

Legal and Institutional Challenges in Addressing Human Trafficking In East African Community (EAC)

Nshimirimana Jeanine and Dr. Gabsa Lidwina

Institute of Governance, Human and Social Sciences of the Pan-African University; Option: Governance and Regional Integration; POX:18, Soa, Yaoundé, Cameroon.

Abstract: *The increasing number of State parties joining the United Nations Trafficking Protocol reflects a positive commitment by member states to combat global human trafficking. Nevertheless, several obstacles are impeding effective efforts against human trafficking within the East African Community. This article identifies a range of challenges, including difficulties in assessing the extent of trafficking, low awareness, inadequate victim identification, poor collaboration among stakeholders, and limited access to justice, among others. The article looks at the legal and institutional hurdles confronting the battle against human trafficking in the East African Community. The research approach in this article relies entirely on secondary data to reveal these emerging challenges. The article closes with robust recommendations, including strengthening the legal framework, enhancing coordination among member states, harmonizing legislation, improving cross-border cooperation, and establishing efficient mechanisms for sharing data and gathering intelligence. Furthermore, it emphasizes the importance of investing in training and capacity-building programs for law enforcement agencies and the judiciary to reinforce their effectiveness in investigating and prosecuting trafficking cases.*

Keywords: Legal, Institutional, Challenges, Human Trafficking, East African Community

INTRODUCTION

Trafficking in Persons (TIP) represents a severe criminal offense, a grave violation upon human rights, and it is a problem that affects regions worldwide. In the East African Community (EAC), which includes countries such as Burundi, Rwanda, Kenya, South Sudan, Tanzania, Uganda, and the Democratic Republic of Congo, human trafficking has emerged as a significant concern.

According to the Regional Counter Trafficking in Persons Project (C-TIP), the primary factors contributing to human trafficking in East Africa encompass poverty, lack of viable economic opportunities, ineffective labor standards and safeguards, limited access to education, awareness gaps regarding TIP, absence of birth registration, cultural and social influences, corruption, globalization, poor migration practices, and the inadequacy of relevant laws to combat TIP (BYAMUGISHA, M. G. 2020).

Recognizing the surge in human trafficking in the region, the East African Legislative Assembly (EALA) took action in 2015 by passing a resolution that called for immediate legislative measures at both the EAC and Partner States' levels. These measures aimed to prevent human trafficking, safeguard victims, and prosecute those involved in trafficking in the region (Gasto, D. I. 2022). Nevertheless, despite the presence of regional legal instruments, challenges persist in addressing human trafficking in the EAC, encompassing both legal and institutional obstacles. These challenges encompass a wide range of issues, including difficulties in assessing the extent of trafficking, limited resources and capacity, insufficient legislative frameworks, weaknesses in law enforcement and the judiciary, a lack of coordination and information sharing, and a shortage of expertise in public awareness, among others (Manani, J. N. 2018).

This study aims to closely examine the legal and institutional challenges encountered in the fight against human trafficking within the East African Community. Its primary goals are to advance human rights, promote collaboration, strengthen legal structures, empower law enforcement entities, safeguard victims, and stimulate regional cooperation. All of these efforts are directed towards the ultimate goal of eliminating human trafficking within the EAC and on a broader scale.

LEGAL CHALLENGES IN ADDRESSING HUMAN TRAFFICKING IN EAST AFRICAN COMMUNITY

The legal challenges in addressing human trafficking in EAC include the following:

Assessing the scope of the problem

A critical issue concerning human trafficking in the EAC pertains to the insufficient legal framework and enforcement mechanisms. Despite progress in creating regional legal instruments like the EAC protocol aimed at combating human trafficking, the effective implementation of these measures encounters challenges. There is inconsistency and fragmentation in domestic legislation and legal mechanisms among member states, which hinders the successful prosecution and punishment of traffickers. Additionally, there is a lack of efforts and capacity-building initiatives directed toward law enforcement agencies and the judiciary, exacerbating the problem (Cockbain, E., & Kleemans, E. R. 2019).

Another significant concern revolves around the limited support and protection available to victims of human trafficking within the EAC. Victims often encounter obstacles in accessing both justice and social services. The absence of comprehensive programs and shelters to aid victims exposes them to the risk of being victimized again and further exploited. Furthermore, public awareness regarding human trafficking is frequently inadequate, resulting in a lack of comprehension and empathy toward victims, making it more challenging to combat this deplorable crime (Kline, A. M. 2017).

