



Coalition of Anti-Human Trafficking CSOs for UPR- Kenya

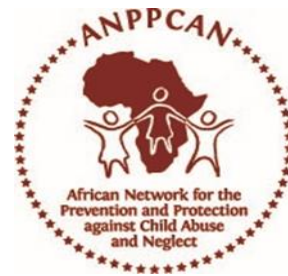
Prepared by:

**Stop the Traffik- Kenya; a member-based coalition for Civil Society
Organizations working within the anti-human trafficking field.**



The organizations that contributed to this report are:

1. African Network for the Prevention and Protection of Child Abuse and Neglect Regional Office (ANPPCAN RO)



2. Awareness Against Human Trafficking (HAART)



3. Candle of Hope Foundation



4. Counter Human Trafficking Trust-East Africa (CHTT-EA)





5. International Rescue Committee (IRC)



6. Kenya Union of Domestic, Hotels, Education Institutions, Hospitals and Allied Workers (KUDHEIHA)



7. Love Justice International



8. Stahili



9. Terre des Hommes Netherlands (TdH NL)



10. Trace Kenya





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List of Acronyms in this Report

1. **AC** Advisory Committee
2. **ACRWC** African Charter on the Rights and Welfare of the Child
3. **ANPPCAN RO** African Network for the Prevention and Protection of Child Abuse and Neglect
Regional Office
4. **ATCPU** Anti-Human Trafficking and Child Protection Unit
5. **CAT** Convention Against Torture, Cruel, Inhuman and Degrading Treatment or
Punishment
6. **CCI** Charitable Children Institutions
7. **CEDAW** Convention on the Elimination of all forms of Discrimination Against Women
8. **CHTT-EA** Counter Human Trafficking Trust-East Africa
9. **CRC** Convention on the Rights of the Child
10. **CSOs** Civil Society Organizations
11. **CTiP** Counter Trafficking in Persons
12. **HAART** Awareness Against Human Trafficking
13. **KUDHEIHA** Kenya Union of Domestic, Hotels, Education Institutions, Hospitals and Allied
Workers
14. **NEA** National Employment Authority
15. **NPA** National Plan of Action
16. **NRM** National Referral Mechanism
17. **STTK** Stop the Traffik- Kenya
18. **TdH NL** Terre des Hommes- Netherlands
19. **TiP** Trafficking in Persons
20. **TOCU** Transnational Organized Crime Unit
21. **UPR** Universal Periodic Review



Summary

This report has been prepared by members of Stop the Traffik- Kenya; a network made up of Civil Society Organizations (CSOs) in Kenya who have been working to combat human trafficking. Their operation approach is based on; prevention, protection, prosecution, and partnership.

This report represents Kenyan citizens within and out of its borders, as well as foreigners within Kenyan borders who have been directly or indirectly affected by human trafficking.

This third cycle Universal Periodic Review (UPR) report highlights the issues Anti-Trafficking CSOs have faced, the national impact of these issues, and the recommendations we hope will be accepted and implemented by our key partner; the Kenyan government.



Introduction

The United Nations defines Human Trafficking as, *the recruitment, transportation, transfer, harboring, or receipt of persons by improper means (such as force, abduction, fraud or coercion) for an improper purpose including forced labor and sexual exploitation.*ⁱ Human trafficking takes several forms which include sexual exploitation (sex trafficking), labour trafficking, trafficking for cultural reasons and for extraction of body parts and/or organs. Child trafficking is featured as the most prevalent form of trafficking at 39%, with trafficking for labour and for prostitution being at 31% and 25% respectivelyⁱⁱ.

According to the Global Slavery Index, human trafficking affects an estimated 40.3 million people worldwide. 71% of these victims are female and 29% of these victims are male.ⁱⁱⁱ 15.4 million victims (75%) are aged 18 or older, with the number of children under the age of 18 estimated at 5.5 million (25%).^{iv} This criminal activity drives a \$150 billion-per-year industry that needs intervention from both Civil Society Organizations (CSOs) and governments in order to stop.^v

The population of Kenya was estimated at 46 million in 2015 by the Kenya National Bureau of Statistics^{vi}. 51% of this total were children ages 0-18 years and 49% adults over the age of 18. 328,000 Kenyans are living in modern slavery and 70% of Kenyans are living in vulnerable conditions that may lead to their slavery.^{vii}

According to a US State Department's Trafficking in Persons Report (2018); Kenya is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking. Within the country, children are subjected to forced labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging. Girls and boys are exploited in commercial sex throughout Kenya, including in sex tourism in Nairobi, Kisumu, and Mombasa, particularly in informal settlements; at times, their exploitation is facilitated by family members.

