

**INTERNATIONAL LAW AND REGULATIONS ON CHILD TRAFFICKING IN
KENYA**

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DECLARATION

This research project is my original work and has not been presented for a degree in any other university for examination purposes.

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DEDICATION

I dedicate this work to God Almighty who has made this work possible and for being my inspiration during the course of this project. I also wish to dedicate this project to my parents Henry and Sarah who have been a source of support, great inspiration, and motivation. To my siblings; Diana, Rahab, Eunice and James, this would not have been possible without your encouragement. To Martin, Thank you for making this possible.

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ABBREVIATION AND ACRONYMS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	The African Charter on the Rights and Welfare of the Child
AHT-CPU	Anti-Human Trafficking Child Protection Unit
ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
AU	African Union
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CHTEA	Counter Human Trafficking Trust East Africa
CRC-OP-SC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child prostitution and Child Pornography
CSEC	Commercial Sexual Exploitation of Children
CSO	Civil Society Organizations
DCI	Directorate of Criminal Investigations
DCS	Department of Children Services
DHS	Department of Homeland Security
EAC	East Africa Community
EACRN	East African Child Rights Network

EU	European Union
HAART	Awareness against Human Trafficking
ICC	International Criminal Court
ICMPD	International Centre for Migration and Policy Development
IGAD	Inter Governmental Authority on Development
ILO	International Labour Organization
ILO-IPEC	International Labour Organization- International Program on the Elimination of Child Labour
IOM	International Office for Migration
IOM	International Organization for Migration
KAACR	Kenya Alliance for the Advancement of Children Rights
KNHRC	Kenya National Human Rights Commission
MDG's	Millennium Development Goals
NCCS	National Council of Children Services
NCMEC	National Centre for Missing and Exploited Children
NCRC	National Crime Research Center
NGO	Non-Governmental Organization
NHRIs	National Human Rights Institutions
OAU	Organization of African Unity

TIP	Trafficking in Persons
TVPA	Trafficking Victims Protection Act
UN CRC	United Nations Convention on the Rights of Child
UNGA	United Nations General Assembly
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations International Children’s Emergency Fund
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
UPR	Universal Periodic Review
US DOS	United States Department of State
US	United States
USA	United States of America
WFCL	Worst Forms of Child Labour

OPERATIONAL DEFINITION OF TERMS

- International Law:** Rules guided by a treaty or custom that dictates how nations interrelate.
- Child Trafficking:** The act of illegally procuring and transporting a Child with the intention to exploit them for labor or sex purposes.
- Compliance:** Refers to the behavior of a state to conform to pre-established rules and regulations.
- Ratification:** The consensual act of a state to be bound to a specific treaty or agreement.
- Regulations:** Refers to the international legal frameworks ratified and or asceded by Kenya.
- International obligations:** Rules that states are bound to respect.
- International legal framework:** A set of rules clearly stipulated in treaty or customary laws that seek to protect states, individuals or properties.
- Convention:** Informal agreement followed by states with no legal consequences for its breach but can be enforced through political pressure.
- Accountability mechanisms:** Measures that ensure states comply to International Law by holding them responsible and answerable to violations.

ABSTRACT

The resolve of the study was to examine the International Law and regulations on Child trafficking in Kenya. Despite the protection of Children through ratification of international legal instruments in Kenya and the subsequent domestication of these laws such as, enacting the Counter-Trafficking Act, 2010 and Children's Act of 2001, Child trafficking still remains an imminent challenge as the number of Children victims of trafficking is soaring. The objectives of the study were to; examine the international legal framework applicable towards addressing Child trafficking in Kenya, assess the extent of Kenya's compliance with its international obligation towards addressing Child trafficking and analyze the challenges in efforts to address Child trafficking in Kenya. Critical legal theory was used to examine the nature of law as an ideologically driven form of power used to serve the interests of the elite in the society to study the nature of Child trafficking treaties in Kenya. The research used exploratory research design. This enabled the collecting of data on several variables which were then examined for recurring patterns using thematic analysis later presented as themes. The target population encompassed the; Ministry of Labor and Social Protection- Department of Children Services, National Council of Children Services, Immigration department National Police Service, Kenya National Human Rights Commission, Kenya Alliance for the Advancement of Children Rights, Child Helpline Kenya, Trace Kenya, Counter Human Trafficking East Africa, Consolation East Africa, Stop the Traffik Ke, Love Justice International, Okoa Sasa, and the Salvation Army. The study used purposive and snowballing sampling techniques. The unit of analysis was the International Law and regulations on Child trafficking. The researcher obtained the list of registered Child trafficking case reports from Kenya Law website. Data was collected guided by the interview schedules. Phone interviews were used in cases where the key informants were working from home as per the Covid -19 regulations. A total of 30 key informant interviews were conducted and follow up interviews in some cases. The validity and reliability of the interview guide was determined through a pilot study in Kenyatta University main campus in the department of International Relations, Conflict and Strategic Studies. Document analysis were used to enhance thematic analyses. The data collected was analyzed and presented in tables, pie charts, and percentages. The qualitative findings were analyzed by content. The overall conclusion of this study was that Kenya's implementation of anti-Child trafficking laws was lax. Kenya is a Child-friendly nation; however, a lot needs to be done to implement Child protection laws and awareness creation.

CHAPTER ONE

INTRODUCTION

This chapter gives a brief introduction to the study by looking at: background to the study; statement of the problem; study objectives; research questions; justification of the study, and scope and the limitations for the study. The purpose of this chapter is to lay the foundation upon which International Law and the regulations of Child trafficking stands.

1.1 Background to the Study

Worldwide, trafficking in people is cited as an exceedingly lucrative transnational organized crime competing with drugs and weapon trafficking (Bales, 2005). An observation made by the International Labour Organization report (2014), indicates that the proceeds from this illegal business are approximated to be US\$ 150 billion annually. Trafficking in persons is unique as the world's greatest somber transnational crimes, which hold very complex human rights challenges of our time globally, regionally, and nationally. According to the United Nations Office on Drugs and Crime (UNODC) Trafficking in Persons global report of 2016, the overall number of humans trafficked worldwide is an estimated 12.3 million. Notably, 25 percent of the trafficked persons are Children. Girls are primarily trafficked for use in commercial sexual exploitation and domestic work, while boys are mainly trafficked for agriculture, mining, plantations, and armed conflict (UNODC TIP Report, 2016).

International Law is an influential channel in Combating Trafficking in persons by setting up a defining, prevention, and protection framework. Trade in humans is a grave rights and dignity violation (Islam and Nicaise, 2017). The universal instrument which provides the definitive framework in the regulation of human trafficking is the United Nations Convention against

Transnational Organized Crime (UN TOC). This instrument was agreed upon by the United Nations General Assembly (UNGA) on 15th November 2000, which entered into force on 23rd September 2003. It was adopted to confront the transnational nature of human trafficking. Supplementing the convention, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, also known as the “Palermo Protocol.” It was agreed upon in the year 2000, which conceptualizes the notion of Child trafficking (UN TOC, 2000).

The willingness of states to suppress trafficking in human beings is evident through ratification of Palermo Protocol. States made a declaration to enhance efforts through an all-inclusive international approach to address the Trafficking in persons in origin, transit, and destination states (Estourgie, 2016). The main focus of the protocol has been for states to detect and prosecute traffickers while identifying, protecting, and assisting those who have already been trafficked while initiating various actions to prevent people from being trafficked (Protocol, 2001). As of 2010, the UNODC is committed to producing annual reports under the name: “UN Global Plan of Action to Combat Trafficking in Persons.” In 2019, 173 states had endorsed the Palermo protocol as of 31st March 2019, to which Kenya is a party. Among these states, 168 states have passed domestic legislation to curb Trafficking in human beings (UNODC TIP Report, 2019).

Domestication of the international treaties is essential for states to address the particular elements in the treaties at the national level. Domestication of the Palermo protocol criminalizes trade in human beings with a special focus on women and Children. In addition, domestication plays a momentous role in the adoption of new regulations to translate the protocol into action or amend

the existing laws. At the same time, they establish institutions and procedures to implement the International Law and protect victims towards a victim-centered approach (UNODC TIP Report, 2019).

Non-compliance with the Palermo Protocol has penalties. Recently United States Trafficking in Persons report evaluated states' compliance by using the three-tier classification system. Penalties follow according to the ranking of the state. The lowest rank a state can earn is tier three, where sanctions involve the withdrawing of non-humanitarian aid. In addition, the states involved may not obtain aid for the partaking of programs related to cultural exchange or education (US Department of State Report, 2014).

Exposure of Children to organized transnational crime has been increasingly on top political agendas of the international community. The International Laws addressing Child trafficking in the world today include The Palermo protocol, the Convention on the Rights of the Child (CRC) (1989), and its additional protocol on the sale of Children, Child prostitution, and Child pornography (CRC-OP-SC), the ILO Convention No. 182 on the Worst Forms of Child Labor of 1999 (Sigfridsson, 2013).

Regionally, the 2006 Ouagadougou plan of action towards fighting trafficking in humans, particularly women and Children, endorses these international instruments to avert Trafficking, safeguard victims of Trafficking, and the trial of those involved in the crime of trading in persons (Thipanyane, 2015). At the East African level, the East African Community (EAC) Trafficking in Persons Bill, 2016 has been presented whose main aim is to counter the trade in human beings with particular attention to Children and women (EAC Counter-Trafficking in Persons Bill, 2016).

Nationally, according to National Crime Research Center (NCRC) Report on Human Trafficking in Kenya 2015, international trafficking prevalence is relatively high, at 60.2%. Child trafficking is the second to Trafficking designed for labor. Poverty, unemployment, and corruption are the main factors contributing to Child trafficking (NCRC, 2015).

African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) 2017 provides a baseline survey for Child trafficking in Busia, Mandera, and Marsabit that observes that there is a absence of lucidity and consistency in comprehension of Child trafficking because of being theoretically related to other crimes. An estimated 20,000 Children are trafficked annually, with two key categories being targeted: girls less than 16 years of age and newborn babies who go missing at the hospitals. (ANPPCAN, 2017).

In November 2020, the BBC Africa Eye brought to light a baby stealing syndicate in Kenya after a year long investigation. The syndicate stole Children from poor and homeless women, primarily single mothers who lived in informal settlements. The babies were then sold to the highest bidder. This racket constituted community leaders and government officials in public hospitals. This criminal enterprise benefited financially from snatching many Children of their mothers. A girl fetched from Kenya shillings fifty thousand while a boy fetched from Kenya Shillings eighty thousand in the market (BBC News Africa, 2020).

Until 2010, the felony of Trafficking in human beings, especially Children, did not specifically exist in the national legislation; Other related legislations addressed Child trafficking. However,

Kenya had been a party to the CRC sanctioned in July 1990. In 2001 Kenya domesticated the CRC inform of the Children's Act 2001 (IOM Rapid Assessment,2014). The Kenyan Constitution 2010 has made a provision on identifying and defending constitutional rights to preserve persons and the communities there by upholding impartiality and actualizing human potentiality (Constitution of Kenya,2010). In addition to ratifying the Palermo Protocol, Kenya has enacted the Counter-Trafficking in Persons Act 2010 and the National Plan of Action for combatting Human Trafficking and Strategic Framework (2013-2017). Trafficking in Children is still prevalent in Kenya paradoxically after ratifying universal and regional mechanisms reproving the practice.

1.2 Statement of the problem

Child trafficking remains an imminent challenge at the international stage, regional, and state levels .This is despite evolution and ratification of international legal norms focusing on the protection of the Kenyan Child from Child trafficking such as the United Nations Convention on the Rights of the Child (1989).

While there have been a notable increase in the number of intervention strategies towards addressing Child trafficking, including initiatives, laws, and accountability mechanisms including Kenya adopting specific penalties against Trafficking in Children such as in the Counter-Trafficking in Persons Act 2010 of the laws of Kenya. States like Kenya have had little success in addressing Child trafficking which is still skyrocketing. An estimated 20,000 Children are being trafficked annually in Kenya (APPNCAN, 2017).

In as much as the government is doing its best there are still gaps when addressing the menace while ensuring the protection of the victims. These prompted the illumination of the specific strategies in place so far while examining the gaps in the regulations of child trafficking in Kenya by the International Laws. There is a need to illuminate on the specific provisions on the regulations, the awareness among key stakeholders and the complementarity with domestic law with an aim to uncover the gaps that plague this manner of implementation.

Inadequate awareness is one of the issues that plague the sky rocketing number of Child trafficking cases that ultimately sought to rethink through the international regulations on Child trafficking operational in Kenya in terms of the compliance, implementation and the hurdles faced in addressing Child trafficking. The shifts in the international regulations and the redefining of the compliance parameters has questionably augmented state duty and widened the parameters of social protection of Children against trafficking. This study pursued to make a contribution to promotion of a consistent and well-coordinated protection response among key stakeholders in Kenya.

1.3 Research objectives

The following were the study objectives;

1.3.1 General objective

The principal objective of this study was to explore International Law and regulations of Child trafficking in Kenya.

1.3.2. The Specific objectives were to;

1. Examine the international legal frameworks applicable towards regulating Child trafficking in Kenya.
2. Assess the extent of Kenya's compliance with its international obligation towards addressing Child trafficking.
3. Analyze the challenges in efforts to address Child trafficking in Kenya.

1.4 Research questions

1. What are the evident international legal frameworks applicable in regulating Child trafficking in Kenya?
2. To what extent has Kenya complied with its international obligation towards addressing Child trafficking?
3. What are the challenges in efforts to address Child trafficking in Kenya?

1.5 Significance and justification to the study

This study contributes to an understanding of Child trafficking in Kenya through the lens of Child protection framework which is not tolerated by law and attracts disciplinary and criminal penalties under the Kenyan law, regional and the International Law. Children as human beings with a right to enjoy fundamental human rights and freedoms. Because of their vulnerability, Children have special rights to ensure their protection. Primarily because they have less decision-making power than adults, they are essentially dependent on adults economically and physically hence easily influenced, weak, have obligation to elders traditionally, and have limited access to law enforcement and legal protection.

Child trafficking has got potential to be a threat to gender equality, one of the top priorities of the Kenyan government, as outlined by Vision 2030 and the Big Four agenda. This is because it inappropriately affects both genders differently, where girls are more affected and in large numbers for commercial sex trafficking and domestic labor. In conflict situations, the girl Child vulnerability to trafficking increases as they are used by combatants as ‘wives’ hence raped repeatedly. Therefore, if not adequately addressed within the legal framework, this problem could lead to a gender imbalance gap in the future.