Access to justice

The East African Court of Justice lacks a specific, legally established mandate for addressing human rights cases, primarily because the Treaty creating the court does not explicitly address such matters. This absence of human rights jurisdiction has had detrimental effects, including eroding public trust in the court (Jalloh, C. C., et al. 2019). It has also deprived East African Community (EAC) citizens of access to the regional human rights system, preventing the development of legal precedents, the provision of remedies, and necessary public awareness.

In addition to the challenges mentioned above, it remains unclear whether many East African people are aware of the available remedies through sub-regional courts, including the East African Court of Justice. It is highly likely that only a limited number of citizens would have the means to access the court for seeking redress. Moreover, since most African human rights enforcement mechanisms lack legal representation institutions that enable individuals to seek remedies against their government when their rights are violated, it's challenging to envision many people affording the legal costs associated with taking on their respective governments to seek redress for rights violations (Mwinuka, H. H. 2013).

In conclusion, the issue of accessing justice for victims of human trafficking within the East African Community is intricate and multifaceted.

INSTITUTIONAL CHALLENGES IN ADDRESSING HUMAN TRAFFICKING IN EAST AFRICAN COMMUNITY

The institutional challenges in addressing human trafficking in EAC include the following:

Lack of awareness

A significant challenge in the fight against human trafficking is the limited awareness and shared comprehension of what constitutes this crime. In most East African Community (EAC) countries, the combination of low education levels and the prevalence of authoritarian political systems has led to a general lack of awareness among citizens. When people are unfamiliar with what to expect from their government and state institutions, they are unable to respond appropriately (Sharapov, K. 2014) .

Furthermore, the absence of accountability and transparency among individuals within government, parliament, state institutions, and regional offices places the population in a vulnerable position. Ignorance or a lack of information creates opportunities for individuals to be exploited, making them susceptible to falling victim to the tragedy of human trafficking. Even in countries where citizens are more cognizant of their rights and vocal in demanding better services and fair treatment from their governments, the responsiveness of the government often remains inadequate (Marchand, K., Reinold, J., & Dias e Silva, R. 2017). Enhancing knowledge and information dissemination across the region will fortify social structures and increase political participation, which are crucial for addressing illicit criminal activities.

Victims Identification

The permeable borders in EAC facilitate cross-border movements, particularly involving economically driven irregular migration. A comprehensive evaluation of cross-border trends and the support mechanisms available for victims in the area has revealed that many instances of trafficking of trafficking initially present as voluntary migrations in search of a better life. However, victims are deceived by various individuals, including business persons, women, retired prostitutes, relatives, peers, religious acquaintances, and agents who entice them with promises of financial gain, employment opportunities, education, and professional training. Unfortunately, these promises often lead them into exploitative situations. Children, in particular, are typically recruited by family members or close family friends and then transported across borders either on foot, by bus, or through the assistance of long-distance truck drivers (Lisakafu, J. 2020).

Lack of Coordination

The execution of provisions within the community regarding the movement of individuals encounters several challenges. Authorities in the Partner States still predominantly consider migration governance to fall exclusively under their respective domestic legal systems. Moreover, there are instances where coordination between the community bodies and the Partner States is lacking, which gives rise to concern about non-compliance with community regulations. A prime illustration of this is the reluctance of the

secretariat to take immediate actions based on the Treaty, often citing the involvement of the Partner States as an excuse for non-intervention (Gasto, D. 2022).

Effectively enforcing anti-trafficking laws necessitates robust coordination and collaboration among law enforcement agencies, governmental entities, and civil society organizations. The limited exchange of information and coordination among member states within the East African Community hinders efforts to combat cross-border trafficking networks and to prosecute those responsible for these crimes.

Political Instability

A conflict occurring within any of the East African Community (EAC) countries has significant repercussions because it inevitably impacts the entire region in various ways. Conflicts in Africa, regardless of their location, often extend beyond ethnic boundaries and physical borders. This complexity adds to the gravity of these conflicts. Given the regional dynamics of conflicts and the fact that security threats, such as the trafficking of arms and humans, transcend national borders, there is a compelling need for collaborative efforts involving regional and sub-regional actors who possess a deep understanding of local contexts (Kamau, E. N. 2018). Human trafficking serves as a clear indicator of deficient security sector governance, and all EAC countries are affected by this menace in one way or another. They either serve as transit points or as places of origin where trafficking syndicates operate.

