respondents (38 percent) primarily considered street begging to be exploited. One, a human resources expert, referred to it as a ‘form of slavery by the rich’. A community peace volunteer from Kamukunji noted that most of the victims are foreigners from Tanzania and Uganda who are mobilised by other people to beg. Yet, the money which they collect from the streets does not develop them. Such exploitation of victims who have been trafficked qualifies as forced begging. This awareness of forced begging was shared by another respondent, a researcher, who distinguished between voluntary and exploitative begging:

While you cannot refute the fact that there are individuals who beg on the streets because they are unable to meet their basic needs, [the] majority are being used by individuals in order to beg, and they strategically sit at different points depending on the time of the day. They even do preparation as they begin to beg, and often, you may find them setting themselves [up] so that those who pass by may sympathise with them and offer help. For these people, it is a business and they use others like children, PwD, those with deformations and wounds to help beg.

The above sentiments echo Kirchofer (2010)’s conceptualisation of forced begging as a structured business venture in which victims of trafficking collect money on the streets, which is later collected from them by their handlers and given to the ringleaders.

Concerns raised by respondents who saw begging as exploited ranged from its limitations as a means of livelihood to questions of authenticity. Street begging ‘is not a sustainable way of life, charity and hand outs are unreliable’ noted one legal practitioner. A banker in Nairobi expressed concern over little children being exploited by their mothers to come and beg in the streets, which denies them an opportunity to attend school. In contrast, a fruit vendor in Ruaka town centre doubted the genuineness of some beggars, for instance, the blind adults who are taken around by child-handlers. The issue of identifying genuine beggars was also highlighted by two other businesspeople. During an interview, a corporate woman living with disability (Key informant 2), cited ignorance as the biggest challenge of disabled street beggars. According to her, some beggars ‘are actually used to the life and do not have the will to do other things while some have no knowledge that there are government bodies that can assist’. She further added, ‘Sometimes when I am in town, I move to the disabled beggars and when they see me dressed and looking smart, they wonder and ask me how I have managed to look after myself’.

The different perceptions among respondents of street begging and the range of concerns that they raised reflects, in part, the complexity of street begging as a phenomenon. This complexity was highlighted in an interview with an expert in the area of countering human trafficking in Kenya (Key informant 1), who commented on both voluntary begging, that is where people choose to beg either individually or in a group, and forced begging, where people are held against their will and forced to beg:

There are those who do it on their own; some individuals do it as a part of larger groups; some individuals beg as part of organised criminal group, either they [are] sharing group income [or] they work in a place as per an assignment they have in exchange of I guess connections or protections and contribute to the organised criminal group; some beg because they are victims of trafficking brought and put to beg, totally under control.

This participant also noted that the latter group of people, who are trafficked and forced to beg, ‘are abused not only through begging but also through other forms of abuse’.

In short, while there does seem to be a fairly high level of awareness of the phenomenon of exploitative begging among respondents, the categorisation of street beggars is layered and multi-faceted. This reflects in part complexity and difficulty of differentiating voluntary from exploited beggars discussed previously. As noted in this section, beggars can be perceived by sympathisers as deserving or undeserving. Respondents identified three groups of beggars in the latter category, namely: workshy and lazy beggars and those who have not exploited other means of livelihood possibly because they lack adequate access to social support systems to equip them with technical and financial skills. The third group is composed of the exploitative beggars who are being used by others. However, one respondent, a researcher and an expert in the field of counter human trafficking, explicitly drew a connection between exploitative begging and human

trafficking, suggesting that further work is needed to sensitise urban residents and workers to this hidden aspect of forced begging and its full impacts on victims.

Vulnerability to Forced begging

The second question required respondents to identify the group of people they considered at highest risk of exploitation through forced begging. They were given four options from which they were to choose one: children, women, men and people living with disabilities. Notably, 23 out of 32 respondents (72 percent) selected people living with disabilities as the main group at high risk of being exploited through forced begging, while only seven (22 percent) respondents selected children and three (6 percent) selected women (see Figure 3). This demonstrates relatively high public awareness of the correlation between disability and exploitation through forced begging.

Responses to street beggars per category

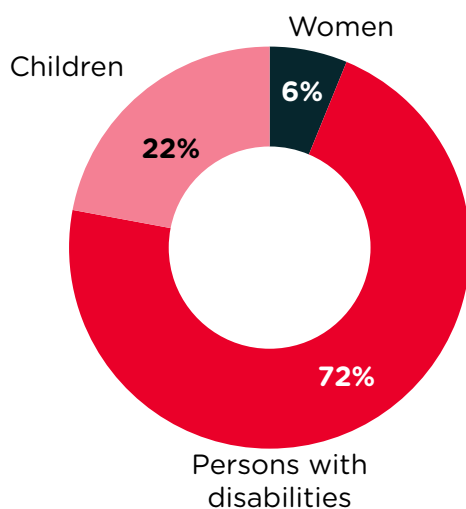


Figure 3: High risk target groups for exploitation by forced begging. Source: Study findings, 2021.

In the open-ended follow up question, the majority of the respondents who believed that people living with disabilities were the most vulnerable to forced begging gave reasons that related to either public attitudes toward or the circumstances of PwD. Five respondents stated that people living with disabilities appeal to the public’s feelings of pity and sympathy, hence can collect more money from passers-by. This makes them more vulnerable to being recruited into forced begging. Furthermore, dependence on others for their needs, such as movement, feeding and clothing also makes them vulnerable to exploitation as observed by three respondents, including a Technical and Vocational Education Training (TVET) officer. This is exacerbated by situations of poverty and unemployment, which mean that PwD may not have a stable means of livelihood. One respondent, a researcher, considered PwD as the most vulnerable group to exploitative begging since most of the street beggars he had encountered were disabled. A businesswoman on Luthuli Avenue in Nairobi cited PwD as a high-risk group because people ‘take advantage and [use] them as their source of income especially the organisations that cater for their upkeep’. However, key informant 2, a corporate woman living with disability noted that some beggars pretend to be disabled because they have noticed that disability attracts more pity from the public.

Children are also considered as a high-risk target group for forced begging because they appeal to the kindness and emotions of passers-by who will easily sympathise with them, as stated by a resident of Kamukunji and Ngong Road. Respondents also highlighted the particular vulnerability of children to exploitation, mentioning that children are at high risk because they are: gullible (businesswomen, Ongata-Rongai); ‘underage and have no way to fend for themselves’ (Fedha Estate resident) and dependent and ‘lack agency’ (Nairobi resident). In a similar vein, an administrator from Dandora said that children are unable to differentiate between right and wrong and are thus easily intimidated or coerced. A student respondent was of the opinion that poverty drives some

parents to send their children into the streets to beg in order to earn and meet their basic needs. Those who saw women as at highest risk of exploitation pointed to the broader aspect of their vulnerable status in society (teacher, Nairobi) and even more, the presence of many women on the streets, which indicates that they are vulnerable (Nairobi resident).

The above analysis reveals that there is high level of awareness of the vulnerability of PwD to exploitative forced begging, including both children and adults. This correlates with Weatherburn and Tamaş' (2016, p. 68) analysis of the situation in European Union, where children as well as adults who present different forms of vulnerability, including physical disability, are prone to exploitative begging. The respondents' comments also suggest that there is a relatively high level of public awareness of the social and economic factors that make PwD vulnerable to exploitation through forced begging.

Drivers of forced begging

Respondents were asked to state factors that facilitated exploitation of persons with disability through forced begging. This was an open-ended question. The responses can be broadly categorised into push factors intrinsic to the lives of victims and originating from their living conditions and pull factors extrinsic to their lives (Table 1).

Table 1: Pull and push factors of exploitation by forced begging (Source: Study findings, 2021)

Push Factors	Frequency	Pull Factors	Frequency
Poverty	10	Poor governance/ implementation of the law	12
Insecurity (in county of origin)	6	Promises of education and assistance	1
Unemployment	3	Greed	2
Lack of education	2	Human trafficking	1
Laziness	2		

While two respondents cited the laziness exhibited by some individuals who shun hard work, the majority of the push factors identified as propelling the practice of forced begging can be described as socio-economic and reflect the living conditions of target groups. Poverty was cited as the main push factor as victims have no other means of survival (ten respondents). In addition, limited job opportunities for some high-risk target groups, such as PwD, was cited as a factor by three respondents. Six other respondents raised the insecurities faced by victims of forced begging both within their domestic homes and their countries of origin, which expose them to human trafficking. Another factor mentioned was high illiteracy levels, which leave victims prone to exploitation by criminal gangs.

These public perceptions are consistent with the findings of an IDS study on disability inclusive development in Tanzania (Rohwerder, 2020), which shows that PwD are in most cases among the poorest and most marginalised groups in society, hence their physical, mental and social situations are likely to be exploited (p.4). Key Informant 1, a practitioner in countering human trafficking in Kenya further identified exploitative begging as a systemic problem based on their own experience working with vulnerable people:

The system does not provide enough social support for people with disability. This trickles back to the issues of family; they don't get enough support. Often, they are ready to give their children away. We have such cases of children in our shelter where families did not want them... That's a sign of how big [a] burden they are to these families but also a sign of how little they get from the state.

The pull factors identified by respondents suggest that they primarily attribute responsibility to public authorities, whether in terms of government inaction or in terms of abuse of power, suggesting that a further push in the implementation of policies and laws to curb or eradicate

force begging would receive support from the public. Twelve respondents held the authorities accountable for the perpetuation of forced begging, citing their inadequacy in the implementation of the law. For instance, one respondent, a lawyer by profession, referred to the ‘lack of proper government controls’ and criticised the Children’s department in particular ‘for not taking punitive measures to stop the abuse’. Another respondent working in Nairobi felt that: ‘The government doesn’t take any serious action to ensure empowerment and self-sufficiency. Cartels are connected with those required to protect PwD, women and children.’ Greed, corruption and bribery were also issues highlighted by a respondent involved in research work, who pointed to the ‘lack of good will by the authorities to follow up with the beggars and offer appropriate assistance’. They added: ‘Sometimes, I do think some County Council Askaris are aware of such dealings and are bribed to even protect and favour these activities on the street.’ As already noted, closely related to their poor living conditions, high-risk target groups are susceptible to deception as a means of luring them into forced begging. Two respondents demonstrated awareness of this, mentioning that fake promises of better opportunities, such as better education and health care assistance, were some of the false incentives used by recruiters.

Physical disability and forced begging

To determine the extent of the phenomenon of exploitative begging in various geographical locations, respondents were asked to state whether they had observed people living with disabilities begging on the streets within their locations. This was a closed question. All but one of the respondents (96.6 percent) reported that they had observed PwD begging on the streets within their localities. They were then asked in an open-ended question to give possible reasons for this practice in their neighbourhoods (Table 2).

Table 2: Possible reasons why PwD beg on the street (Source: Study findings, 2021)

Response from respondents	Frequency
Forced to beg by others who exploit them	6
Abandoned by their families	1
Begging as a means to earn income	14
Densely populated areas	4
Financial benefits which attract others to join	2
Pretenders	1
Employed to beg	2

The most frequently indicated reason for PwD engaging in street begging was as a means to earn income (14 respondents), or more specifically as a means to sustain their livelihoods (university student) and to meet basic needs such as food, clothing and shelter (three respondents). Given that the majority of respondents saw beggars as exploited rather than as ‘deserving’ poor, this response suggests at least an implicit understanding of how economic need can lead to exploitation among PwD. Six respondents highlighted the phenomenon of forced begging, wherein PwD are recruited by criminal groups to beg on the streets. For instance, a legal practitioner noted that ‘even the money they collect often does not benefit them, they are left alone in the street corners in a terrible state, sometime even getting rained on to make the humanitarian situation look more miserable to attract sympathy’.

This brings to the fore the issue of other social injustices that victims of forced begging face. Key informant 2, a corporate woman living with disability highlighted some of these abuses based on her observations and interactions with beggars:

[They] beg the whole day and [are] sometimes given poor meals. They are dropped [off] early in the morning and then their wheelchairs are taken away and hidden somewhere so that they cannot move away from that location. The ones I have interacted with say that they come Tanzania. The shelters where they are kept are poorly facilitated with no beds. They sleep on clothes or hardboards and some on the bare floor.

Another respondent based in Nairobi agreed with the problem of exploitation faced by disabled beggars, but also underscored affirmative action opportunities for PwD, which people who are in situations of forced begging have not been able to access:

The county government has given privilege to the PwD to do business along the streets of Nairobi and some of the PwD have started doing small businesses like selling of sweets and other stuff. The forced beggars who are PwD have not been allowed to take advantage of such opportunities.

Densely populated areas were cited by four respondents as an environment that attracts PwD to beg on the streets; as one respondent put it, these are ‘strategic places for begging’. This could be linked to the increased rate of urbanisation which draws poor PwD to towns for begging. Another respondent cited instances where PwD are ‘employed to beg’ while a teacher in Nairobi opined that some only pretend to live with physical disabilities, such as blindness.

These findings demonstrate that public perceptions of the reasons why PwD engage in street begging are multifaceted, not only in terms of how they categorise beggars, but also the diversity of reasons they identify for PwD engaging in begging. Still, based on the responses gathered in this study, we can conclude that there is a general understanding among educated urban professionals that PwD who engage in begging are doing so for survival, regardless of whether they are on the streets voluntarily or are being forced to beg.

Suggestions for eradicating or reducing forced begging

The last question of the survey asked respondents to suggest ways of eradicating or reducing exploitation through forced begging. This was an open-ended question where 14 out of 32 respondents (44 percent) suggested that social support systems and effective rehabilitation programs should be established to improve the lives and welfare of PwD in the community so that they can meet their basic needs. This was reiterated by key informant 2, who identified Mary Rice Centre located in Lang’ata, Nairobi and run by Christian Brothers as an example. She added that parents with disabled children drop them at this centre in the morning and then proceed with their daily activities. Christian Brothers also offer counselling and psychosocial support to the children and education. As already noted, effective social support structures have been shown to protect PwD from exploitation and social exclusion (Rohwerder, 2020).

Ten respondents (31 percent) suggested that government and civil society organisations should empower people living with disabilities by equipping them with knowledge and skills training, and financial and livelihood support. Closely related to this, a corporate woman living with disability underscored importance of family and community sensitisation to increase awareness around inclusion of PwD and the availability of such programs. She said, ‘Parents with disabled children also need to be reached out to and educated about inclusion.... that disabled children should be equally treated like other children. Some of these parents take other children to school but deny their disabled children the opportunity for school. Instead, they decide to move about with the disabled child begging for money.’

Eight respondents (25 percent), effective law enforcement to crack down on and prosecute the cartels and criminal gangs perpetuating forced begging is important in eradication of this crime. Another respondent proposed that the public should give street beggars non-monetary assistance, such as food and clothes, since giving money attracts more beggars, hence encouraging the practice. The relevant authorities should also gather and maintain proper data of all PwD in the country, which will improve planning of programs. Two respondents stated that the public should be sensitised about this vice and empowered to report such cases whenever they occur. A legal practitioner noted that given the complex nature of this problem, to fight against it will require the involvement of multiple stakeholders, including religious bodies, which can ‘reach the public conscience’.

This study also revealed public fears surrounding street begging due to its perceived association with criminal activity. For instance, a participant from Kamukunji noted that some street beggars are involved in other crimes: ‘... in most cases these beggars are dangerous thieves who drug you

and steal everything from you. Ask Kenyans about the same, they will share many cases'. Another respondent, a student noted that not all the beggars are 'genuine' and might be 'informers to thieves and gangs'. They went on: 'I have at times noticed that there's a lot of eye movement around the car whenever the beggars approach you, especially by the assistants of those on wheelchairs [or who are] blind'. The UNODC Global Report (2020) noted that victims of forced begging are in some instances coerced to engage in other criminal activities on the street, such as shoplifting, pickpocketing, snatching ATM cards and breaking into cars (p. 50). The perception among some urban residents of beggars as criminals suggests that there is still a need to raise public awareness of trafficking for the perpetuation of criminal activity.

Conclusion

This study was premised on the assumption that public awareness about forced begging by PwD is critical in eradication of this illegal practice. Given that most sympathisers of street beggars are the general public, adequate awareness that beggars could be victims of forced begging would mitigate chances of the public unknowingly supporting criminal gangs. Generally, there is relatively high degree of sympathy for people living with disability and an awareness of their vulnerability to exploitative begging, particularly children and women. Economic demand is the most pressing push factor that has propelled exploitative begging among PwD as their limited accessibility to employment and education opportunities is exploited by ill-intentioned people. Although the survey sample was small, this suggests that there might be a prospect of support that could be tapped into for targeted public campaigns on how the public can best respond to the problem, as well as those aimed at pushing for a more effective response from governmental authorities.

However, this sector of the public, although relatively highly educated and well-informed, still does not generally seem to make a connection with the larger problem of human trafficking and forced begging. This suggests there is still a need for greater sensitization among urban populations about issues surrounding trafficking and the different forms it can take; and particularly on forced begging so that the public can know that disabled street beggars could be victims of trafficking in persons. Social support systems for PwD are of great significance in the fight against forced begging because this mitigates the socio-economic pressure laid upon PwD who already face limited access to means of livelihoods. We recommend further research on the exploitation of PwD through forced begging, given the limitations of this study which was based on a small survey of a specific sector of the general public. The phenomenon of double-victimization – where victims of trafficking are coerced into other criminal activities as recruiters and handlers of PwD which exposes them to arrest by authorities – also raised concern.

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**ARTWORK - Rehema Baya****Artwork title: 'Safe Spaces'****Medium: Digital Illustration****Size: 420 x 594 mm****No. of Pieces: 5****Series: 1 of 5****Art Description**

The young girl in our society is always feared for. The dominant form of violence that we fear she will encounter is of a sexual nature. She has to exist permanently in this dimension together with other girls. All are one. We cannot see her nor identify her but she has to stay in this space and fear. Stay cautious. Her identity is hidden in her natural existence as a female yet she is not sad. She is often oblivious to the fears that we share. In this dimension all she does is dream of all the things a little girl would dream of.

Child Trafficking to Charitable Children's Institutions: Challenges and opportunities to combat the problem in Kenya

Michelle Oliel, Kristen Cheney and Michelle Koinange.

Introduction

Kenya is making important changes to how it cares for children, in line with its obligations under the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the UN Convention on the Rights of Persons with Disabilities. The Government's ten-year National Care Reform Strategy for Children in Kenya 2022-2032 (National Strategy) seeks to prevent children's unnecessary separation from their families and decrease reliance on institutional care in favour of family and community-based solutions, which decades of research has shown to be detrimental to children's development (Dozier et al., 2012).

Despite Kenya's robust legal and policy framework for family and community-based alternatives to residential care institutions, the proliferation of orphanages, or Charitable Children's Institutions (CCIs) as they are referred to in Kenya, is attributed to a "standard approach to child protection—which consists of addressing the symptoms" that "is inadequate at best and counter-productive at worst" (Chege & Ucembe, 2020: 9). Moreover, Cheney and Ucembe (2019) argue that the establishment of CCIs is primarily driven by donor desire rather than the actual needs of children without parental care—often disrupting more appropriate forms of family-based care.

In 2017, the Kenyan Government placed a moratorium on the registration of new CCIs, citing inappropriate placement of children in institutions rather than family-based care options and concerns about possible child trafficking (Ministry of East African Community, Labour and Social Protection, 2017). The Cabinet Secretary of the Ministry of Labour and Social Protection stated, "It was evident that some of the children's homes were involved in unscrupulous practices which may include child trafficking" (Ministry of East African Community, Labour and Social Protection, 2017: 1).

Prior to the onset of Covid-19, it was estimated that there were approximately 45,000 children in more than 845 registered CCIs across Kenya (Republic of Kenya, 2022: ii). Despite a government directive in March 2020 stating that children should be released from institutions to return to families due to the pandemic, a total of 26,198 still children remained in CCIs (Alliance for Child Protection in Humanitarian Action et al., 2020). The number of children currently in CCIs may be even higher since the reopening of schools in 2021 following a year of closure to contain the pandemic. The actual number of unregistered institutions and children in them is unknown, but we hypothesize that it potentially surpasses the number of those which are registered.

The 2017 moratorium on registering new CCIs is still in effect, but potential violations of the moratorium as well as instances of child trafficking into CCIs continue to be reported. We argue that trafficking into CCIs is indeed happening in Kenya, and that the problem should be urgently addressed to protect vulnerable children and families. In this chapter, we define the parameters of the problem and provide some recommendations for preventing and responding to it.

Orphanages and trafficking in Kenya

Children in CCIs are at a particularly high risk of violence (Ministry of Labour and Social Protection, 2020; National Crime Research Center, 2020), including sexual and gender-based violence and trafficking. In 2020, the National Crime Research Center found a significant increase in violence against children, especially against girls, across a number of care settings following the onset of the coronavirus pandemic (Covid-19). In its report, the NCRC noted that CCI staff were among the main perpetrators of violations of children's rights during Covid-19 (National Crime Research Center, 2020: 59).

Kenya's ten-year National Care Reform Strategy recognises that institutional care currently faces multiple challenges, and similarly acknowledges "the high levels of child rights violations including

neglect, child trafficking and physical and sexual abuse” in both registered and unregistered institutions (Republic of Kenya, 2022: 131). The National Strategy outlines a number of interventions aimed at addressing orphanage trafficking, including: (i) recognising orphanage trafficking as a crime and ensuring it is prosecuted as a matter of justice for victims and as a deterrent; (ii) providing appropriate training to prosecutors, the judiciary, the National Police Service and the Directorate of Children’s Services (DCS) to tackle orphanage trafficking; and (iii) developing a campaign to prevent orphanage donations, tourism and volunteerism, and encourage the redirection of funding towards family and community-based services.

The National Care Reform Strategy defines orphanage trafficking as “the active recruitment of children into orphanages or residential care institutions in developing nations for the purpose of ongoing exploitation, particularly through orphanage tourism” (Republic of Kenya, 2022: 13). While commonly associated with exploitation for profit, there is also evidence of children being recruited, transported, and harboured in CCIs for the purposes of sexual and other forms of exploitation, as will be discussed below. Orphanage trafficking can also occur without the involvement of orphanage volunteers.

In 2018, the US Department of State devoted a chapter in its Trafficking in Persons report to “Child Institutionalization and Trafficking” (US Department of State, 2018: 22). It states,

...profits made through volunteer paid program fees or donations to orphanages from tourists incentivize nefarious orphanage owners to increase revenue by expanding child recruitment operations in order to open more facilities. These facilitate child trafficking rings by using false promises to recruit children and exploit them to profit from donations. (US Department of State, 2018: 22)

While the US report did not refer to Kenya in relation to orphanage trafficking, the Government of Kenya has acknowledged evidence of this crime occurring in the country, noting that “there is ample evidence of its existence in Kenya” (Republic of Kenya, 2022: 127). Though Kenya’s Counter-Trafficking in Persons Act (2010) does not expressly identify orphanage trafficking as a distinct form of trafficking and does not enumerate profit motives among its *non-exhaustive* list of what constitutes exploitation (Article 2), it does identify sexual exploitation, child labour, keeping a person in a state of slavery, and subjecting a person to practices similar to slavery as forms of exploitation. It is important to note that the Counter-Trafficking in Persons Act explicitly recognizes the link between trafficking and other forms of alternative care, including adoption, foster care and guardianship. Article 4 of the Act provides:

4. Acts that promote child trafficking

1. A person who for the purpose of trafficking in persons—
 - (a) adopts a child or offers a child for adoption;
 - (b) fosters a child or offers a child for fostering; or
 - (c) offers guardianship to a child or offers a child for guardianship, commits an offence.
2. A person who initiates or attempts to initiate adoption, fostering or guardianship proceedings for the purpose of subsection (1) commits an offence.
3. A person who commits an offence under this section is liable to imprisonment for a term of not less than thirty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life. (Republic of Kenya, 2010)

It is not known why CCIs were explicitly omitted in the list of other forms of alternative care associated with trafficking. Persons have been convicted in Kenya for trafficking children, including for the purposes of forced begging—often involving children from neighbouring countries—but none of the cases have involved children in CCIs, despite evidence discussed below that children are recruited into orphanages and harboured for the purpose of ongoing exploitation, including for the purpose of soliciting funds from donors and volunteers and also sexual exploitation.

The link between CCIs and adoption should be noted, considering that adoption is among the family-based care options for children in residential care when suitable, necessary, and in the child’s

best interests. Citing concern over trafficking, the Cabinet approved an indefinite moratorium on intercountry and domestic adoption of Kenyan children and revoked all licenses to conduct adoptions in Kenya in 2014. The Government recommenced licensing of adoption agencies, as well as local adoption. However, Kenya's Children Act, 2022, upholds the moratorium for intercountry adoptions: "the terms of the Moratorium on inter-country and resident adoptions issued on 26th November 2014 shall apply to matters relating to inter-country adoption under this Act."