In 2014^{viii}, child trafficking was established to be prevalent at 33% compared to men and women established to be 26% and 41% respectively. Nyanza, Western Kenya, lower Eastern regions (Ukambani), Kisii, Meru, Central Kenya and North Eastern Kenya are identified source areas, while Mukuru Kwa Reuben, Mathare and Kibera informal Settlements in Nairobi are destinations where these children are exploited in multiple ways. Tanzanian children with physical disabilities are transported to Kenya for forced begging while Somali girls and women are brought to Kenya



by trucks returning from transporting goods from Somalia and placed in brothels in Nairobi or Mombasa.

Kenyans are also recruited by legal and illegal employment agencies or voluntarily migrate to Europe, the United States, Southeast Asia, and the Middle East in search of employment, where at times they are exploited in domestic servitude, massage parlors and brothels, or forced manual labor. Most victims in domestic trafficking are sourced from rural areas and the majority of those trafficked out of the country are sourced from low income urban areas, with girls being the majority.

70.5% of victims of domestic trafficking (both adults and children) are sourced from rural areas and 21.6% from urban areas. For external trafficking victims (both adults and children), 42.2% are sourced from urban areas and 29.7% from other African countries, mostly destined for the Middle East and other African countries.

In 2014, the National Crime Research Centre documented^{ix} the following human trafficking routes^x for both adults and children:

- **Domestic human trafficking routes**

Mandera →Wajir →Garissa →Mwingi →Nairobi →Loitokitok (used 58.4%)

Moyale→Isiolo →Meru →Nairobi →Namanga (used 47.8%)^{xi}

Busia →Kakamega →Kisumu →Nairobi →Mombasa (used 45.2%)

- **International human trafficking routes**

Ethiopia →Mandera →Garissa →Nairobi →Tanzania →South Africa (used 67.8%)

Ethiopia →Mandera →Garissa →Nairobi →South Africa (used 46%)

Ethiopia →Mandera →Isiolo →Nairobi →Saudi Arabia (used 35.5%)

D.R.C→Uganda →Kenya →Tanzania→Mozambique→South Africa (used 31.2%)

Uganda→Nairobi→Mombasa→Saudi Arabia (used 23.7%)



In recent years, the Kenyan government has done the following to combat human trafficking:

1. Reconstitution and Gazettement of the 2nd Advisory Committee (AC) in September 2018 after a period of not having an AC following the end of the first term of the AC as stipulated in the Counter-trafficking in Persons Act (CTiP) 2010.
2. Establishing a CTiP Secretariat^{xii} to coordinate and carry out anti-human trafficking activities in Kenya on behalf of the Advisory Committee.
3. Development of the National Referral Mechanism guidelines (NRM) which seek to coordinate multi-agency response to Human Trafficking in Kenya^{xiii}. It was developed by the Advisory Committee and the CTiP Secretariat in 2015 and has currently been disseminated and piloted within multiple counties^{xiv}.
4. Implementation and subsequent review of the National Plan of Action (NPA) (2013-2017).
5. The National Employment Authority (NEA) developed a system for accreditation of recruitment agencies. These accredited agencies are listed on their website. This was through a public notice which issued a list of 79 accredited companies with the validity of Certificate dates on 9th January 2018 and subsequently published them on their website.
6. There has been a significant increase in the capacity of the Directorate of Criminal Investigations to investigate human trafficking crimes and conduct rescue operations. This has especially been noteworthy in the operationalization of the Anti-Human Trafficking and Child Protection Unit (ATCPU) as well as the Transnational Organized Crime Unit (TOCU).
7. Ministry of Labour, Social Security and Services assigned labour attachés to Kenyan missions in Qatar, the United Arab Emirates and Saudi Arabia to protect citizens employed in these countries.

Kenya relies on the Constitution of Kenya (2010), Penal Code (Cap 63), Sexual Offences Act (2006), Children's Act (2001) and the Counter Trafficking in Persons Act (2010) to make provision on human trafficking and related offenses. Additionally, Kenya relies on international laws and treaties such as the Palermo Protocols, Convention on the Elimination of all forms of



Discrimination Against Women (CEDAW), Convention on the Rights of Children (CRC), African Charter on the Rights and Welfare of the Child (ACRWC) and the Convention Against Torture, Cruel, Inhuman and Degrading Treatment or Punishment (CAT).

Previous UPR Cycles

This is the first joint submission by the Kenyan anti-human trafficking CSOs to the UPR. Human trafficking issues, particularly child trafficking issues, have been highlighted before in previous UPR submissions.

During the last UPR review (22 January 2015), Kenya received the following 6 recommendations related to child trafficking. It accepted all of them (A stands for “accepted”). These are the recommendations:

1. A - 142.47: Prosecute the perpetrators of trafficking and sexual exploitation of women and children. **Sierra Leone** was the recommending state.
2. A - 142.50: End early marriages and the trafficking of minors. **Spain** was the recommending state.
3. A - 142.6: Ensure the full operationalization of the National Policy and Action Plan on Human Rights. **South Africa** was the recommending state.
4. A - 142.60: Take further efforts against the trafficking of children and eliminate child labor by enforcing compulsory education. **Albania** was the recommending state.
5. A - 142.77: Combat the trafficking and sexual exploitation of women and girls by means of adoption of a comprehensive national action plan in this domain. **Lithuania** was the recommending state.
6. A - 142.80: Take measures to develop an integral plan of action to combat trafficking and the sexual exploitation of women and girls, including through medical and psychological assistance to victims of these crimes. **Mexico** was the recommending state.