Vulnerable Borders and Migration Routes

The East African Community (EAC) is characterized by permeable borders and established migration routes, which provide traffickers with convenient means to transport victims across national boundaries.

However, the effectiveness of the EAC One Stop Border Posts Act in governing irregular migration can be questioned on two significant fronts: Firstly, its enforcement depends solely on bilateral agreements to be negotiated among Partner States. This reliance on bilateral agreements, which are often non-binding and temporary, suggests that the Assembly, like other community organs, leans towards the belief that border governance falls entirely within the range of sovereign states. Secondly, irregular migrants tend to avoid designated common border posts due to the increased risk of apprehension. Instead, they choose more indirect and less large routes. Reports indicate that these designated common border posts are less favored as entry or exit points by irregular migrants among EAC Partner States (Nugent, P., & Soi, I. 2020).

Sovereignty cannot serve as defense or justification for non-compliance, nor should it hinder compliance, especially when coupled with weak enforcement of existing laws. The absence of judicial frameworks further restricts efforts to apprehend, prosecute, and penalize human traffickers (Qureshi, W. A. 2017). Strengthening border controls, fostering regional cooperation in border management, and sharing intelligence on trafficking networks are imperative steps to combat cross-border trafficking.

Limited resources and capacity

Several East African Community (EAC) countries rely partly on external financial support and lack sufficient funding, personnel, and infrastructure to effectively combat human trafficking. In many of these nations, there's an insufficient allocation of resources dedicated to strengthening the police and justice systems. For the criminal justice system to operate effectively, a certain level of resources is essential, whether it's for deterring future offenders, incapacitating wrongdoers, or rehabilitating past offenders (Majidi, N., & Ocho, L. 2016). This is evident in the region having the lowest ratio of police force to the public and fewer judges per capita compared to any other part of the world.

Inadequate resources pose obstacles to establishing specialized law enforcement units, establishing shelters for victims, and providing comprehensive support services for those who have been victimized.

Corruption

Corruption is increasingly identified as a significant factor perpetuating human trafficking and allowing traffickers to evade justice. In 2002, the African Union (AU) reported that Africa was losing an estimated \$150 billion annually due to corruption. This corruption spectrum spans from bribing law enforcement officials to infiltrating state institutions (Barkley, D., & Maduka, C. 2017).

For instance, there are serious allegations of officials in certain countries colluding with organized criminals involved in drug, arms, and human trafficking. Because these criminal activities yield substantial direct benefits, government officials often have no incentive to reduce or combat them. Corruption in Eastern Africa has detrimental effects on business operations and reduces the attractiveness of the region for trade and investment. The economic and political costs imposed by corruption have a profound impact on Eastern African nations and are challenging to eliminate if corruption becomes ingrained in the political culture. A significant

portion of the population is denied access to essential public services, and the rule of law is not effectively enforced, resulting in inadequate public safety standards and environmental protection policies (Kamau, E. N. 2018).

Moreover, corruption directly contributes to the lack of public infrastructure, investment opportunities, access to education, and employment prospects. This disproportionately affects the most vulnerable members of society and perpetuates cycles of poverty and inequality. Corruption not only enables trafficking but also exacerbates the flow of people by destabilizing democracies, undermining a country's rule of law, and impeding its development. There is a need for broader recognition of the connection between corruption and human trafficking. Despite these progress, these issues are often tackled separately without acknowledging their inter-linkages. Addressing them together is essential to enhance the effectiveness of efforts to combat trafficking (Chikwanha, A. B. 2007).

Data Management

Data management is often overlooked but plays a crucial role in the battle against trafficking. In Eastern Africa, as in other parts of the continent, the primary challenge in gaining an accurate understanding of illicit trafficking lies in the absence of quantitative data. The lack of reliable data hinders the ability to definitively assess the extent to which organized crime and illicit trafficking have infiltrated the region. Data is either not collected, not easily accessible, or treated as confidential. Moreover, the available data is often unreliable because collection methods lack consistency, and there is uncertainty regarding the accuracy of victim reporting (Nzau, M. 2022).