In 2019, the Government of Kenya undertook situational analyses in five counties (Kiambu, Kilifi, Kisumu, Murang'a, and Nyamira) to provide a snapshot of CCIs (registered and unregistered) and the children living in them. In Murang'a County, it was noted that residential care institutions "have been the hub for child trafficking where children are monetized and exploited for money which harms these children and hampers their development. Some of the homes are businesses only for personal gains" (Ministry of Labour and Social Protection et al., 2020b: 20). In a separate study conducted by Disability Rights International, one Chief in Murang'a County was quoted as saying,

Orphanages realized that if they had more children they could get more donations. At first, they only had local donations but they also started getting international donations. As they received more money, they realized they could use it for themselves. It became corrupt. They started misusing the donations. (Rodriguez et al., 2018: 7).

This sentiment was echoed by the Murang'a community, which noted in a focus group discussion that "children are perceived as business for individuals who want to become rich" (Ministry of Labour and Social Protection et al., 2020b: 20).

Recruitment of children from families

Material poverty and lack of access to services such as education are among the primary reasons why children get admitted into the care of CCIs (National Crime Research Center, 2020: 59; Ministry of Labour and Social Protection et al., 2020c). Most children in CCIs are *not* orphans: they have at least one living parent, or kin who face challenges due to poverty. CCIs often go out into impoverished communities to recruit children from vulnerable families, promising services that may be out of reach for those families, such as education (CNN, 2017)—despite the fact that institutionalizing children because of poverty contravenes the Guidelines for the Alternative Care of Children in Kenya (Republic of Kenya, 2014), modelled after UN Guidelines for the Alternative Care of Children (United Nations General Assembly, 2010: 4).¹ In a CNN story about child trafficking to an orphanage, a relative of a girl who was 'recruited' into an orphanage stated, "I wanted Teresia to stay with me like a daughter, but I didn't have enough money. When I was approached by someone who could take her into an orphanage, I didn't have a choice" (CNN, 2017). When CCIs recruit from vulnerable communities, it can be a sign of intention to exploit children for financial gain, such as soliciting donations from supporters or entertaining visitors. After being recruited into CCIs, children are often instructed to claim they are orphans and required to sing and dance for visitors and volunteers—a form of forced begging (Cheney and Ucembe, 2019: 44). Children in the CCI that Teresia was recruited into often missed school to entertain visitors and were punished if they shared with volunteers that they were not in fact 'orphans' without families (CNN, 2017). In some cases, children are purposely kept in deplorable conditions to increase donations. Meanwhile, children's images and stories are frequently used unethically by CCIs to garner online donations or attract fee-paying volunteers (Oliel, 2021).

In January 2021, a class action lawsuit was filed in the United States under the Racketeer Influenced and Corrupt Organizations (RICO) Act on behalf of donors and volunteers against Illinois-based non-profit, First Love International Ministries, which runs a CCI in Nairobi County. The lawsuit alleges that "First Love preys on American donors for money to build CCIs that are unnecessary and in contravention of international norms" and "...does so by building a rich but deceptive tapestry of children in need" (Calavan v. First Love International Ministries et al, 2021a: 95-96). Recruiters promised families "that their children would receive an education or medical care (which they did not) if their children came to live at First Love" (Calavan v. First Love International Ministries et al, 2021a: 156). It is alleged that many children in the CCI did not have court committal orders, and

¹ The guidelines state, "Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family."

that many were missing birth certificates and hailed from villages “hundreds of miles away from First Love”.

At least one child was specifically alleged to have been recruited and harboured at First Love under false pretences. One sponsor stated:

...Purity contacted us to ask us to please forgive her mother. She said her mother was deceived by a woman who was recruiting children to come to First Love. Her mother was told that First Love was a boarding school and the woman collected the boarding school fees from her mother. Not until Purity was separated from her mother, was she told to lie and say she didn't have a mother. Purity felt trapped & scared & stuck and felt like she had no choice but to go along with it. Purity does not know the amount her mother paid the woman and she has never seen her ever again. She said she felt horrible lying all those years but her & her mother were afraid to speak up and didn't know how to handle the situation. (Calavan v. First Love International Ministries et al, 2021a: 160)

According to the lawsuit, “despite learning over time that many of these children had living family members, there was no record of the required home visits or attempts to reunite the children with their families” (Calavan v. First Love International Ministries et al, 2021a: 151). While the Court is yet to rule on the Complaint as at the time of writing, witnesses in the First Love case are alleged to have been intimidated. The US Federal Court of Illinois, in June 2021, “granted the Plaintiff’s *ex parte* motion for temporary restraining order, motion for leave to file under seal, and motion for protective order to prevent First Love’s Witness Intimidation” (Calavan v. First Love International Ministries et al, 2021b: 1). The restraining order was ultimately lifted and the case was dismissed by the court, which found that it was an improper attempt to apply US racketeering laws to foreign actions and that the alleged facts did not meet the elements to state a claim for racketeering. As such, the facts of the case were never adjudicated. The case was not appealed by the Plaintiff.

Profit-making intention

Though not directly addressing the issue of orphanage trafficking, a number of civil disputes before Kenyan courts raise relevant issues. Property disputes involving CCIs and their management signal red flags, considering that CCIs are meant to be places of care and protection and, according to the National Standards for Best Practices in CCIs, “...must not be established for fundraising, individual gain or personal enrichment. Rather, the best interests of the child should always prevail” (Republic of Kenya, 2013: 20). The number of such publicly reported disputes may be revealing of a larger pattern of for-profit orphanages in the country.

The civil case concerning Robin Nest Orphanage brought a number of relevant issues before the High Court of Kenya, including concerns in relation to unregistered orphanages, foreign volunteers, and the CCI’s management’s intentional use of the institution for financial gain (The High Court of Kenya, 2012). The Plaintiffs filed a civil suit against the Defendants in the Chief Magistrates Court seeking vacant possession of a premises where the Defendants had established Robin Nest Orphanage. While the case initially commenced as a property dispute among quarrelling orphanage operators, the Court aptly asked important questions about the status of the institution as well as the well-being and best interests of the children. In considering the matter, the lower Court noted that “parties are just preoccupied with issues that concern them without really acting in the best interest of the children in the Orphanage” (The High Court of Kenya, 2012: 4) and ordered the Children’s Officer to file a status report on the CCI and close the CCI should it not be registered with NCCS.

The Children’s Officer reported that the CCI was unregistered, operating illegally, and run by two administrators from New Zealand. The Court also considered that the “intentions” of all parties to the dispute were “to control and manage the resources channelled to the home by the so-called sponsors” (The High Court of Kenya, 2012: para. 24). The Court further considered:

The home has only remained a cash cow for the combatants in this dispute for 11 years now. It is on record by the Children’s Officer that it is the management wrangles that has [sic] made it difficult to have the institution registered. It is also on record that the dispute between the parties is about whether resources should be channelled through the

Respondents as the founders of the home or directly to the Appellants as the managers of the home. It is all about control and use of resources and not about the wellbeing of the inhabitants thereof, the children (The High Court of Kenya, 2012: 11, emphasis added).

In this case, the Court ordered the removal of the children and closure of the unregistered orphanage (The High Court of Kenya, 2012: para. 26).

A recent case before the Environment and Land Court also concerned a property dispute at a primary school and CCI in Kiambu County (Environment and Land Court of Kenya, 2021). Media reports suggest that this may involve the same institution and operator which was “raided” by authorities in 2016 following the death of one pupil and allegations of sexual violence. Local media reported that the children were living in deplorable conditions and that the Nigerian-born director “had been using the facility [to] solicit for foreign donations in the guise of assisting and providing shelter to orphans and vulnerable children ...he started running a boarding primary and secondary school where parents paid school fees for their kids” (Thika Town Today, 2016).

Other property disputes have also raised allegations of the misappropriation of donor funds by CCIs (The High Court of Kenya, 2020). These and other management and property ownership disputes brought before Kenyan courts,² though not specifically addressing the issue of child trafficking, raise red flags that some CCIs may be exploiting the children in their care for financial gain—and may thereby be considered to be trafficking children (van Doore, 2016).

As Kenya seeks to decrease its reliance on institutional care, the profit-making intentions of some operators is apparent: once facing closure, some operators transform their operations into boarding schools, in contravention of the Children’s Act and without approval of NCCS (Children Act, 2022 : Article 68). For example, a former CCI operator whose institution was closed in 2013 following serious allegations of orphanage trafficking and other forms of violence against children subsequently opened and operated a boarding school. The fact that “the facility appealed online for foreign volunteers to visit and donors to contribute to the ‘orphanage’ and volunteers reported online having visited the same ‘orphanage’” (Ministry of Labour and Social Protection et al., 2020b: 46) reveals the nefarious nature of this shift. This operator is not alone. Since the Government’s intentions to deinstitutionalize became clear, a number of CCIs purporting to operate in Kenya are actively fundraising online to transform into or build a boarding school as a means of circumventing the legal framework. This is because boarding schools operate under different regulations than CCIs, and do not have the same oversight over children in need of care and protection. Such conversions “underscore the importance of taking a cross-sectoral and cross-departmental approach to care reforms” (Ministry of Labour and Social Protection et al., 2020b: 47).

Trafficking’s link with orphanage voluntourism

Orphanage tourism includes volunteering at, or visiting, orphanages and is demonstrated to have harmful effects on children (Zeanah et al., 2019). Typically, volunteers from wealthy countries visit CCIs in less developed countries such as Kenya. Orphanage volunteering has become quite popular in the last two decades, and the industry that has emerged to support it has contributed to a consumer demand for institutions and children that Cheney et al have labelled ‘the orphan industrial complex’ (Cheney and Rotabi, 2017, Cheney and Ucembe, 2019). For instance, half of the 42 CCIs in Kilifi County reported that they relied on volunteers, with 25 percent relying on international volunteers (Ministry of Labour and Social Protection et al., 2020a: 22).

Orphanage voluntourism is considered a pull factor, contributing to the recruitment of children into orphanages for profit. While the presence of foreign volunteers in CCIs has been documented (Ministry of Labour and Social Protection et al., 2020c), the number of orphanage volunteers and the magnitude of the problem is unknown. Evidence suggests a number of hotspots, including in Kenya’s capital and coastal regions, which also happen to be popular tourist destinations. According to the 2020 Situational Analysis of coastal Kilifi County, “[i]t is possible that the presence of tourists (and potential sponsorship and donations that come with tourists) in Kilifi may have inadvertently

² See e.g. Care Mission Kenya & 4 others v Benta Akinyi Otieno & another t/a Deity ECD Primary School Busia (K) and Emmanuel Children Home Busia (K) [2019] eKLR; See Ng’ambwa Heartbeat Community Children’s Home & Rescue Center v Heartbeat Limited [2017] eKLR.; Republic v Director Of Children’s Services & 3 Others Ex-Parte Chairman, Secretary & Treasurer Of Good Hope Orphanage Home [2014] eKLR; Francis K. Baya & 2 others v Sammy Mutile & another [2015] eKLR; Hamm Helmut Vs Farida Riziki (2011) e KLR See also Catherine Nyaga & 8 others v County Government of Kiambu [2021] eKLR.

created a pull factor for children into institutions” (Ministry of Labour and Social Protection et al., 2020a: 15).

Foreign volunteers engage in voluntourism by spending short periods of time volunteering at CCIs around Kenya, including unregistered institutions which have been set up specifically to attract foreign volunteers and donors. These CCIs can therefore be sites of trafficking or other forms of exploitation (van Doore, 2016). The perfect clients are fee-paying voluntourists, often well-intentioned individuals who travel to Kenya to ‘help’ ‘orphans’ (Oliel, 2021). Some volunteers pay fees to international travel agencies for the experience or to orphanage operators in Kenya who promote fee-paying volunteer stays using various means. Others coordinate trips as part of religious missions or school groups (Cheney and Ucembe, 2019). Preying on these good intentions, orphanages claim to provide care for ‘orphans’, but in reality, some CCIs are sources of profit for unscrupulous operators who recruit children to orphanages in order to exploit them for financial gain (Oliel, 2021). In other cases, orphanage volunteers themselves pose a serious risk to children. There have been a number of well documented cases of abuse by volunteers engaged with children in CCIs, including a case involving a British Airways pilot who was alleged to have sexually abused children during visits to Nyumbani Children’s Home (BBC, 2016). He committed suicide before appearing in a UK Court.

Kenya’s Citizenship and Immigration Act (Republic of Kenya, 2011) is clear that the “the holder of a visitor’s pass shall not accept or engage in any form of employment, whether paid or *unpaid*... without the permission of an immigration officer in writing” (Article 31(5), emphasis added). The Act is clear that someone who engages in unpaid work “shall not be issued with a visitor’s pass and shall apply for a special pass...” and that a person who engages in voluntary employment commits an offense (Article 31(6-7)). Foreign nationals volunteering in CCIs are therefore not legally permitted to enter Kenya on a tourist visa. There are also separate visas applicable for missionaries under Kenyan law.

In the Robin Nest case, the Court raised the important point that foreign volunteers are not properly obtaining the appropriate authorization to enter into Kenya and undertake voluntary work in an institution (The High Court of Kenya, 2012). There is also evidence that foreign nationals are coached to lie to Kenyan authorities by CCI operators. In the First Love case, the complainant, an American donor and volunteer, alleges she was not asked to undergo a background check and provides an email as evidence that she was given “very specific instructions to lie to the Kenyan authorities about the reason for her trip” (Calavan v. First Love International Ministries et al, 2021a: 108). The email states: “Please also see the revised instructions for applying for the Kenya visa which I have attached to this email message. It tells you to put ‘tourist’ for reason for travel and ‘to visit friends’...or ‘tourist’ for the reason of your trip” (Calavan v. First Love International Ministries et al, 2021a: 109).

Additional requirements to volunteer in a CCI are set out in the National Standards for Best Practices in Charitable Children’s Institutions, including criminal background checks from one’s country of residence and proof of legal entry into Kenya (Republic of Kenya, 2013). While in theory “volunteer workers are appointed by the CCI recruitment panel *upon recommendation from a recognised authority, organization or persons of good public standing*” (Republic of Kenya, 2013: 40, emphasis added), this does not happen in practice. The Directorate of Children’s Services, the recognised authority for children in CCIs, is rarely consulted or even informed of the arrival of foreign volunteers or visitors.

Other court cases serve to highlight additional problems with short-term orphanage volunteering. The civil case concerning Robin Nest Orphanage also addressed the issue of foreign volunteers, emphasizing the dangers of having foreign volunteers who do not undergo appropriate screening and fail to obtain appropriate work permits:

We cannot have foreigners who have not been properly investigated and/or screened as to their suitability to work in our children’s home to come and be with our children as the administrators of a home at such short period and leave. Nobody knows their qualifications, their intentions and suitability to work in children’s homes. Maybe they are only visitors or tourists, that is why they remain for only three (3) months, the period a

tourist visa lasts and do not bother to apply for work permits. (The High Court of Kenya, 2012: para. 23)

The Court further raised a number of important considerations relevant to the discussion of the role of short-term foreign volunteers, which as noted above can have the effect of pulling children into CCIs. It considered that short term trips (in this case three months) were too short “to undertake any meaningful work” (The High Court of Kenya, 2012: 8). Second, the Court recognised that “administrators come from different countries and lack the grasp of the issues affecting the institution” (The High Court of Kenya, 2012: 8). In other words, foreign staff and volunteers do not have the local knowledge needed to understand the issues affecting children in institutions in Kenya, making their interaction and engagement dubious. Moreover, the very rotation of volunteers through CCIs adversely affects a child’s ability to form healthy relationships in the future (Richter and Norman, 2010). It also places them at heightened risk of trafficking by creating a demand for children, leading to their recruitment and harbouring in residential care in the first place.

Volunteers, despite the role they play in these harms, have also played a role in shining the light on some of the indignities and violations children in CCIs face (CNN, 2017). Among the examples found online is a piece entitled the “Art of Whistleblowing”, in which a former orphanage volunteer published a letter jointly written by the former director of a Nakuru-based CCI, two volunteers, sponsors, and directors (Bilginçan, 2011). The letter warns “Current/Prospective Sponsors, Volunteers and Staff” of a number of serious concerns over the CCI, including that it fundraises for children no longer in its care and for projects which do not exist. Common to these cases, the letter warns that children have families, “exit strategies do not exist”, and children and young people are kept in care until they are kicked out at the age of 18 (Bilginçan, 2011).

Whistle blowers sometimes face resistance, intimidation and harassment, however, including threats of retaliation when they seek redress. In the First Love case, for example, it is alleged that the defendants “used intimidation and threats and caused others to use intimidation and threats to hinder, delay, or prevent the communication of the facts alleged herein” (Calavan v. First Love International Ministries et al, 2021a: 248). Evidence presented in the complaint includes a letter to the Defendant, a former volunteer and donor, from “an Illinois attorney acting on behalf of First Love. First Love’s attorney threatened her for taking her concerns to government officials and agencies in Kenya” (Calavan v. First Love International Ministries et al, 2021a: 192).

Missed opportunities to prosecute orphanage trafficking in Kenya?

Despite the evidence of child trafficking to orphanages, no person has been charged with this crime in Kenya—even in situations where the facts present the recruitment of children for the purposes of exploitation.

In February 2021, Gregory Dow, a US national was convicted and sentenced for 15 years imprisonment for sexually abusing girls in an orphanage he founded and operated with his wife (Department of Justice, 2021). While he pled guilty to charges of engaging in illicit sexual conduct in a foreign place (Department of Justice, 2020), the facts revealed that trafficking may have been a more appropriate charge, reflecting the totality of the crime which went beyond simply engaging in illicit sexual conduct with four minors. Gregory Dow and his wife moved to Kenya in 2008 to start the Dow Family Children’s home, which “remained in operation for nearly a decade with financial support from donors in the United States, including churches and other faith-based organizations” (Department of Justice, 2021). According to the Department of Justice (2021):

[Dow’s] wife even transported the victims to a medical clinic to have birth control devices implanted into their arms, which allowed Dow to perpetrate his crimes without fear of impregnating his victims. The defendant purported to be a Christian missionary who cared for these children and asked them to call him “Dad.” But instead of being a father figure, he preyed on their youth and vulnerability.

The Dows recruited, transported, and harboured children in their CCI for the purpose of sexual exploitation. When the institution was closed in 2017, some of the 87 children in the Dow’s care were immediately reunified with family (Kuria, 2021). Children also died in the care of the Dows, and the victims’ families parent(s) still do not have answers as to “how and why the remains were buried” (Kimutai, 2021).

The Dows are not alone: a Dutch national was reported to have recruited girls from their mothers to his orphanage in a rural area and exploited them for sexual purposes. He was also reported to have “...duped the children’s mothers that he would sponsor their education in his ‘school’” (Kiage, 2019). He was, however, charged with the crime of defilement and not trafficking despite Kenya’s legislation which includes sexual exploitation as an enumerated ground. Interestingly, the publicly reported facts could lend support to the assertion that the Dutch national possessed the requisite intent (Oliel & Otiende, 2019): he was also previously convicted and served a sentence in the Netherlands for sexual crimes and was charged with the “defilement” of three girls at Donholm Estate in Nairobi in 2002. He is also alleged to have posted “amateur videos of minors dancing and posing suggestively, including in a bedroom” (Kiage, 2019) on his YouTube channel.

In both cases, it appears that the children may have been recruited, transported, and harboured for the purpose of sexual exploitation, though the perpetrators were not charged with child trafficking.

Conclusions and recommendations

We commend the Kenyan government for the progress it has made over the last decade to prevent and respond to human trafficking whilst laying the foundation for a multisectoral and coordinated care reform effort for children. Kenyan authorities, including the Anti-Human Trafficking Child Protection Unit within the Directorate of Criminal Investigations, as well as courts have been at the forefront of addressing violations committed against children in CCIs, and in relation to sexual and gender-based violence in particular. However, no person has been prosecuted in Kenya for orphanage trafficking to date, despite reports of this crime taking place.

The National Care Reform Strategy is a catalyst for wider strengthening of the child protection system, and thus anti-trafficking efforts. It recognizes the need to address child trafficking to orphanages, as well as the link between child trafficking and institutionalization, as an important part of the care reform process. While welcoming the moratorium imposed by the Government on the registration of new CCIs in 2017, reform efforts would be strengthened by *suspending* the registration of new CCIs.

Anti-trafficking actors also need to be part of such efforts. According to an unpublished survey undertaken by Stop the Traffik, Changing the Way We Care (Maestral International and Catholic Relief Services), and Stahili Foundation, 80 percent of civil society organizations supporting child victims of trafficking place children in CCIs as a protection response. The continued use of CCIs by the anti-trafficking sector provides strong incentives for the institutions that are more resistant to reform efforts—which are critically needed considering the harms of institutionalization on a child’s development and well-being, even where orphanage trafficking is not at issue. The National Strategy recognises the importance of “preventing the use of institutional care as a means to ‘protect’ children from “trafficking...as well as being used to ‘rehabilitate’ children following trauma” (Republic of Kenya, 2022: 42). Developing family-based alternatives such as emergency foster care will be important to ensure that child survivors of human trafficking are provided with care and protection that meets their individual needs and is in their best interest.

As recognised in the National Care Reform Strategy, there is a need to strengthen the legal and policy framework by explicitly recognizing and criminalizing orphanage trafficking as a distinct form of trafficking; and to build the capacity of relevant authorities to prevent, identify, prosecute, and respond to orphanage trafficking. Prompt, effective, and well-coordinated investigations conducted by those trained in trauma-informed and child-sensitive approaches are critical to securing evidence of orphanage and all forms of VAC committed in CCIs, reducing harm, safeguarding well-being, and improving outcomes for survivors, including for those who may have left care. Ineffective, unsafe, and otherwise unethical investigation processes cause and exacerbate harm, including by re-traumatizing survivors, limiting chances for justice, and infringing on other children’s rights.

The National Strategy also recognizes that “halting of foreign voluntourism and volunteering could provide an opportunity to reset the narrative and approach taken towards orphanage trafficking and orphanage tourism and volunteerism” (Republic of Kenya, 2022: 32). We endorse this.

It is also essential that the monitoring and reporting of violations be closely linked to appropriate responses and support, including referral to services. The capacity of actors to coordinate

response provision is crucial. There is a need to develop an emergency response mechanism that is adequately funded and well-structured so as to enable a multisectoral response to orphanage trafficking—including those cases which may require removal from institutional care. This may include, for example, a multidisciplinary team, including government children’s officers, social workers, and counsellors *who are specifically trained* and deployable to CCIs and who can be seconded on demand to ensure that the wellbeing and rights of children are safeguarded. Government should increase funding to support children and families throughout and undertake individualized case management with the ultimate goal of reintegration. Support should also be provided for placement in alternative family-based care, where necessary, suitable, and in the child’s best interest. Decisions must be based on the individual needs of each child to ensure that the care placement promotes stability and permanency (Republic of Kenya, 2019).

As we conclude, we would like to highlight the following five additional practical recommendations:

1. **Meaningful inclusion and participation of children in CCIs** is critical to addressing violations which affect their rights and well-being. Raising awareness among children in CCIs of their rights, and where and to whom to report where they feel their rights are violated, is crucial, including through the provision of child-sensitive training and materials.
2. The Ministry of Labour and Social Protection should **publish the list of registered CCIs and information on where and how to report violations against children in CCIs online, especially** ing for foreign donors and volunteers who may not easily be able to reach a sub-county children’s office.
3. In light of the misinformation being provided to would-be volunteers, the Government should **issue a directive clarifying its position on orphanage volunteering as per the National Strategy**, and reiterating the safeguards already provided in the legal and policy framework.
4. Address the issue of orphanage voluntourism by **sensitizing consular staff in embassies located in volunteer sending countries and strengthening the safeguards in the Republic of Kenya Electronic Visa registration system**. This could include requiring that individuals applying for a tourist visa declare that they are *not* entering Kenya for the purposes of unpaid voluntary work and will not be interacting with children in alternative care settings. In cases of violations, the Directorate of Children’s Services and the Directorate of Immigration Services should work in a coordinated fashion to enforce regulations.
5. **Disseminate information to would-be tourists**. This may include disseminating Information on orphanage volunteering and orphanage trafficking on relevant Government websites (e.g., DCS, NCCS), including on the E-Visa Portal as well as Kenyan embassy websites in volunteer sending countries. The Government should consider leveraging existing mechanisms such as the Kenya Tourism Board to increase awareness of orphanage volunteering and orphanage trafficking to would-be tourists, such as by providing information official information on Kenya Airways flights and other airlines from hotspot volunteer sending countries (e.g. KLM/Air France and British Airways), as well as those airlines operating flights to Kenya from major international transit hubs (e.g. Turkish Airlines).