This study contributes to knowledge by generating key information on attempts to address Child trafficking in its legal framework nationally, transnationally, and internationally. This will be crucial to providing illumination in the state of affairs in Kenya in regards to implementation of international instruments on Child trafficking. The reasons that will be cited for challenges faced by Kenya in its international legal obligation to address Child trafficking will be helpful information for Non-Governmental Organizations (NGOs) to pressure the relevant state authorities to comply with the specific factors cited.

1.6 Scope of the Study

The breadth of this study was International Law and the regulation of Child trafficking in Kenya. The international legal framework and the Children’s act of 2001 were complimentary. The international regulations include resolutions and state pronouncements, including those adopted in the UNGA and the UN Human Rights Council, although not legally binding form normative frameworks on state conduct in the international system. First, this study examined the international legal instruments that Kenya has ratified in addressing Child trafficking. Then, the study focused on Kenya’s compliance with its specific legal obligations in addressing Child

trafficking as a state with a responsibility to protect its citizens. Lastly, the study illuminated the challenges faced in a bid to address Child trafficking in Kenya.

1.7 Limitations and Delimitations

COVID-19 pandemic and the ensuing panic coupled with strict government regulations such as partial lockdowns and curfews made it hard to access key informants. Where access was granted, they required a constant rescheduling and strict observance of the pandemic rules. The key informant personnel in the civil and private service were difficult to schedule due to their jobs and various commitments. To circumvent the challenges, the researcher observed the strict government regulations while in some instances, telephone interviews were used to minimize the physical contact. In addition, the study made use of the secondary sources of information triangulated with primary sources of information to achieve the consistency.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This section presented background information on regulation of Child trafficking in International Law contexts, the theoretical foundation of the research, the gaps in relation to independent, dependent, and intervening variables. The independent variable was International Law, while the dependent variable was Child trafficking.

This chapter sought to define the research problem by distinguishing what had been done, what needs to be done, and the variables important in this topic. Condensation of the relevant published and unpublished literature from global, regional, and Kenyan perspectives was carried out. This included books, dissertations, reports, and conference speeches.

This study consequently undertook a thematic review focusing on the following themes; International Law and regulations of Child trafficking, State's compliance with International Law on Child trafficking, and challenges encountered when addressing Child trafficking.

2.1.1 International Law and Regulations of Child Trafficking

The International Law on Trafficking in human beings has evolved for over a century, as CdeBaca (2011) in his keynote address at Michigan Law School observes. The development of the various conventions, instruments, and institutions is a testament to his observation. These instruments have addressed crucial aspects of trafficking in persons such as slavery, forced labor, enslavement, and servitude. His observation gives a vivid depiction of the history of the International Law of trafficking in humans from the most notable moments in history yet fails to illuminate the issue of Child trading.

Morcom & Schleonhardt (2011) explore how the concept of Trafficking in humans has evolved in the International Law context. International Law on human Trafficking has resulted from anti-slavery conventions such as the League of Nations anti-slavery convention of 1926. On addressing forced labor and prostitution, the 1957 Abolition of Forced Labour Convention and the UN Convention for the Suppression of the Trafficking in Persons and the Exploitation of Prostitution of Others in 1949 were adopted. It wasn't until 1989 that the issue of Child trafficking was highlighted by the United Nations(UN) through the adoption of the UN CRC (1989) to protect Children from trafficking in and its additional protocols were adopted. However, the UN did not adequately address the definitive framework of Child trafficking until the adoption of the UN TOC (2002) and 'Palermo' protocol which became the focus in suppression trafficking in humans. Kenya has made considerable efforts to ratify and domesticate these conventions but there are considerable gaps that hinder their implementation which this study seeks to examine.

In her in-depth analysis of the International Law on trafficking in human beings, Gallagher (2010) links laws with various rules such as the key standards of transnational criminal law, international criminal law, the international human rights law, the refugee law, and the International Law on the state responsibility in a bid to identify the process of explaining the major duties of states to define, prevent, protect and act against the offenders. Notably, this observation helps explain the various criminal aspects of the crime of trade in humans in relation to international legislations yet being light on Child trafficking. Regretably, where there are low levels of awareness on the regulations of Child trafficking among the key stakeholders in the criminal justice system, many states including Kenya use these laws to charge Child traffickers

with misdemeanors such as Child abduction. This has derailed the fight on Child trafficking where many traffickers get minimal sentences thus the issue remains unaddressed.

In Kenya, the regulations on Child trafficking has undergone significant milestones. Oduor (2013) observes that Kenya is a monistic system where the Constitution of Kenya 2010 recognizes and accepts International Law as part of the Kenyan law. Previously Kenya was a dualistic state which was a major challenge in addressing Child trafficking as International Laws addressing Child trafficking had to be domesticated before enforcement. Although Kenya is a monistic state, International Laws on Child trafficking are yet to be effected in prosecuting Child traffickers.

Odhiambo (2017) observes that prior to 2012, no specific law dealt explicitly with the menace of humans trafficking until the Counter-Trafficking in Persons Act (CTiP) 2010, was put into effect in 2012. Previously, the legal mechanisms used to address the crime of this nature were the Children's Act 2001, Sections of the Penal Code, and Sexual Offenses Act 2006, partially addressing the issue. She fails to include the Constitution 2010, which is very instrumental in creating the CTiP(2010) alongside provisions for safeguarding basic rights and human dignity. Although Kenya has the requisite legislation to address prevent, protect, prosecute, and execute the International Law on Child trafficking, past legal mechanisms such as Children's act 2001 and sections of the penal code are still used in the prosecution of traffickers due to laxity among stakeholders.

2.1.2 State's Compliance with International Law on Child Trafficking

Henkins (1968) argues that states behave largely in compliance with International Law in reference to his famous aphorism, which affirms that the majority of nations observe nearly all values of universal law. However, he is less clear on why the states comply, but he lists a set of

factors that favor compliance, such as the state's reputation and domestic politics of state's reciprocity.

International regulations still have a grip-like influence on both the workings and the structures of the national constitutions (Maluwa, 1999). While International Law regulating human trafficking has had various successes, such as coming up with a solid definition, the law has similarly been beleaguered with failure on several grounds. Birdsall (2009) observes that one problem concerning the International Law relevant in the Children's rights context is the weak enforcement mechanisms. Under the UN Treaty law, International Law is only legally binding upon the state's ratification. However, when the state breaks the agreement, there are no forceful consequences in terms of a sovereign body above the states. It is upon this backdrop that this study seeks to assess Kenya's the enforcement mechanisms to its international legal obligations to regulate Child trafficking.

The United States Trafficking in Persons report (2009) places countries in trilogy (Tier 1, Tier 2, and Tier3) according to the overall efforts made by the states to fight human trafficking. States that have initiated significant attempts to take action on Trafficking in persons get tier 1 classification. In contrast, Tier 2, 3 are for countries that have not done enough, according to the US Department of State. In addition, Barnabe (2012) notes that the United States Department of State, to a large extent, rewards countries via the provision of foreign aid. This is in relation to how countries respond well to Trafficking in people, inventiveness to address the crime, as well as the specific initiatives to counter human trafficking. The specific sanctions that the United States can issue on the poor performers are the withdrawal of the much needed foreign aid in the developing countries, education and cultural aid withdrawal, and the reluctance to continue with

the military support. For the Kenyan government to be consistently on tier two, there has to be considerable efforts on compliance which this study seeks to assess.

2.1.3 The Challenges of Addressing Child Trafficking

As Nyataya et al (2017) observe, the cost factor accrued when investigating transnational cases is high. This is because Trafficking in persons, in particular, carries many crimes with it. It is time and resource-consuming for countries with limited resources. However, it should not be an excuse for the states involved not to put in endeavors to pursue trafficking across borders.

While trafficking in people has lately been termed a national security issue, criminal jurisdiction issue, and a human rights violation. Davidson (2016) observes the United States of America (USA) and the European Union (EU) spending a vast amount of resources aimed at erecting barriers to this movement of people. The barriers involve both traditional barring methods: building walls, fences, and checkpoints to modern and sophisticated use of high technology surveillance systems. The externalization of the European Union's effort on border control through funding the establishment of migration detention facilities, bilateral agreements, visa regimes, and military training has further helped reduce the transnational traffic flow within the European Union member states. Kenya, however, as a developing state plagued with a resource shortage has limited workforce and finances necessary to erect barriers to the movement of people though being a member of EU transnational agreements. This study sought to uncover the challenges the Kenyan government faces in limiting Child trafficking across borders as an origin, transit and destination point.

Mendelson (2014) observes that it's largely that the benefactor community has not placed combatting human Trafficking as a high priority issue as with eradication of poverty or improving maternal health. Both were top of the list of the United Nation's Millennium

Development Goals (MDGs). Notwithstanding, having both bilateral development institutions like the U.S Agency for International Development and numerous private philanthropies working relentlessly to curb Trafficking in persons thus there has been a slow rate in addressing the aspects of Child trafficking.

As Salihu et al. (2016) note, it's the essence of every government to prioritize safety actions to safeguard the life and properties of the citizens. While establishing partnerships with international non-governmental organizations like the United Nations Children's Fund (UNICEF) may be deemed necessary, the domestication of the international treaties, subsequent enforcement, and public awareness on the vice is of utmost importance in addressing Child trafficking. This study sought to unravel the challenges faced by the Kenyan government in its endeavors to domesticate International Laws and enforce regulations on Child trafficking.

International Labour Office (ILO) (2014) asserts that Child trafficking is a unique and worst of Child labor (WFCL) in the ILO Convention No.182. Stating that Child trafficking has to be eradicated as an urgent matter that is regardless of a state's development rank by setting a challenge for the states that by the year 2016, this crime will be past. This meant that states would have to live up to the challenge by setting up mechanisms that would prevent Children from being trafficked or re-trafficked, removing Children from the exploitation areas, and providing victim assistance. This study therefore sought to uncover the efforts Kenya has placed to comply with ILO Convention No. 182 being a signatory to the convention.

2.2 Theoretical framework

The critical legal studies movement started critical legal theory in the United States in the 1970s as a precedent of legal realism. Critical legal theory draws inspiration from Robert W. Gordon,

Roberto M. Unger, and Duncan Kennedy. The primary assumption of the critical legal theory is that; Law is a mask that is a manifestation of power. From this expression, the law itself is not neutral, but it is ideologically driven in the form of power that is additionally used to serve the interests of the elite in the society. The rules are flexible, and politics have a very significant influence on the approaches of law and interests. As a result, personal and moral positions impact the law (Tushtet, 1990).

Critical legal theorists stipulate that politics and whoever is in power determines the specific issues that ought to be discussed in the international arena. Trafficking in Persons has made it to prominent international theaters like the United Nations General Assembly with notable achievements, including ‘Palermo’ protocol (2000). The protocol is the key international legal apparatus on which the definitional and the global anti-trafficking policies are anchored. The introduction of the Tier system classification by the USA to curb trafficking in people and the subsequent classification of countries into three categories (Tier 1, Tier 2, and Tier3) depending on the determinations to curb Trafficking in people. (United States Department of State, 2009). In itself, it’s an expression of power coming into play in influencing the moral position of law.

Critical legal theorists propose that law is indeterminate and is therefore not a doctrine or a precedent that drives the outcomes of the judicial decisions but other factors. The critical legal theorist exposes the hidden political nature of the law and the interpretation of the legal language for that same effect. The other factors that indeed determine the regulation of human Trafficking largely involve the diversity of actors in the international system with varying interests, whether governments, Inter-Governmental Organizations, and Non-Governmental Organizations. These actors are key players in understanding Trafficking in persons as a phenomenon that includes definitional aspects and the international legal formulation (Orakhelashvili, 2011).

Critical legal theorists are concerned with the idea of reification, especially in the context of rights where the concept requires a form of independence beyond its creation in the social context. This brings conflictual ideas in the international system where governmental and the non-governmental divides bring issues relating to state compliance. It also raises complex issues in relation to the lenses of social contexts in which Trafficking in persons is to be addressed. This breeds a new set of challenges that states face in the regulation of Trafficking in persons. In addition, critical legal theorists believe that placing one's complete trust in the legal system to be the guardian of one's rights is misplaced due to the high prospects for manipulation.

Tushnet (1990) denounces rights in particular as 'illusions and myths,' which are well formulated to guise vital inequalities be it social, political, or economic. According to him, rights create divisive factions within communities, thus acting as an agent of separation, which logically diminishes their chance for collective political action. The trans nationality aspect of Trafficking in human beings anchored on transnational movement has made a provision for states to justify an aggressive border control plan in the pretext of combatting Trafficking in persons. In addition, it provides an avenue for solid states to showcase their might to the world.

Although critical legal theorists are in agreement that law creates divisive factions within communities, in retrospect various subgroups of people are faced with distinct challenges which necessitate creation of specific laws to address their needs therefore promoting inclusivity. In reality, there can not be a one inclusive law protecting the rights of everyone thus the need for different laws for different groups of people.

2.3 Conceptual framework

Figure 2.1 shows the conceptual framework as adopted by the study. As shown, the independent variable is International Law on Child trafficking, while the dependent variable is Child trafficking. The intervening variables are regulations on Child trafficking, political will, donor funding, and resource allocation.