As a result, it is currently impossible to ascertain the true scale of the issues related to illicit trafficking and organized crime in Eastern Africa. The magnitude of these problems varies from one country to another and within individual countries, contributing to conflict views due to the absence of accurate data, changing external circumstances, and differing perceptions of safety and security (Wittig, T. 2017).

Establishing a comprehensive database of trafficking cases within the East African Community (EAC) is imperative. Gathering information from victims will enable the government to study the recruitment and placement strategies employed by traffickers. Once this data is available, it will also facilitate the identification of abusive employers and recruitment agencies, as well as the monitoring of services provided in destination countries. Consequently, the EAC will have access to more targeted protective information.

Inadequate Legal Frameworks

In East Africa, one of the significant challenges is the absence of suitable legislation addressing the issue of human trafficking. While Rwanda and Tanzania have already put in place specific laws to combat human trafficking, Burundi, Kenya, and Uganda are currently in the process of developing and adopting anti-trafficking legislation. This involves either presenting draft laws to their legislative bodies or being in the advanced stages of drafting such laws (Okafor, I. C).

However, despite having dedicated units in their police forces to tackle human trafficking, these countries have not yet charged anyone with a human trafficking offense. Consequently, there is a lack of reliable statistics in this area. Additionally, a notable weakness in the region's efforts to combat trafficking is the absence of referral systems that can provide protection and support to victims. Rwanda stands out in the region as the only country where the government, the police, and the Ministry of Gender have established shelters and a hotline service to assist victims of gender violence, including those who have fallen victim to trafficking. However, the challenge lies in the lack of appropriate referral mechanisms across borders, which hinders efforts to efficiently facilitate the return and rehabilitation of victims who have crossed international boundaries (Onditi, F., et al . 2021).

Weak Law Enforcement and Judiciary Systems

Some member states are encountering difficulties when it comes to effectively enforcing laws against human trafficking. These challenges arise from issues such as corruption, a lack of comprehensive training for law enforcement personnel, and judicial systems that may be overloaded with cases. Consequently, this situation often leads to low conviction rates and relatively mild punishments for those involved in trafficking, which, in turn, weakens the deterrent effect and denies victims the justice they deserve.

An illustrative case of this inaction can be seen in the 2013 motion put forth by the East African Legislative Assembly (EALA), which urged Partner States to step up their efforts against human trafficking by producing an annual status report. However, as of the EALA meeting in August 2015, the Council has not taken any steps toward creating this report. This lack of action by Partner States is frequently rooted in a reluctance to reach authority to a regional body (Weldon, K. W. 2016). While acknowledging the need for a regional approach to combat human trafficking and recognizing that states wish to maintain their autonomy, it is essential to develop a regional approach that incorporates a regional judicial solution while still affording Partner States a degree of autonomy.

Despite successful cooperation on various issues in East Africa, Partner States have struggled to collaborate effectively in combating human trafficking. The alignment of legislation across the region is crucial to ensure a coordinated and efficient response.

CONCLUSION AND THE WAY FORWARD

Every year, millions of individuals, spanning across children, men, and women, become victims of human traffickers who subject them to forced labor, sexual exploitation, domestic work, and other forms of exploitation worldwide. The increasing number of countries becoming State Parties to the United Nations Trafficking Protocol is a positive sign of the political commitment of member States to combat human trafficking on a global scale. However, various challenges are obstructing effective efforts against human trafficking both globally and, more notably, within the East African Community (EAC). The social and human repercussions of trafficking are profoundly impact, with long-lasting consequences (Gasto, D. I. 2022).

Therefore, to confront the issue of human trafficking within the EAC, it is imperative to reinforce the legal framework and enhance cooperation among member states. This involves aligning legislation, strengthening collaboration across borders, and establishing efficient mechanisms for sharing data and gathering intelligence. Additionally, investing in training and capacity-building programs for law enforcement agencies and the judiciary is critical to enhance their ability and prosecute cases related to trafficking.

Equally crucial is the necessity to prioritize support and protection within the region. This encompasses the creation of comprehensive programs for assisting victims, establishing secure shelters, and ensuring access to healthcare, counseling, and legal aid. Public awareness campaigns should be initiated to educate communities about the dangers of human trafficking and promote a culture of compassion and assistance of victims.