We feel that these recommendations, if followed, will go a long way toward helping the Government of Kenya effectively address and prevent orphanage trafficking.

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Protection

'We Have Our Different Strengths'

Marygorret Mogaka

It is ten years since the Counter-Trafficking in Persons Act. What are the achievements?

First, there are the committees set up by the Act. One is the counter trafficking in persons advisory committee to implement the Act, established in July 2014. [...] Another achievement was the establishment of the National Assistance Trust Fund to assist victims of trafficking. [...] We have also been able to establish the secretariat. When it was established there were four officers; in 2020 the capacity increased to ten. [...] Another achievement is the work the secretariat has been undertaking with other government agencies and civil society organisations to support victims in terms of rescue, [meeting] basic needs, placement in shelters, repatriation and reintegration. [...] Recently we have had a close working relationship with HAART, where we were able to rescue and support, repatriate and are in the process of reintegrating some thirty-two Ugandan girls and three babies. We were able to develop operational documents [including] regulations for the National Assistance Trust Fund [...], the national referral mechanism for assisting victims of trafficking and the police prosecutor investigation guidelines. Since 2017 we have been able to commemorate the world day against trafficking in persons in collaboration with other government agencies, embassies, UN bodies and civil society organisations. [...] We have been able to have training for law enforcement [personnel] undertaken with support from partners and the better migration management program. [...] We've also had awareness creation in partnership with CSOs. We are in the process of setting up a government-run shelter.

What about the ordinary victim when it comes to protection – are we in a better place when it comes to assisting victims of trafficking?

Yes. We are in the process of establishing structures for support. I think that this will require closer collaboration between government agencies and civil society. We have our different strengths so if we can synergize, we will be able to assist more victims. Mostly I find that we are assisting more international or inter-country trafficking victims but [...] we do not seem to have a lot of activities supporting victims who are internally trafficked [within Kenya], so I think that's an area that we need to improve moving forward.

Shelters are extremely important for robust protection. One is not enough. What is your plan to make sure that we have a comprehensive approach?

It's true. One shelter is not enough, but we have to start somewhere [...]. We also collaborate with those who are providing shelters, like HAART, CTD and other organisations and encourage other civil society organisations to establish shelters but ensure that they provide quality services to the victims.

As you know, there is a challenge with the legal framework. It's very difficult to find a legal base to operate a shelter.

Yes. As we speak, there is a team working on the review of the Counter Trafficking in Persons Act. [...] One of the proposals that we expect in the amended law is how to establish shelters or how they will be regulated [...] and how services will be monitored.

Over the last ten years of counter trafficking in Kenya, what was a challenge?

There have been several learning points. [...] We do not have adequate shelters and the shelters that we have basically take girls, so we don't have shelters for women, men and persons with disabilities or special needs. [...] Then we have inadequate information and data on human trafficking in persons, so we cannot say how many people have been trafficked. [...] Another issue has been inadequate information among law enforcement on issues of trafficking and the difference between trafficking in persons and smuggling of migrants [...]. Something else I've noticed is that the capacity of actors outside Nairobi and maybe Mombasa [to handle trafficking in persons matters] is lacking for both GOK and CSOs. [...] Then we have a challenge of inadequate interagency collaboration. We tend to work in silos. [...] And of course COVID-19 has increased the vulnerability [of victims] and the resources [for the sector] have been reduced because of the shift

towards fighting the pandemic.

Over the next ten years what is the forecast for your agency? If you had to choose one area to focus on what would it be?

According to the [five-year] National Plan of Action that we are just finalizing we want to focus more on prevention and [...] to evaluate the effectiveness of prevention programs. [...] I think if we prevented people from being trafficked it would be more cost-effective than responding when they've been trafficked because it is expensive to rehabilitate persons who have gone through the harrowing experience of being trafficked. [...] [But] we would not forget protection, so we will still strengthen victim assistance and data management.

What does holistic protection, support, rehabilitation and reintegration to victims look like?

Sophie Muriuki

Introduction

HAART began working directly with victims of human trafficking in 2013 (Otiende and Manji, 2018, p. 8). Since then it has developed a victims assistance programme, which aims to help victims and survivors in their recovery from their traumatic experience through holistic protection, support, rehabilitation and reintegration. Depending on the needs of the client this might include assistance with, for example, counselling, transport, training, economic empowerment, school fees, medical assistance, legal aid and rescue. Regardless of the individual case, HAART takes a trauma-informed approach in its management and care of victims and survivors, aiming to incorporate into all services ‘an understanding of the impact of violence and psychological trauma on the lives of victims’ (Otiende and Manji, 2018, p. 30). It has also developed best practice guidance for those working with victims (Otiende and Manji, 2018).

HAART’s best practice model (Figure 1) illustrates the case management protocol for providing trauma-informed, holistic protection, support, rehabilitation and reintegration to victims of trafficking. This model captures the steps taken by HAART in its work with victims since 2014 (Otiende and Manji, 2018, p. 11). Once a person has been screened and identified as a victim of human trafficking, the first steps in the rehabilitation process are to assess their basic, medical and psychological needs and to develop a comprehensive case plan. The goal is to enable the victim’s reintegration into the community. HAART takes a victim-focused approach to the identification and screening of victims and to their rehabilitation and reintegration. But its best practice model is also cognisant of the fact that, given the nature of the work, it is imperative that service providers pay attention to their own self-care in order to mitigate against some of the occupational hazards of the helping profession such as vicarious trauma or compassion fatigue.

This article shows what this best practice model looks like in practice through HAART’s engagement with clients, with a particular focus on the organisation’s psychosocial support services. It first outlines the trauma-informed approach to care that underpins HAART’s Victims Assistance process. The author then draws on her professional experience as a Clinical Psychologist who works with HAART’s clients to provide an overview of the psychological assistance offered to clients, the evaluation tools and psychotherapeutic techniques that are used, and the practice of self-care among practitioners. Having noted key limitations of HAART’s service provision, the article finishes with some reflections on the work that HAART is doing to assist victims of human trafficking and challenges and possibilities that lie ahead.

Trauma-informed care

Trauma-informed care involves realising the impact that trauma has on survivors, understanding and being able to identify trauma and respond with effective treatment that meets the individual’s needs, and, crucially, avoiding compounding trauma or re-traumatising a survivor through providing suitable and professional care (Otiende and Manji, 2018, pp. 29–30).

It is essential for service providers who work with those affected by trauma to have an understanding and conscious awareness of trauma in order to provide suitable care and to avoid re-traumatising the victim. Studies have demonstrated that trauma survivors often face other challenges at the time the traumatic experience is taking place and for a long time after the event (Knight and Borders, 2018). It is also now understood that how a person reacts to a traumatic and stressful event is contingent on what they have previously experienced (Monson and Friedman, 2006). Trafficking can also have a profound impact on the victim’s psyche and belief system, including their identity or sense of self and/or their sense of patriotism. The impact of human trafficking on some of our clients’ sense of patriotism may be considered by some as a contentious issue.

However, some clients have shared their disappointment in what they term as the government's "lack of support" when they raise the alarm on the exploitation being experienced. This may be their own alarm while still in the country of exploitation or that which has been raised by their loved ones who are back home. This "lack of support" as shared by some clients refers to not being rescued or being repatriated at their own expense or even a lack of basic support once they arrive home as most return with nothing to show for their time away. Some clients often report feeling abandoned by the government and report that they sometimes find themselves questioning their sense of patriotism. Another area of concern are the themes that are often expressed by the victims of human trafficking we see, largely around guilt, self-blame and shame as they reflect on the fact that they "took" themselves to these areas where they were exploited. The impact on other people other than the victims also needs to be acknowledged. As Knight and Borders (2018) put it, "trauma is ubiquitous in our world"; traumatic events not only impact those directly affected but also those who are around them, who may have witnessed their suffering in person or even on social media.

Since the introduction of the term 'trauma-informed' by Harris and Fallot in 2001, what it means to take a trauma-informed approach and provide trauma-informed treatment has been elaborated on and developed by different service providers globally (Knight and Borders, 2018). In general terms, a trauma-informed approach covers both the practice and environment of service delivery. It takes into consideration the biological, spiritual, emotional and psychological status of a client as these cannot be treated exclusively, as well as the possibility that a client may have experienced more than one traumatic event. A trauma-informed approach is therefore holistic in nature. Certain considerations must be made when evaluating a client's human trafficking experience. These may include but are not necessarily limited to legal aid, medical assistance, family tracing and psychological care. These services ought to be of high quality and made known to the recipient as a part of a holistic response.

A trauma-informed approach also prioritises the client's safety. Studies have demonstrated that this is essential in order to work with clients with a traumatic history or those exhibiting traumatic stress (Allen, 2005; Herman, 1992); an affected individual cannot receive effective intervention while still in a traumatic environment.

Trauma-informed Psychological Support for Victims of Trafficking

Human trafficking has been found to cause a great deal of psychological harm to those affected. Survivors can experience high levels of depression, anxiety, post-traumatic stress disorder and self-harm, among other mental health issues (Borschmann et al., 2017; Kiss et al., 2015). Mental health services are therefore a crucial part of holistic, trauma-informed care for victims of trafficking (Otiende and Manju, 2018, pp. 30, 56). Psychological support is essential in terms of both the initial assessment of a client and in the integration of appropriate mental health goals into their treatment plan, and as an element in their rehabilitation. As part of the assistance that HAART has offered to victims of trafficking over the last year, it has facilitated approximately 170 counselling sessions, which include both initial mental status examinations and psychotherapy sessions. A majority of the clients have been female, reflecting a more commonly found gender difference in health-seeking behaviours, with women having a greater tendency to seek healthcare than men (Jordan, 2018).

A core value guiding the provision of support to victims of trafficking is their right to information (Otiende and Manji, 2018, p. 26). Prior to beginning any work with a client, we make them aware of the services they will be offered and, if possible, for how long, as well as what they can expect to happen to any information that they share. When offering psychological care, it is imperative to reiterate that confidentiality will be maintained during and after the healing process, as well as the limits of that confidentiality, for example, when a client discloses that they are a danger to themselves or others. Furthermore, clients are informed that any information that falls under the limits of confidentiality will be shared to a third party once disclosed by them. Although it may seem very simple, providing clients with information about our services and their rights gives them choice and control at a time when they predominantly experience helplessness and powerlessness.

Of particular importance is the voluntary nature of clients' participation. Clients are informed that they can withdraw from services should they feel the need. Furthermore, victims of human trafficking are also informed of their right to refuse services offered by one department within

HAART without detriment to their receipt of services from another. For instance, clients often feel the need to stop therapy but continue to receive other rehabilitative support from the protection department. Allowing clients to make these choices helps to reiterate to them the fact that they not only have rights, but also hold control and power over what happens with their cases. This contributes to their sense of psychological safety within the organisation, which facilitates their healing process.

Holistic, trauma-informed care also involves taking a victim-centred, comprehensive approach and prioritising the client's needs. While offering trauma-informed psychological care, we have found that even the absence of the most basic of needs is an impediment to adequate psychotherapy. It is therefore imperative to appreciate that clients' basic needs are met and that their previous losses are acknowledged (Jordan, 2018). It is with this in mind that Maslow's hierarchy of needs (incorporating basic needs, safety needs, social needs, esteem needs and self-actualization), is taken into consideration when managing a victim's case. Maslow developed a concept that highlighted five key areas that humans need to meet to survive. These areas are physiological, safety, social, self-esteem, and self-actualization and Maslow theorised that these are to be met hierarchically starting from physiological needs and working up towards self-actualisation (Laser, Peach and Hounmenou, 2019). Physiological needs, also known as basic needs, are considered a priority and according to Maslow one cannot move on to the next stage if their basic needs have not been met. This is then followed by the next stage of needs, safety, which include one's wellbeing, stability, safety with the law and so on. Once an individual has achieved these initial areas they can then proceed on to meeting their social needs which comprise of a sense of belonging, developing and maintaining relationships and acceptance. The fourth stage is concerned with one's sense of self-esteem and one works towards increasing it. The final stage of self-actualisation occurs when the individual feels personally fulfilled, realises their own potential and that they can achieve everything they set out to (Laser, Peach and Hounmenou, 2019).

What this means at HAART is that rather than working in isolation, HAARTs' case workers and in-house therapist work hand in hand in service delivery in their efforts to offer trauma-informed care and support. The therapy room has to be considered as one of multiple departments within an organisation, all of which unite in offering care to survivors. Ideally, this care should include community sensitisation. Where possible, we therefore work to psycho-educate survivors' local communities on how to support returnees. We also acknowledge the impact on families of survivors and, where possible, integrate this into our clients' support plans.

These core principles guide the psychosocial care that is offered by HAART. Before going into more detail on the specific psychological evaluation tools and psychotherapeutic techniques that are used, it is important to note that the COVID-19 pandemic has inevitably had an impact on the work carried out by the organisation's in-house therapist, who have adapted their service delivery to ensure the psychological safety and security of clients. Psychological evaluations and psychotherapy sessions are facilitated virtually following a victim-centred approach to ensure that all clients have access based on their means and needs. Clients who have the necessary infrastructure to support telehealth are provided with internet data bundles that allow for video or audio internet calls to be initiated. However, HAART is cognisant of the fact that some clients may not have internet-enabled telephones. In such cases, sessions are facilitated via audio call at no cost to the client. Facilitating these virtual or remote sessions has allowed for the provision and continuity of care despite the pandemic. It also allows clients who reside in different or remote parts of the country access to psychotherapy in the comfort of their homes.

Psychological Evaluation

HAART uses evidence based psychological evaluation tools to assess the client's mental health and to track changes in the client's presentation of symptoms over time. These are administered as part of a client's initial assessment, through a clinical interview by the inhouse-therapist. In an effort to give standardised care and treatment, this will include a mental status examination and the DSM-5 Self-Rated Level 1 Cross-Cutting Symptom Measure (American Psychiatric Association, 2013). The mental status examination is a basic evaluation tool that provides an overview of a person's psychological and behavioural functioning (Goldberg and Murray, 2006). The purpose is to obtain a description of signs and symptoms by recording information gathered through the examination of a client during an interview or elsewhere, for example, in a group, clinic or hospital.

The different categories that are observed and described include:

- a. Affect (the client's observable emotional expression)
- b. Mood (the client's emotional state)
- c. Thought process (in terms of form, attention and speed)
- d. Memory and consciousness (whether the client's long-term and short-term memory are intact, whether they are oriented to time, place, situation and date, and whether any altered consciousness or regression is observed)
- e. Motor movement and nonverbal communication (e.g., is the client relaxed, agitated, restless, hypoactive or hyperactive in terms of their body movement?)
- f. Speech (assessing their verbal communication including the rate, rhythm and organisation of the client's speech, and whether it is congruent with their affect)
- g. Interpersonal behaviour (the client's relationally driven behaviour, e.g., whether they are avoidant, aloof, disengaged or guarded with other individuals)
- h. Intrapersonal attitudes and behaviour (the client's internally driven attitudes and behaviour; specifically, whether they are ego dystonic or syntonic, that is whether they believe that their behaviour is consistent with their personality and, if not, whether they externalise blame to others, and whether they exhibit any grandiose behaviour or intro punitive, catastrophising or splitting/dichotomous thinking)
- i. Psychosis (does the client have beliefs, perceptions and/or sensory experiences outside the realm of realistic possibility, specifically delusions or hallucinations?)
- j. Appearance (e.g., is the client well-groomed, immaculate, dishevelled or underdressed?)

Another baseline psychological evaluative tool that HAART has utilised since August 2020 is the DSM-5 Self-Rated Level 1 Cross-Cutting Symptom Measure (American Psychiatric Association, 2013). This user-friendly tool, developed by the American Psychiatric Association for adults and children, is available for use by clinicians and practitioners in their work with clients. It was developed for screening purposes to help clinicians identify additional areas of inquiry that may have significant impact on the individual's treatment and prognosis, as well as to track changes in a client's symptom presentation over time (APA, 2013). The assessment is designed to be administered at the initial patient interview and to monitor treatment progress. It can therefore be repeated depending on the client's presenting issue. The tool highlights additional areas that the clinician may need to investigate further in the development of client's treatment plans. While the adult tool can be utilised as a self-reporting measure, it is currently administered by the resident psychologist given the nature of our current response where we have the sessions facilitated virtually. The tool is administered by the in-house psychologist as it is an evidence-based tool and needs to be interpreted by a mental health professional to avoid misinterpretation of information such as the severity of a certain symptom. Furthermore showing high severity in one domain or area versus showing high occurrence in all domains may mean different things for different people. Trained professionals will be able to make an appropriate interpretation of the data and communicate the findings to the concerned individual. The tool aims to screen how often one has felt depressed, hopeless, how often they lose their temper, experience unexplained aches and pains and so on.

The tool for children is available in two formats: it may can be filled out by a child's guardian, for children aged six to seventeen years old, or. It may it can be utilised as a self-reporting measure for children aged eleven to seventeen years old. The adult version of the measure consists of 23 questions that assess 13 psychiatric domains, including depression, anger, mania, anxiety, somatic symptoms, suicidal ideation, psychosis, sleep problems, memory, repetitive thoughts and behaviours, dissociation, personality functioning, and substance use. Each item inquiries about how much (or how often) the individual has been bothered by the specific symptom during the past 2 weeks. The children's version consists of 25 questions that assess 12 psychiatric domains, including depression, anger, irritability, mania, anxiety, somatic symptoms, inattention, suicidal ideation/attempt, psychosis, sleep disturbance, repetitive thoughts and behaviours, and substance use. In

the tool intended to be filled out by the child's guardian, each item asks the parent or guardian to rate how much (or how often) his or her child has been bothered by the specific symptom during the past 2 weeks. In the self-reporting tool, each item asks the child, aged 11–17, to rate how much (or how often) he or she has been bothered by the specific symptom during the past 2 weeks.

Upon completion of these two initial evaluations and based on their findings, the clients are psycho-educated on the results and the implications for their mental health. The clients are then given the opportunity to give consent to engage in therapy in order to address the observed symptoms and process their traumatic experiences. A number of clients decline to proceed with psychological care. This is more often than not due to the fear of facing their human trafficking experience. As trauma tends to leave those affected with an overwhelming surge of emotions, facing and confronting it is seen as a threat. It is therefore expected that clients might shy away from doing so. Trauma often feels like a constant attack on the senses and leaves those affected exhausted with the constant stimulation.

The evaluations are also beneficial tools in screening and assessing for signs and symptoms of crisis, such as suicidal ideation or attempts. This allows for early intervention and the enrolment of clients who pose a risk to themselves into urgent psychiatric care. Psychiatric care may involve seeing a psychiatrist as an outpatient or, in particularly high-risk cases, as an inpatient. Some human trafficking victims have needed this support and have benefited from the intervention. Providing an early response in this way has a better outcome for the victims as their presenting symptoms can be addressed in good time, allowing them to address the underlying issues that have brought on psychological crisis and/or distress. Addressing crisis situations such as suicidal ideation further demonstrates to the victims of human trafficking the support readily available to them at HAART and goes a long way toward addressing the stigma they have experienced as a result of the human trafficking experience and the mental health concerns they have faced. Borschmann et al. (2017) found that victims of human trafficking tend to demonstrate higher tendencies of self-harm than clients who have not experienced human trafficking. It is therefore imperative that a client who has disclosed self-harm, be assessed and referred for appropriate intervention.

Psychotherapy

For those clients who consent to engage in therapy, treatment plans are developed and customised to meet each client's needs and symptom presentation (this includes clients who require urgent psychiatric care). A full trauma history is obtained in an effort to gain an understanding of their lives. Studies indicate that obtaining such a history is of particular importance as clients are often unaware of the impact of past experiences on their present situation; obtaining a trauma history helps in illustrating this (Jordan, 2018). Clients are encouraged to set their goals for therapy in an effort to let them drive the process. These goals are placed in order of priority based on what the client would like to address first. In trauma situations, however, one may find that a client is unable to determine the level of negative impact that some symptoms may have on them and their lives. Psychoeducation is therefore a crucial component of trauma-informed and survivor-centred care. More often than not, psychoeducation exercises need to be carried out repeatedly due to poor memory or concentration on the part of the client. As psychotherapy and healing proceeds and clients become less symptomatic, it is possible to evaluate and reduce the frequency of psychoeducation exercises.

Studies have shown a relationship between the human trafficking experience and mental health concerns in both adults and children (Borschmann et al., 2017; Kiss et al., 2015). At HAART, we find the common psychological conditions following human trafficking to be post-traumatic stress disorder (PTSD), acute stress disorder, conduct disorder, major depressive disorder, suicidal ideation and generalised anxiety disorder. Appropriate psychotherapeutic techniques are facilitated based on the clients' presenting issues, identified goals of therapy, access to equipment for Telehealth services and their readiness for change. Modalities that have been found to be effective with HAART's clients include trauma therapy, brief solution-focused therapy, cognitive behavioural therapy and eye movement desensitisation and reprocessing (EMDR) therapy. With all clients, the therapeutic process is informed by a client-centred approach, a counselling skill that takes the needs of the client as paramount. The rationale behind the use of these modalities is that they are evidence-based therapies (Monson and Friedman, 2006).

In executing the therapy process, clients are encouraged to sit with their emotions whilst in a calm state in order to teach them how to better regulate and self-soothe when they feel flooded. Body awareness training is also facilitated as it demonstrates to clients the physiological dimension of traumatic experience. These practices are often conducted at the initial stages of client engagement as a means of enhancing the psychological safety of the client; they can become beneficial when the client is engaging with traumatic material. Relaxation techniques such as breathing exercises, mental imagery and grounding exercises are some of the stabilisation strategies, also known as self-regulation skills, that we have also been found to be particularly beneficial with the victims of human trafficking engaged at HAART. Clients who acquire these self-regulation skills can apply them in different facets of their lives when faced with a stressful situation and not just when dealing with their traumatic experiences.

Further to the formal counselling session, depending on the psychotherapeutic technique being applied, clients may be provided with take home assignments that allow them to continue processing in between sessions. As mentioned earlier, clients may require further support such as repeated psychoeducation sessions due to issues such as poor memory. The same is true for content discussed in therapy. Digital reminders are often sent to clients via various applications in an effort to offer them access to the content in the event that they were too symptomatic to have taken it in during the session. Once a client is able to calm down, they are urged to review the content in an effort to refresh their memory. The main rationale for this extra provision is to avoid compounding the client's trauma. Clients often report that following a session, they tend to go back to the hustle of their daily lives, which may include catering to their basic needs. They then find that the session content slips their mind and exhibit signs of guilt or shame when asked what was tackled at the previous session. By providing clients with access to the content of their sessions for review, we aim to mitigate the risk of this happening. In more severe or clinical cases, where sensitive information needs to be shared, we take extra precautions such as the use of password protection on shared documents. This reinforces the client's sense of safety, which is often required in order to carry out effective trauma therapy.

The needs and priorities of the victims are placed at the centre of the trauma-informed psychological support that HAART offers, from their initial clinical interview and mental health status examination throughout the therapy process. But the organisation also recognises the impact that working with victims of trafficking can have on service providers and the importance of self-care.

Self-Care

Self-care is part and parcel of HAART's best practice model (see Figure 1). Studies have shown that those who work with trauma-affected clients may develop vicarious trauma due to accumulated interaction with the clients and, moreover, the amount of empathy involved in attending to them (Jordan, 2018). Vicarious trauma is often referred to as an occupational hazard, since it is a phenomenon that occurs as a result of listening to and being drawn into highly specific client stories (Rothschild, 2000). The greater the amount of detail that is shared, the higher the risks of the client being hyper aroused and of the individual attending to them walking away affected (Rothschild, 2000). Symptoms of vicarious trauma tend to mirror those of PTSD and are accompanied by a sense of fatigue and hopelessness, physical and emotional exhaustion, feelings of rage or irritability and avoidant behaviour such as avoiding certain tasks or even clients (Jordan, 2018).

Recognising that vicarious trauma has an impact on one's occupational and personal life (Jordan, 2018; Rothschild, 2000), the author attends clinical supervision sessions bimonthly in an effort to process some of the material that she is exposed to. The organisation encourages team members to practice self-care and has put in place self-care plans that individuals can draw on as they serve victims and survivors of human trafficking. Team meetings, such as case management meetings, are not only beneficial for sharing client updates, but also tend to be an opportune moment to check in with colleagues on how they are faring and to identify what, if any, additional support is required. In response to the COVID-19 outbreak, HAART also introduced a 'virtual wellness' programme for staff to provide a safe space for them to share and connect with other team members.