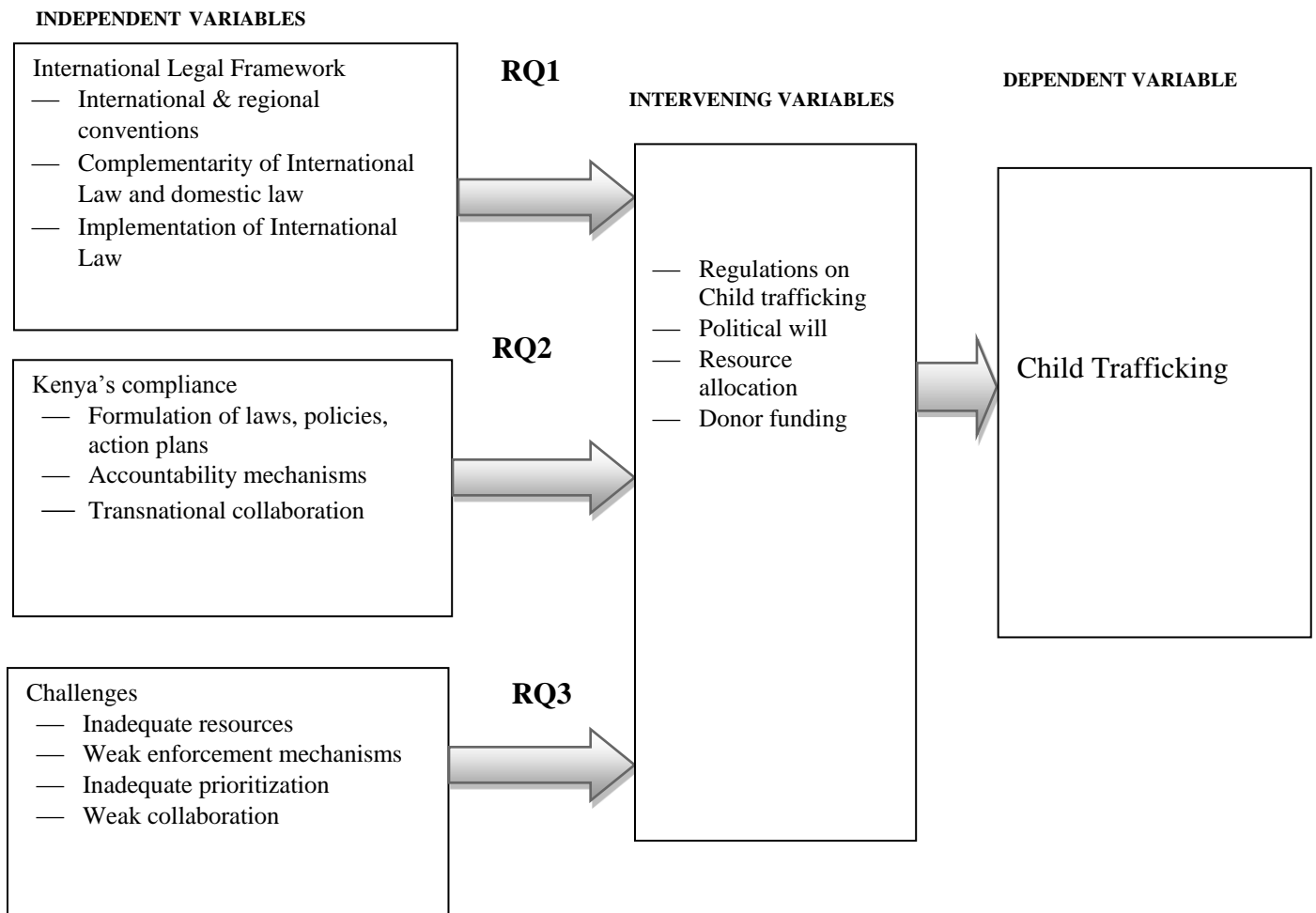


Figure 2. 1: Conceptual Framework model for International Law and regulation of Child Trafficking in Kenya

Source: Researcher 2021

International legal frameworks are fundamental to regulating Child trafficking. In Kenya, these frameworks are hinged on international and regional conventions on Child trafficking. Before 2010 when Kenya was a dualist state, implementation of International Law on Child trafficking was a huge challenge due to lack of complementarity between most International Laws and domestic laws. Most traffickers were prosecuted with other related crimes such as Child abduction instead of trafficking in Children thus serving minimal sentences and receiving meagre fines which directly affected the fight on Child trafficking.

A state's compliance to International Law varies due to different levels of political goodwill. These in return determines the kinds of laws, policies and action plans formulated by the state including timeframes, and the efforts the states will put in place to collaborate with other countries to address Child trafficking. Politics and whoever in in power determines the strides that the country will make in fighting Child trafficking. Countries with a high political goodwill prioritize Child trafficking leading to high resource allocation and therefore get a higher tier ranking.

The fight against Child trafficking in Kenya is plagued with various challenges from inadequate resources, weak enforcement mechanisms and inadequate prioritization by the state as we are largely dependent on donor funding. This leaves Child trafficking efforts at the mercy of donors when it comes to resource allocation. At a time when the whold world is plagued by the Covid-19 pandemic, donor funding has been redirected to fight the menace leaving minimal funds to address Child trafficking.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This chapter consists of the research design and the methodology that was used to conduct this study. The chapter gives an account of the research design, research location, the proposed target population, sample and sampling procedures, data collection instruments, validity, piloting and the reliability of research instruments, data collection procedures, data analysis procedures, and the ethical considerations.

3.1 Research Design

The study employed exploratory research design due to existence of scanty research on the regulations of Child trafficking in Kenya in relation to International Law necessitating the use of qualitative research method approach. This aided the researcher gain insights and a deep comprehension of the subject matter and expanded the breadth and scope of study. This was achieved by identification of the problems in the study objectives and areas of interest specifically suited for this research. This approach in the study aided the researcher to study International Law and regulations of Child trafficking in its natural settings.

3.2 Study Area

The study area was Nairobi, Kenya. The justification being Nairobi was a destination point of Child trafficking in addition to its strategic position in holding the regional offices of international and local organizations namely; the Ministry of Labor, Social Security, and Services, Kenya National Commission of Human Rights, Love Justice International, among

others while at the same time the city holds its central position for being the head offices of

DEPARTMENT	Frequency	Percentage(%)
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government ministries that are key to this study.

3.3 Target Population

The national Child protection framework in Kenya identified a wide range of stakeholders who play a pivotal role in Child protection both from the government and the non-governmental organizations, thus forming the target population. In addition, an in-depth document analysis of the legal documents of International Law's applicable to address Child trafficking, compliance, and challenges specific to Kenya was carried out.

The target population, therefore, encompassed the Ministry of Labor and Social Protection, specifically the Department of Children Services (DCS) and the National Council of Children Services (NCCS), The Immigration Department, the National Police Service, the Kenya National Human Rights Commission, Child Helpline Kenya, the Counter Human Trafficking Trust East Africa (CHTEA) Stop the Traffik (Kenya), Consolation East Africa, TRACE Kenya, Kenya Alliance for the Advancement of Children Rights (KAACR), Love Justice International and The Salvation Army.

Department of Children Services	4	13
Immigration Department	2	7
Okoa Sasa	1	3
National Police Service	3	9
Kenya National Human Rights Commission	2	7
The Salvation Army	2	7
Love Justice International	1	3
Kenya Alliance for the Advancement of Children Rights	2	7
TRACE Kenya	2	7
Counter Human Trafficking Trust East Africa	2	7
Stop the Traffik (Kenya)	1	3
Child Helpline Kenya	2	7
National Council for Children's Services	4	13
Consolation East Africa	2	7
Total	30	100%

Table 3.1 Target Population

Source: Researcher 2021

3.4 Sampling Techniques

International Law on Child trafficking being the study's unit of analysis, the researcher identified key organizations and departments dealing with Child trafficking in Kenya which formed the target population. After identifying the target population, the researcher moved towards selecting a sample from the accessible population through various techniques. The study used non-probability sampling techniques to sample target groups. In this study, purposive and snowballing sampling methods were used.

The purposive sampling technique was based on the researcher's needs. The specific needs of the researcher include the skills and judgment, and experience of the target population. To identify the respondents who might have rich information on Child trafficking and its regulation, this study used purposive sampling for the relevant government officials and non-governmental organization officials. Snowballing was used where the population was not easily accessible and identifiable.

3.5 Sample Size

Using Cochran's formula,

$$n_0 = z^2 pq / e_2$$

With the assumption that half the target key informants will participate in the interviews, the maximum variability was then. Therefore, $p=0.5$. Assuming a confidence level of 95% and a precision of plus or minus 5, the confidence level of 95% gives a Z value of 1.96.

Hence, $n_0 = ((1.96)^2 (0.5) (0.5)) / (0.05)^2 = 385$.

The study involved a smaller population; thus, Cochran's modified formula for sample size calculation in small populations was used.

$$n = \frac{n_0}{1 + \frac{(n_0 - 1)}{N}}$$

n_0 - standard sample size recommendation of 385(Cochran's).

N - population size (target population size) was 32

n - new sample size

Therefore, $n = 385 / (1 + (384/32))$

$n=29.6$

As per Cochran's formula, the sample size for this study was 30 key informants. These individuals were selected based on their knowledge and involvement in Child protection spheres.

3.6 Instruments of Data Collection

The study used of interview guides to collect primary data from the key informants. The interview guides as a tool for collecting data entailed asking open-ended questions for their unique detailed response capabilities where the respondent's responses gave insights into their background, interests, and decisions. To collect secondary data, document analysis from official government sources, key scholars and case studies was done.

The use interview guides and tape recording was important for both physical and telephone interviews . In order to obtain in-depth data, which might not be possible to get while using a questionnaire, the researcher had a particular advantage of probing for more information where

very sensitive information was required. Tape recording was critical in ensuring the accuracy of the data during transcription.

3.7 Pretesting of the Research Instruments

Pretesting was executed before conducting the study by conducting interviews using interview guides to ten university students conversant with International Law as a discipline at Kenyatta University at the Department of International Relations, Conflict and Strategic Studies. The participants were prompted to give feedback on the interview guides. This enhanced both the dependability and the validity of study instruments.

3.8 Validity and Reliability

To enhance the validity and reliability of the study, the researcher obtained participant verbatim accounts where the researcher was able to maintain literal statements of participants and quotations from documents. The researcher used tape recorders where the data was retrieved mechanically, thus ensuring validity. A triangulation of the verbatim and content analysed from documents was also done.

3.9 Data Collection Procedure

The study gathered both primary data and secondary data. Primary data was amassed by employing interview guides. Data collection from the interviews was transcribed from tape recorders and written notes for accuracy.

Secondary data was collected through document analysis of books, journals, websites, and newspapers. The documents were used to trace the background information about International

Law and the regulation of Child trafficking and amass important information about the vice of Child trafficking in Kenya, the compliance, and challenges.

3.10 Data Analysis Procedure

The researcher used thematic analysis to data collected. The data was categorized into distinct themes where the researcher looked for patterns and trends that consequently led to having interpretations and generalizations. The generalizations informed the themes which were presented in chapter four. In addition, the researcher used descriptions, tables, and figures to present the data to make it visually appealing.

3.11 Ethical Considerations

The researcher obtained the necessary research permits from graduate school, National Commission for Science, Technology, and Innovation, (NACOSTI) and notified the Nairobi County Government about the intended research. Informed Consent was sought while maintaining the confidentiality of the information given and anonymity of the participants to protect their privacy through the use of a consent form. Moreover, the researcher took the necessary COVID 19 precautions such as wearing of masks and maintaining social distance while conducting interviews.

CHAPTER FOUR

DATA ANALYSIS, PRESENTATION AND DISCUSSION

4.0 Introduction

The aim of the study was to examine the international legal framework in addressing Child trafficking in Kenya while assessing the compliance and challenges encountered with the observance of the international obligations as well as the challenges encountered in enforcing the implementation.

This chapter presents key findings from the fieldwork conducted between 01/10/2020 to 30/11/2020. The findings are presented in three sections as per study objectives. The first section focuses on the first objective, which is; to examine the international legal framework aimed at addressing Child trafficking in Kenya. The second section presents the findings from the second objective, which is to assess the compliance of Kenya to its international legal obligation in addressing Child trafficking. The third section covers the findings on objective three, which is to analyze the challenges encountered in efforts to address Child trafficking in Kenya.

The findings which are primarily based on qualitative data were collected using interview schedules presented to key informants in form of physical interviews, phone interviews, and follow-up interviews. The researcher used tape recording to record the data and later transcribed the data.

4.1 Background Characteristics of the Study Respondents

The first objective's questions sought to; establish the respondent's views on the international legal framework ratified by Kenya to address Child trafficking, to describe the relationship

between the international legal framework and domestic law in addressing Child trafficking, and to explain the factors that challenge the application of international legal framework in dealing with Child trafficking in Kenya.

The study conducted was multi-sector and multi-disciplinary in nature that drew key informants from government institutions, NGOs, and faith-based organizations.

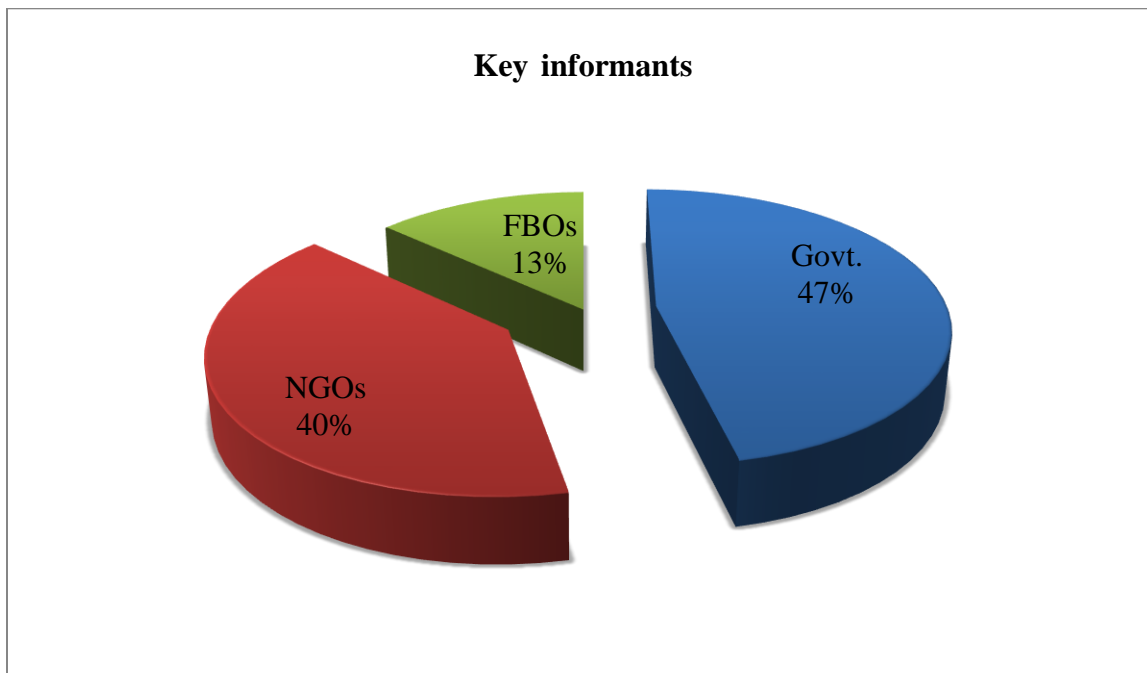


Figure 4. 1: Categories of institutions that key informants

Source: Researcher 2021

The governmental institutions involved included; the Ministry of Labor and Social Protection, specifically the Department of Children Services (DCS), National Council of Children Services (NCCS), the Immigration Department, the National Police Service (NPS) and the Kenya National Commission for Human Rights. The non-governmental organizations include Counter Human Trafficking Trust East Africa (CHTEA), Stop the Traffik (Kenya), Consolation East

Africa, TRACE Kenya, Kenya Alliance for the Advancement of Children Right (KAACR), Okoa Sasa, and Child Helpline Kenya. Faith-Based Organizations included; Love Justice International and The Salvation Army.