REFERENCES

- Barkley, D., & Maduka, C. (2017). The impact of anti-corruption conventions in sub-Saharan Africa. In *Poverty reduction strategies in Africa* (pp. 65-77). Routledge.
- BYAMUGISHA, M. G. (2020). *LEGAL ASSESSMENT TO REVIEW THE ANTI-HUMAN TRAFFICKING LEGAL FRAMEWORK, MEASURES AND PROVISIONS IN THE AFRICAN UNION* (Doctoral dissertation, Faculty of the Rule of Law for Development (Prolaw) Program, Loyola University Chicago).
- Chikwanha, A. B. (2007). The anatomy of conflicts in the East African Community (EAC): linking security with development. *Keynote speech to Development Policy Review Network-African Studies Institute, Leiden University, The Netherlands*.
- Cockbain, E., & Kleemans, E. R. (2019). Innovations in empirical research into human trafficking: Introduction to the special edition. *Crime, Law and Social Change*, 72, 1-7.
- Gasto, D. (2022). Examining the Implications of the East African Community Strategies on Irregular Migration Governance. *The Journal of African Law and Contemporary Legal Issues*, 1(1), 152-174.
- Gasto, D. I. (2022). *Irregular Migration Governance in the East African Community: Assessing the Legal and Institutional Response*. *The Eastern African Law Review*, 49(1).
- Jalloh, C. C., Clarke, K. M., & Nmehielle, V. O. (Eds.). (2019). *The African Court of Justice and human and peoples' rights in context: development and challenges*. Cambridge University Press.
- Kamau, E. N. (2018). *Effects of Globalization on Regional Security in East Africa: a Case Study of East African Community* (Doctoral dissertation, university of nairobi).
- Kline, A. M. (2017). The Fallacy of Free Will in Prostitution: Encouraging Prostitution Reform to Prevent the Repeated Victimization of Vulnerable Persons. *Mich. St. Int'l L. Rev.*, 25, 665.
- Lisakafu, J. (2020). Interregionalism and police cooperation against cross-border crime in East Africa: Challenges and prospects. *Broadening the Debate on EU-Africa Relations*, 115-131.
- Majidi, N., & Oucho, L. (2016). East Africa. *Migrant Smuggling Data and Research*, 55.
- Manani, J. N. (2018). *Regional Economic Communities and Transnational Crimes: the Case of Hum Communityan Trafficking in the East Africa* (Doctoral dissertation, university of nairobi).
- Marchand, K., Reinold, J., & Dias e Silva, R. (2017). Study on migration routes in the East and Horn of Africa. Accessed on December, 5, 2021.
- Mwinuka, H. H. (2013). *Regional Human Right Systems: Challenges Facing the East African Court of Justice in Realizing Human Rights within the East African Community (LLM)* (Doctoral dissertation, dissertation University of Iringa).
- Nugent, P., & Soi, I. (2020). One-stop border posts in East Africa: State encounters of the fourth kind. *Journal of Eastern African Studies*, 14(3), 433-454.
- Nzau, M. (2022). The governance dimensions of environmental security in 21st-century Eastern Africa: A review. *Human Security and Sustainable Development in East Africa*, 135-150.
- Okafor, I. C. Beyond Piracy on the East African Coast: Interrogating Illicit Trafficking.
- Onditi, F., Odera, J., Onditi, F., & Odera, J. (2021). The Prevention of Violence Against Women. *Understanding Violence Against Women in Africa: An Interdisciplinary Approach*, 227-246.
- Qureshi, W. A. (2017). The prosecution of pirates and the enforcement of counter-piracy laws are virtually incapacitated by law itself. *San Diego Int'l LJ*, 19, 95.
- Sharapov, K. (2014). Understanding public knowledge and attitudes towards trafficking in human beings. *Research Paper: Part, 1*.
- Weldon, K. W. (2016). *One for all and all for one; Combatting human trafficking in East Africa by granting limited criminal jurisdiction to the East African Court of Justice* (Doctoral dissertation, Regent University).
- Wittig, T. (2017). Poaching, wildlife trafficking and organised crime. In *Poaching, Wildlife Trafficking and Security in Africa* (pp. 77-101). Routledge.