Limitations to service provision

While HAART endeavours to meet the needs the victims of trafficking by offering support

ranging from counselling and medical assistance to vocational training, legal aid and economic empowerment, there are limitations to the services that the organisation can provide. A key factor limiting HAART's service provision is the organisation's limited financial resources. A number of human trafficking victims face physical and/or sexual abuse. This leaves them with lingering injuries that require medical aid. More often than not, extensive testing is required, which poses a challenge to HAART's limited resources. This limitation often impedes their case management as we find that clients feel stuck or unable to move forward in their rehabilitation process. The same can be said for psychiatric care. Psychopharmacology often requires long-term use, but given the limited resources available to HAART, the organisation is often only able to offer short-term assistance. Once this is exhausted, clients feel burdened as medication becomes one of the basic needs that they need to find money for. Unfortunately, this often means poor drug adherence as clients must prioritise between purchasing psychotropics and paying for basics such as rent or food for their family. As one can imagine, this often leads to the regression of progress made in post-traumatic growth in some clients.

Another major limitation is that clients may opt out of HAART's services. Trauma-informed victim-centred approaches are centred around empowering clients. It therefore becomes difficult when clients opt out of rehabilitation programs such as technical training or vocational programs aimed at enriching their skill set. Clients cannot under any circumstances be compelled to continue attending vocational programs. The challenge arises if they opt out before they attain certification and all efforts are made to support them in navigating the difficult choices they face. Some clients report opting out due to efforts on their part to earn a living or even due to lack of the necessary resources to get to their vocational program, for instance they may have no available transportation or may be unable to pay the necessary transportation fare.

This also applies to the psychological support that HAART offers. Clients cannot be compelled to attend or continue in therapy and we find that clients often opt out. Some of the symptoms of trauma include hyper vigilance, re-experiencing (that is, having sudden, involuntary traumatic memories) and other highly emotive experiences. As Eads and Lee (2019) note, the distress that can be caused from confronting and processing past trauma means that high drop-out rates from therapy are common when working with trauma-affected clients. Oftentimes, HAART clients opt out when they are in the middle of their healing process and return after a break. A number also disclose that when their livelihood situation improves and their basic needs are met, they feel a reduction in their presenting symptoms. HAART has tried to counter the tendency for clients to opt out of therapy by psycho-educating them on the benefits of seeing therapy through whilst taking it at their pace and by reiterating the voluntary nature of therapy. Where appropriate, we have also used strengths-based approaches such as brief solution-focused therapy (BSFT), which primarily focuses on the present and future (Eads and Lee, 2019), as an alternative or complement to trauma-focused therapy. BSFT allows a client to interact with their strengths when problem solving a present or anticipated stressor. This gives clients an increased sense of self-esteem and assures them of an internal set of resources they may have forgotten they have. In some cases, this has allowed some clients to feel ready to confront and process their traumatic human trafficking experiences.

Conclusion

Victims and survivors of human trafficking face vast challenges and difficulties. In addition to lacking the most basic of needs, they are often deeply traumatized as a result of the horrendous experiences they have gone through as victims of trafficking. Through the development of its Victims Assistance programme over the past decade, HAART has learnt that a holistic and trauma-informed approach is essential in order to empower the affected individuals and help them recover from their traumatic experiences. Psychological support is an essential part of this rehabilitation. If left unattended, psychological wounds grow and disempower our clients. Given the limited resources available to specialist organisations like HAART, it is recommended that greater awareness of the dynamic impact of trafficking on victims and survivors be extended to psychosocial practitioners working in other settings, so that they gain an understanding of human trafficking issues and are supplied with the necessary resources to address them (see also Borschmann et al., 2017). Furthermore, the experience at HAART has demonstrated that authenticity in victim-centred care results in an enriching experience for both practitioners and

clients. In other words, in our victim-centred approach we have demonstrated genuineness and reliability in our service delivery and the benefits of this is reported by our clients. It is hoped that the next ten years will show a growth in and appreciation of the role of mental health services in assisting victims and survivors of human trafficking.

The author therefore recommends that one way this growth may be facilitated is by growing the department and providing additional technical mental health support by engaging more professionals in order for HAART to have a wider reach. Additionally, the Kenyan government is also encouraged to enhance their focus and support of mental health which may in turn help reduce the stigma that often accompanies victims of trafficking and increase access to mental health care. A final consideration may be inviting the Kenyan government to provide psychosocial support to returning victims of trafficking upon arrival back home. Early intervention is very beneficial as it reduces the likelihood of developing psychological issues. This step may also be positively interpreted by the victims of trafficking as an act that makes them feel valued by their government thus contributing to their recovery.

Remaining open minded and having an attitude of learning ensures that practitioners remain actively engaged and involved in trauma-informed approaches. The past year has taught us to utilise unprecedented ways of practicing, for instance, by delivering virtually facilitated psychotherapy in environments that cannot be controlled. The therapy room has indeed changed as a result of the COVID-19 pandemic.

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'She Never Thought That I Could Escape'

Mother Mary

So how did you escape?

One day she [my employer] went for a major operation and stayed in hospital for seven days. After she came back, she opened the door. When she left, she left food counted for one meal per day. I was eating one meal and not enough food. But I was not supposed to go out. When she came back, visitors would come visit her because she was out of the hospital. [...] She heard someone ringing the bell. She never thought that I could escape. She gave me the key because she couldn't walk down and asked me to open the door for the guest. [...] I went down, opened the door for the guest, [...] then I didn't lock the door. [...] I gave her the key and went to my room and started thinking if I should run away. My second thought told me no. Then I thought if I hesitate and someone else comes and knocks the door and opens it, she will know that I left the door open. I decided to say enough is enough, whatever would happen, I had to go. That was the ninth month.

I put my clothes together and told her 'Madam I am going now'. [...] She was expecting that I would get to the door and find it locked. She had her eyes on me as I was going downstairs towards the door. When I opened the door, she screamed. It was winter, there was snow all over. People could not hear her voice. She was screaming to show that there is danger in her house. I walked uphill not knowing where I was going as it was full of snow. I fell down more than ten times. [...] I was out but still in my heart it was very hard. I didn't know the end of this. But I was out of that house.

Mary walked until she 'saw a building with a picture of Mother Theresa and Maria, mother of Jesus'. Thinking that 'these might be Christian people', she knocked on the door. The building was a missionary house which cared for the sick and elderly. Mary stayed there for one or two years as a volunteer carer until spinal problems left her unable to work. The missionaries found her a room and supported her as she recovered. Eventually she was able to take on domestic work for international residents who she met through the international church she had joined. She saved the money she earned. Once she had a work permit and her situation was relatively stable, she started to use her savings and to negotiate with the consulate to rescue and repatriate other Kenyan women who had escaped abusive employers. She finally returned to Kenya in 2019 after reconnecting with her daughter via Facebook.

After so much experience, as somebody who went from being enslaved and abused to somebody who was a saviour, who rescued people, would you go back again?

No. Even now I tell the people: never dare to go to a foreign country without knowing where you are going and never dare to hear someone tell you that there is work and this and this without knowing where you are going. Never do that. I am even ready to talk to people in public to tell them: If you are going to a foreign country let your family know where you're going. Let the government know where you are going. And when you arrive there don't let anyone take your passport from your hand. Make sure you know what you are doing.

Improving the Protection Component in Kenya through Survivors' Expertise

Prof. Rachel Julian, Dr. Radoslaw Malinowski, Dr. Robin Redhead

Kenya, being the source transit and destination country for victims of human trafficking in East Africa over the past decade developed regulations and policies that aimed to control, limit and ultimately eradicate the crime of trafficking in persons. The process of domestication of international law on trafficking in persons together with aiming at adherence to international standards was predominantly accomplished through, but not limited to, the introduction of the Counter-Trafficking in Persons Act, 2010 (GOK, 2012). This, in conjunction with the development of regulations and national plans (predominantly the National Plan of Action, the National Referral Mechanism and the National Coordination Mechanism (GOK, 2015)) form a counter-trafficking policy that adopts the three pillars framework from the United Nations Office on Drugs and Crime (UNODC): Protection, Prosecution and Prevention. International law is a context that produces a perpetrator of violence and a victim of abuse (Redhead, 2015). Within this legal framework, those who have experienced trafficking are recognised as 'victims of trafficking' (VOT). Legal 'victim' status is very important to survivors to ensure their needs are being met within Kenya's regulations and national plans. However, those who survive trafficking, whether given victim status or not, consider themselves and represent themselves as survivors. This paper will distinguish between the terminology 'victim' and 'survivor' in the following way: 'victim' is a legal status and 'survivor' refers to people who have experienced human trafficking, were rescued, or managed to end the exploitation by themselves and then were (or were not) assisted by the relevant service providers.

The meaning of 'Protection' as a component of counter-trafficking policy in Kenya, is articulated across various mechanisms, making it difficult to piece together the provisions in place for evaluation. This, however, is not the only challenge faced when analysing the Protection component of counter-trafficking policy in Kenya. Several implementing government institutions, responsible for coordinating protection of victims, together with different levels of implementation of policies, make the overall picture of Protection of victims multifaceted and jumbled. This article presents an attempt to understand the effectiveness of the implementation of the Protection component for counter-trafficking policy in Kenya. Protection is an essential determinant of the success or failure of counter-trafficking processes in eradicating trafficking in persons in Kenya.

The research presented here employed a survivor-centred methodology to evaluate the effectiveness of Protection processes in protecting victims of human trafficking. The results found that there is limited engagement with victims of trafficking, which creates gaps in the implementation of the Protection policies.

Haart Kenya conducted a participatory research project with survivors of human trafficking. Based on the survivors' experience-based knowledge. We identified five key areas where the Protection component of counter-trafficking policy needs to be revisited. Those are: 1) lack of synchronisation between the protection of victims and prosecution of traffickers, 2) the role of family in the rescue and rehabilitation of victims, 3) grassroots awareness of safe migration, 4) better information management about rescue and rescue channels, and 5) acknowledgment of survivors in protection at the policy level. We begin with a review of the international and national legal mechanisms that deal with the Protection component of counter-trafficking policy. We then outline the survivor methodology before conducting an evaluation of the five key areas to establish the importance of survivors' expertise to effective Protection efforts.

Protection Mechanisms

Protection, one of the 3 pillars of counter-trafficking policy in Kenya is captured in different laws and national plans. The table below sets out both national and international laws used in human trafficking Protection in Kenya.

National Laws	International Laws
The Constitution of Kenya 2010; (Kenya Law, 2010)	The United Nations Convention Against Transnational Organised Crime, 2000 (UNODC, 2000)
The Children Act, (Kenya Law, 2001)	Palermo Protocol (UN Protocol to Suppress and Punish Trafficking Persons, Especially Women and Children (UNODC, 2000)
The Penal Code, Cap. 63 (Kenya Law, 1970)	The Protocol Against the Smuggling of Migrants by Land, Sea and Air UNODC, 2000)
The Sexual Offences Act, 2006 (Kenya Law, 2006)	Convention on Elimination of all forms of Discrimination against Women (CEDAW), 1979. (UN, 1979)
The Witness Protection Act, 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 age for 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 worst forms of child labour, 1999. ILO 1999)
The Counter-Trafficking in Persons Act, 2010	African Charter on Human and People's rights (OAU, 1981)
Refugee Act of 2006 (Kenya Law, 2006)	African Charter on the Rights and Welfare of the Child (ACRWC) of 1990. (OAU, 1990)
The East African Community Treaty (2006)	

Drawing on the content of these legal requirements, the Kenyan government have put several nation-wide plans and mechanisms in place to further support protection efforts in counter-trafficking policies. They are the National Action Plan for Combatting Human Trafficking: Strategic Framework 2013-2017 (NAP) (GOK, 2015); National Referral Mechanism for assisting victims of human trafficking in Kenya (NRM); National Assistance Trust Fund for Victims of Trafficking in Persons; and the National Coordination Mechanism on Migration (NCM). Taken together these plans and mechanisms are designed to create a robust, efficient counter-trafficking policy that will enable government institutions as well as other players to effectively address the crime of human trafficking.

The purpose of the NAP (GOK, 2015) is to promote co-operation between different stakeholders from all sectors in Kenya and lay the groundwork for closer co-operation with other countries in the region and beyond. Its implementation involves the participation and cooperation of all stakeholders and embraces private sector partnership. It goes a step further in ensuring the implementing of international conventions, treaties and protocols, the Kenyan Constitution, and the Counter-Trafficking in Persons Act (CTIP). The NAP articulates the 3Ps approach, namely: Prevention, Protection and Prosecution. Although the plan was envisaged for the years 2013 - 2017 (and thus its term has ended), there was never a new plan after the expiry date. This reveals there is an implementation gap and that more steps need to be taken to bring full realisation of the plan.

The guidelines provided in National Referral Mechanism for assisting victims of human trafficking in Kenya is a government strategy that brings together stakeholders from different sectors to work towards countering trafficking in persons, by promoting regular migration. They detail a proper response and referral system for the stakeholders in addressing trafficking cases. The NRM articulates shared objectives and provides for standardized operating procedures for assisting victims of trafficking. It provides a system for identification, referral, holistic support, and assistance to the survivors of trafficking through medical support, psychosocial support, shelter/safe home placement or legal assistance through court representation. It also provides the basic guiding principles for identifying and assisting VOTs, the national referral process structures, the coordinating agency, focal persons, principles of return and the re-integration process. The guidelines uphold the values and principles in the Constitution, which seek to always preserve the victim's dignity and to protect them against discrimination on the basis of race, colour, gender,

age, language, creed, religion, nationality, political or other opinion, cultural belief or practices, property, birth or family status, ethnic or social origin, disability, or any other grounds. Overall, the protection mechanisms meet the legal requirements and thus are satisfactory from a legal point of view. The investigation, however, revealed that although formal requirements are met, the limited implementation of those policies poses a threat of lost opportunities, such as cases of survivors not being compensated nor traffickers prosecuted.

The CTIP Act establishes a National Assistance Trust Fund for Victims of Trafficking in Persons, administered by a Board of Trustees funded by Parliamentary allocations, proceeds of crime confiscated or forfeited, income generated by investments, and donations. The Fund is intended to be used for expenses associated with VOTs, damages, and other purposes upon the advice of the Advisory Committee. The fund also aims to provide financial assistance to victims of trafficking. It is however unclear whether the mechanisms established by legal regulations are meeting the needs. With many cases of survivors not being able to access the fund, as well as no available information about the fund operations among the service providers, it is not possible to decisively claim that the fund successfully sustains the needs of survivors of trafficking.

In July 2016, the Kenyan Government launched the NCM, a government led interagency coordination platform that is responsible for national migration issues in Kenya. It is tasked with facilitating interagency coordination, collaboration, and information-sharing on migration concerns at the national level. Furthermore, it is hosted by the Department of Immigration Services, within the Ministry of Interior, and coordinates National Government activities, bringing together stakeholders including other relevant ministries and departments as well as non-state actors tasked with investigating issues of safe migration. The NCM scrutinises what constitutes safe migration. One of the main concerns that affects safe migration has been documented as trafficking and smuggling in response to which the NCM encourages collaboration and cooperation among stakeholders and the state in addressing human trafficking. Trafficking of persons poses a challenge as a human rights violation that seeks to diminish the capacity of a victim in terms of consent. From the review above, it is evident that the existing mechanisms meet the international and national standards of protecting victims of human trafficking. Legal mechanisms and human rights seem to guarantee the wellbeing of survivors and support from the relevant institutions. However, the quality of implementation remains a challenge. There is a lack of commitment to fully realise the protection provision contained within the institutional mechanisms. As we will discuss in the next section, this combination of a lack of commitment with poor implementation, creates a situation where protection of survivors of human trafficking remains ineffective, despite the formal mechanisms being guaranteed by law.

Evaluating the Protection component through survivors-centred methodology

Assessing the Protection component in Kenya requires a balanced approach that combines practitioners' experience with the knowledge of a counter-trafficking theoretical framework. Even if those protection criteria are met, the experience of the beneficiaries can be different from the practitioners' perspective. For this reason, this research used a different approach; it gave survivors of human trafficking a leading role. Firstly, it was important to determine who is considered a survivor of human trafficking. At which point does a victim of human trafficking become a survivor? Is it simply the fact they have survived their experience or must they have completed rehabilitation and regained their lives? Most of the service providers prefer the term 'survivor' as it is more empowering than 'victim'. Despite this preferred usage, 'survivor' is virtually absent from international and national law, as these legal mechanisms perpetuate the use of the 'victim' term.

The victim/survivor terminology debate is wide-reaching within human trafficking discourse. For instance, the choice of terminology is used to make emotional distinction between passive victim – strong survivor (Papendick, Bohner, 2017) or shameful victim – angry survivor (Boyle, Clay-Warner, 2018), representing different levels of agency for the individual and implying alternative future life trajectories. While bound by terminology captured in law, this paper takes the position that people who experience human trafficking should be empowered to decide their own status and choose which term represents them best. In that sense, from our research, survivors of human trafficking are all those who have exited the stage of exploitation and are in the process of healing through trauma informed care. Victims are those who are still being exploited and are yet to be free from the trafficker's control.

The research design acknowledged that survivors being rescued still undergo rehabilitation and their participation in the research is dependent on their capacity and wellbeing. Primum non nocere rule applies here; participation in the research cannot negatively affect survivors' health and wellbeing. This meant only those who had completed the rehabilitation phase were selected to participate. After appropriate candidates were identified and consent was received, survivor participants were given robust research methods training delivered by research methodology experts. To avoid any negative impact on the participant's wellbeing, counselling support was offered to anyone who needed support and trauma self-care training was conducted at the beginning of the research project. The research team was composed of survivors who designed the data collection tools. A total of 21 participants took part in the study: 13 survivors and 8 key stakeholders from the government and civil society. Data was collected from the government officials (from different levels) together with civil society workers and survivors themselves. The results were analysed and the findings were corroborated through the focus group composed of survivors. Survivors' engagement was not limited to providing information (stories) but included analysis of collected data and to provide insights at early stages of data analysis. This co-design methodology empowered the survivors who enjoyed participating and analysing the material.

The research identified five gaps in the implementation of the Protection component to counter-trafficking policy that need to be addressed: 1) lack of synchronisation between the protection of victims and prosecution of traffickers, 2) the role of family in the rescue and rehabilitation of victims, 3) grassroots awareness of safe migration, 4) better information management about the rescue channels and rescue, and 5) acknowledgment of survivors in protection at the policy level. The following is analysis of these gaps and their significance to the full realisation of the protection component to counter-trafficking policy in Kenya.

Lack of synchronisation between the Protection of victims and Prosecution of traffickers

The international and domestic counter-trafficking policy envisages Protection, Prosecution and Prevention as key components. Each one should correlate with the others. This applies especially to prosecution of traffickers, as in most cases this component is implemented simultaneously with protection of victims. In an ideal scenario prosecution of traffickers should complement protection of victims as punishing the offender increases the safety of the victim (this applies especially in a scenario when the crime is committed by an Organised Criminal Group), gives a sense of justice, and provides an opportunity for compensation.

Unfortunately, in many scenarios prosecution of traffickers operates separately from protection of victims, in the sense that the institutions in charge of prosecution do not consider aligning towards protection. This discord starts with the lack of proper information and guidance offered to survivors. Sometimes the information gap prevents any prosecution as one of the key informants says, "Victims' inability to seek help is another challenge, they fear to report such cases to the law enforcement, they fear to go to court" (KII No. 4). The causes of such fear vary amongst a lack of understanding of benefits from prosecution, a lack of protection mechanisms offered throughout the prosecution and a lack of support from service providers.

As prosecution is usually a long and complex process and survivors are not familiar with legal jargon, a lack of proper communication creates a perception of alienation among the survivors. Survivors of trafficking feel (and in fact they are) being treated purely as a source of evidence that will help law enforcement agencies pursue justice. Little attention is paid to their personal needs and the traumatic experience they have endured. This government official reiterates that signs of trauma and stress survivors express are at best misunderstood and ignored during the prosecution:

"So even trying to help the victims, it has been a challenge to some of them because if you try to secure them, and place them in a place of safety, they can become even arrogant, they can start breaking things, making it very difficult for them to be helped" (GOK, KII No. 7).

Such a statement speaks to the government officials' lack of sensitivity to the trauma survivors are dealing with.

A lack of synchronising the Protection - Prosecution dynamic also happens. Those in charge of providing protection to survivors sometimes do not consider any need to prosecute the traffickers,

even when victims are showing interest in pursuing justice:

“When I returned to Kenya, I tried to find ways of arresting the agent but up to date she is still free. Honestly, I did not get any help. One neighbour of mine working in Kenyan security helped me and I spoke out my issues to the authorities and all I needed was to get my money back and move on with life. I lost over 2 million yet it was borrowed money. All I need is let her be arrested and she refunds my money” (Survivor interview No. 9).

The same applies to the situation of compensating victims, something that is still to be acknowledged as a priority for the service providers (both the Government and non-governmental organisations). One survivor explained, “You know, once someone does not know his/her rights, then at times compensation may not be available. Because he/she might not know the rules that guides this. I have heard of some cases where the perpetrators have been arrested, but once that happens, the victims are not even aware of what happens next in regard to compensation” (KII No. 3).

Prosecuting traffickers is one of the critical actions that can curb trafficking in persons. Survivors of human trafficking in most cases are to play the role of witness, providing crucial evidence against the traffickers. This research argues against processes that reduce survivors to exclusively evidence providers. Restricting survivor engagement in this way fails to recognise survivors’ needs, which in turn, reduces survivors’ willingness to cooperate with the law enforcement agencies. Therefore, an expansion in law enforcement’s understanding of survivor utility in gathering information for protection processes is essential to encouraging survivor participation in the prosecution of traffickers.

The role of family in rescue and rehabilitation of victims

East African, including Kenyan, cultural, and societal practices differ in many ways from Western cultures. Family is paramount in East African society. Individuals are not autonomous actors, but rather has familial commitments and responsibilities expected of them. The family is where values, behaviours and cultural life are learned and enforced (Kanu, 2010). The traditional composition of an African family includes grandparents, aunts, uncles, cousins (from both parents’ sides), as well as non-related friends and acquaintances. In this sense a family is a social group characterized by common residence, economic cooperation, and reproduction (Infield, 2001). In the traditional African family, harmony, as well as the sense of belonging, is rated as the most important value for all family members (Shizha & Charema, 2008).

For this reason, families play a vital role in rescue, rehabilitation and reintegration of victims of human trafficking. It is family members who will identify victims, even when those victims are their own family members. It is the family that is often approached by the distressed victim as this survivor recounts:

“The situation became so hard and thank God at that time my brother was also working in Saudi. He came for me and took me to the embassy and the embassy took me to jail for women, since I did not have my documents. My father talked to someone at the embassy who then assisted with my repatriation processes back home” (Interview with Survivor No. 9).

Family members are often involved in coordinating survivors’ rescue and return. In this survivor’s case, a family member provided the financial support required to repatriate the survivor:

“They [my sponsors] sent me to the embassy and told me to take care of my travelling expenses back home including the air ticket. My family looked for the money and sent me, and I returned back home” (Interview with Survivor No. 9).

Yet, the important work carried out by families is barely acknowledged by institutions or represented in their official documents. As this research has uncovered, there are many ways of acknowledging the role of the family in the protection process. In most cases family members are essential not only to the rescue, but also later, during the rehabilitation and reintegration process. After all, most survivors will return back to their families and if they are to receive any support it will most likely happen in the family environment. It is obvious then that it is a huge omission not to include the family as an actor in processes of rescue, rehabilitation, and reintegration.

Grassroots awareness of safe migration

Another challenge with the Protection component concerns the gathering of information related to safe migration and human trafficking. This applies to those who are planning to migrate – whether for work, education or another purpose – both within the country and abroad. While the level of awareness at the community level about the risks of human trafficking has increased significantly over the years, there is a gap in sensitising vulnerable populations to how to migrate safely and how to avoid human trafficking. This survivor summarises this need, “I would love to see people wishing to travel to first be trained, so that they know where they are going and if the places are safe for them” (Interview with Survivor No. 13).

Existing resources, such as specifically dedicated government websites by the Ministry of Foreign and Diaspora Affairs (Government of Kenya, 2023) and the National Employment Agency (National Employment Authority, 2023) resources on safe migration, provide important information but can only be accessed by those who are computer literate and have some level of awareness about how to find such information. Many prospective migrants (as well as prospective victims of human trafficking) have no such capacity and they migrate without an adequate level of information.

While providing information through the website is undoubtedly very important, vulnerable people at the community level need more support in the form of information campaigns and training. It should be a priority for government and civil society to ensure that knowledge about where to find relevant information is distributed among the potential migrants and training on how to migrate safely should be delivered before they go. It is also crucial those migrating are informed of how to behave in a trafficking scenario and where to find help.