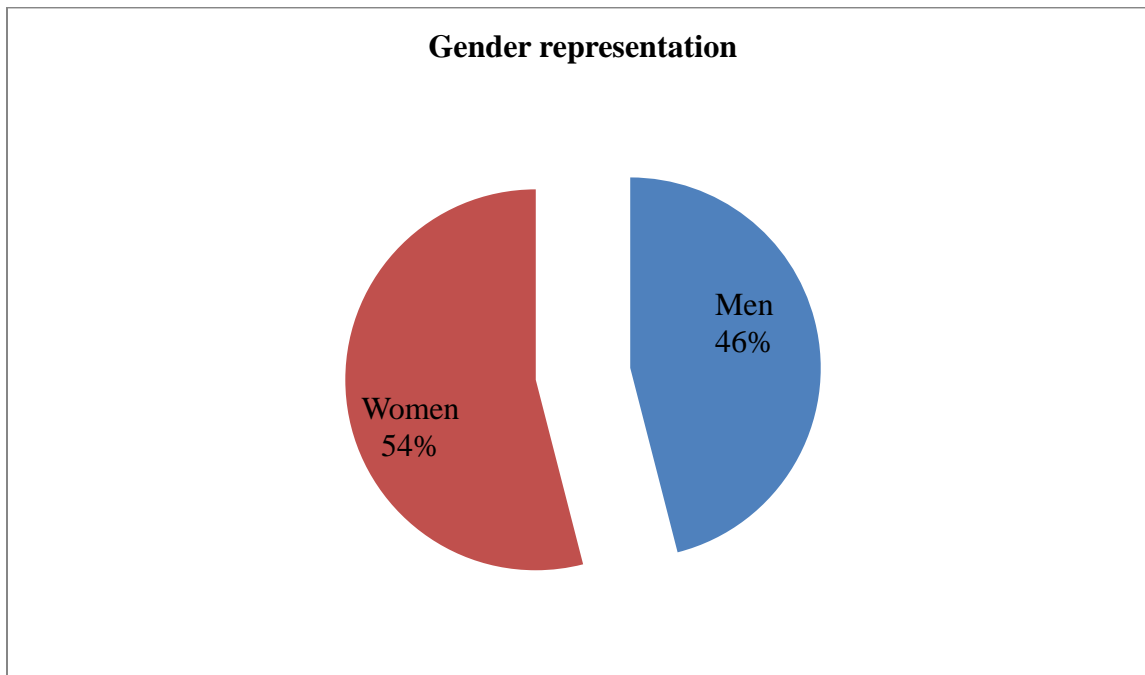


Figure 4. 2: Gender distribution of key informants

Source: Researcher 2021

The study's participants were 46% male and 54% female. This indicated that women were more involved in Child protection spheres and, in particular, Child trafficking. Women were also more enthusiastic about discussing Child trafficking and were more than happy to give referrals on other women working on the same fields. Analysis of key documents was also done to provide insights on the international legal framework addressing Child trafficking.

4.1.1 The International Legal Framework Relating to Child Trafficking In Kenya

Under objective One, the study examined the international legal framework regulating Child trafficking in Kenya, the relationship between the International Laws and domestic laws addressing Child trafficking in Kenya, and the implementation of a global legal framework in Kenya. The findings under this study were gathered from key informant interviews and content analysis of relevant documents.

Twenty key informants were interviewed based on their positions and involvement in Child protection in Kenya. Most of the respondents held senior positions in both the government and non-governmental sectors. The study identified thirty key documents that were analyzed were based on the content, which was purely on the international legal framework addressing Child trafficking. The findings will therefore be presented based on four major themes; The existence of an international legal framework in addressing Child trafficking in Kenya, a high level of awareness among stakeholders of the international legal framework ratified by Kenya to address Child trafficking, existence of complementarity of the international legal framework and domestic law, and existence of gaps in implementation of International Law. These themes are elaborated in the following sections.

4.1.1 The existence of an international legal framework in addressing Child trafficking in Kenya: Key Conventions and Protocols

According to treaty law, the study established a treaty can only be applicable in a state after it has been ratified or acceded by a country. Article 11 (1) of the Vienna Convention on the Law of Treaties state that;

“...The consent of a State to be bound by a treaty may be expressed by signature, exchange of

Name of the Treaty	Year of Adoption	Year Kenya Acceded to
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instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed....”

Trafficking in human beings’ despite being a modern-day legal issue, has a lengthy political and legal history and has evolved over time. (Gallagher, 2010). Allain (2017) separates the international legal framework aimed at addressing Trafficking in persons into three distinct categories dating from the before establishment of the League of Nations era, then to League of Nations period, and lastly, the United Nations.

Before establishment of the League of Nations, Faulkner (2019), in her work, ‘The development of Child trafficking within the International Law’ traces origins of Trafficking in persons’ definitions to International Convention for The Suppression of White Slave Traffic 1910. During League of Nations, a Committee for Protection of Children (1919) was formed. In 1924, the Declaration on the Rights of the Child (1924) was adopted. This led to conception of the Geneva Declaration of the Rights of the Child in 1924. The United Nations (UN) was established to replace the League of nations.

The UN created various conventions, protocols, plans of actions, and declarations to address Child trafficking at the international level. The study found out that Kenya has ratified or acceded to these treaties;

International Labour Organization (ILO) Conventions. Forced Labour Convention The Minimum Age Convention	1964 1979	2001
The United Nations Convention on the Rights of the Child (UNCRC)	1989	1990
The African Charter on the Rights and Welfare of the Child (ACRWC)	1990	2000
United Nations Convention against Transnational Organized Crime (UNTOC) (Palermo protocol)	2000	2005

Table 4. 1: Treaties ratified or acceded by Kenya that address Child trafficking

Source: Researcher 2021

4.1.1.1 The United Nations Convention on the Rights of the Child (UNCRC) (1989)

The examination of the UNCRC revealed that it was adopted on 20th November 1989 under the UN RES 44/25. It purposed to recognize Children rights by providing a framework for the safeguarding of civil, social-political, and cultural rights of the Child. To date, 196 countries have ratified the UNCRC, making it the most widely ratified convention (Palmqvist, 2006). Kenya became a party on 30th July 1990 (CRC/C/KEN/2, 2006). The study found out that the UNCRC is internationally binding law on the protection of Children from trafficking by making four main provisions; Articles 32, 34,35 and 36

Table 4. 2: Specific articles in the UNCRC addressing Child trafficking

Article 32	Prohibits economic exploitation of Children through the performance of any work that would harm a Child’s development in any form.
Article 34	Commits states to secure Children against all types of sexual abuse and misuse.
Article 35	Encourages states make efforts to forestall abduction, offer or traffic of Children.
Article 36	Compels states to take action in protecting all forms of exploitation that will be endangering a Child’s welfare

Source: Researcher 2021

The UNCRC was short on addressing commercial sex exploitation, which resulted in the First World Congress on the commercial sexual exploitation of Children(CSEC) held in Sweden (1996), from which Kenya developed its “National Plan of Action Against Commercial Sexual Exploitation of Children in Kenya (2013-2017)” (NCCS, 2013). As a result of realizing the gap, a Special Rapporteur focusing on the sale of Children, Child prostitution, and Child pornography was formed (Cedrangolo, 2009). Additionally, the international community enacted an optional

protocol to address the issue specifically; The CRC-OP-SC (2000), to which Kenya became a signatory on 8th September 2000 (OHCRC, n.d).

Findings indicated that there was some opposition even from the CRC Committee to form the CRC-OP-SC. The CRC-OP-SC goes beyond the UNCRC in that it introduced the criminal justice aspects obliging states to criminalize and penalize elements involved (Gallanger, 2010). The protocol obliges states to strengthen cooperation in prosecuting Child traffickers and protecting Children who are trafficking victims.

The study revealed that UNCRC instituted a Committee on the Rights of the Child that monitors its application (Gallagher, 2010). In this regard, the researcher found out that the committee has regularly raised concerns about Trafficking in Children in Kenya in its various forms and for different purposes. In 2016, the UNCRC Concluding Observations, particularly the combined third to fifth periodic Kenyan reports, the UNCRC treaty monitoring committee indicated “... the wide prevalence of Child labor, including the commercial sexual exploitation of Children and human trafficking for Child labor.... the committee is seriously concerned about killings of and Trafficking of Children with albinism for body parts” (CRC/C/KEN/CO/3-5, 2016).

In response, Kenya cited the following measures to address Child trafficking; “...the implementation of the National Referral Mechanism to assist victims of trafficking in twelve counties....” (A/HRC/WG.6/35/KEN/1 2019). On addressing CSEC, the following legislations are in place to criminalize it; The Kenya Penal code 2009 section 174, which criminalizes Child stealing, Sexual Offences Act 2006 section 13 criminalizes Child trafficking for sexual exploitation and CTiP (2010) section 4 which highlights acts that promote Child trafficking. On the sale, Trafficking, and the abduction of Children, Kenya has established Regulations on

adoptions (2005) and The Constitution of Kenya 2010, which enshrines provisions to deal with Child trafficking (CRC/C/KEN/3-5, 2015).

The committee, in response, expressed serious concerns about the Trafficking and killing for the body parts of albino Children, increased Child marriages, high level of economic exploitation of Children through increased enrollment as domestic workers. Given these, the committee recommended that Kenya fully implement the Counter-Trafficking in Persons Act (2010) (CRC/C/KEN/CO/3-5, 2016).

4.1.1.2 United Nations Convention against Transnational Organized Crime (2000)

Discussions on Organized crime first came up during the Fifth United Nations Congress in Geneva in September 1975, which was held to discuss how to prevent crime and treat offenders. It focused on the evolution of national and transnational crime as a business (A/CONF.203/15). This study established that this led to the materialization of UN TOC in November 2000 in Palermo, Italy. So far, UN TOC has 147 signatories and 190 state parties (UN TOC, n. d). UN TOC prerequisite for a crime to be defined under the convention is that a crime has to be transnational with an identifiable criminal organization and heinous.

Gallagher (2010) observes that the key motive of the convention is the criminalization of a variety of offences ranging from; money laundering to corruption. Additional provisions in the protocol called for cooperative measures among states, such as offering technical and mutual legal assistance, information sharing, and witness protection, are also envisaged in the convention.

The convention has three constituent protocols; Protocol against illegal manufacturing and trafficking of firearms, The Protocol on Migrants smuggling, and the one more relevant to this study, the Protocol on Trafficking in human beings, particularly women and Children. In this regard, this section will center its discussion on the Palermo Protocol.

The Palermo Protocol

The Argentinian government was the first to propose the drafting of a convention addressing Trafficking in Children. This was due to increasing proof of the activity being key in organized crime groups and slow drafting of the CRC-OP-SC, which resulted in suggestions to draft a protocol addressing Trafficking in women and Children. (E/CN.4/RES/1999/40).

The drafting of a protocol that enlisted only women and Children was deemed restraining.

Part	provision
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Hence, United States came up with the first inclusive draft ‘Trafficking in Persons’ which in a sense expanded the purposes of exploitation beyond sexual and submitted it to the Ad Hoc Committee under the title “Draft Protocol to Combat International Trafficking in Women and Children” (A/AC/254/4/Add.3, 1998). A majority of countries, including Kenya, welcomed this draft. The following are the provisions of the Palermo protocol.

Table 4. 3: Provisions of the Palermo Protocol that address Child trafficking

Article 2,3	The protocol purposes to prevent and counter human trafficking, protect victims and encourage collaboration among party states. It also defines the acts, means, and purpose elements of Trafficking and there after defining a Child as persons below eighteen.
Article 6,8	Obliges states to offer protection to victims and provide psychosocial support mechanisms that ensure full recovery of victims of Trafficking while taking account of special populations such as Children.
Article 9	Encourages states to come up with strong measures to prevent Human Trafficking.

Source: Researcher 2021

The drafting of the Palermo Protocol was an essential step to Curb Trafficking in persons. Kenya is a signatory to the protocol domesticated the CTiP Act (2010) enforced in 2012. Section I of the Act criminalizes trafficking in persons for sex or labor purposes (Gathigah, 2019).

The “National Plan of Action on Human Trafficking (2013-2017)” was developed to address Trafficking across the 47 counties in Kenya, which was a step toward implementing the Palermo protocol. Replies of Kenya on the 68th session in 2017 on “Constitutional and Legislative Framework and Harmonization of Laws” the Victim Protection Act 2013 is highlighted in Articles 6 and 8 of the Palermo Protocol on states obligation to provide victim assistance. The Act seeks to provide assistance to trafficked victims for the provision of protections against police harassment and provision of psycho-social care (OHCHR Replies of Kenya, 2017).

4.1.1.3 ILO Forced Labour Conventions (1964) and the Minimum Age Convention (1979)

The study findings were that ILO Conventions have been ratified by 182 countries, with Kenya being a State party since 2001. The ILO conventions are codes that offer protection for

vulnerable groups in exploitative labor with a unique mandate on protecting the rights of persons from forced labor; it seeks to address the business of trafficking in humans as a sociological problem.

The following are the provisions;

Table 4. 4: Provisions of the ILO Conventions that address Child trafficking

ILO Convention	Provisions
Forced Labour Convention 1930 (No 29)	Criminalizes mandatory work and Obligates state parties to punish traffickers under the penal code.
Abolition of Forced Labour convention 1957 (No 105)	Obliges countries to subdue forced labor.
Minimum Age Convention 1973. (NO 138)	A Child can begin working at sixteen years for light work and eighteen years for hazardous work.
Worst Forms of Child Labour 1999 (NO 182)	<p>Article 1, Mandates countries to enforce measures in eliminating worst forms of Child labor with urgency.</p> <p>Article 3 (ILO 182) affirms the restriction and prohibition exceeding forms of Child labor (WFCL), including sale and Trafficking of Children, slavery for labor, buying a Child for pornographic activities, recruiting of Children in illegal undertakings such as trade in drugs, forms of debt bondage and use of Children for any work which could harm Children.</p>

Source: Researcher 2021

Kenya has been an ILO member since January 1964. The convention came into force in 2001 the same year the Children's Act 2001 came into effect which criminalizes Child labor and economic exploitation. It was also established that there is a reporting mechanism to Committee of Experts on the Application of Conventions and Recommendations (CEACR) once in three years. Submissions by CEACR on International Labour Conference 109th Session in 2020 revealed that, under the Minimum Age Convention, 1973 (No. 138), the Kenyan government has combated Child labor through programs such as Support the National Action Plan (SNAP) project. However, CEACR was deeply concerned with increasing numbers of Children not attending school and taking part in hazardous work, mostly in farm work, domestic work, and street vending, increasing their vulnerability to Child trafficking. This was revealed after an International Labour Organization- International Program on the Elimination of Child Labour (ILO-IPEC) Labour Market Survey conducted in Busia and Kitui in 2012 (International Labour Conference, 2020).