Better information management about rescue channels

Like the previous gap that addressed what happens prior to trafficking, this gap narrates what victims require to be rescued. From the interviews with survivors, it transpired that there is no organised system of managing the information about rescue possibilities. The success or failure of rescuing a victim in the absence of a systemic/institutional approach, relies on sheer luck or on their family’s capacity to get help. Victims often rely on informal sources of information as this government source indicates:

“The government does not have a strong communication strategy on this (how to rescue and get help), neither do we have it from any other source and so there is a lot of information that potential victims of trafficking and migrants get from those informal sources, which are fairly credible in their estimation” (KIII No. 3).

The impact of unavailable information is clear in this survivor’s testimony:

“No governmental organization rescued me from trafficking. I managed to get help from the travelling agency that had assisted me in travelling... I communicated to them about my predicament by calling them through the contact they had shared with me before travelling... The agency liaised with her branches in the country” (Interview with Survivor No. 2).

The above testimony is representative of a pattern of rescue that is used by the majority of victims. They turn for help to those in their immediate sphere.

This does not mean that there is no help from the government offered to victims of human trafficking. On the contrary, victims and their families get support from government institutions once they are able to find them and ask for help:

“the government was involved in a way, by giving me refuge through the embassy. Then HAART Kenya came in and assisted with my repatriation from India back to the country. The embassy officials explained to me that since I still had a valid visa, it was easier to facilitate my exit from India. They told me they were going to retrieve my passport from the trafficker, and also explained that it would be my own responsibility to secure my ticket back home” (Interview No. 7 VOT).

What is missing in government policy is a mechanism for delivering systematic information on

how, where and when to seek help. The Kenyan government official website for migrants (National Employment Authority, 2023) does not provide information on what to do once someone ends up in a trafficking situation. The Kenya National Commission on Human Rights brochure on safe migration provides the rescue emergency phone number in Kenya but does not explain what to do when the migrant becomes (or has become aware of) a victim of human trafficking (KNCHR, 2018). Neither does it provide additional information on how to get rescued while abroad.

Finally, after a victim is rescued or escapes the exploitation situation there is no structured information on what should happen next. VOTs need to know what rights they have and what the steps are in the rehabilitation and reintegration processes. This survivor speaks to this lack of information:

“Initially, I was not aware of any policies guaranteeing my protection as a survivor. It is after returning to the country, that Trace Kenya started training us on several protection policies. The organization explained to us the procedures that we need to consider in case one is travelling, what to do when you are being mistreated, who to contact and how to go about it” (Survivor interview No. 6).

For each survivor it will depend on who is providing this service (if any is provided at all). What is needed is better information management. For instance, a Survivor Charter of Rights could be distributed to every survivor upon rescue or place of arrival, accompanied by a brochure/leaflet shared on social media, different websites and in written form, to help them get the support they need.

Acknowledgment of survivors in protection at the policy level

The final gap in the policy is related to the role of survivors in countering human trafficking. When the current policies were drafted (soon after 2012), there was little understanding of survivors’ role in countering human trafficking. In the first instance, policies referred to victims not survivors. Secondly, the focus was on aiding victims and obtaining a testimony if relevant and forthcoming. There was no consideration given to the usefulness of the content of victim’s testimony outside of catching criminal activity. As our participants have articulated, it is an insensitive and sterile experience:

“Initially, I was not aware of any policies guaranteeing my protection as a survivor. It is after returning to the country, that Trace Kenya started training us on several protection policies. The organization explained to us the procedures that we need to consider in case one is travelling, what to do when you are being mistreated, who to contact and how to go about it” (Interview with Survivor No. 6).

When we turn our lens away from victim terminology towards the concept of survivor, we invite survivors to become active agents in their own recovery as well as vital sources of information for the prevention process.

At a policy level, there is no recognition of survivors. The two committees that are established by the Counter-Trafficking in Persons Act 2010, namely the Advisory Committee (Part IV) and the Board of Trustees (for the Trust Fund – Part V), do not include survivors as sitting members. The Act ensures membership is drawn from the strategic government offices involved in counter-trafficking together with representation from civil society (for the advisory committee), but with no representation from survivors. Mandatory inclusion of survivors would be the first step in better recognition of this group in managing the Protection component of counter-trafficking policy in Kenya, not only a symbol of acknowledging the role of survivors in counter-trafficking but also a practical solution to ensure survivors’ role in Protection.

The absence of survivor representation on the two committees is not an incidental shortcoming but rather a reflection of a systemic problem. The growing survivor-led movement and awareness-raising of the importance of survivors in current counter-trafficking measures, is calling out Kenya’s counter-trafficking policies as insufficient and out-dated. Rectifying this lack starts with a change in the language, a shift in terminology from victim to survivor. This shift in representing the experiences of people who have been trafficked as instrumental resources to more than just criminal cases, will ensure survivors’ wellbeing as well as improve the effectiveness of protection and prevention efforts.

Creating a structure for survivors’ representation in drafting, overseeing, and evaluating counter-trafficking policies could possibly be the next step towards their acknowledgment in counter

-trafficking practice. Creating a more structured body that will represent survivors will benefit the whole counter-trafficking movement by ensuring survivors take part in all counter-trafficking work, lending their experience and complementing the expertise of others. A structured body would also benefit survivors by ensuring equal participation in the movement (through regulating the selection process). Such bodies already exist in different CSOs but what is needed is a nationwide policy instituting such an entity.

Conclusion

This article tackles the question: how well has the protection component been implemented and what did survivors say about it?

From an analysis of the existing mechanisms, it has been shown comprehensively that the Kenyan government complies with all the national and international legislation. However, the plans are out of date and, from survivors' stories, inaccessible to them, meaning that there are clear implementation gaps in the protection component of Kenya's countering human trafficking policy. Survivors' reflections have demonstrated how they see the connection between prosecution and protection, but the failure to link these two pillars together within these mechanisms generates one of our key findings; that including survivor voices can help improve the protection component. This research provides a methodology for including survivor voices. Further results have shown that the two areas survivors recognise as missing from the policy are safe migration and rescue channels. They noted the importance of information on safe migration and rescue channels, but so far they can only rely on informal sources of information, therefore revealing this as another policy gap. Although the policy meets international obligations, there is no recognition of the role of family in protecting people from the risk of trafficking and helping their safe return.

All this points to the need for survivors to be recognised in policy, included in the protection process and for their voices to inform implementation. The implementation gap is currently filled by NGOs and family. NGOs like Haart Kenya are well placed to work with the government on including survivors because they are involved in the policy and implementation areas as well as the front-line delivery of services. This article demonstrates that implementation gaps have been identified by survivors and, therefore, we recommend that survivors be included if we are to improve the protection component for counter-human trafficking policy in Kenya.

Survivors – empowered and heard – could have a transforming influence on other policies and institutions. Through their presence and action, the role of survivors in countering human trafficking would receive the attention they deserve.

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Dream of Freedom by Javan the Poet

It has been the longest of years,
It has been the longest of months,
It has been the longest of weeks,
It has been the longest of days,
It has been the longest of hours,



Minutes, seconds, micro seconds and milli seconds,
Grandfathers, grandmothers, mothers, fathers,
Sons, daughters' nieces and nephews,
All lost to pain, suffering, darkness of dark trade, Trade of humans, trade of human organs,
Trade, trade of human labor, peace and happiness, Trade, trade of human dignity and beauty,
Trade, trade across border, regions and nations, Trade, trade that belittles humanity and its true meaning,



How many are gone, can we count?
How many are lost and, in a frenzy, can we tell?
How many are on transit now, can we say?
How many are wishing to get back home, can we help? How many are in solidarity, solidarity
against human trafficking, Solidarity against poor laws, solidarity to inform, can we join?
This pain must come to an end, an end that I see, These fears must turn to courage, courage that
I feel, This families must unite again, unity that is real,



These laws must be one for safety of all, safety that we mean,
A decade of true struggles has come to pass,
A decade of true organizing has come to be,
A decade of true partnership has come strong,
A decade of true direction has shown path,
A decade of the long-awaited freedom is here,
Be the champion against Human Trafficking!

Composed and written by Javan The Poet

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Prosecution

Prosecution of human trafficking in Kenya: Assessing the effectiveness of the legal framework in light of international standards

Claire Adionyi

Introduction

According to the United Nations Office on Drugs and Crime *Global Report on Trafficking in Persons 2016* (UNODC, 2016), legislation has increased dramatically since the introduction of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) (United Nations, 2004, pp. 41–51). The Palermo Protocol entered into force in 2003. Yet, while 158 countries (88 percent) currently have a statute that criminalises most forms of trafficking (p. 12), only about 40 percent of countries reported having ten or more yearly convictions, and almost 15 percent reported no convictions at all between 2012 and 2014 (p. 51). Tuttle (2017, p. 8) observes that these trends have remained relatively stable since the introduction of the Protocol in 2003, indicating that, despite new legislation, demonstrated responses to trafficking have remained largely unchanged. Meanwhile, evidence indicates that human trafficking is a growing issue and that the number of detected victims is increasing (ibid.).

Kenya ratified the Palermo Protocol in 2005 and enacted the Counter-Trafficking in Persons Act in 2010 to fulfil its obligations therein. However, the US Department of State (2021) still categorises Kenya as a Tier 2 country, noting that: ‘The Government of Kenya does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so’ (p. 328). The predominant form of trafficking within Kenya has been trafficking for farm and domestic labour (National Crime Research Centre, 2015). However, Kenya has also become a destination country for sexual exploitation. In 2017, the US Department of State reported cases of women from India and Nepal recruited to work in dance clubs in Nairobi and Mombasa facing debt bondage, ‘which they are forced to pay off by dancing and forced prostitution’ (US Department of State, 2017, p.234). More recent reports similarly indicate a rising number of women and underage girls from South Asia who are victims of human trafficking being forced to ‘work in Bollywood-style dance bars in Kenya’s adult entertainment industry’ (Bhalla, 2019).

Kenya is a source, transit and destination country and also an emerging regional centre for labour and sex trafficking in the East African region (IOM, 2005). Daghar of the Institute for Security Studies (ISS), an African non-profit organization, observes that there remain gaps in laws and enforcement that expose trafficking victims to a well-organised criminal market (Daghar, 2020). Kenya has had major problems as a source country for labour exportation to the Middle East, including at least 130,000 domestic workers (Gathigah, 2019). As Daghar (2020) notes, ‘for many Kenyans ... this means a life of slavery in Middle Eastern countries as traffickers exploit socio-economic vulnerabilities and gaps in the legal protection of migrant workers’. Despite this, none of the approximately thirty cases currently handled by Kenya’s prosecution service involve forced labour to Middle Eastern countries (Daghar, 2020). Furthermore, the coastal region of Kenya has been known as a ‘hotspot area’ for irregular migration and human trafficking: ‘proximity to the ocean makes the target counties key international transit points and has facilitated a common destination’ for victims of trafficking (IOM, 2018, p. 8). Yet, there is little up to date information and ‘a lack of programming targeting trafficking in these regions’ (p. 11), suggesting that the coastal region and the trafficking that occurs in the region has not been a priority area of policy.

Given Kenya’s prominence in the region and the fact that its Counter-Trafficking in Persons Act (CTA) has been in force since 2010, this is an opportune moment to review Kenya’s progress in curbing the crime. The operational hypothesis of this article is that Kenya’s efforts to combat human trafficking has not lived up to the CTA’s legislative potential. This article therefore provides an overview of the international legal framework on human trafficking to establish the international standards, and then draws on a desktop review of legislation and relevant secondary sources to assess the Kenyan legislative framework against these standards, with a specific focus on prosecution. It concludes with some recommendations based on promising international practices.

International legal framework for addressing human trafficking

International human trafficking standards have been developed through a number of instruments, which have led to the development of the contemporary anti-trafficking regime. This regime is embodied in the United Nations Convention against Transnational Organized Crime (United Nations, 2004, pp. 5–39), adopted by General Assembly resolution 55/25 of 15 November 2000, which is the main international instrument in the fight against transnational organized crime, and its supplementary Palermo Protocol. These instruments solidified a criminalised approach to trafficking (Lloyd and Simmons, 2015, p. 427) and have been noted as the most reputable and recent instruments of international law that guide the definition, prevention and prosecution of human trafficking (King, 2009).

The purpose of the Palermo Protocol is set out in Article 2. Although Article 2(a) stipulates that particular attention be paid to women and children, the scope of the Protocol was expanded during negotiations to be inclusive, under ‘the basic principle that any human being, regardless of age or gender, could become a victim and that all forms of trafficking should be covered by the Protocol’ (UNODC, 2004, 257). Article 3 provides a definition of trafficking in persons. According to the UNODC guide for the implementation of the Palermo Protocol (UNDOC 2004, pp. 243–318), this definition is meant to provide consistency and consensus around the world (p. 269). Article 5 of the Protocol contains the criminalisation requirement: ‘Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally’.

The UNODC (2004) notes that trafficking, as defined in the Protocol, ‘consists of a combination of three basic elements’ (p. 268). The obligation set out in Article 5 is to criminalise trafficking ‘as a combination’ of these constituent elements, not to criminalise the elements themselves (p. 268). It is therefore important to note the following basic elements as contained in the definition as they are instrumental in guiding national legislative processes:

- a. *The action of:* recruitment, transportation, transfer, harbouring or receipt of persons;
- b. *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;
- c. *The purpose of exploitation, which include, at a minimum:* the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (UNODC, 2004, p. 268).

Having established the international standards that underlie this aspect of human trafficking, Kenya’s legislative framework will be assessed through this lens.

Legislative response of the Government of Kenya to address human trafficking

While Kenya is a party to various treaties that have an impact on human trafficking, such as the Abolition of Forced Labour Convention, 1957 and the Worst forms of Child Labour Convention, 1999 (no.182), its ratification of the Palermo Protocol is the most relevant to this discussion, since it is the first legally binding instrument that contains an internationally recognised definition of human trafficking and that requires its criminalisation. The Counter-Trafficking in Persons Act (CTA), 2010 was adopted to implement Kenya’s obligations to the Palermo Protocol by providing for the offences relating to trafficking in persons. While there are a number of other laws that contain important provisions that have an impact on the criminalisation and prosecution of human trafficking in Kenya, the CTA is the principal legislation and its salient features will therefore be examined first.

Salient features of the Counter-Trafficking in Persons Act, 2010

To meet the criminalisation standard as set out in the Palermo Protocol, domestic legislation must meet certain requirements. First, it must criminalise the conduct set out in Article 3 of Palermo Protocol. Second, it should similarly criminalise attempts to commit a trafficking offence, pursuant

to Article 5(a) of the Protocol; participation as an accomplice in such an offence, pursuant to Article 5(b); and the organisation or direction of others to commit a trafficking offence, in line with Article 5(c). Thirdly, the UNODC observes that national legislation should adopt a broad, dynamic and flexible definition of trafficking, as provided in the Palermo Protocol, to enable the legislative framework to respond effectively to trafficking that: occurs across borders and within a country; consists of a range of exploitative purposes and not just sexual exploitation; victimises children, women and men and not just women or adults; and takes place with or without the involvement of organised crime groups (UNODC Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000). How does the Counter-Trafficking in Persons Act measure up in relation to these requirements?

Section 3(1-4) of the CTA adopts the same wording as the Palermo Protocol in defining human trafficking. Section 3(5) criminalises that conduct and states that an offender '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'. This punishment is sufficiently stringent as it is similar to the imprisonment terms for other serious crimes under the Kenyan Penal Code. It is also more stringent than the penalties for trafficking in other Tier 2 countries such as Tanzania. However, the option of a fine in lieu of imprisonment arguably disqualifies trafficking from comparability with other serious offences such as manslaughter and robbery, since these do not have an option for fines (Penal Code, 2010). The Ugandan 2009 Anti-Trafficking Act, which does not provide the option of fines in lieu of imprisonment, can be emulated, especially as Uganda is also a Tier 2 country (US State Department, 2019, p. 472).

The CTA makes provision for the definition of other important terms such as consent and sexual exploitation (Section 2). It thereby meets both international human trafficking standards and international human rights standards, which require that laws must be 'sufficiently precise to allow the citizen ... to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail' (Sunday Times v. the United Kingdom, 1974). Section 3(4) of the CTA recognises the transnational nature of human trafficking, thereby providing for acts of trafficking in persons committed both internally within the borders of Kenya and internationally across Kenya's borders. Given that international cooperation is crucial to countering human trafficking, the presence of such clauses on jurisdiction in anti-trafficking domestic laws is important as they enhance the kind of cooperation envisioned in the 4 'Ps' approach of prevention, protection, prosecution and partnership.

Section 3(6) makes room for the criminalisation of types of offenders other than the actual perpetrators of the offence of trafficking, establishing that 'a person who finances, controls, aids or abets the commission of an offence' is liable to the same punishment as the actual perpetrator. This gives effect to the provisions of the Palermo Protocol within Kenya's criminal regime. The Kenyan Penal Code does not differentiate between offenders; all are treated as principal offenders, regardless of the specific role they have played in the commission of the offence and are thereby subject to the same punishment (Penal Code, 2010). The CTA also goes a step further than the Palermo Protocol in elaborating on acts that promote child trafficking (covering adoption, fostering and guardianship) and providing a sufficient punishment for those acts, thereby extending protection to children (Section 4).

Promotion of trafficking in persons is also criminalised and attracts a punishment of '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' (Section 5). Any person who knowingly engages the use of fraud or misrepresentation 'to obtain any document from Government agencies, in order to assist in the commission of an offence of trafficking in persons' is subject to not less than ten years imprisonment or a minimum fine of ten million shillings or to both 'and upon subsequent conviction, to imprisonment for a term of not less than ten years without the option of a fine' (Section 6).

An offender convicted of facilitating entry into or exit out of Kenya for the purposes of promoting trafficking in persons is subject 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 a term of not less than thirty years without the option of a fine' (Section 7).

Section 8 of the CTA criminalises a tactic commonly used by traffickers, namely confiscation of their documents and personal possessions:

A person who—

- (a) confiscates, conceals, alters, destroys or in any other manner deals with any identification or travel documents, of another person in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies; or
- (b) confiscates, conceals, destroys or in any other manner deals with personal effects of another person or threatens to do so in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies,

commits an offence and is liable to imprisonment for a term of not less than ten years or to a fine of not less than ten million shillings or to both and upon subsequent conviction, to imprisonment for a term of not less than ten years without the option of a fine. (CTA, 2010, Section 8)

Lastly, the CTA makes conduct that results in life threatening circumstances for or the death of a victim of trafficking in persons an offence, with a proscribed punishment of imprisonment for life with no option for the payment of a fine (Section 9).

The CTA has made necessary provisions pursuant to its international obligations but still contains some inadequacies. For instance, it only criminalises *attempts* to commit a trafficking offence with respect to child trafficking (Section 4.2), not in general. As such, it fails to meet the standard set out by the Palermo Protocol under Article 5(2)(a), which requires each State Party, subject to ‘the basic concepts of its legal system’, to establish as an offence an attempt to commit a trafficking offence. It similarly fails to outrightly criminalise the directing of others to commit trafficking as required by Article 5(2)(c) of the Palermo Protocol, leading to a gap in the law which may consequently hamper effective prosecution of human trafficking offences.

Other legislation

While the CTA is the principal legislation on human trafficking, it works in concert with Kenya’s Constitution, Penal Code and sector-specific legislation, notably the Sexual Offences Act, 2006 and Victim Protection Act, 2014.

The Constitution of Kenya, 2010 makes no direct reference to human trafficking but does contain provisions that implicitly address the problem. Article 2(6) provides that ‘any treaty or convention ratified by Kenya shall form part of the law of Kenya’, effectively making those laws applicable within the municipal courts. The Bill of Rights in Chapter 4 contains a myriad of rights that render protection to victims of trafficking. In particular, Article 30 forbids slavery, servitude and forced labour and Article 50(9) provides for the enactment of legislation to provide for the protection, rights and welfare of victims of offences. Article 50(9) is important in that it sanctioned the creation of the Victim Protection Act, 2014. This Act forms part of the legal framework on human trafficking as it extends its provisions under Section 5(2) to the protection of victims under the Counter-Trafficking in Persons Act, 2010. The Victim Protection Act takes into consideration the transnational nature of human trafficking by endowing victims of human trafficking with various rights (under Part III) and extending its protection irrespective of the nationality, country of origin or immigration status of the victim.

The Kenyan Penal Code, which is Kenya’s principal criminal law code, prohibits unlawful compulsory labour under Section 266, classifying it as a misdemeanour offence. Misdemeanours are punishable with imprisonment for a term not exceeding two years or with a fine, or with both (Penal Code, 2010 S36) – an insufficiently stringent sentence to deter this conduct. The classification of compulsory labour as a misdemeanour is not a sufficient level of criminalisation by the international standards on human trafficking. However, the Penal Code creates an exception under Section 266A that addresses this: ‘Where it appears that any of the offences specified under this Part is committed for the purpose of exploitation, the person committing the offence shall be charged with the

appropriate offence as specified in the Counter Trafficking in Persons Act.’ As noted above, ‘the purpose of exploitation’ is one of the three basic elements that constitutes human trafficking under the Palermo Protocol’s definition.

The Sexual Offences Act, 2006 criminalises the facilitation of child sex tourism and ‘child prostitution’ and prescribes punishment of no less than ten years’ imprisonment for any person convicted of those offences (Sections 14, 15). These penalties are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape, under the same Act (US Department of State, 2019, p. 272). It also provides for the offences of child trafficking (Section 13) and trafficking for sexual exploitation (Section 18), imposing minimum terms of imprisonment of ten and fifteen years respectively, although in the latter case there is also the option of a fine of at least two million shillings either in lieu of or in addition to the prison sentence.

Taken together, the legal framework for criminalisation and prosecution that has been established by the CTA and other relevant laws provides an impressive domestic response to human trafficking, even if there are still some inadequacies. But what has been the effect of this criminalisation of human trafficking on prosecution? This can be assessed by reviewing human trafficking cases and concurrently assessing judicial interpretations of this legal framework in Kenya.

Judicial interpretation of the legislative response

There have been very few cases brought under the CTA in Kenya since the Act came into effect over ten years ago. Data on the exact number of ongoing or pending cases on human trafficking in Kenya is conflicting; one report indicates that Kenya’s prosecution service is currently handling thirty cases (Daghar, 2020), whereas another source indicates that there are at least forty (Kakah, 2019). A review of existing appeal cases and/or decisions of the High Court demonstrates that while Kenya’s superior courts have a good grasp of the CTA, there are inadequacies in prosecution. Since it is only superior court decisions that are reported in Kenya due to their binding effect, the decisions of the subordinate Chief Magistrates Courts are not included in this review; this is noted as a limitation of this study.

In the case of *Maduku Mbashani & another v Republic*, the appeal rested on whether the appellants had been charged with a non-existent provision of the law. In the first of two counts, they had been charged with trafficking in persons contrary to *Section 3(3)(5)* of the CTA (emphasis mine). In the judgment, the Court reproduced *Section 3(3)*, which defines other acts that constitute trafficking, and *Section 3(5)* which prescribes the penalty. The judge held that ‘the contention by the appellant that the mention of *Section 3(3)(5)* in the charge sheet does not disclose an offence under the Act’ was not true. Even if it were to be found that an error had been made in the drafting of the charge sheet, the judge noted, ‘the error does not change the substance of the charge’. Since the charges were read and explained to the accused and were responded to, ‘any defect on the charge sheet is curable under *Section 382* of the CPC [Criminal Procedure Code]’. It was further observed that, having pleaded guilty to the offence, the appellants could only appeal against the sentence. The judge reduced the sentence from the initial forty years to the minimum sentence provided in the CTA of thirty years, noting that the appellants were first time offenders. This case was decided on its merits and depicts the ability of the court to adequately apply the provisions of the CTA.

In contrast, the case of *Halima Adan Hassan & another v. Republic* provides an example of judicial ineffectiveness. The appellants, Halima Adan Hassan and Kheirta Ibrahim, were charged with trafficking in persons contrary to *Section 3(d)(e)* and *Section (3)* as read with *Section 3(5)* of the CTA. They were recorded as having pleaded guilty to all charges and were convicted. On Count 1, each was sentenced to pay a fine of thirty million shillings or in default to serve thirty years’ imprisonment. The grounds of their appeal were that:

- ◆ exploitation is an essential element of the charge of trafficking in human persons, but was not in the charge sheet;
- ◆ that ‘the charge sheet was defective as there was no offence created under *Section 3(d)* of the Act’ and in the counsel’s view, ‘only trafficking for purposes of exploitation was provided for under *Section 3(5)* of the Act, while the particulars of the offence herein did not include exploitation or deception’; and

◆ that the appellants had not been warned of the seriousness of the offence before conviction. This case is an example of judicial ineffectiveness as the court's judgment turned on the trial magistrate's mistake in failing to warn unrepresented accused persons of the seriousness of the offence before convicting them on a plea of guilty. In view of the seriousness of the offence in Count 1 and the fact that the appellants had only served a few months in prison, the Court ordered a retrial in the interests of justice. Unfortunately, due to the declaration of a retrial, the court was unable to make any pronouncement on the merits of the other grounds of the appeal and consequently missed out of an opportunity to provide clarification on the issue of exploitation being an essential ingredient of the charge of trafficking in persons.