According to Carol Bellamy, the then Executive Director UNICEF in 2003, in order to fight Child trafficking, governments needed to end excessive forms of Child labor.

...How can we put an end to the most abhorrent forms of Child labor when the Trafficking of women and Children remains unabated...? Children are increasingly treated as commodities by organized crime networks where the profit derived from these Children being traded into slavery or compulsive labor...(Bellamy, 2003)

The Committee's comments on WFCL 1999 (No.182) lamented Kenya's failure to provide a report on WFCL. Due to the high number of Children doing domestic work and Children being recruited in Al-Shabaab militants, the Committee then urged Kenya to apply and effectively regulate Children working in dangerous environment. (International Labour Conference, 2020).

4.1.1.4 The African Charter on the Rights and Welfare of the Child (ACRWC)(1990)

The study findings established that the ACRWC was adopted on 26th Organization of African Unity (OAU) Ordinary Session Head of State Assembly Addis Ababa, Ethiopia in 1990 (CAB/LEG/24.9/49 1990). As of June 2019, it had been ratified by 49 African Union (AU) states (Global Initiative to End Corporal Punishment,2019 para 1). Kenya ratified the charter on 25th June 2000.

The ACRWC is the African framework that enshrines provisions for African Child protection. It is unique from the UNCRC in that it addresses problems that face the African Child, such as Female Genital Mutilation and Child Marriages. (Mansingh, (2017), para 10)

The general provisions are;

Article	Provisions
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Table 4. 5: Provisions in the ACRWC that address Child Trafficking

Article 15	Makes provisions for Child protection from all types of economic misuse.
Article 21	Obligates states to protect Children from detrimental societal and cultural practices such as Child marriages.
Article 21	State parties should protect Children from inter-country adoptions that will lead to Trafficking by ensuring that the Child's best interest is protected.
Article 27	States should protect Children from all types of sexual abuse.
Article 29	States to take initiatives suitable in prevention sale of, abduction, and Trafficking in any form.

Source: Researcher 2021

The Kenyan government has made great strides to include provisions of the ACRWC in its legislations and policy framework. This was evident in the first state report to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) (2008-2011), Kenya, reported having increased the number of adoption societies and created more awareness about the adoption process to address Child trafficking. Kenya cited the 2010 constitution as a guarantor of Children against all types of exploitation. In addition, the enactment of the CTiP Act (2010) to safeguard Children from trafficking (ACEWRC 1st State Party Report-Kenya, 2013).

In response, the ACERWC voiced concerns about the high rates of forced Child marriages and female genital mutilation, suggesting judicial officers and magistrates training on Child protection laws (SA2590, 2014).

In the second and third state party report 2012-2017 to the ACERWC urged the Kenyan government to implement the CTiP Act (2010) fully and address Child Prostitution in response, Kenya cited reviewing of the ‘National Plan of Action against Sexual Exploitation of Children

2013-2017' (Article 27) and National Plan of Action against Human Trafficking (Article 29).The committee of experts esteemed use of the CTiP Act (2010) and expressed dissatisfaction with the government's failure to act on Child prostitution. (2nd and 3rd State Party Report-Kenya, 2018)

4.1.1.5 Domesticated Kenyan Laws that address Child Trafficking

Apart from the international legal framework, in Kenya, the national constitution is the supreme law regulating the affairs of the state. Article 2(5) of the Kenyan Constitution outlines that International Law becomes a part of Kenyan law. Article 260 of the Kenyan constitution outlines a Child to mean "... an individual who has not attained the age of eighteen years..." Additionally, it protects the Kenyan Child from exploitative labor in (Article 53, 1 (d)) which is further expounded in the Children's Act 2001 to address sexual exploitation, harmful cultural practices and trafficking of Children thus safeguard the welfare of the Children.

In addition, Kenya has enacted a variety of laws, including the CTiP Act (2010). The Act makes a provision for the deterrence and fighting trafficking in Children by protecting victims and penalizing perpetrators by attracting a fine of thirty million or thirty years' imprisonment or both. The Employment Act 2007 makes a provision for shielding Children from exposure to Child labor and trafficking.

The penal code in Section 256 outlaws abduction or kidnapping Children under fourteen years with an intention to steal it. Subsequently, the Sexual Offences Act 2006 criminalizes CSEC (Article 15), Child sex tourism (article 14), and Child pornography (Article 16). In addition, the Marriage Act 2014 criminalizes Child marriages by stating the legal marriage age to be eighteen years (Article 4). This protects Children from being trafficked for Child marriages.

4.1.2 Awareness among Stakeholders of the International Legal Framework Ratified By Kenya to address Child Trafficking

When the respondents were asked about the international legal framework ratified by Kenya to address Child trafficking that they knew of, out of twenty Key informants, seventeen key informants had a prior knowledge of the main international legal framework that Kenya has ratified in efforts to address Child trafficking. The question aimed at assessing the awareness of the international legal instruments among key stakeholders, and here is what some of the respondents said;

“...I know of several international legal instruments that address the prohibition of trafficking in Children case in point the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Convention against the Transnational Organized Crime (UNTOC) supplemented by the Palermo protocol....”

(Key Informant R8: Senior officer Child helpline Kenya on 21st October 2020).

“...I know of a lot of laws that address Child trafficking internationally and in the region.... We have the ACRWC, which protects the African Child, also the Ouagadougou action plan (2006) to combat Trafficking on women and Children in Africa. Then there is the EAC bill 2016 close home, which has not been passed yet, but it’s a close replica of the Kenyan counter trafficking in persons Act 2010....”

(Key Informant R10: Senior Officer at KAACR 15th October 2020)

“...I have an idea of these laws, the Palermo protocol just to mention and the most important and most overlooked to address illegal adoption is The Hague Convention on inter country adoption rights....”

(Key Informant R25: Principal Immigration Officer, 20th Oct 2020)

“...Kenya is a party to various conventions and protocols addressing Child trafficking...although the Palermo protocol is the most cited, we have the UNCRC, the Universal Declaration on Human Rights 1948, and in Africa, we have the ACWRC, which have been domesticated into the Children’s Act 2001....”

(Key Informant R2: KNCHR Officer, 19th Nov 2020).

The above responses were an illustration that the knowledge of the international legal framework aimed at addressing Child trafficking in Kenya was in existence among key stakeholders in the Child protection spheres. The demonstration of the domestication of these laws ultimately gives a funnel approach application of the International Law down to the local context.

4.1.3 Establishing Complementarity of the International Legal Framework and Domestic Law on Child Trafficking

During the field work, twenty key informants were asked the link between the international legal framework and domestic law addressing Child trafficking. Fifteen of the key informants cited there were aware of a high degree of complementarity between International Laws and domestic laws in addressing Child trafficking. The aim of the question was to gain an understanding of the relationship between the laws in question, as the following statements illustrate.

“...most of these laws are in agreement with the current domesticated laws in the country. We have the Counter-Trafficking in Persons Act 2010, which illustrates this....”

(Key Informant R15: Senior Officer at NCCS on 26th October 2020)

“...these laws showcase complementarity with each other for instance, the domestication of Children’s Act 2001 is a testament to this as it is a domestication of the UNCRC....”

(Key Informant R6: Senior Coordinator, Salvation Army 14th October 2020)

Three of the respondents looked at the complementarity aspect in terms of the content of our pre-existing laws in contrast with the International Laws.

“...when you look at the Counter-Trafficking in Persons Act (2010), we have copied the definition of trafficking in persons from the Palermo protocol word for word hence we intend to fully implement what Palermo protocol entails....”

(Key Informant R12 and R13: Senior Officers at Department of Children Services 16th October 2020)

The Key Informants R12 and R13 were accurate as was confirmed during the triangulation process, as shown below;

Extract from Palermo Protocol;

Article 3(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of receiving or giving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.

Extract from Counter Trafficking in Persons Act (2010);

3. Trafficking in persons.

(1) A person commits an offence of Trafficking in persons when the person recruits, transports, transfers, harbors, or receives another person for exploitation by means of-(a) threat or use of force or other forms of coercion;(b) abduction;(c) fraud;(d) deception; (e) abuse of power or of

position of vulnerability;(f) giving payments or benefits to obtain the consent of the victim of trafficking in persons; or (g) giving or receiving payments or benefits to obtain the consent of a person having control over another person.

“...these laws just feed into each other, that’s how I can explain it briefly....”

(Key Informant R 9: Senior officer, Stop Traffik Kenya 30th October 2020)

The complementarity of the laws is a vital aspect to look at when examining the gaps that inform the domestication of International Law. 2010

4.1.4 Existence of Gaps in the Implementation of International Law

When the key informants were asked about factors that challenge the application of the international legal framework in addressing Child trafficking in Kenya; they cited challenges in implementation of international legal framework and criminal prosecution of perpetrators with other related crimes as the main weaknesses due to lack of awareness on Child trafficking laws among the Criminal Justice personnel.

Kenya is obligated by Palermo protocol, to which it is a state party, to prosecute the perpetrators while protecting the trafficked victims in Articles 5 and 7. The respondents identified that one of the major challenges that plague the enforcement of the international legal framework in Kenya is the gaps that lie in the implementation framework, as evident from the responses illustrated below;

“...no single document addresses the various aspects of Child trafficking; they are too scattered. This makes the perpetrators to be charged with other crimes such as Employment Act violations, Child Labor, Sexual Offences....”

(Key Informant R10: Senior Officer at Kenya Alliance for the Advancement of Children 15th October 2020)

Another respondent lamented on the failure of implementation although Kenya has ratified a lot of laws,

“...Kenya is rated one of the most Child-friendly countries in Africa due to the large number of laws that it has ratified and domesticated to protect Children from vices, including Child trafficking. The number of policy documents, the National Plans of Action are many, but they remain to gather dust on a shelf somewhere. Perpetrators of Child trafficking are charged with other related crimes since there is a disconnect in having to prove the case in court as a case of Child trafficking....”

(Key Informant R 17: Senior officer at the NCCS 14th October 2020)

“...you know the punishment for trafficking is thirty years’ imprisonment, having this in mind traffickers bribe law enforcement officers who in turn charge them with other related crimes which attract fewer penalties also most police offices are not aware of Child trafficking laws which makes them charge perpetrators with other related crimes....”

(Key Informant R 27: Officer at National Police Service 6th November 2020)

During the second reading of the Prevention of Organized Crime Bill (BILL NO.4 of 2010), Prof. Saitoti, the then Minister for Internal Security and Provincial Administration, cited Gaps in Kenya legal systems that often lead to a lot of acquittals which demoralizes our security agencies as explained by the Parliamentary Proceedings during the discussions

“...while security organizations have and continue to put in place concerted efforts to combat organized crime, the existing laws seem inadequate to assist in preferring appropriate charges and meting out deterrent penalties against the offenders... this particular Bill is expected to fill in the legal lacuna that exists in our laws....”

Ms. Millie Odhiambo, in parliamentary proceeding tabling the CTiP Bill 2010, acknowledged there's a problem in execution of our laws as she stated,

“...one of the things that we have excelled as a country in the last 10 or 15 years is coming up with very many new laws, but the challenge has been the implementation... So, it is not enough for us to come up with these laws, but we must show that we are serious in dealing with issues that affect us as a country....”

Case studies showing hurdles encountered in addressing Child Trafficking in Kenya

The study examined some of the Child trafficking cases in Kenya, particulars of cases, and verdicts while assessing the application of anti-trafficking laws in Kenya. The cases settled upon exposed the hurdles that plague the implementation and the application of the counter-trafficking in person's laws.

In the case of *Adan Ibrahim Harrow vs. Republic, Marsabit High Court*, 3rd May 2019. By Judge S. Chitembe, The Criminal Appeal No. 2 of 2019 was from an appeal of original conviction and sentence in criminal case No. 24 of 2017 of the Hon. BM OMBEWA principle magistrate court at Marsabit. The appellant was charged with Child trafficking on count one, contrary the section 13 of the Sexual Offences Act No.3 of 2006 and Defilement as count two, Contrary with Section 8(3) of the Sexual Offence Act No.3 of 2006. Adan transported K.A, aged 13 years, to Manyatta Didi Rigatu using a motor vehicle to perpetrate a sexual offence with the Child. The appellant denied the charges but was convicted. Upon appeal, count two charges on defilement were upheld, and count one charge on trafficking were dropped, citing that Section 13 of the Sexual Offences Act was repealed and thus improper (*Adan Ibrahim Harrow v Republic* [2019] eKLR).

The researcher observed that in 2016 when this case was first presented in court, the CTiP Act,2010 was in place, but Adan was charged with a repealed section in the Sexual Offences Act 2006. This shows ignorance of the CTiP Act 2010 by personnel in the criminal justice systems, which was in force since 2012.

In the case of Newton Chomba Wathitha Vs. Republic, Embu High Court on 3rd May 2012 Judge H. I Ong’udi. The appeal was from a previous conviction and sentencing of Senior Resident magistrate case number 533 of 2008 delivered on 19th May 2008 at Gichugu Resident Magistrate Court. Newton Chomba was charged with Child trafficking on count one, contrary to section 13(b) of the SOA No. 3 of 2006. Between the 11th and 16th of May 2008, in Kirinyaga district, Newton harbored a girl A.K.G under 15 years to have unlawful sexual contact. The appellant pleaded guilty and was convicted. However, on appeal, Judge H. I Ong’udi set the appellant at liberty because the appellant was sentenced before he was convicted, which was procedurally wrong. Secondly, there was no offence of ‘Child trafficking’ in law at the time. In his defense, he cited that Section 13 of the SOA was repealed in 2010; hence the appellant could not be convicted of the offence (Newton Chomba Wathitha V Republic [2012] eKLR).

The study observation was that prior to the enactment of the CTiP Act 2010, there was no law addressing Child trafficking in Kenya, and traffickers got convicted of other crimes or were acquitted.

4.2 Assessing Kenya’s Compliance to its International Legal Obligations in Addressing Child Trafficking

The analysis of objective two aimed at assessing Kenya’s compliance to its international legal commitments, the responsibility of the international community at addressing Child trafficking, and Kenya’s efforts both at the state level and as a regional player. The findings for objective two were sought from twenty-eight key informants and twenty key documents as key sources.

The findings will therefore be presented in three major themes; formulation of laws, policies, and action plans, accountability mechanisms in the international system, and transnational Collaboration.

4.2.1 Formulations of Laws, Guidelines, and Policies

The study established that the international community plays a significant role in creating attention to contemporary issues such as Child trafficking at a global stage. The proactive role

played has steered advancement and formulation of different pacts, resolutions, policies, guidelines, and the subsequent National plan of actions geared at addressing Child trafficking. This section seeks to briefly state the international community's role in the formulation of laws and discussions on the existing guidelines and policies that have been put in place to address Child trafficking both internationally and locally.

Findings from the study revealed that the international community provides a platform where states discuss issues affecting them through the United Nations General Assembly (UNGA), conventions, workshops, seminars, and recently webinars. Consequently, state parties formulate laws, become signatories, and later ratify and domesticate these laws in their respective states. The most cited laws in addressing Child trafficking include the Palermo protocol, CRC, ACRWC, Hague Conventions, and ILO Conventions.

4.2.1.1 The International Situation

The study revealed that the implementation of these international legal frameworks has resulted in the formulation of policies that provide technical assistance to their operationalization. Below is an analysis of some of the key guidelines.

The UNODC (2009) provides a 'Framework for Action' as an essential guideline that addresses trafficking in persons, including trafficking in Children. The guideline affects the implementation of the Palermo Protocol. The Framework hereby addresses three main facets of trafficking in humans; prevention, protection of victims, and indictment of traffickers. Additionally, the Framework provides practical actions to circumvent the challenges that plague efforts aimed at combating trade in persons comprehensively. In addressing Child trafficking, the

framework recommends the use of an approach based on Child participation and Child-Rights while ensuring Child's best interests as guiding principles (UNODC, 2009)

The Office of the United Nations High Commissioner for Human Rights(OHCHR) provides guidelines that encompass efforts to forestall Child trafficking, victim protection, and assistance should ensure special considerations to Child victims' particular needs and vulnerabilities. The Child's best interest should be considered for Child victims of trafficking (OHCHR, 2010).

UNICEF provides a guide for reference on safeguarding the rights of trafficked Children of for Europe to address Child protection in various avenues; at the intergovernmental level, governmental level, and non-governmental level. The guidelines provide; an emphasis on nondiscrimination principle, the Child's best interest concerning Child's rights to privacy, and the right of each Child to air their views (UNICEF, 2006).

4.2.1.2 The Kenyan Situation

The outcome of the research established that Kenya had made considerable endeavors to address and act against Child trafficking. This has been through the advancement of various strategies and regulations. The subsequent discussions seek to highlight the significant strides.

The “National Plan of Action for Children (2015-2022)” provides a framework through which stakeholders and patrons coordinate, plan, implement and monitor programs for Kenyan Children. To address Child trafficking, the NPA aims to; strengthen the National Steering Committee on Child trafficking, operationalize CTiP Act provisions while presenting findings from research on Child trafficking interventions (NPA, 2015).

The National Referral Mechanism (NRM) provides a standard procedure for assisting trafficked persons. NRM provides a system for identifying, referring, offering holistic support, and providing indicators for identifying Child victims of trafficking while providing a platform that envisages cooperation between stakeholders (NRM, 2018). The NRM has been very effective in the referral of victims to shelters. In 2019, a total of 78 victims were referred for shelter services. Among them were 40 Children (USDOS TiP Report, 2020).

Various legislations address Child trafficking; among them, the Constitution of Kenya 2010 Article 53 enshrines rights and mandates promotion of a Child's best interest (Constitution, 2010 article 53). The Children's Act 2001 is a domestication of UNCRC and ACRWC, which provides a framework for a Kenyan Child's rights. Articles 13, 14, and 15 have provisions on protecting Children from all types of misuse, including trafficking (Children Act, 2001, Articles 13, 14, and 15). The Employment Act of 2014 under Article 53 prohibits the employment of a Child in excessive and harmful labor (Employment Act, 2014 article 53). The Sexual Offences Act, 2006, under Article 36, Criminalizes recruitment, harboring, and transferring of Children for sex use (Sexual Offences Act, 2006 article 36). The CTiP Act (2010) in Article 4 criminalizes any action promoting Child trafficking. In addition, Article 19 of the act establishes the counter-trafficking in person's advisory committee mandated to coordinate multi-agency activities geared towards combating human trafficking (CTiP Act (2010) Articles 4 and 19).

The Anti-Human Trafficking and Child Protection Unit (AHTCPU) was founded in 2006 to curb sexual abuse in Kenya. Recently, the unit has access to high-speed internet that facilitates data sharing, precise reporting, record keeping, and monitoring gender-based violence, Child trafficking, and Child exploitation. To control high levels of Online Sexual Exploitation of Children (OSEC) in the country, the unit has partnered with a US-based National Centre for

Missing and Exploited Children (NCMEC), the DCI, and the United States Department of Homeland Security (DHS). It's the only unit of its kind in East Africa (UNODC,2019).

The key informants were asked to highlight the efforts made by the international community and Kenya to address Child trafficking. Below are some verbatim quotations from the key respondents about the efforts.

“...the international community plays a proactive role in coming up with treaties and compelling states to make commitments to comply with the treaties; other efforts include funding projects, arresting tourists who sexually exploit Children in Africa, and prosecuting them. Mainly from Germany, Sweden, Britain, and other EU nations....”

(Key Informant R8: Senior Officer at Child Helpline Kenya on 23rd October 2020)

“...the international community aids in the prosecution of criminal perpetrators and formulation of policies, guidelines and more effective laws to punish traffickers and deter potential perpetrators....”

(Key Informant R16: Senior Officer at NCCS on 26th October 2020)

“...the international community has come up with Conventions, policies, effective laws which upon domestication, the Kenyan government comes up with relevant legislation and NPAs to address Child trafficking....”

(Key Informant R10: Senior personnel at KAACR 15/10/2020)

4.2.2 Accountability Mechanisms

The study uncovered that the international community ensures compliance through a system of checks and balances, such as requiring reports to be submitted every specified given timeline.

The most notable reports being the Universal Periodic Review (UPR), United States Department

of State (US DOS), and specific reports affiliated to the specific treaties a state is a signatory to. These include reports to the CRC , ACEWRC , and ILO CEACR committees.

The UPR is a procedural assessment of human rights records in UN member states to which Kenya is a party. The UPR is characterized by state-initiated procedures where each state compiles actions to improve human rights conditions in their countries. UPR receives submissions from Kenya as a state and its stakeholders, who are NGOs and NHRIs, on human rights situations and violations every five years. The OHCHR then gives areas of improvement to Kenya, which goes through the review process and offers recommendations.

For instance, in the outcome of the second UPR cycle in 2015, Kenya received the recommendations to combat Child trafficking in the recommendations 142.60, 142.77, 142.71, 142.78, 142.81 (A/HRC/29/10, 2015). In response to the National Report on Child trafficking, Kenya reported having disseminated the National Referral Mechanism. This mechanism provides for guiding framework to combat and protect trafficked victims in twelve counties identified as hotspots of trafficking. In addition, Kenya reported on the gazette of the second advisory committee and disseminating 300 officers of the law enforcement to address trafficking. (A/HRC/WG.6/35/KEN/1, 2019).

The United States Department of State (US DOS) conducts an annual review on the extent of trafficking in humans in different countries worldwide. The Trafficking in Persons reports serve as a roadmap for the diplomatic arrangement on trafficking in humans. Each state is rated according to its level of compliance in different tier rankings with justifications.

Findings from the 2020 Trafficking in Persons (TiP) report pointed out that Kenya has been continuously rated tier 2 since it does not entirely meet least criteria of Trafficking Victims

Protection Act (TVPA). Although some efforts have been made in terms of; increment in the number of the identified victims, the launch of a cyber-crime center at Anti- Human Trafficking –Child Protection Unit (AHT-CPU) that will specifically deal with the inquiry of Online Sexual Exploitation of Children (OSEC) and improvement in terms of cooperation among countries, there has been a relative decrease in the number of inquiries, enactment, and convictions. Recommendations included that Kenya should increase training in the criminal justice system by offering harsh sentences to perpetrators.

When asked how the international system ensures Kenya’s compliance to international legal obligations, the key informants pointed out the following,

“...the international community has come up with several reporting mechanisms to ensure compliance to the international treaties. These mechanisms include the CRC review committee, which is a monitoring body for the UNCRC. Then we have the ACEWRC, which is monitors the ACWRC. We also have UPR, a reporting mechanism that works on monitoring respect for human rights globally. In addition, we have the CSO forums and the academia who presents complementary reports that keep the government in check. The CSO forums present reports by annually updating the ACEWRC on the status of Children’s rights....”

(Key Informant 9: Senior Personnel at Stop the Traffik on 30th October 2020)

4.2.3 Transnational Collaboration

The study findings indicated that Child trafficking is a global phenomenon that requires countries, organizations both local and international, to cooperate to address this menace. Kenya is a leading player in the region in addressing human trafficking. She is a part of various regional initiatives, among them; The Khartoum Process, the Better Migration Management (BMM), Inter Governmental Organization for Development (IGAD), and the East Africa Community (EAC), which will be discussed in the following sections.

The Khartoum Process is a platform for regional dialogue on cooperation to address trafficking in humans and migrants smuggling in countries of source, passage, and destination along with the horn of Africa- Europe Migration Route. Kenya is a leading partner in this process. The platform provides an avenue for countries to consult, coordinate and cooperate politically to address trafficking in humans and migrant smuggling. It promotes a mutual understanding of challenges and opportunities for partnership with governments and intergovernmental institutions such as UNODC, IOM, UNHCR, ICMPD, and IGAD to combat migrant smuggling and trafficking in humans (Khartoum process 2014).

In an attempt to address smuggling and trading in humans within and from horn of Africa, the European Union Trust Fund for Africa and the German Ministry for Economic Cooperation and Development (BMZ) funded the Better Migration Management (BMM) Program. The BMM programs are implemented by IOM in the following countries; Kenya, Djibouti, Somalia, Uganda, Ethiopia, South Sudan, and Sudan. The BMM works closely with the Africa Union Commission and Inter Governmental Organization for Development (IGAD) to foster regional cooperation that will enhance development and stability while observing international treaties and human rights (IOM, 2020)

IGAD seeks to address human trafficking by addressing the factors that encourage trafficking and the challenges involved. For instance, through its Security Sector Program, IGAD held joint discussions with INTERPOL on “Disrupting the Finances of Criminal Networks Responsible for Human Smuggling and Trafficking in the Horn of Africa.” The discussions centered on strengthening international collaboration in dismantling these networks hence an emphasis on the partnership. Besides, the partnership aimed to disrupt related illegal financial flows,

consequently building institutional capacities in confronting human trafficking. (IGAD SSP, 2019)

The EAC partner states recognize the magnitude of trade in humans in the region. In 2016 the East African Legislative Assembly passed EAC Anti-Trafficking in Persons Bill. The bill has a legal basis for preventing human trafficking, prosecuting the traffickers, victim protection mechanisms, and encouraging cooperation in efforts to curb human trafficking. The bill is awaiting assent by EAC heads of states. (EAC, 2016)

When asked about the role of Kenya in addressing Child trafficking, the Key respondents revealed the following;

“...Child trafficking in the region has been well addressed by organizing regional forums, seminars, workshops and inter-country benchmarking with countries like Sudan, South Sudan....”

(Key Informant R12, 13: Senior Officers at Department of Children Services 16th October 2020)

“...region-wise, we are trying to create awareness on Child protection issues, including Child trafficking. This is characterized by governments collaborating to do the inter-country tracing, coordination between immigration officials through improved communication in border town with the one-stop border points....”

(Key Informant R18: Senior Officer at NCCS on 26th October 2020)

“...there has been inter-agencies coordination through the investigations of trafficking by the Interpol. The trafficking syndicates are often dynamic and amorphous “faceless” since they are operating transnationally from the dark web hence requiring a lot of cooperation from other governments....”

(Key Informant R15: Senior Officer at NCCS on 26th October 2020)

4.3 Analyzing the Challenges Encountered in Efforts to Address Child Trafficking in Kenya

Objective three sought to analyze the challenges encountered in an effort to address Child trafficking in Kenya. The findings for this objective were sought from twenty-eight key informants and key documents. The study revealed the following five major themes; challenges exacerbated by COVID 19 pandemic, difficulty in the identification of Child victims of trafficking, the challenge of Transnationality in combatting Child Trafficking, inadequate prioritization of Child trafficking, and poor collaboration among key stakeholders.

4.3.1 Challenges exacerbated by COVID 19 pandemic

Since March 2020, COVID 19 has ravaged almost all aspects of our lives. After reporting the first few cases of COVID 19 in Kenya, the president ordered the closure of schools, and all Children were forced to remain at home indefinitely. This prompted the researcher to gain a keen interest in the pandemic's effect on Child trafficking in Kenya.

The study sought to investigate the challenges posed and exacerbated by the global pandemic and how this affected Child trafficking. The findings revealed three significant challenges; increased economic pressure, reduced donor funding, and increase in online sexual exploitation of Children(OSEC).

Increased Economic Pressure

The study results indicated that the economy is hard hit by the pandemic characterized by massive layoffs, a shutdown of businesses, and a reduction of wages. This led to a loss of the source of livelihood for many families. Approximately 1.72 million persons lost their jobs during the lockdown (Munda, 2020).

The discussions with the key informants revealed the risks brought by increased economic pressure. Below are some of the quotations from the key informants that reveal the perils of increased economic pressure on Child trafficking.

“...Loss of livelihood has opened up a Pandora’s box that has exposed Children to a lot of vulnerabilities such as Child labour exploitation and commercial sexual exploitation....”

(Key Informant R15: Senior Officer at NCCS on 26th October 2020)

“...there have been increased cases of Child trafficking accentuated by the fact that many people are laid off, making Children more vulnerable. Children are forced to ‘chip in’ because they feel ‘big’ and need to fend for their families. Looking for jobs to increase the household incomes without national Identity Cards makes them increasingly vulnerable to Child trafficking....”