In *Muhammad Asif v Republic* the appellant was charged with and convicted of the offence of trafficking of persons contrary to Section 3(1)(d), as read with Section 5 of the CTA. He was sentenced to serve five years imprisonment or to pay a fine of five million shillings for the offence. The appeal was allowed, the conviction quashed and the sentence set aside. The case turned on the fact that there was a defect in procedure: the court records showed that no charge had been read to the appellant and the appellant did not take plea. The Appeal Court also ruled that there had been no evidence brought against the appellant on the offence of trafficking in persons and neither was the alleged exploitation proved. This case shows a failure of both the judiciary and the prosecution. The defect was a very simple mistake with far reaching consequences. The Court observed that for a person to be charged under Section 3(1)(d) and 5 of the CTA, the evidence should indicate that the accused person had committed the proscribed conduct.

The Court, however, employed an innovative reading of the Act in the case of *Doris Kemunto v Republic*, which concerned the trafficking of a young child (who remained missing). The Court held that the fact that a child had been deprived of parental care and love amounted to her being subjected to slavery. The appellant had been charged and convicted of the offence of trafficking in persons contrary to Section 3(1)(b) as read with Section 3 (5) of the CTA. It was alleged that on 7 May 2013, the appellant had 'fraudulently transferred VK a child aged 3 years and two months with intent to deprive SK the parent who had the lawful charge and care of the possession of VK'. The appellant was found guilty and convicted. The appeal was dismissed as the court held: 'This child in my view has been subjected to slavery for wherever she is she has been deprived of her parental care and love. She is living with persons who are not her parents nor relations. Wherever she is she has been deprived of motherly love which in my view amounts to slavery.' In interpreting the provisions of the Act, the Court noted: 'Section 3(3) provides that, *the recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set out in subsection (1) of this Act*' (emphasis the Court's). For these reasons, the prosecution was held as having proven its case beyond reasonable doubt.

The other reported cases on child trafficking were brought under Section 13 of the Sexual Offences Act (SOA), usually as a second count to a count of defilement contrary to Section 8(1) as read together with Section 8(2-4) of the same Act. However, in such cases, the appeal decision does not necessarily address the merits of the second count of trafficking and accordingly no analyses of the said cases can be engaged in. However, the case of *George Hezron Mwakio v Republic*, which was brought under the SOA, is emblematic of the weakness in the prosecution of human trafficking in Kenya where the appeal judgement rested on the merits of the charge of defilement and the offence of trafficking was not charged despite the fact that the essential elements of transnational human trafficking were present (the appellant was arrested in Tanzania having forcefully made the victim to cross the border).

There are, however, two cases on child trafficking brought under the SOA that do directly address child trafficking charges in the appeal judgments. Although such cases were not brought under the CTA, the principal legislation, they will still be analysed as they either make reference to the principal legislation or refer to the Palermo Protocol for clarification.

The first, *Ezra John Nyangena v Republic*, is another case that reflects poorly on Kenya's prosecution service. The appellant appealed against a conviction and sentence on two counts under the SOA, the first count being that of child trafficking contrary to Section 14(a) of the Act. The case was not decided on merit as the Judge ruled that: 'The Trial Magistrate correctly noted that the proper

offence was not under Section 14(a) of the Act which deals with child tourism but under Section 13(a) of the Act dealing with trafficking'. The Court further noted that, at the time the appellant was charged, the offence of child trafficking under Section 13 of the Act had been repealed by the CTA. Thus the appellant could not face the first count, which was in respect of a non-existent offence. The appeal was allowed and the conviction and sentence for the first count was quashed.

In *Kenneth Kiplangat Rono v Republic*, the appellant was charged with the first count of defilement of a girl under the age of fifteen years contrary to Section 8(3) of the SOA and the second count of child trafficking contrary to Section 18(1) of the same Act. In relation to the second charge, in examining the elements of the offence, the Court of Appeal found that the offence of 'trafficking' and the term 'child trafficking' was not defined in the SOA. The Court of Appeal thus turned to the definition of 'trafficking in persons' in Article 3(a) of the Palermo Protocol. It was held that this definition informed the offence of trafficking for the purpose of sexual exploitation. The Court re-examined the evidence and concluded that because the charge of defilement was not proved, it was not possible to then establish the charge of trafficking for sexual exploitation. The Court also agreed that the age of the complainant was not proved by medical evidence. It highlighted Article 3 of the Palermo Protocol: 'In a case where the age of the victim is uncertain and there are reasons to believe that the victim is a child, a State party may, to the extent possible, under its domestic law, treat the victim as a child in accordance with the "convention on the rights of the child" until his/her age is verified.' It was held that it was possible for the State to prove the age of the child but had failed to do so. The court thus concluded that the elements of Section 18 of the SOA had not been proven beyond reasonable doubt and as such the appellant's appeal was allowed in its entirety. This shows another instance of poor prosecution. However, it appears that the court was well versed with the laws on child trafficking and took the further step of consulting the Palermo Protocol on definitions that the Sexual Offences Act lacked.

The remaining reported cases on human trafficking are not reviewed here as they raised procedural issues such as plea taking rather than issues of merit or rested on misapplication of the trafficking offence.

Conclusion and Recommendations

As noted by the UNODC and other stakeholders in the fight against human trafficking, there needs to be a concerted effort to eradicate this vice. Part of this effort involves state parties to the Palermo Protocol meeting their obligations therein on the criminalisation and prosecution of human trafficking within their domestic legal orders. Kenya enacted the CTA as a direct response to its obligations under this Protocol. Kenya similarly possesses other sector-specific legislation such as the Sexual Offences Act and the Victims Protection Act. Together these laws provide an impressive domestic response to human trafficking. Under the CTA, the principal legislation, Kenya has incorporated the criminalisation requirements set out under the Palermo Protocol's Article 5. To its credit, the Act has gone a step further and made novel provisions such as those in Section 4.

This article's aim was to analyse the extent of the implementation of the Protocol with respect to criminalisation and prosecution (rather than other obligations such as victim protection). A review of human trafficking cases to ascertain judicial interpretation of this legislative framework and to gauge the level of implementation shows very clearly that the number of cases that have been prosecuted is minimal for an Act that has been in operation for over ten years.

Nevertheless, the review disclosed that superior courts have a good grasp of the legislation on human trafficking, as demonstrated in the *Kenneth Kiplangat Rono* case. It is also clear that the courts have been willing to employ an innovative reading of the CTA to ensure the provisions of the law are met, as was the case in *Doris Kemunto v Republic*. Conversely, the review also disclosed ineffectiveness on the part of Kenya's prosecution service and trial courts to effectively investigate and prosecute human trafficking cases. Glaring mistakes in some of these cases had fatal implications for the conviction of offenders at the appeal stage, as in the case of *Halima Adan Hassan*. In *Muhammad Asif v Republic*, the appeal turned on the fact that the trial court had failed to take plea – a most basic requirement of the criminal procedure process.

In conclusion, as much as there exists a good legislative response to international human trafficking standards in Kenya, it is apparent that there is no substantive implementation of this legislation in practice.



Recommendations

1. In order for the Government of Kenya to ensure effective prosecution of human trafficking offences, it should provide for the training of its prosecution service and trial courts on effective ways of investigating and prosecuting trafficking cases. The steps taken by Israel, a Tier 1 country, can be emulated. These include extensive anti-trafficking training, awareness-raising workshops, and seminars to officials; and increased training to ensure that all judges hearing criminal cases participated in a mandatory training on sex crimes and trafficking in persons (US Department of State, 2019, p. 254).
2. It is recommended that Kenya increases its investigation and consequent prosecution of human trafficking offences. Only then will its legislative fire power have a deterrent effect on offenders.
3. The existence of fines in lieu of imprisonment may interfere with the deterrence effects of the CTA as human trafficking is arguably a very lucrative offence. It is therefore recommended that Kenya amend its laws to remove the option of fines in lieu of imprisonment in sentencing. This would bring the CTA into line with Kenya's Penal Code, which does not allow for fines in lieu of imprisonment for serious offences.

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'Make Plans and Judge Yourself'

Interview with Ambassador Christian Fellner

You were there when the international community took a very bold step to regularise, categorise, but also define the way we address human trafficking in Palermo, twenty years ago. How do you see that time?

People who work with law need to define things. Therefore, the international community thought it useful to work on a framework for the fight against international organised crime [...] and trafficking in human beings was part of it. [...] During negotiations, we worked out a framework which made it clear to the states parties this is the framework we can use and transform into our legislation. [...]

People say that human trafficking is the fastest growing criminal activity across the world. Have you really made an impact?

We have created a framework that allows international cooperation [...] against those who are doing things we believe are not good. Without this framework, this would not be possible. Do we still have trade in human beings? Yes, we can see it and that's not good. But we do have the framework. We have to work on more intense cooperation, more information-based evidence, better policing of these things and then to bring the perpetrators to justice. Another thing which would be very important [...] is where the proceedings are going. There is a lot of money in this business [...]. It's time to see where the money goes and to confiscate the money and bring it to good use, for example [...] to compensate the victims of trafficking in persons.

I think this is one of the Achilles heels of counter-trafficking work. In Kenya - but Kenya is not the only example - the process of making the traffickers pay the victims is virtually non-existent. Why is it a challenge?

It takes a long time. Young people might believe it's too slow but cultures, legislations, they don't change easily. [...] Connected to organised crime is money laundering and money laundering is an industry. People use a lot of intellectual energy getting their blood money washed white. It's very difficult [...] [but] maybe in a few years, we'll be able to look at accounts where the police and intelligence services suppose there is money which is illegally collected and they may be able to get it through international cooperation. [...]

Sometimes in countries like Kenya victims are not victimized by organised money-driven criminal groups. Often human trafficking is in the local setup with a lot of cultural support. What would you say about this?

No doubt there are [these exploitative] situations and it very often has to do with poverty. [...] But again societies are working on it and the framework given by the international community. Laws have not only a direct effect on what people have to do and what police can do, but also an indirect effect because the law says this should not be done and this is something that works in your consciousness. [...] You can at least have a discussion with full support of the law. You can say look, that's not right and this is going to work in the state of mind of the people. They are going to know over time this is wrong. [...]

Kenya has this history of ten years of countering human trafficking. Are we on the right track or still going in the wrong direction?

First of all let me congratulate you and your organisation for the fantastic work you do. [...] You are on the right track. You are improving structures, negotiating with the government. There are a number of good laws in Kenya. Maybe implementation is not perfect, but training of judges, police and prison wardens is necessary. So all these structures should be worked on. [...] But you are also working on the individual, because if there is a victim of trafficking [...] this [person] also needs assistance now. So you are working on several tracks [...] and always in cooperation with the government because we have to work with those who are actually 'legally' responsible for things. You are assisting them with your experience, your resources and I'm proud as an Austrian that we support your activities.

We are opening a second decade of counter-trafficking work in Kenya. If you were to advise the decision-makers to focus on one thing only, what would it be?

Maybe you are surprised by what I'm saying now. The one thing I will tell authorities, make plans for the next decade and judge yourself every year or maybe every second year [on] how far you have gone with the plan. [...]

Overview And Impact Human Trafficking Trends In Kenya

Mr. Tonny M. Odera

Delivered at the Legal handbook for supporting victims of trafficking launch 28 October 2022

A. Background

Chapter four of the Constitution of Kenya 2010 contains the fundamental rights and freedoms guaranteed to all citizens and residents of Kenya. These include inter alia the **right to life (Art. 26), right to human dignity (Art. 28), right to protection from slavery, servitude and forced labour (Art 30), freedom of movement and residence (Art. 39) and access to justice (Art. 48).**

These rights I have highlighted and would pose the questions is everyone free to enjoy these and other rights guaranteed by the Constitution?

Everyone should be free to pursue their dreams and desires for a better life in any part of the world subject to the applicable laws. Can we turn a blind eye when our brothers, sisters, friends, relatives or person known to us who in their pursuit for work and income are through force, fraud, and coercion are subjected to inhuman, degrading, slavery and/or are forced to work in such conditions both within and outside the country that is against their will? This is the genesis of human trafficking or modern-day slavery as it is called.

B. Impact of Human Trafficking in Kenya

Kenya is a state party to the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (PALERMO PROTOCOL)** and has also enacted among others the following laws to curb human and child trafficking in Kenya including;

- Counter Trafficking in Persons Act, 2010
- Counter Trafficking in Persons (Regulations) 2015
- The Children Act, 2022
- The Victim Protection Act, 2014
- The Legal Aid Act, 2016
- The Sexual Offences Act, 2006
- The Employment Act, 2007, etc

Human trafficking in Kenya is a criminal offence and also a violation of human rights guaranteed by the laws of the land and has the following impacts;

1. **It is a heinous crime** that sees victims undertake work (including sexual exploitation, pornography, child sex tourism, prostitution, organ harvesting, etc) against their will. Sometimes the work is undertaken under violence, threats of violence against them or their family, sometimes the work is undertaken to pay off a debt that only ever grows larger.
2. **This takes away the victim's freedom**, forces them to work in what are frequently appalling conditions with no hope of escape and some either get grievous harm/injury or even die as they attempt to escape the deplorable conditions.
3. **Post-traumatic stress disorder** - The victims of human trafficking suffer trauma and other consequences that are harmful to their health and to treat this will result to them or their families **incurring costs for treatment and care which are expensive** more so since the victim never made any income.

However, we should be cognizant that these costs relate to the health care and judicial

treatment of the person being trafficked as an offender in some countries and face charges for immigration and related offences.

4. Other **social or community costs** are associated with multiple recoveries and the associated health and justice costs, including costs expended on recovery and reintegration of the person being trafficked back into the community such as the costs associated with ongoing counselling, community support, job training, community placement, starter packages (ongoing) and future follow-ups.
5. **Loss of taxes & revenue by governments-** Since human trafficking revenue is illegitimate criminal income it is not captured as business revenue or income tax, and tax revenue as a result is lost.
 - i. In the case of sex trafficking/exploitation the traffickers may earn annual revenues of \$250K per victim have been calculated as typical, and which the trafficking victim may well require more community and health support, the off-setting tax revenues do not exist.
 - ii. In the case of labour trafficking, the trafficking victim is tasked with providing labour that generates income, but since they do so against their will and for no wages, there is also a loss of tax revenues.
6. **Economic imbalance** - Any economic model that utilizes slave labour creates an imbalance to all other participants in that sector of the economy. Labour always has a cost for the production of goods or the delivery of services in every economic model.

Therefore, labour and production costs impact upon the final cost for goods or services. Any company or endeavour that can illegally remove their labour costs puts themselves at an advantage in the market place, allowing them to undercut legitimate and lawful businesses and enterprises.

C. Legal Trends on the situations of Human Trafficking in Kenya

The law enforcement measure continues but are not adequate to address official complicity in trafficking crimes, which remained pervasive. The Counter-Trafficking in Persons Act of 2010 criminalized and prescribed penalties of 30 years to life imprisonment, a fine of not less than 30 million Kenyan shillings or both. These penalties were sufficiently stringent but the trafficking continues to be rampant.

The US Department of State 2021 Trafficking in Persons Report for Kenya finding is that in 2020, the **government reported initiating investigations of 18 trafficking cases**, including at least four child sex trafficking cases, one child labour trafficking case, and one adult labour trafficking case, compared with **six trafficking investigations initiated in 2019**.

✓ **How many incidents of trafficking in persons were highlighted in 2021 from our work at HAART?**

The government **reported arresting 11 alleged traffickers in 2020**, a decrease from at least 42 arrests in 2019. Arrests included a German national involved in child sex tourism and six Kenyan nationals for exploiting Ethiopian victims in forced labour; other arrests included charges of child sex trafficking and child labour trafficking, but the government **did not provide further information** on these cases.

The government reported **prosecuting 46 individuals** under the 2010 anti-trafficking law **between July 2019 and June 2020**, compared with at least 22 individuals prosecuted in 2019; however, some of the prosecution data provided fell outside of the current reporting period.

It is good to highlight that the government continued to enhance the investigative capacity of the Directorate of Criminal Investigation's (DCI) Anti-Human Trafficking and Child Protection Unit (AHTCPU) by increasing its personnel from 33 to 37 officers—27 in Nairobi and 10 in Mombasa—and planning to open a third office in Kisumu. However, the numbers still remain too low to comprehensively address and handle the numerous cases of trafficking in persons occurring in various parts of the country.

Apart from the COVID-19 pandemic-related challenges, officials also reported that law enforcement action under the 2010 anti-trafficking law remained minimal for various reasons, including: **limited**

police awareness about evidence collection and its use in proving a trafficking crime; corruption; the increased challenges of pursuing a trafficking prosecution instead of treating incidents as immigration violations; and the complexity of proving all the elements of trafficking.

Kenya remained on Tier 2. These efforts included increasing the number of investigations and prosecutions of trafficking crimes; convicting more traffickers; increasing personnel dedicated to specialized anti-trafficking police units; and launching a new hotline to report trafficking crimes.

However, the government did not meet the minimum standards in several key areas. The government identified significantly fewer trafficking victims, and protection services for identified victims, particularly adults, remained limited and inconsistent in quality.

The government often tried trafficking cases as immigration or labour law violations rather than crimes under the anti-trafficking law, which resulted in suspected traffickers receiving less stringent sentences. Additionally, because of the lack of screening among migrants, authorities reportedly detained and deported potential trafficking victims for suspected violation of immigration laws. Observers reported the Counter Trafficking in Persons Secretariat remained without sufficient staffing or funding, hindering overall progress on anti-trafficking efforts.

D. Recommendations and actions to be taken

The trends from recent highlights in the media coupled by the fact that the World Cup football tournament is scheduled for mid November 2022 in Qatar. There have been numerous persons migrating from Kenya to the middle east countries for jobs and similarly there have been very concerning recent revelations of Kenyan victims of trafficking stranded in the same middle east countries.

We cannot stop people for pursuing their dreams but we have a duty to ensure that we protect our citizens from falling into traps set up for them by traffickers. We can do so by doing the following;

- Increase efforts to vigorously investigate, prosecute, and convict traffickers, including complicit officials, and sentence convicted traffickers to adequate penalties, which should involve significant prison terms.
- Ensure protection services are available for all victims, including adult victims and foreign nationals.
- Fully implement the national referral mechanism and encourage law enforcement officials to formally refer trafficking victims for assistance.
- Systematically and proactively identify trafficking victims by screening vulnerable populations, such as refugees, asylum-seekers, individuals in commercial sex, and all foreign workers, including Ethiopians, Ugandans, Somalis and other persons, for trafficking indicators and refer all victims to appropriate services.
- Increase protective services for victims participating in the criminal justice process to prevent re-traumatization including offering legal aid.
- Establish a shelter dedicated for trafficking victims to receive specialized care or provide funding or in-kind resources to **NGO like HAART Kenya** that run such shelters.
- Increase data collection and data sharing among relevant agencies to synthesize and analyse nationwide law enforcement and victim protection data related to trafficking crimes.
- Expand training to all levels of the government, specifically to law enforcement personnel and local authorities in rural and coastal regions, on identifying, investigating, and managing trafficking cases.
- Continue to regulate and oversee overseas recruitment agencies and train inspectors to report potential violations to the appropriate officials. The Agencies that are implicated in human trafficking should **IMMEDIATELY** be suspended/deregistered and the agents arrested, charged and prosecuted for trafficking related offences and the proceeds frozen/impounded and remitted to the Victims of Trafficking Assistance Fund.







ARTWORK Title “MBONA”(“WHY”) by Stephen Otieno Okuku

Title : “MBONA” (“WHY”)

Size 200cm by 150cm.

Acrylics on Canvas

Biography

Stephen Otieno who is known as Okuku in the field of art is a Kenyan born artist based in Nairobi. He specializes in drawing, painting, fashion and graffiti; charcoal on paper, pen and ink on paper, acrylic on canvas and spray paints his my main medium.

He has worked alongside other great artists in the Kenyan graffiti scene doing projects in different parts of Nairobi including Mathare, Dagoreti, Kenya National Theatre, Buruburu, SouthB, Eastleigh among others.

His work has been exhibited in several group exhibitions at the Village market, Alliance Francaise, Nairobi University, PanAfric, National Museum among others and also participated in several Manjano Exhibitions.



Partnership

Addressing Trafficking for Sexual Exploitation in Kenya: The Need for a Gendered Response

Tsitsi Matekaire

Introduction

Kenya is a source, transit and destination country for human trafficking for sexual exploitation (hereafter referred to as sex trafficking). Sex trafficking is a hidden crime and human rights violation, and its scale in Kenya cannot be easily quantified. Despite its prevalence, there is no consolidated national database on human trafficking. Furthermore, many cases go unreported for a number of reasons. First, there is limited awareness of sex trafficking as a human rights violation and crime among victims and survivors and their communities. Second, survivors are often blamed and stigmatised; when they do report, their cases may not be taken seriously or properly investigated. Finally, in some instances, cases are not recorded as human trafficking offences. Prosecutions and convictions are few (see also Adionyi in this volume), resulting in limited public confidence in the justice system's ability to hold traffickers and others who exploit victims accountable and to ensure that victims and survivors obtain justice. These intersecting factors contribute to a culture of impunity, enabling traffickers to continue to benefit and make huge profits from sex trafficking.

Despite the challenges in understanding the full scale of the problem, sex trafficking is prevalent in Kenya, with women and girls constituting the majority of victims. Research shows that Nairobi is the main destination for rural to urban sex trafficking within Kenya and also serves as a transit hub for the trafficking of women and girls to other African countries, including neighbouring countries such as Uganda and Tanzania as, well as to Asia, Europe, and the Middle East (Freedom Collaborative and Stop the Traffik, 2020, pp. 4–5). Equality Now's partner organisations report that young women and girls are also trafficked into tourist regions of Mombasa and Naivasha from other parts of Kenya, and they are often exploited through the entertainment and tourism industry, as demonstrated by recent cases of women and girls being trafficked into Mombasa for sexual exploitation under the guise of being dancers (Bhalla, 2019). According to observers, restrictions introduced to address the COVID-19 pandemic have resulted in more victims being confined to the same location as their traffickers, thus exacerbating their exploitation (US Department of State, 2021, p. 331).

This article discusses the continued vulnerability of girls to sex trafficking a decade after the passing of the Counter Trafficking in Persons Act, 2010, and argues for a gendered approach to addressing the problem. Based on the experiences of adolescent girls who have been subjected to or are at risk of sex trafficking and sexual exploitation, it first explores how sex and gender-based discrimination and intersecting structural inequalities continue to establish conditions in which women and girls are particularly vulnerable to sex trafficking. These girls' testimonies were shared with the author by Equality Now's local civil society partners, namely Trace Kenya and LifeBloom Services International, which work with adolescent girls in Mombasa and Naivasha. It then goes on to examine Kenya's legal approach to addressing sex trafficking and offers recommendations on how the legal system could be strengthened.

Vulnerability and links with trafficking for sexual exploitation

Girls and women make up the overwhelming majority of persons trafficked for sexual exploitation globally (UNODC, 2020, p. 33). Sex and gender-based discrimination and intersecting inequalities result in women having a generally inferior position in society, which in turn renders them vulnerable to exploitation. Discrimination and inequality against women and girls are often underpinned by customary and codified laws or reinforced by a lack of laws and other measures to promote gender equality and women's rights. Within patriarchal society, women and girls are also subjected to gender stereotypes that reinforce their inferior position, whilst men are accorded privilege and power over both women and the institutions that govern the societies that they live in. Patriarchal systems operate in the family, the economy, the justice system, law enforcement, and in politics and decision-making. Furthermore, the value of women is often perceived in relation to their sexual and reproductive roles and is further minimised on the basis of other forms of discrimination such

as race, class, age, ethnicity, disability, religion and immigration status. When these intersecting inequalities are compounded by poverty, the effects can be catastrophic for women and girls.