(Key Informant R8: Senior Officer at Child Helpline Kenya 23rd October 2020)

“...the loss of livelihood for parents has directly contributed to increased vulnerability for Children as they are inclined to look for an alternative source of income and thus recruited into worst forms of Child labour like Child trafficking. The Children have also been absorbed in other sectors of the economy; boys have been recruited for herding, mining, and fishing. Girls have been recruited for domestic labour and commercial sexual exploitation....”

(Key Informant R6: Senior Officer at Salvation Army on 21st October 2020)

Trafficking of Children for labor purposes has seen a surge as most families are grappling with the fact that they can no longer feed themselves. The desperation has led to increased Children susceptibility to exploitation into excessive practices of Child labour and sexual exploitation.

Reduced Donor Funding

The study revealed that donors have a leading part in addressing Child trafficking by providing funds and technical assistance. The outbreak of the COVID 19 pandemic has led to shifting in donor funding from Child trafficking to combating the spread of the pandemic. The following are some of the quotations from key respondents;

“...with too much focus on COVID 19 prevention efforts, there has been a lack of focus on Child protection in general. The donors focus on other aspects of the COVID 19 pandemic resulting in cessation in some donor funding. This stagnates Child protection projects that heavily rely on donor funding for their sustenance....”

(Key Informant R4&R5: Senior Personnel at Consolation East Africa on 8th October 2020)

“...since most organizations rely on donor funding when the funds are slashed, the organizations are forced to reduce staff capacity and services. This has resulted in a reduction in Child rescue services....”

(Key Informant 12&13: Senior Personnel at DCS on 30th October 2020)

Online Sexual Exploitation of Children(OSEC)

The study findings indicated that with the closure of schools and the introduction of online learning, Children have been exposed to online sexual predators. Freedom collaborative (2020) report indicated that online Child pornography and Child trafficking risks have increased due to uncensored internet access due to the online learning modes (Freedom Collaborative, 2020 p.22).

The key respondents amplified these claims, as quoted below.

“...while most sex dens and brothels have remained closed where sex predators used to frequent, the predators have now shifted their focus online leading to increased cases of online sexual exploitation of Children....”

(Key Informant R6: Senior Officer at Salvation Army on 21st October 2020)

“...with Children accessing their classes online, the internet has exposed them to increased chances of Child trafficking through being lured by traffickers through social media platforms....”

(Key Informant 12&13: Senior Personnel at DCS on 30th October 2020)

4.3.2 Difficulty in the Identification of Child Victims

The study uncovered that the identification is the first step in rescue of victims of Child trafficking. When the key respondents were asked to highlight the process from identifying a victim to taking the victim to a shelter, they cited identification of Child victims as the main challenge. The following key respondents indicated some of the difficulties;

“...the identification is hard for people of Somali origin, but once we suspect a case, we act on it....”

(Key Informant R 25: Senior Immigration Officer 2nd October 2020)

“...most people are unaware of Child trafficking; hence victims end up unnoticed....”

(Key Informant R 17: Senior Officer at NCCS on 13th October 2020)

“...identification of Child trafficking cases is hard because Children blend in quite well; unless it is a group of Children, it’s hard to single out one....”

(Key Informant R 14: Senior Officer at NCCS on 13th October 2020)

4.3.3 The Challenge of Transnationality in Combating Child Trafficking

From the study findings, Child Trafficking is a universal menace, and Kenya is not an exception being an origin, transit, and destination country to Child victims. A report done by Freedom Collaborative uncovered that Kenya’s trafficking locations and cross-border routes total up to 98. Kenya is an origin country for Children trafficked to; Chad, France, Spain, Rwanda, Germany, Netherlands, Uganda, Italy, and Tanzania. As an end country, Kenya harbors Children trafficked

from; Democratic Republic of Congo, Somalia, Uganda, Ethiopia, and Tanzania. In addition, Kenya is a transit point for Children being trafficked from; the Democratic Republic of Congo to Ethiopia, Uganda to Somalia, and Tanzania to Burundi (Freedom Collaborative, 2020).

Discussions with key informants revealed that transnationality was a great hindrance in investigations and prosecution of Child trafficking cases by citing the following;

“...transnationality is a very important aspect to look at. Although the internal cases are high, the external cases are on the rise, with exceptional cases on the media. Children are mostly trafficked from Somalia to Eastleigh, Kenya, for Child marriages which are rampant. The investigation is thus faced with a language barrier as the main challenge....”

(Key Informant 12&13: Senior Personnel at DCS on 30th October 2020)

“...the transnationality of Child trafficking cases should be taken seriously; recently, there was a case of trafficking of one hundred Karamoja girls from Uganda into Kenya. Although they have been successfully repatriated, it took a lot of bureaucratic engagements which slowed down the process of repatriation....”

(Key Informant R 01: Senior Personnel at CHTEA 19th October 2020)

The investigation and prosecution of transnational Child trafficking cases should be bestowed the same attention accorded to internal cases. These will require the government to commit more resources to their investigation and conduct more joint efforts with the other states involved.

4.3.4 Inadequate prioritization

Prioritization aids in marshaling resources and combining efforts in the international and national circles, especially when dealing with transnational crimes. As the study revealed, the Kenyan government has not put in place enough measures and resources in combating Child trafficking in comparison to other international crimes like terrorism. When asked whether Child trafficking

was getting enough prioritization in terms of resource allocation in contrast to other transnational crimes, the Key Respondents highlighted the following,

“...prioritization is a big issue. When it comes to the allocation of funds for Child trafficking, there is a budget for Child protection, but in most cases, it is misused. When the need arises for Child victims to use the funds, the funds are not there....”

(Key Informant R4&R5: Senior Personnel at Consolation East Africa on 8th October 2020)

“...when we talk of transnational organized crime; we talk of terrorism, poaching, drug trafficking, small arms trafficking, and human trafficking. Other than trafficking in persons, the rest get hefty budgets from the international community in a bid to address them because they always seem “overwhelming” with an emphasis on terrorism, where people have looming fear in their faces that it’s always there. With human trafficking, it always seems distant as if they are stories that happen to distant people....”

(Key Informant R9: Senior Personnel at Stop the Traffik Ke on 30th October 2020)

“...the issue of Child trafficking is clearly not a government priority. If you want to measure the seriousness try repatriating a foreign national who is a victim of Child trafficking....”

(Key Informant R 03: Senior Personnel at Okoa Sasa 20th November 2020)

4.3.5 Poor collaboration among key stakeholders

The study revealed that the collaboration of various institutions is crucial in addressing the menace of Child trafficking. Most institutions cited lax collaboration in addressing Child trafficking. A report done by the Freedom Collaborative revealed that the stakeholders, despite the existence of mechanisms for collaboration such as the National Referral Mechanisms, majority of the stakeholders held each other in distrust, citing the lack of goodwill among them (Freedom Collaborative,2020). Below are quotations from various respondents.

“...there is a need to map organizations that rescue victims of Child trafficking. This will help reduce duplication of efforts and better coordination in securing a safe place for Child victims....”

(Key Informant R 19: Senior Personnel at TRACE ke 21st October 2020)

“...there is a sloppy collaboration from the government side, from reporting to the police all the way to the Children officers when it comes to identification and rescuing of Child trafficking victims....”

(Key Informant R 17: Senior Officer at NCCS on 13th October 2020)

“...most of the institutions have internal policies that prohibit the sharing of information among the stakeholders, which need to be reviewed for the purpose of combatting the menace of Child trafficking across the board. The policies should thereby encourage data collaboration efforts in order to close the knowledge gap that is in existence at the moment....”

(Key Informant R 27: Senior Officer at NPS on 22nd November 2020)

With an observation of the lack of a national data repository mechanism specifically on Child trafficking despite its provision in the Counter Trafficking in Persons Act (2010). This creates a disconnect in knowledge generation.

CHAPTER FIVE

SUMMARY, CONCLUSION, AND RECOMMENDATIONS

5.0 Introduction

This chapter will focus on four sections; a summary of the study findings on each objective, the conclusion of the study, the recommendations from the study findings, and suggestions for further research.

5.1 Summary

A state's compliance with International Law is characterized by states' ratification of a treaty. The level of commitment is monitored by relevant treaty monitoring committees, which keeps states in check on the observance of the treaty obligations. A State's Tier Ranking is a reflection of the efforts in place to address trafficking in humans. International Law plays a pivotal part in addressing Child trafficking in Kenya. Objective one was to examine the international legal framework aimed at combating Child trafficking in Kenya. The study results indicated that the regulation of Child trafficking in Kenya by International Law draws its framework from the

various conventions and protocols, namely, UNCRC, Palermo protocol, ILO conventions on Forced Labour, and Minimum Age, and ACRWC. An assessment of the key stakeholders' knowledge of the international legal framework indicated a high level of awareness of the international legal framework ratified by Kenya to address Child trafficking. In addition, the study discovered a high level of complementarity between the international legal framework and domestic law. However, there are still gaps in implementation of International Law.

Giving reference to the second objective on assessing Kenya's compliance to its international obligations in addressing Child trafficking, the study results revealed compliance in various forms. Kenya has been formulating various laws, policies, and action plans such as the CTiP Act 2010, the National Plan of Actions, and the National Referral Mechanism. To enhance accountability, Kenya has been issuing periodic reports on Child trafficking status in the country, as evidenced by the submission of the Universal Periodic Review (UPR) report, ACEWRC, CEACR, CRC Committee reports. In addition, Kenya is a party to regional collaboration initiatives such as The Khartoum Process, BMM, and EAC.

The third objective focused on analyzing the challenges encountered in attempts to address Child trafficking in Kenya. The study findings illustrated that the COVID 19 pandemic has increased the vulnerability of Children to Child trafficking by aggregating the economic pressure. Identification of Child victims of trafficking remains a significant obstacle in tackling this menace. Furthermore, the inadequacy in prioritizing Child trafficking coupled with poor collaboration among key stakeholders poses major impediments in addressing Child trafficking.

5.2 Conclusion

International Law has been instrumental in regulating Child trafficking in Kenya. It has been the genesis of a lot of domestic laws that address Child trafficking. Kenya has made significant efforts to curb Child trafficking, such as promoting regional collaboration and complying with international reporting mechanisms by sending periodic reports, coming up with the National Plan of Action, and legislations such as the CTiP Act 2010.

To this end, International Law has emerged as a powerful conduit in the regulation of Child trafficking in Kenya by obligating Kenya to formulate laws, policies, and guidelines. Kenya is amongst the friendliest nations in Child protection laws and has been instrumental in promoting regional collaboration in the fight against Child trafficking. However, Child trafficking cases are still on the rise, and there is a lot to be done to implement laws.

5.3 Recommendations

Child trafficking results from the lax implementation of laws, inadequate resource allocation, increasing economic pressures, and poor collaboration among stakeholders. Based on these findings, the study recommend the following:

- 1.The Department of Children Services should liaise with the media, religious institutions, and the ministry of education to create awareness of Child trafficking among Children and parents. The awareness should encompass the components of Child trafficking, victim identification, reporting mechanisms, and victim protection procedures.
2. Policymakers should develop a multi-agency approach that will include all key stakeholders such as the Department of Children Services, the National Police Service, Immigration

department, and NGOs. This will help in the mapping of the rescue centers and enhance multi-agency collaboration, which will reduce Child trafficking cases.

5.4 Suggestions for further research

(a) Considering the finding of this study, a study may be conducted on the role of Charitable Children Institutions in encouraging Child trafficking in Kenya.

(b) A study should be carried to determine how Anti Child trafficking laws discourage people from reporting and seeking victim support services.

(c) A study may be conducted to find out if Child trafficking needs different approaches and interventions from adult trafficking in Kenya.

REFERENCES

1st State Party Report (2008). The Implementation of the African Charter on the Rights and Welfare of the Child 2008—2011.

African Network for the Prevention and Protection against Child Abuse and Neglect, ANPPCAN (2017) *Baseline survey on Child trafficking in Kenya*.

Allain, J. (2013) Slavery in International Law: 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Supplementing the United Nations Convention against Transnational Organized Crime pp.410-421)

Allain, J. (2017). White Slave Traffic in International Law. *Journal of Trafficking and Human Exploitation*, (1), 1-40.

Ajansı, A. (2020). Kenya police unearth Child trafficking syndicate. <https://www.aa.com.tr/en/africa/kenya-police-unearth-Child-trafficking-syndicate/2048151>

Bales, K. (2005). *New Slavery* (2nd Edition). California: Contemporary World Issues Series.

BBC News Africa. (2020). *The Baby Stealers* [Video]. YouTube. <https://www.youtube.com/watch?v=7ix5jbCmiDU>

Bellamy, E. (2003). *Looking Backward: 2000-1887*. Broadview Press.

Birdsall N. (2009) *Global Citizens and the Global Economy*. Centre for Global Development. New York.

CdeBaca, L. (2011). Successes and failures in international human trafficking law. *Mich. J. Int'l Law*

Cedrangolo, U. (2009) *The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: On the Jurisprudence of the Committee of the RIGHTS of the Child*.

Children Agenda Forum. (2015). *National Plan of Action for Children in Kenya 2015-2022*. Kenya.

Colson, C. (2007) *God and Government, An insider's view on the boundaries between faith and politics*. Michigan.

Concluding recommendations by the African Committee of Experts on the Rights and welfare of the Child (ACERWC) on the Kenya 1st periodic report on the status of implementation of the African Charter on the Rights and Welfare of the Child.

East African Community (EAC) Counter Trafficking in Persons Bill (2016).

Estourgie, S. (2016) *the fight against human trafficking. Why do countries ratify, but not all, comply with the Palermo protocol?* (Radboud University).

Faulkner, E. A. (2019). *The Development of Child Trafficking Within International Law: a socio-legal and archival analysis*. In *Pluralizing International Legal Scholarship*. Edward Elgar Publishing.

Freedom Collaborative (2020). *Child Trafficking in Kenya, During COVID-19, and why Collective Data is Key to its Prevention*.

Gallagher, A. (2010). *The International Law of Human Trafficking*. Cambridge University Press.

Gathigah, M. (2020). Human Trafficking- It Came Disguised as an Opportunity of a Lifetime. Interpress Service News Agency.

Global Report. (2019). Progress towards ending Corporal Punishment of Children.

Henkins, L. (1968) *How Nations Behave*, 2nd Ed. New York: Columbia University Press.

IGAD SSP, (2019). Disrupting the Finances of Criminal Networks Responsible for Human Smuggling and Trafficking. IGAD.

ILO. 2020. 109th Session of the International Labour Conference.

International Labour Organization (2014) *Profits and Poverty: The Economics of Forced Labour* Geneva.

International Labour Organization (2017) *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* Geneva.