In Kenya, the testimonies of adolescent girls who have experienced or are vulnerable to sex trafficking and sexual exploitation vividly illustrate how discrimination and inequality often start in early childhood. Although Kenya's 2014 Demographics Health Survey showed that the majority of women and men (67 per cent and 69 per cent respectively) reported having no sex preference, among those who did, a higher proportion of men than women prefer sons (NCPD, 2020, p. 26). Traditional patrilineal societies in the Great Lakes region generally value boys over girls, and anthropologists working with the Gabbra, a patrilineal and patrilocal society, found that women with no son have shorter birth intervals than women with at least one son (Rossi and Rouanet, 2015). Under the pressure of giving birth to a boy, women will have pregnancies in quicker succession.

The different value placed on boys as compared to girls affects families' and communities' perceptions of the rights and privileges that they should respectively enjoy. Predominantly, in these situations, girls will be disadvantaged. The testimonies of girls who have experienced sex trafficking and sexual exploitation show that when families are living in poverty, girls are often worse affected than boys. Many girls reported that their situation deteriorated after the loss of a parent or parental care, when they were forced to take on the role of caregiver to their siblings. For instance, many girls reported that they did not have the same access to education as their brothers. As they reached puberty, they were more likely to drop out of school to work to supplement the family's income. Parents and caregivers are themselves constrained by poverty, and often do not ask what 'work' a girl may be doing or may turn a blind eye even when they know that it involves sexual exploitation. When coerced by traffickers and pimps with promises of the money they can earn in the sex industry, these girls feel they have no choice and become trapped in a life of sexual exploitation. Although boys also experience sex trafficking, the life path for a boy from the same family and circumstances is likely to look different and is less likely to end in sex trafficking and sexual exploitation.

As they enter adolescence, girls face new vulnerabilities compounded by those already experienced in childhood, and their life trajectories can continue to diverge dramatically from those of boys. If no safeguards are in place, these changes may result in loss of rights and vulnerability to exploitation. Key vulnerabilities arise from girls' social sexualisation – as they undergo physiological changes, society begins to see them as sexual, reproductive and seductive beings. They may no longer be viewed as children who need protection and thus become vulnerable to sexual abuse and other forms of violence such as female genital mutilation, child, early or forced marriage, sexual abuse, and early pregnancies. In Kenya, an estimated 21 percent of all girls and women aged between fifteen and forty-nine have been subjected to female genital mutilation (UNICEF, 2020, p. 4), while 23 percent are married before the age of eighteen (NCPD, 2020, p. 5). Sexual and gender-based violence is based on the notion of power and control over women's bodies; at this stage of their lives, girls have very little control over their sexuality, despite often being stigmatised as seductresses. Ultimately, the sexualisation of adolescent girls condones and creates an environment that enables sexual exploitation. Childhood and early sexual abuse and violence further entrench vulnerabilities. Studies show that the majority of girls bought and sold in the sex trade experienced sexual abuse and harassment in their early lives (Goswami, 2002).

The normalisation of sexual exploitation of girls is evident in the magnitude of their exploitation through sex tourism. Many girls and young women are trafficked and sexually exploited through the tourism industry around Kenya's coastal region. Some ten to fifteen thousand girls living in coastal areas of Malindi, Mombasa, Kalifi and Diani are exploited in the sex trade – up to 30 percent of all children aged between twelve and eighteen living in these areas (UNICEF, 2006). Sex tourism creates a demand for sex trafficking. Equality Now's local partners report supporting many girls who have been trafficked from other parts of Kenya or from other countries. The constant pushing of the boundaries of what is acceptable for girls sexually results in society's acceptance that sexual exploitation is a normal part of life. Research has shown that the normalisation of sexual exploitation combined with economic poverty can result in parents and guardians feeling powerless and being 'complicit' in the trafficking of their children (HAART 2018, pp. 42–43). This complicity also extends to other actors such as law enforcement personnel and community members who may turn a blind eye to the problem (Terre des Hommes, 2014, p. 22).

Adolescent girls also experience vulnerabilities arising from menstrual poverty due to a lack of sanitary products. This is a problem identified by Equality Now's partner organisations in Mombasa and Naivasha but is also a more widespread problem across the country. UNICEF reports that one in ten girls miss school due to periods. A study in Kenya that collected responses from 3,418 menstruating females aged between thirteen and twenty-nine found that 25 percent used materials such as cloth, paper or tissue; among girls younger than fifteen years old, 10 percent depended on makeshift items (Phillips-Howard et al., 2015). The Covid-19 pandemic has exacerbated inequalities and worsened gender-based violence. Equality Now's partner organisations report that families' livelihoods have been negatively impacted by the pandemic and many women and girls have been left unable to meet their hygiene needs. A rapid gender assessment of the Covid-19 pandemic in Kenya revealed that over 90 percent of women and girls reported a decrease or no access to menstrual hygiene products (UN Women et al., 2020, p. v). This situation leaves them particularly vulnerable to sexual exploitation including sex trafficking, as reports show they are pushed to exchange money for sex to access sanitary pads (Phillips-Howard et al., 2015). Equality Now's partner organisations have started to provide sanitary products as part of their support and empowerment programmes to help reduce this vulnerability to sexual exploitation.

Women and girls who are trafficked from other countries into Kenya are driven by the same conditions of discrimination and inequality manifesting as poverty, unemployment and lack of access to resources and opportunities. Young women and girls are lured with promises of well-paying jobs, but instead, on their arrival in Kenya, are sexually exploited through the entertainment and tourism industry. Equality Now's partner organisation in Mombasa reports a number of cases of women and girls from South Asian nations such as Nepal, India, and Pakistan who have been trafficked and exploited through entertainment venues. In 2019, a Canadian-British national in Mombasa was arrested and charged with three counts of human trafficking: harbouring victims, using premises to promote trafficking and confiscation of passports (Bhalla, 2019).

Trafficking for sexual exploitation constitutes gender-based violence

The experiences of girls highlighted above demonstrate that trafficking for sexual exploitation needs to be understood as a consequence of sex and gender-based discrimination and intersecting inequalities. As with other consequences of inequality and discrimination, when sex trafficking occurs in childhood, the resulting exploitation often does not stop when the child turns eighteen. Testimonies from survivors show how, without adequate support, it is difficult to escape sexual exploitation and how, when victims become adults, they are more likely to become trapped in the sex trade in a cycle of abuse. Once they have transitioned into adulthood, society and law enforcement often shift their perspective and view and treat these victims as 'prostitutes'. As a result, abused children grow into adults that are stigmatised and penalised under prostitution provisions in the Penal Code which prohibit living off the proceeds of prostitution.

It is important to recognise that sex trafficking is a result of the exploitation of women and girls' vulnerability. Sex trafficking occurs because those with power exploit and abuse vulnerable people for profit and/or sexual gratification. Although it is difficult to quantify the profits that traffickers make from selling women and girls for sex in Kenya, global estimates show that human trafficking for sexual exploitation is the most profitable form of trafficking, netting traffickers around 99 billion dollars a year (ILO, 2014, p. 15). This money comes from the pockets of those who buy sex; without them there would be no market demand to produce and sustain the roles of pimps and traffickers as 'distributors', nor would there be a force driving the 'supply' of women and girls to be sexually exploited. Whilst there is no typical profile of those who buy sex, buying sex is a gendered exertion of patriarchal power. It is predominantly men who buy sex and predominantly women and girls who are bought. The market therefore results from and is sustained by the same gender-based discrimination and inequality that enables other forms of gender-based violence.

International law and standards establish that sex trafficking constitutes gender-based violence. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others states in its preamble that 'prostitution and... the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community'. Under Global Goal 5.2 of the Sustainable Development Goals, the Kenyan government, together with other governments worldwide, committed to 'eliminate all forms of violence against all women and girls in public

and private spheres, including trafficking and sexual and other types of exploitation'. The Committee on the Elimination of Discrimination against Women elaborated in its recent General Recommendation (CEDAW/C/GC/38) that trafficking and sexual exploitation of women and girls is rooted in structural sex-based discrimination and constitutes gender-based violence. The General Recommendation also highlights that trafficking in women and girls is 'often exacerbated in the contexts of displacement, migration, [and] the increased globalisation of economic activities' (para. 10), all of which increase the vulnerability of women and girls to trafficking and sexual exploitation. To what extent does the existing legal and policy framework around sex trafficking and sexual exploitation in Kenya respond to these issues of vulnerability and abuse of power?

Kenya's legal approach to addressing sex trafficking: opportunities and gaps

The government of Kenya has taken legal measures to address trafficking for sexual exploitation. It has ratified international and regional laws including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), all of which mandate member states to address trafficking for sexual exploitation. Kenya is a signatory to the main international law on human trafficking, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol), which supplements the United Nations Convention against Transnational Organized Crime, 2000 (see UNODC, 2004, pp. 5–51). As already noted, it also committed to the realisation of the Sustainable Development Goals, which include eliminating 'all forms of violence against all females in the public and private spheres including trafficking, sexual and other types of exploitation' (Target 5.2).

At a national level, Kenya's constitution protects people from slavery and sexual exploitation by including as fundamental rights the right to freedom from torture, inhuman or degrading treatment, and the right to freedom from slavery and servitude. More specifically, the Counter Trafficking in Persons Act (CTA), 2010 is well aligned with the Palermo Protocol and defines trafficking for sexual exploitation as an offence committed with the intention of subjecting the trafficked persons to any offence under the Sexual Offences Act, 2006. The CTA acknowledges both internal and cross-border trafficking and, depending on the offence, imposes sentences of between ten years and life imprisonment and fines as high as 30 million shillings, making the law punitive and deterrent. Further, the Act includes provisions to ensure that victims are not punished and are provided with services and support, including compensation through a National Assistance Trust Fund for Victims of Trafficking in Persons. The CTA is complemented by other laws such as the Children Act, which provides for the protection of children from human trafficking and any form of sexual exploitation.

Kenya has also made commitments to gender equality and to improving the rights of women and girls. The constitution guarantees equality and freedom from discrimination and stipulates that every person is equal before the law and has the right to equal protection and equal benefit of the law. Kenya's Vision 2030 reinforces the same principles and values. Other policies and laws have been adopted to promote, enforce and monitor equality and non-discrimination such as the National Policy and Action Plan on Human Rights (Government of Kenya, 2014), the Marriage Act, the Matrimonial Property Act, the Land Act and the National Policy on Gender and Development (Government of Kenya, 2019) among others. As a co-leader of the global Generation Equality's Action Coalition to end gender-based violence, the Kenyan government recently unveiled its commitments to and roadmap for advancing gender equality and ending all forms of gender-based violence and female genital mutilation by 2026 (Government of Kenya et al., 2021).

These legal and policy commitments are impressive and provide a strong foundation for a holistic approach to addressing sex trafficking. However, their implementation could be strengthened. Specifically, regarding the anti-trafficking frameworks, there is limited knowledge and awareness within communities on what constitutes human trafficking, and sex trafficking in particular. Therefore, reporting of cases is low. Increasing public awareness is an important aspect of both prevention and protection for those affected. When cases are reported, they may not be taken seriously and properly investigated. This impacts public confidence in the law enforcement and judicial systems and makes victims reluctant to report cases, breeding a culture of impunity that emboldens traffickers. Despite the prevalence of the problem there are very few detected cases of sex trafficking in Kenya. Overall, the identification of persons trafficked for sexual exploitation

is low with latest figures showing that only eight victims were identified between 2016 and 2018 (UNODC, 2020, p. 32).

Whilst the provisions of the CTA provide that the victims of human trafficking ‘shall not be liable for any offences related to being in Kenya illegally or for any criminal offence that was a direct result of their trafficking’, civil society organisations have reported cases where trafficked persons are in fact arrested for violating immigration and prostitution laws. Local organisations have also reported the limited support and services available to trafficked persons. For instance, due to the lack of available shelters, the government has often placed adult victims and survivors in prisons or detention centres and placed children in centres for juvenile offenders until suitable shelter space becomes available (US Department of State, 2021, p. 330)

Another key challenge is that the Penal Code criminalises soliciting and living off the proceeds of prostitution, thus effectively criminalising those selling sex (predominantly women). These provisions fail to make the connection between sex trafficking and prostitution. Although there are many routes into the sex trade, sex trafficking and prostitution are rooted in the same sex and gender-based discrimination and inequality, and in the male demand for women and girls who can be bought and sexually exploited. Sex trafficking responds to gendered, misogynistic and often racist demands for prostitution, while the criminalisation of victims and survivors of sex trafficking and sexual exploitation serves to increase and perpetuate their vulnerability. The Penal Code does not mandate the imposition of a penalty on those who buy sex (predominantly men). In that regard, the law fails to address male entitlement to paid sex as a key driver of sex trafficking and to acknowledge the exploitative behaviour of those who use their economic power to exploit women and girls. Penalising women and girls, and not those who buy sex also reinforces the stigmatisation and discrimination of already vulnerable people.

Way Forward: An Equality Approach to Addressing Trafficking for Sexual Exploitation

While Kenya has taken legal measures to address trafficking for sexual exploitation, notably through the CTA, this article has highlighted the continued vulnerability of girls and women to sex trafficking. There are opportunities for Kenya to strengthen and build on its efforts to address trafficking for sexual exploitation. To do this effectively requires taking a human rights and gender equality-based legal approach and implementing a holistic and comprehensive strategy that recognises both the push and the pull factors that allow sex trafficking to thrive. Such an approach would need to be underpinned by the understanding that gender inequality and discrimination are at the heart of trafficking in women and girls, and that achieving gender equality and improving the rights of the women and girls affected is paramount to addressing the vulnerabilities that lead to exploitation. It must also address the power imbalances between men and women, and attitudes that promote and condone male entitlement and commodification of women’s bodies. Thus, in addition to promoting equality between men and women and enacting and implementing laws that hold every actor in the exploitation chain accountable – including those who buy sex, as well as pimps and traffickers – an effective approach to addressing trafficking for sexual exploitation would also recognise the vulnerability of trafficked women and girls, and ensure they are provided with support, including to exit the sex trade. Acknowledging sex trafficking and prostitution as structural discrimination and violence against women and girls will lead to an approach that does not treat trafficked persons and those exploited in the sex trade as criminals.

The key components of such an approach would be:

1. Promoting equality between men and women: The approach would acknowledge that sex trafficking is a form of gender-based violence grounded in gender-based discrimination and inequality, and that gender inequality and discriminatory laws and practices trap women and girls in poverty and fail to protect them from violence, rendering them vulnerable to exploitation and trafficking. Women and girls who lack access to resources, such as housing, land, property and inheritance, and those fleeing conflict or humanitarian crises are at increased risk. Women and girls trafficked for sexual exploitation are caught in cycles of sexual violence and assault. It is critical to implement legal safeguards for women and girls to alleviate poverty and provide them with non-exploitative options.

2. Address sex trafficking through laws that hold every actor in the exploitation chain accountable:

The approach would specifically focus on holding accountable those who buy sex, in addition to traffickers and pimps. Countries that have implemented laws that penalise sex buyers, while decriminalising women and girls, have reported a reduction in sex trafficking (Maddy Coy et al, 2016) .

3. Recognise the vulnerability of exploited people and support them to exit the sex trade: When sex trafficking is acknowledged as structural discrimination and violence against women and girls, it follows that sex trafficking victims and survivors require protection and support to exit their situations of exploitation and to access justice.

This approach would rely on the implementation of a well-coordinated ecosystem of laws, meaning that the CTA works in conjunction with other laws relating to children's rights, gender equality and women's rights, access to education and social services, sexual offences, prostitution, sex tourism, and immigration among others. Notably, anti-trafficking provisions are also contained in the Children Act, and harmonisation of comparable offences between the CTA and the Children Act is required. To properly address sex trafficking requires more than implementing the CTA. It also requires collaboration across various government departments, and between government and civil society actors.

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'What Happened Will Always Be in My Mind'

Lindsay

Can you tell me what you remember about your experience?

What happened to me will always be in my mind even if what happened was some years back. I remember I was taken advantage of by a person with the wits to understand I was still a child and I've felt bad about it even today. I feel bad that someone did not understand I was a child and sexually assaulted me and let me go through hardship. [...]

When did you realise that this was not right?

I realised this when I was in Class 7. That's when the threats started and I've always pegged them as a red flag. Threats like 'I won't pay your school fees if you tell your mom or anybody', so you're supposed to keep silent and not tell anyone. The threats got me thinking that what was happening might not be right. I became a total loner then. We also used to sing a song in school that no one should touch your private parts, no one should see them.

What were your feelings and thoughts?

At first, I felt it was good for a girl child and it is what other girls went through, but because I didn't interact with them, I didn't know. Sometimes I would sit down and cry and wonder if I really belonged to the family, if I really needed a father. A lot of it drove me back to my childhood since I never had a fatherly figure in my life, so I felt having a father ruined the life I had with my mother.

How did you find yourself in the hands of HAART Kenya?

My performance in high school was going down so my teacher referred me to a counsellor. I cautiously spoke to the counsellor at first, but I gradually opened up. The counsellor then went on to say that I can't go back home and need to be protected. I did not understand what was happening, but I agreed with the counsellor that I needed to stay away from home. [...]

How did the first few days at the HAART shelter feel like?

I found girls and this made me happy. I had a bad perspective of men. I also thought about how I'd miss my mom and my siblings but at least I knew it was good to stay away from dad. A lot was going on in my mind.

What was your experience at the shelter?

I got mentorship from various counsellors [and] leadership skills that made it possible for me to apply for a leadership position in school. I have the courage to speak out for myself and I can have ideas like any other person and be treated as a child. I also started playing with dolls. [...]

The most memorable experience was food together. I liked how we were sharing meals even with the seniors. Leaving the shelter for team building exercises was also amazing.

What can you say about this particular experience and how it has impacted you?

I feel encouraged, that I'm not someone numb who can't speak out for themselves. Someone whose decisions don't have to be made for them. I feel great like a lady who is independent and stands up for herself.

How has the journey been from when you left the shelter to where you are now?

I went home when I left the shelter [after twenty-six months] and found the man there. But I was like 'I got this' and I considered all the mentorship I had received and decided I was not going to fail anyone. From there, I found my way to university and am currently doing counselling psychology. I would like to focus on children so they can speak out and say what's on their mind, not be silent like I was.

What do you think were the barriers that kept you from coming forward?

The threats and the thought of ruining my family's reputation. The idea that a father provides was also right there. The thought of what my family would think about me after I reported was something I also considered.

What suggestions do you have to help children come forward?

There are agencies, counsellors and those people that children trust. Even if it is your family you don't trust, there can be a friend. Don't be silent, share your thoughts. Keeping silent never helped me but speaking got me to a safe haven and where I am now.

Voices Of African Migrants: How Media Can Transform Reporting

Rosemary Okello-Orlale, Paul Kiage

Introduction

According to the United Nations High Commissioner for Refugees 2015 report, sub-Saharan African countries host more than 26 percent of the world's refugee population. In Eastern Africa, Kenya hosts the largest number of communities vulnerable to human trafficking, both citizens and foreign nationals. It also borders countries classified as places of origin for victims of trafficking in the Horn of Africa (HAART, 2020). In addition, legal and illegal employment agencies recruit Kenyans to work in other parts of the world, who sometimes end up being exploited. But little is being done to ensure that issues related to migration are covered accurately by the media in Africa or that voices of migrants and those affected by migration are being heard. Migration is not a priority on either the political or the media agendas in African countries

In the 2020 Trafficking in Persons Report, the United States ranked Kenya at Tier 2. The Report shows that Kenya has made significant progress in the identification of human trafficking victims, creating the victims' fund to support survivors, and launching a cybercrime centre to investigate human trafficking. Yet, despite recording these gains in the last decade, human trafficking continues to plague Kenya. As the COVID-19 pandemic, and human and natural disasters affect economies, businesses and households, criminals continue to take advantage of desperate job seekers. Collectively, these conditions make Kenya as one of the global hubs for human trafficking; a source, transit and destination for humans trafficked for forced labour, and sexual exploitation.

Migration in Africa is often associated with conflict leading to the mass movement of people within and across borders. Increasingly, it has also been linked to individual's decisions related to socio-economic and educational opportunities and cross-border trade.

What has come out clearly is that the voices of migrants have not been very audible in today's 24-hour news cycle. The realities of the women, children, men, disabled, elderly involved in migration journeys are not given visibility or given priorities by reporters. The way the media houses have continued to report has not contributed comprehensively to better public understanding on migration challenges. Since Journalists are required to reflect reality in all its dimensions and to further the understanding of their audiences, and to highlight areas for policy attention, it is critical to build the capacity of media practitioners on giving voices to the migrants through strengthened reporting and quality journalism.

The article on Voices of the African migrants looks at ten (10) years of Counter Trafficking in Persons Act: Achievements and Opportunities and how the media can transform migration reporting in the continent using new technology. Journalists are continuously being required to better reflect reality as their readers, viewers and listeners know the reality on the ground. It is

critical to build the capacity of media practitioners on giving voice to human trafficking issues based on the Act and understanding the context of migrants' issues through Data Journalism. It also focuses on the fact that despite Kenya's Counter-Trafficking in Persons Act, the cases are still on the increase and its impact is not properly communicated to the public. It will also investigate how Data Journalism can transform media reporting on human trafficking in Kenya when narrative, numbers and visuals are merged to tell the migrant stories.

Ten Years of Counter Trafficking in Persons: Challenges and Opportunities

This study re-examines the achievements, current challenges and opportunities of the last ten years since Kenya promulgated the Counter Trafficking in Persons Act in 2010.

Kenya establishes the National Assistance Trust Fund for Victims of Trafficking

To protect, support, rehabilitate and reintegrate victims, Kenya Government established the National Assistance Trust Fund for Victims of Trafficking in 2020. The Treasury allocated the

Fund 20 million Kenyan shillings and while this is a good sign of commitment, lack of framework regarding its disbursement and weak enforcement continue to derail the Fund's effort to reach the victims.

For example, the first disbursement to a victim was as a result of a lawsuit in the country's court. Part of the Fund's budget has been channelled to provide shelter, food, medical care, psycho-social counselling, legal aid, rehabilitation and reintegration support to victims. The gaps in the Fund's framework inhibit service delivery to victims. In one instance, officers serving victims were forced to use personal cars and funds to provide services to identified victims. Due to the government's bureaucratic procedures, officials often experience delays in releasing the funds, undermining their efforts to provide services that are considered emergencies.

To complement their objectives, the Government works closely with NGOs to care for the trafficking victims, whether in providing shelters, clothing, medical check-ups, or operating hotlines. From the sources assessed in this study, it is concerning that the Government over-relied on NGOs to run State owned shelters for trafficking victims. Nevertheless, the Government performed well in providing security to victims and witnesses, in and out of courts, and acting on referrals and leads to prevent human trafficking. On the other hand, the Government demonstrated preferential treatment by prioritizing shelters for its citizens over foreign victims. Foreign victims have limited shelter options.

Consider, for example, the situation where every Kenyan adult victim who needs a long-term shelter service must get an authorization from the Cabinet Secretary for Labour and Social Protection, in a process and system already overwhelmed by bureaucratic norms. The limitations in shelters and other services explain why Kenyan immigration officials quickly repatriate foreign victims, sometimes exposing victims to the threats they are fleeing from in their home countries.

To curb human trafficking, the Government of Kenya, NGOs and other stakeholders, such as the media need a more coordinated strategy. Majority, 70.5% of victims of domestic trafficking, are sourced from rural areas, where the presence of law enforcement personnel is minimal, and awareness among the general public is significantly low with little presence of qualified media professionals. There is urgency to train media practitioners in these regions on ways to identify, investigate and report cases of human trafficking. The gap also calls for increased cooperation with local leaders, religious organizations, community-based organizations, and local institutions. There is an urgent need to train more personnel and law enforcement officers in rural areas, including immigration officials at the ports of entry in the border towns. Besides increased training, the Government has the responsibility to manage corruption, which fuels human trafficking.

In these trainings, the Government needs to significantly incorporate ethics curricula and cultivate practices that discourage corruption in this area of service, and other sectors in general. It would be a good idea to organize in-service programmes for serving officials. While this may sound costly, the cost of human trafficking - at all levels - is unimaginable. The Government should also intensify training in urban areas. Like other illegal activities, human trafficking mutates to withstand the pressure from authorities and to target new victims. In the past few months, cases of minors disappearing in urban areas across the country have more than doubled. The media and the government have continued to bring child disappearances to public attention, but these recent occurrences depict the changing strategies human traffickers employ to execute their criminal agenda. Unlike before, human traffickers no longer use strangers to target their unsuspecting victims, but increasingly a wide circle of acquaintances. The COVID-19 pandemic effect on schools in Kenya and in the region worsened the situation, with the disappearance of minors in secondary schools, largely girls, dominating the daily headlines.

Even as authorities focus on rural and coastal areas, human traffickers are moving their operations to digital spaces, particularly when targeting victims in urban areas especially in informal settlements. The Government launched a cybercrime centre to investigate sexual exploitation and child sex trafficking cases in the country and in the region. This step enhances coordination among law enforcement agencies, both domestic and external. Observers point out it has improved efforts to regulate recruitment firms that often act as pipelines for human trafficking in the region. Being a regional leader in digital penetration, transformation and usage, Kenya is equally prone to cybercrimes. Several reports indicate Kenyans have been charged with cybercrimes, both in the

country and across the world, including in the United States and Europe. On the other hand, the Government, NGOs and other stakeholders can use Kenya's digital landscape to their advantage to expand training and awareness in areas of human trafficking.

More importantly, the law enforcement authorities and antitrafficking personnel need specialized training to protect trafficking victims. In some cases, authorities penalized victims for unlawful doings their traffickers coerce them to commit. For example, police raids have led to charging potential victims with commercial sex crimes and labour regulations violations in the country. In courts, key witnesses, often the victims, sometimes withdraw their testimonies or do not appear in courts for fear of re-victimization, weakening cases against traffickers. In other cases, witnesses miss courts after deportation, or repatriation. Corrupt officials are at the centre of these legal uncertainties, threatening foreign victims with deportation or denial of basic needs to withdraw testimonies. Legal battles can also run longer in Kenya, making it hard to prosecute traffickers and criminals. Additionally, different stakeholders are divided on the penalty human trafficking as a crime should attract in Kenya. The debate posits human traffic is a very serious crime yet rape still attracts a bigger penalty. Lastly, without specialized training, skills, and experience, prosecutors, investigators, and other personnel may find it hard to establish the intent necessary to charge trafficking suspects. It is vital to address these issues through intensive, multidisciplinary training and research.

To adequately address human trafficking, the Government of Kenya, other governments in the region as well as all stakeholders must commit to address the root causes of these underlying issues, but not limited to violent conflicts, poverty, disasters, unequal access to opportunities and distribution of national resources, gender-based discrimination, community-based discrimination. The triple tragedies of locusts' invasion, the COVID-19 pandemic that caused job losses, and the recent long droughts and famines, coupled with the violent conflicts in its neighbours, precipitate crises that expose individuals and communities to human trafficking. Human traffickers are already exploiting these challenges to expand their activities. The effects of climate change, terrorism threats and violent conflicts will continue to displace individuals and communities in the region. It demands national and international coordination and response to defend and protect the vulnerable populations from human trafficking, and rights violations.

The role of the media

Positive coverage related to issues about human trafficking is important. It can also help build awareness in a way that is more accessible to broader audiences. Successful media coverage of human trafficking can highlight the efforts being made against human trafficking, the partnerships in place working to stop the crime and the success stories of survivors, social workers, law enforcers and many other people doing tremendous work. The stories that can inspire people to focus on solutions rather than problems are a powerful way to reach the public. Media framing should be minimal, the stories should report as they are from the impeccable sources.

Most coverage on human trafficking by the media has always been termed as "Disrupting the narrative" of *them vs us*. This has made the voices of migrants to be missing in the mainstream media. And they are rarely given a chance to combat myths and misinformation regarding their motivations and experiences

Media continue to show insensitivity, unprofessionalism and lack of understanding on immigrant issues- thus we need trainings and dialogues for media and experts on the issue to enhance understanding and appreciation. Journalists are important in a number of ways in the refugee problem, more importantly, it's because of media coverage that perceptions (positive/negative) are formed about refugees, thus either host communities accept or become hostile to them, set the agenda on policies and treatment of refugees within the confines of both local and international law. It's from balanced media (both traditional and online media) reporting that influences balanced public perception towards mixed migrants and foster strategic partnerships among the media and practitioners working to enhance protection for migrants.

Migrant voices

The absence of the voices of the migrants themselves came up repeatedly during the discussion of various topics. Talking to migrants directly can provide a picture of the main challenges they

confront and where they feel assistance is most needed. It can also provide a more nuanced understanding of the reasons people migrate, their migration calculations, their remittance patterns, their interactions with the state, their approach to documentation, and whether migration increased or reduced their precariousness. On a related point, it was also evident that most migration related research adopts a narrow migration focus. While research can and should do more to include the perspectives of those who move, addressing issues of migration also requires a broader perspective that provides a more thorough understanding of migrants' relations to host and sending community members and officials. The inclusion of migrant priorities and perspective does not mean that migrants should be the sole voice in shaping agenda, but their experiences are important.

The media play an important role in society, primarily as communicators of information to citizens and watchdogs who provide political, economic, and societal oversight to hold governments and their officials to account. They wield significant power to shape and influence public perception on key issues, one of which is migration. The 2018 World Migration Report draws attention to the complex relationship between media and migration across the world. It calls on us to unpack the impact of press coverage on migration and how this can influence and change the attitudes of people, including policy makers, and societies towards migration

The media have a responsibility to report on the complex nature of migration, and provide factual information about the drivers, patterns, trends, consequences, and general implications of migration without stigmatising or objectifying migrants

According to **Afrobarometer Report 2019**; "migration has become a staple of the news in many countries, filled with images of desperate Africans fleeing an impoverished continent, poised to descend on the West." While such reports are not necessarily false given the volume of Africans seeking irregular paths of migration to Europe and the USA, as well as intra-continental migration in Africa, they do not provide the full picture needed for helpful policy interventions and action. Journalists should challenge simplistic, publicly held perceptions through stories which enable both communities and policy makers to move past the stereotypical portrayal of migrants in the media. They must develop an understanding of the complex nature of migration (social, economic, cultural, and political), and that understanding should be reflected in their reportage.

Conclusion

The media can magnify the potentially destabilizing aspects of migration, without also celebrating the positives impacts. In many countries, the public has lost confidence in government's ability to manage migration, widening the confidence deficit between citizens and the state.

The media should challenge the dominant mono-dimensional narrative which associates migration with conflict, poverty, diseases and societal ills, and therefore reinforces negative stereotypes about migrants, entrenching their isolation, subjectification, emasculation, statelessness and muting of voices. The government should not gag the media; they should be given the freedom to report facts about human trafficking.

As the IOM notes, "best practices in migration journalism involve putting the individual first and giving migrants a voice. It also requires the careful and accurate use of terminology, prudent use of images, and care not to contribute to the reinforcement of stereotypes and myths." In addition, introspection by the media on their role in the migration crisis and ongoing migration debates, and a commitment to objective, balanced reporting are crucial steps.

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'Miracles Can Happen'

Bishop of Ngong

Do you think we can eradicate human trafficking from Kenya in the next ten years, or at least reduce it significantly?

If every effort was put [into] the creation of awareness and [...] all the agencies concerned made a concerted effort we could significantly reduce the level of human trafficking in the next ten years. However there ought to be very aggressive awareness creation and advocacy. The church could make this part and parcel of its pronouncements because the church is a force not only through its homilies but also through other fora where the plight of our brothers and sisters who are exposed to human trafficking could be addressed. [...]

Together [with civil society] we can push for issues of investigation, prosecution and conviction and also preventive measures. I learnt just a few days ago of some twenty women who were about to be flown out of the country somewhere in Nyeri – so those kinds of efforts to prevent such pending or looming abuses [...] so that we do not just deal with the aftermath. [And] in every diocese there should be a shelter. [...] Efforts being made are commendable but of course there is so much to be done because it is an area where you cannot put your finger on it and say 'well this it'. Trafficking is pretty illusive.

Eradication! I am not ruling out any possibility for a miracle. I believe miracles can happen and if it is eradicated that would be the greatest happiness. But if we put in more efforts I believe it is possible and we should really aim at significantly reducing human trafficking in Kenya in ten years. But everybody has to do his part. [...]

Do you think that this is an area where we should be more keen on collaborating with other churches and religions?

Absolutely. [...] We have a working, very active dialogue reference group where we address issues of justice, peace and common moral issues in the country – very active with representatives from [among] Hindus, Muslims, Catholics, Protestants, Evangelicals. [...] I have been a member for the last six years. We have not addressed [the issue of human trafficking] squarely [...] A lot more could be done in that area as an interreligious body. We also have another forum for mainstream Christian churches. We address issues of justice and peace, but I don't remember an occasion when we centred our attention on this and I believe that it would be an area to focus on. Those ecumenical forums, inter-religious forums [...] would add value and a voice to creating awareness and finding ways and means to work significantly towards reducing human trafficking in our midst.

Looking forward ten years, do you think we are going to make significant progress as a society and make human trafficking a minor problem, or we are going to still struggle?

I am an optimist but also a realist. I think a lot more needs to be done by government agencies. [...] Even when there are convictions the sentences are not what one would expect [given the] seriousness of these offenses. [...] [There needs to be] a penalty that serves as a warning to the rest. [...] In the coming ten years I would expect some significant change in the way cases are being prosecuted and convicted [...] and [in] protective measures so that people are not vulnerable. [...] Unless the government addresses the challenge of unemployment there will be room for exploitation of young people especially, so there are social issues that need to be addressed. The [cost] of living is rising day by day. [...] If these gaps are not closed they would open up a gate valve for the young people to be exploited and trafficked because of their vulnerability. There have been promises that the economy will be grown, jobs will be created, young people will be empowered. We hope that if this bears results then we can say with certainty that, yes, in ten years' time there will be significant reduction, but there is a lot to be done. As a church [we] also [need] to build our people, especially young people morally, to build their faith [so] they will be able to choose right from wrong.







ARTWORK Title: Human Trafficking by Erick Muriithi

Title : Human trafficking

Size : 100cm by 66cm

Medium : Acrylics on canvas

Biography

Erick 'Sticky' Muriithi, a visual artist based in Nairobi, Kenya. He was mentored by Patrick Mukabi, a prolific and experienced artist and Uhuru Brown a graffiti pioneer in Kenya. He prides himself in being a multi-disciplinary artist. He works on canvas, paper, graphics, concrete and wood.

He has exhibited in group shows and solo exhibitions at The National museum, The International school of Kenya Sarit centre, Alliance Francaise, Karen golf and country club, the Railways Museum and The Village Market.

About the Authors

Prevention

Johanna Bögel works as an advisor with Deutsche Gesellschaft für International Zusammenarbeit (GIZ) GmbH in the Better Migration Management Programme, which supports the annual Kenyan Civil Society Organisations (CSO) Planning Meetings financially and logistically and is funded by the European Commission and the Federal Government of Germany. This article was written in a private capacity; it does not reflect the opinion of the organisation or the Programme.

Collins Otieno Obwar is an artist. In an interview with Haart Kenya, Collins explained that after finishing high school in 2016, his girlfriend got pregnant. He decided to 'go abroad for greener pastures' so that he could give his child 'a decent life' and help pay his younger siblings' school fees. He and other youth were brought to Dubai to work at the Global Village tourist site. After being paid late for their first month's work, they received no further wages and had to 'hustle', earning cash from street performances so that they could send money home. When Global Village closed in March 2020 due to the COVID-19 pandemic they were owed four months' pay and found themselves 'stuck in Dubai', without money or passports.

Augustine Bahemuka is a researcher, peace practitioner and banker. He is also a guest writer in the Daily Monitor newspaper in Uganda. He holds a bachelor's degree in Biomedical Laboratory Technology (Makerere University - Kampala, Uganda) and post-graduate studies in Philosophy and Theology. He also holds MA in Peace Studies and International Relations (Hekima University College - Nairobi, Kenya). His areas of interest are peacebuilding, refugees and financial inclusion.

Faith Ondeng holds a bachelor's degree in social work from Catholic University of Eastern Africa (2011). She also holds a Master's degree in Peace Studies and International Relations from Catholic University of Eastern Africa through her constituent college - Hekima University college (2020). Faith works as a research consultant at Wasafiri Consulting since October 2016, specialising on perceptions research. Faith also regularly collaborates in various competencies with the Centre for Research Training and Publications at Hekima University College.

Elias O. Opongo is senior lecturer and Director of the Centre for Research, Training and Publication (CRTP) at Hekima University College, Nairobi, Kenya. He holds a PhD in Peace Studies from University of Bradford, UK, and MA in International Peace Studies from University of Notre Dame, USA. He is a conflict analyst and peace practitioner, and his research focus is in the areas of transitional justice, peacebuilding and conflict resolution, democracy and state-building.

Michelle Koinange is passionate about advocating for human rights and the ethical treatment of all migrants. She has worked within the anti-human trafficking space for more than half a decade. Notably, she was the Coordinator of the national CSO Network for 4 years, lead drafter of the first joint anti-human trafficking submission for the Universal Periodic Review (UPR) process, and spearheaded the routes mappings for Kenya and the larger Eastern Africa region.

My name is Rehema, some of my close friends call me Syntax. Despite spending most of my adult years in Nairobi, I was raised and surrounded and molded by an active Swahili culture. As an artist, I am continuously growing creatively through a strong curiosity about societal values and the experiences of the community that surrounds me. This has been strongly shaped through hands-on experience working with non-profit organizations like HAART Kenya. As I stay present in my environment, I am hoping to join in, even more strongly as time goes by, on the dialogue on

humanity and the dignity of every individual. I live for storytelling that will continue to lead us to a place of global inclusivity.

Javan Omondi Ofula, a lover of literature since his school days, has dedicated himself to poetry and composing socially charged pieces that champion social justice and celebrate African culture. With over thirty compositions and numerous performances on different stages, he collaborates with artists and youth organizations to empower the youth through arts. Javan is the co-founder of Mtoto WA Dandora, an NGO in Dandora. He also founded the movement “Hip Hop Cradle,” promoting the growth of young artists and runs a company that fosters arts in slum areas. Selected for projects by the United Nations and Commonwealth Youths, he is committed to organizing youths, bridging gaps, and promoting sustainable peace. Nominated for the Human Rights Defender of the Year 2019, Javan is a prominent leader in the Arts and Sports for Social Justice movement, using arts to champion social change and human rights. He has been part of various movements and alliances, impacting conversations through arts locally and internationally.

Kristen Cheney, PhD, is an expert in international development and humanitarian intervention for children, with a focus on the development of child-friendly and rights-based social policy. She has led research, consultancy, advocacy, and capacity-building projects in Africa, Europe, Asia, and the Middle East on issues from children’s rights to adolescent sexual and reproductive health. Author of two monographs, one edited volume, and many academic articles, Dr. Cheney’s own research has focused on the impact of the global ‘orphan industrial complex’—including orphan tourism, childcare institutions, and intercountry adoption—on child protection in developing countries, primarily in Eastern and Southern Africa.

Michelle Oliel is an international human rights lawyer and child protection practitioner with a specific focus on children in armed conflict and alternative care. Michelle has experience documenting crimes against children across a number of country contexts. For more than a decade, she has worked for UN and UN-related agencies, provided technical support to governments, and supported the work of regional bodies to protect children’s rights. Michelle holds a Bachelor of Arts in Political Science from York University (Canada), a Juris Doctorate (University of Windsor, Canada) and a Master of Laws in International and European Law (Utrecht University, the Netherlands). Michelle is the Deputy Director of the Lori E. Talsky Center for Human Rights of Women and Children at Michigan State University, College of Law.

Marygorret Mogaka is a visionary leader and a champion for children’s rights with a Bachelor’s and Masters of Arts from the University of Nairobi. She is a trained counsellor and has dedicated over three decades to child protection while working with the Government. She currently serves as the Director of Children’s Services and heads the Counter Trafficking in Persons Secretariat in Kenya’s Ministry of Labour and Social Protection, leading the fight against human trafficking. She is also a member of the National Council on the Administration of Justice standing committee on Access to Justice for Children. Her commitment and service to children earned her a Head of State Commendation in the year 2015.

Protection

Sophie Muriuki is a practising Clinical Psychologist (MA) with over a decade of professional experience providing therapy to and rehabilitating victims of trauma and conflict related violence among other psychological issues. She has worked with various organisations in Kenya and Australia seeking to resettle survivors of conflict-related violence. Sophie is also a Certified Professional Mediator and holds membership of the Kenya Psychological Association, Clinical Psychologists Association of Kenya and the Kenya Counselling and Psychological Association.

She has also undertaken specialised training in Art Therapy, Psychological First Aid (PFA), Skills for Psychological Recovery (SPR), and Eye Movement Desensitization and Reprocessing (EMDR Level 1).

Mother Mary is a survivor of human trafficking who has helped to rescue, protect and repatriate hundreds of other victims – domestic workers like Mary herself who ended up on the street or in prison after running away from abusive employers. In an interview with Haart Kenya Mary described her experiences. She had made the difficult and dangerous journey to South Africa aged forty, in search of ‘a better life’. There, she lived in slavery for five years, working unpaid for a family who exploited and abused her, until she was rescued by a pastor who took her into his family. Several years later, Mary travelled to Jordan to work for a friend of the pastor, but after only three months her employer was transferred. Mary said that she found herself ‘in a prison again’ when she went to work for ‘an old lady with a big house’. For seven months she worked there unpaid, subjected to abuse and locked inside the house; she was not even allowed to take the rubbish outside. She even considered jumping out of the bathroom window, but it was too small.

Dr. Robin Redhead is a Course Director at Leeds Beckett University in the UK. She researches the politics of human rights, focusing on how people empower themselves through discourses of human rights. With a background in gender studies, she is concerned with how women are constructed within the legal frameworks of international human rights. Robin works on what implications identity construction has for empowering people. Her current focus is the construction of victims in contemporary practices of trafficking in persons in the context of human rights. She is part of the Peace, Conflict and Human Rights group in the Centre for Social and Applied Research (CeSAR) investigating the importance of narrative in human rights and conflict.

Dr. Radoslaw Malinowski is a founder and CEO of HAART Kenya. He migrated to Africa 20 years ago and has been working with different national, regional and international bodies on issues related to trafficking in persons, slavery and migration. Radoslaw is also a lecturer with Tanagaza University College and published several publications with focus on human trafficking.

Professor Rachel Julian is an internationally recognised researcher working on Unarmed Civilian Peacekeeping/Protection at the Leeds Beckett University, in the UK. She focuses on how the lives and voices of those affected by violence and crisis are recognised. Her work challenges the widespread acceptance of violence in International Relations and the assumption that peacekeeping requires soldiers. In working with community partners in South East Asia and East Africa, Rachel has explored how civilians protect one another from violence, increase their capacity and agency to act, the voices of survivors in influencing policy and how nonviolent feminist analysis generates creative approaches in the midst of complex challenges.

Protection

Claire Adionyi is an Advocate of the High Court of Kenya. She holds an LLM in International Human Rights Law from the University of Groningen in the Netherlands, an LLB Degree (Hons) from the University of Nairobi and a post-graduate diploma in law from the Kenya School of Law. She is currently pursuing her PhD studies at the Institute of International and Comparative Law in Africa (ICLA), University of Pretoria and is also a Lecturer and the Research Director at Strathmore Law School. Claire has an interest in international criminal justice and is a Research Fellow at the Strathmore Institute of Advanced Studies in International Criminal Justice. She has been a visiting scholar at Symbiosis Law School in Pune, India under the aegis of the International Association of Law Schools (IALS) as the recipient of the 2020 Visiting Professor & Scholar Award.

Dr. Christian Fellner, Ambassador of the Republic of Austria to Kenya, is a career diplomat who negotiated the Palermo Convention in 2000 and has worked in various postings in Africa over the past fifteen years. In an interview with Haart Kenya, he reflected on achievements and gaps in the development of the legal framework for countering trafficking in persons over the past ten years.

Mr. Tonny M. Odera is a human rights activist, HAART Board Member and advocate of the High Court of Kenya, Commissioner of Oaths and Notary Public with over 13 years professional experience in legal practice. Tonny has consistently been engaged as a Consultant to carry out specialized assignments on human rights and humanitarian law for international organizations such as UNODC, UNICEF, IOM, ICS, Save the Children, Kindernothilfe, etc and also national NGOs including; The CRADLE, CLAN, REEP, RIPPLES, CWSK, IMLU and also government departments like Immigration, Children's Department, National Police Service, etc where he has facilitated training and capacity building workshops. Mr Tonny actively participated in drafting the Kenya 2010 Counter Trafficking in Persons Act.

Stephen Otieno who is known as Okuku in the field of art is a Kenyan born artist based in Nairobi. He specializes in drawing, painting, fashion and graffiti; charcoal on paper, pen and ink on paper, acrylic on canvas and spray paints his my main medium. He has worked alongside other great artists in the Kenyan graffiti scene doing projects in different parts of Nairobi including Mathare, Dagoreti, Kenya National Theatre, Buruburu, SouthB, Eastleigh among others. His work has been exhibited in several group exhibitions at the Village market, Alliance Francaise, Nairobi University, PanAfric, National Museum among others and also participated in several Manjano Exhibitions.

Partnership

Tsitsi Matekaire is the Global Lead - End Sexual Exploitation at Equality Now. Tsitsi holds a Bachelor of Laws from the University of Zimbabwe and an LL.M. in Human Rights Law from the University of Nottingham.

Lindsey is a university student who grew up with her mother until a male figure joined the family when she was in Class 4 of primary school. From Class 5, she was sexually abused behind a curtain that partitioned her single-room home. This continued until her second year in high school, when she received support from HAART. In an interview with Haart Kenya, she reflected on her experiences.

Rosemary Okello-Orlale is a well-recognized communication, media and gender expert who finds interest in creating Africa narrative through Data storytelling. Currently she is the Director- Africa Media Hub, Strathmore University Business School whose mission is to increase expert knowledge among the business and finance journalists in the coverage of critical issues related to the global economy and business using data visualization. She has worked with key partners to make Strathmore University set a landmark precedent by becoming the only University in Africa to be hosting Data for over 5 Countries (Kenya, Tanzania, Senegal, Ghana and Sierra Leone) going back 17 years under the African Regional Data Cube (ARDC) – including food systems related data; has a long personal history in analyses/ reporting on food security and climate change issues. She is also in the Advisory Board of the Strathmore Data Analytics Centre (SADAC). Previously she was a Program Officer with the Ford Foundation Eastern African Office on Civic Engagement and Government; Creativity and Free Expression and Advancing Public Service Media Initiative. She has supported the media sphere as a platform to give voice and visibility to marginalized people and the transformation of the alternative media into a critical voice of civil society. She is also a Founder of African Woman and Child Feature Service- a Media NGO where she served as the Executive Director. And the First Secretary of the Kenya Editor's Guild and Africa Editor's Forum. She is also a founder member of the Kenya Media Council.

Paul Kiage is a qualified Population Scientist / Demographer specializing in monitoring and evaluation of reproductive health and development-oriented projects. Kiage hold a B. Arts and M. A. Populations Studies and Statistics from the University of Nairobi. Over the last 20 years, Kiage has acquired practical experience in developing project monitoring and evaluation frameworks as well as monitoring the implementation of development and health programs through engagement with local, regional, inter-governmental, international, public and private organizations. His central areas of expertise are project logical framework matrix design, research proposal development, indicator development and tracking, data analysis and interpretation, capacity building and dissemination of monitoring & evaluation findings. He has competently worked on projects' assignments of national, regional and international nature and his major contributions have been mostly in the area of Monitoring and Evaluation. He has also had the ability to consolidate data from multiple sources coupled with the requisite skills in analysis, data interpretation and report writing. Kiage has extensively researched, published, consulted in the area of reproductive health and development programs in Kenya and in the East African region.

Bishop John Obala of the Catholic Diocese of Ngong is Chair of Kenya's Catholic Commission for Promoting Integral Human Development. In an interview with Haart Kenya, the Bishop offered some thoughts on the possibilities and challenges for eradicating human trafficking in Kenya. This is an issue that not only falls under Bishop John Obala's remit as commission Chair but is also close to his heart; two of his family members, both young men, have disappeared without trace after being trafficked to the Middle East.



Back Cover

Title: Rehabilitation

By Brian Omolo

Artist BIO

Brian Omolo is an illustrator and designer born and raised in Nairobi, Kenya. He works with abstract ideas, putting them together to tell a story. His style is a mix of hand-drawn illustrations which are then scanned, added colour effects on the computer. He was inspired by the line “What does holistic protection, support, rehabilitation and reintegration to victims look like?” In this piece we see his protagonist, the plants are a metaphorical healing agent bringing back to health, plus a protective halo breaking the chains of slavery

Art Description

Artwork title: Rehabilitation

Medium: Digital Illustration

Size: 420 x 594 mm

Coverpage Photography by:

Matilde Simas, Capture Humanity

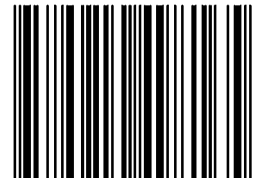
Kabutha Kago, ArtbyKabs

Rehema Baya, Syntax Art

Most of the images are Survivors or Grassroots Community Members who collaborate with HAART.



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