International Organization for Migration, IOM (2017) ‘*Human Trafficking in East Africa, “Research Assessment and Baseline Information in Tanzania, Kenya, Uganda, and Burundi.”*’

Islam, M. S., & Nicaise, A.Y., (2017). International Responsibility of Human Trafficking under International Law. *International Journal of Management and Applied Sciences*, 3(12) 1, 2.

Kenya, L.O. (2006) Sexual offences Act of 2006. NO. 3 OF 2006. Chief Registrar of the Judiciary.

Kenya, L.O. (2009) the Penal Code. Chief Registrar of the Judiciary.

Kenya, L.O. (2013). The Constitution of Kenya: 2010. Chief Registrar of the Judiciary.

Kenya, L.O. (2015). Victim Protection Act: 2014. Chief Registrar of the Judiciary.

Kenya, L.O. (2015). Victim Protection Act: 2014. Chief Registrar of the Judiciary.

Kothari, C.R. (2004) Research Methodology: Methods and techniques. New Age International.

Lenzerini, F. (2007). International Legal Instrument on Human Trafficking and a Victim-Oriented Approach: Which Gaps Are to be filled. *Intercultural Hum. Rts. L. Rev.*, 4, 205.

Maluwa, T. (1999). International Law in post-colonial Africa *Martinus Nijhoff Publishers*. (Vol. 4).

Mansingh, C. (2017). Child Trafficking. Prezi.

Mendelson, S. E. (2014). Born Free. *Foreign Affairs*.

MOL. (2013) National Plan of Action for Combating Trafficking in Persons Strategic Framework
(2013—2017). Kenya.

Morcom, C & Schleonhardt, A. (2011) All About Sex?! The Evolution of Trafficking in Person
in International Law.

National Council for Children's Services. (2013). The National Plan of Action against Sexual
Exploitation of Children (2013-2017). Kenya.

National Crime Research Center, NCRC (2015) *Human Trafficking in Kenya*. Nairobi, Kenya.

Ngwe, J. E., & Elechi, O. O. (2012). Human trafficking: The modern day slavery of the 21st
century. *African Journal of Criminology & Justice Studies*.

Nyataya, K., Isaboke, p., Gacinya, J. (2017) Human Trafficking Incidence in Rwanda: Its
challenges prevention and control. *International Journal of Research in Sociology and
Anthropology* (Vol 3(1)).

O'Connell Davidson, J. (2016). De-canting 'Trafficking in Human Beings', Re-centering the State. *International Spectator*, 51(1), 58-73.
<https://doi.org/10.1080/03932729.2016.1121685>.

Odhiambo, T. A. (2017). *A Critique of the role of the government in combatting human trafficking in Kenya* (Doctoral dissertation, Strathmore University).

OHCHR Replies of Kenya. (2017) Consideration of reports submitted by States parties under article 18 of the Convention on the Discrimination against Women: 68th session.

OHCHR. (1979) Convention on the Elimination of All Forms of Discrimination against Women.

OHCHR. (1999). Traffic in Women and Girls. (E/CN.4/RES/1999/40).

Orakhelashvili, A. (Ed.). (2011) *Research Handbook on the Theory and the history of International Law*. Edward Elgar Publishing.

Organization of Africa Unity. (OAU). (1990). African Charter on the Rights and Welfare of the Child. CAB/LEG/24.9/49 1990).

Palmqvist, E. (2006) Children's Rights in Kenya-an Analysis based on the CRC Reports. Save the Children Sweden.

Protocol, U. P. (2001). United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and Children, supplementing the United Nations Convention against transnational organized crime.

SA2590. (2018) Recommendations and Observations to the Government of Kenya by the African Committee of Experts on the Rights and Welfare of the Child.

Salihu, D., & Chutiyami, M. (2016). Trends of Child trafficking situation in Nigeria and a way forward. *Research on Humanities and Social Sciences*, 6(16), 31-37.

Sigfridsson, T. (2012). *Trafficking of Children: the case of South Africa* (Doctoral dissertation, Stellenbosch: Stellenbosch University).

Social Protection. (2019). NRM Guidelines for Kenya.

The Counter Trafficking in Persons Act No. 8 of 2010 www.kenyalaw.org

The Khartoum Process. (2014). Declaration of the Ministerial Conference of the Khartoum Process. (EU-Horn of Africa Migration Route Initiative). Rome.

The Second and Third State Party Report 2012-2017 on the African Charter on the Rights and Welfare of the Child. Presented to the African Union November 2018.

Thipanyane, T. (2015). *Human Trafficking: African Perspective*, JURIST.

TOC, U. (2004). United Nations Convention Against transnational organized crime and the protocols thereto. United Nations Office on Drugs and Crime.

Tushnet, M. (1990). *Critical legal studies: A political history*. Yale

UN. (2005). Fifty Years of United Nations Congress on Crime Prevention and Criminal Justice: Past Accomplishments and Future Prospects. Eleventh United Nations Congress on Crime Prevention and Criminal Justice. Bangkok. (A/CONF.203/15 para.7).

UN Children's Fund (UNICEF). (2006). Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe.

UN Committee on the Rights of the Child (CRC). (2006). UN Committee on the Rights of the Child: Second Periodic Report of States Parties Due in 1997, Kenya. CRC/C/KEN/2.

UN Committee on the Rights of the Child. (CRC). (2015). List of issues in relation to the combined third to fifth reports of Kenya. (CRC/C/KEN/3-5, 2015).

UN General Assembly (2019). National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. A/HRC/WG.6/35/KEN/1.

UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at <https://www.refworld.org/docid/4220706c0.html> [accessed 20 December 2020].

UN General Assembly. (1948) Universal Declaration of Human Rights. 217 A (III).

UN General Assembly. (1989). Convention on the Rights of the Child. New York City: United Nations. Treaty Series, vol. 1577, p 3.

UN Human Rights Council. (2015). Report on the Working Group on the Universal Periodic Review: United States of America. A/HRC/30/12.

UNICEF. (2014). Thematic Areas: Implementation of International Human Rights Obligations, taking in to Account Applicable International Humanitarian Law. Universal Periodic Review Report. Section 3.

United Nations General Assembly. (2015) Report of the Working Group on the Universal Periodic Review. Kenya. A/HRC/29/10, 2015.

United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2016* (Vienna, 2016).

United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2019* (Vienna, 2019).

United States Department of State, *Trafficking in Person Report 2014* (Washington, D.C., 2014).

United States Department of State, *Trafficking in Person Report 2017* (Washington, D.C., 2017).

UNODC. (1998). Draft Protocol to Combat International Trafficking in Women and Children Supplementary to the United Nations Convention on Transnational Organized Crime. (A/AC/254/4/Add.3).

UPR. (2019). Draft Report of the Working Group on the Universal Periodic Review. Kenya.

US Dept. of State, & United States of America. (2009). Trafficking in Persons Report 2009.

Vienna Convention on the Law of Treaties (1969). Vienna. Treaty Series, vol. 1155, p. 33

APPENDICES

A1: Letter of introduction

LETTER OF INTRODUCTION

Mary Nduta Njoroge,
P.O. Box 118-00216,
Githunguri, Kenya
njoroge-nduta18@students.ku.ac.ke
(Date)

(Address 2)

RE: REQUEST FOR RESEARCH DATA

My name is Mary Njoroge a postgraduate student at Kenyatta University pursuing a Masters in International Relations and Diplomacy in the Department of International Relations, Conflict and Strategic Studies.

I am conducting research on **International Law and the Regulation of Child Trafficking in Kenya**. I am writing to kindly request for access to research data at **(The institution)** inform of key informants and documents for analysis as part of the requirement and fulfillment of the program. The main objectives for the research are;

- 1) Examining the international legal framework aimed at regulating child trafficking in Kenya
- 2) Assessing Kenya's level of compliance with the international legal frameworks in addressing child trafficking.
- 3) Analyzing the challenges and opportunities faced by Kenya in addressing child trafficking.

I consider a chance to access data in your institution as the right opportunity for me to not only learn but also contribute towards creating a publication on child trafficking.

Please do not hesitate to contact either via my email Njoroge-nduta@students.ku.ac.ke or my mobile phone 0721 744 282.

Thank you for your time and consideration.

Yours sincerely,

Mary Njoroge.

A2: Research Interview Guide

KEY INFORMANT INTERVIEW GUIDE

- 1) Could you describe the nature of your work and how it relates with child protection in general

Follow up question 1: How does the nature of your job relate to child trafficking in particular

Follow up question 2: What is your understanding of the term child trafficking?

Follow up question 3: Which are the most common forms of child trafficking you have come across

Follow up question 4: What categories of children are most vulnerable to trafficking and what factors increase vulnerability?

- 2) What role is your institution playing addressing child trafficking?

- 3) What do you think the international community is doing to address child trafficking

Follow up question 1: How do you relate the effectiveness of the international community on addressing child trafficking and why?

Follow up question 2: What factors could you use to rate the effectiveness of the international community?

- 4) What is Kenya doing to combat child trafficking?

Follow up question 1: how do you rate the level of success and why?

- 5) Which is the international legal framework ratified by Kenya to address child trafficking?

- 6) How could you define the relationship between the international legal framework and domestic law in addressing child trafficking?

- 7) What factors do you know of that challenge the application of the international legal framework in child trafficking in Kenya?

- 8) How has child trafficking been addressed regionally by IGAD and by the EAC?

- Follow up question 1: what has been the success or challenges?
- 9) How do you rate Kenya's compliance to its international legal obligation?
- Follow up question 1: why do you think Kenya is doing well or not doing well and why?
- Follow up question 2: what aspects needs to be improved and why?
- Follow up question 3: what support does Kenya need in order to effectively address child trafficking at the national level and at the county level?
- 10) What is being done in terms of resource allocation in Kenya targeting child trafficking?
- Follow up question 1: In relation to the other transnational organized crime includes terrorism, drug trafficking, poaching, is human trafficking getting enough prioritization in terms of resource allocation?
- 11) Describe the process followed from identification of a victim of trafficking to taking the child to shelter or a better place?
- Follow up question 1: what are the challenges involved ?
- Follow up question 2: how have they been addressed in the past ?
- 12) Which systems keeps records on child trafficking victims in Kenya?
- 13) How is transnationality aspect in child trafficking an important aspect to look at?
- Follow up question 1: what challenges face the investigation of child victims of trafficking who are foreign nationals?
- Follow up question 2: describe how repatriation of child victims of trafficking who are foreign nationals?
- 14) Describe the process followed in the investigation of child trafficking cases.
- Follow up question 1: how many cases are under investigation ?
- Follow up question 2: how is the investigation of child trafficking of foreign nationals being done ?
- Follow up question 3: what factors affect the investigation the cases?

15) What mechanisms are used to take care of victims of child trafficking after rescue?

Follow up question 1: what measures are there to protect children in institutions from child trafficking?

Follow up question 2: which category of children are more vulnerable to child trafficking?

16) In your opinion what are the social, political and cultural factors that encourage child trafficking in our society?

17) What are the particular challenges faced by your institution in addressing child trafficking?

18) How was the COVID-19 pandemic affected child trafficking?

Follow up question 1: what aspects have been hard hit?

Follow up question 2: what challenges have been exacerbated by the COVID-19 pandemic?

Follow up question 3: what plans do you have in reversing the effects of COVID-19 pandemic on child trafficking?

A3: Research authorization from Graduate school



**KENYATTA UNIVERSITY
GRADUATE SCHOOL**

E-mail: dean-graduate@ku.ac.ke

Website: www.ku.ac.ke

P.O. Box 43844, 00100
NAIROBI, KENYA
Tel. 8710901 Ext. 57530

Our Ref: S205/26659/2018

Date: 9th June, 2020

Director General,
National Commission for Science, Technology
and Innovation
P.O. Box 30623-00100
NAIROBI

Dear Sir/Madam,

RE: RESEARCH AUTHORIZATION FOR MARY NDATA NJOROGE, REG. NO. S205/26659/2018.

I write to introduce Mary Ndata Njoroge who is a Postgraduate Student of this University. The student is registered for M.A degree programme in the Department of International Relations, Conflict and Strategic Studies.

Mary intends to conduct research for a M.A Project Proposal entitled, "International Law and the Regulation of Child Trafficking in Kenya".

Any assistance given will be highly appreciated.

Yours faithfully,


PROF. ELISHIBA KIMANI
DEAN, GRADUATE SCHOOL

HI/Inn


A4: Research permit from NACOSTI


REPUBLIC OF KENYA


**NATIONAL COMMISSION FOR
SCIENCE, TECHNOLOGY & INNOVATION**

Ref No: 790293 **Date of Issue: 15/July/2020**


RESEARCH LICENSE



This is to Certify that Miss. MARY NDUTA NJOROGE of Kenyatta University, has been licensed to conduct research in Nairobi on the topic: INTERNATIONAL LAW AND THE REGULATION OF CHILD TRAFFICKING IN KENYA for the period ending : 15/July/2021.

License No: NACOSTI/P/20/5746

790293
Applicant Identification Number


**Director General
NATIONAL COMMISSION FOR
SCIENCE, TECHNOLOGY &
INNOVATION**

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NOTE: This is a computer generated License. To verify the authenticity of this document, Scan the QR Code using QR scanner application.

A5: Research Consent Form

RESEARCH CONSENT FORM

Title of the Research Project: INTERNATIONAL LAW AND THE REGULATION OF CHILD TRAFFICKING IN KENYA

You are invited to participate in a research study 'INTERNATIONAL LAW AND THE REGULATION OF CHILD TRAFFICKING IN KENYA'. This study is being done by Mary Njoroge a student at Kenyatta University in pursuit of Masters in Arts in International Relations and Diplomacy. I have a passion to contribute towards combating child trafficking in Kenya and Horn and Eastern Africa region. This study is expected to illuminate on the international legal framework that addresses child trafficking in Kenya, the compliance and challenges faced by Kenya in addressing child trafficking. If you have any questions concerning my research, please do not hesitate to contact me through Njoroge-nduta18@students.ku.ac.ke. In addition, my mobile contact is +2547 2174 4282.

I confirm that I have read and understood the subject information letter explaining the above research project and I have had the opportunity to ask questions about the project

I understand the participation is voluntary and I am free to withdraw at any time without giving any reason. In addition, should I not wish to answer any particular question(s), I am free to decline

I understand that my responses will be kept strictly confidential.

I understand that my name will not be linked with the research materials

I agree to the interview being audio recorded

I agree to the use of anonymized quotes in publications

I agree to take part in the above research project

Name of the Participant

Date

Signature

Name of the Researcher

Date

Signature