Kenya chose to respond directly to three of the six recommendations (142.6, 142.60, 142.77) by committing to these three main actions: Fully implement the Anti-trafficking law; capacity building of government officers of the trafficking law including children’s officers, the judiciary and immigration officers; and establish the International and Organized Crimes Division in the High Court to prosecute human trafficking cases.



Issues and Recommendations

Issue 1: Lack of consolidated and credible data and Information on Trafficking in Kenya

Despite the prevalence of human trafficking in the country there is no consolidated data or repository for information relating to human trafficking in Kenya. This makes it very difficult to inform policy on prevention, protection, prosecution and partnership in matters relating to counter human trafficking.

The Government of Kenya funded the National Crime Research Centre that undertook a research titled *Human Trafficking in Kenya* published in June 2015. There hasn't been any updated statistics on the state of human trafficking since 2015. Kenya also lacks an operational database for documenting and following up on cases of victims of trafficking.

Recommendations

1. Implementation of section 20 (2) (g) of the Counter Trafficking in Persons Act, '*Compilation and documentation of data and information on cases of trafficking in persons for purposes of policy formulation and program direction*' by creating a system for collection and storage of data that protects victims information and can be accessed by a list of authorized agencies and individuals.
2. The State should undertake a National Study on human trafficking by December 2020. This study should give information on prevention, protection, prosecution and partnership measures taken by the government and their partners.

Issue 2: Delayed implementation of CTiP Activities due to the Secretariat Anchorage in Department of Children Services Under the Ministry of Labor, Social Security and Services

The initial justification for the Secretariat being anchored in the Ministry of Labour, Social Security and Services as opposed to the Ministry of Interior and Coordination of National Government was because at the time of drafting the CTiP Act, human trafficking was categorized majorly as a labor issue. Additionally, the anchoring of the Secretariat under the Department of Children Services is linked to the history of the first cases of trafficking which were primarily of children.



Kenya is a source, transit, and destination country which makes human trafficking a migration and security issue. The victims are also both children and adults. The Department of Children Services is mandated to deal with children issues and therefore adults who are victims of trafficking do not get the level of support they would need.

Currently, there is delayed implementation of CTiP Activities due to the anchorage of the Secretariat in the Ministry of Labor, Social Security and Services under the Department of Children Services. CTiP activities would be conducted more seamlessly if the Secretariat was anchored in the Ministry Interior and Coordination of National Government which is responsible for matters relating to security and immigration.

Recommendations

1. We recommend that the State anchors the CTiP Secretariat within the Ministry of Interior and Coordination of National Government which is responsible for matters relating to migration and security. This Ministry also provides easier access to key partners in the fight against human trafficking such as; the National Police Service, the State Department of Immigration and Citizen Services as well as the National Coordination Mechanism for migration.
2. We recommend that as the State anchors the CTiP Secretariat within the Ministry of Interior and Coordination, they assign more people to the Secretariat and decentralize operation of the Secretariat to county level.
3. We recommend that the State provides guidelines to help efficiently implement the CTiP Act. The guidelines should provide for, among others, the prompt transition of Advisory Committee (AC) members and the transparent selection process for CSOs within the AC.

Issue 3: Delay in the Operationalization of the Trust Fund

Part V of the CTiP Act acknowledges the financial need required to adequately assist victims of human trafficking. The National Assistance Fund for Victims of Trafficking in Persons (Trust Fund) is outlined in this part of the CTiP Act. The Trust Fund is supposed to cater to the needs victims of trafficking have.

There is currently no information on how much money the government has allocated to the fund in previous financial years. There is also no guideline for the collection, utilization and even auditing of the funds that will be allotted.



Recommendations

1. We recommend the operationalization of the Trust Fund by allocating funds and gazettelement of the regulations on the Trust Fund so that the Board of Trustees can plan, budget and disburse the funds to victims of trafficking.
2. We recommend the state of Kenya allocates funds to the National Assistance Fund for Victims of Trafficking in Persons (Trust Fund) in the national 2020- 2021 budget.
3. Additionally, we recommend that State captures the Anti Human Trafficking activities in the annual sector reports and draft regulations specific to the Trust Fund that will regulate the conduct of affairs and business of the Board of Trustees of the Trust Fund.

Issue 4: Inadequate Protection Services for Victims of Trafficking

Victims of trafficking need protection services when rescued or identified. The services they require include but are not limited to shelter, medical aid, legal aid and psychosocial support. Currently, most of the protection services are provided by civil society organizations and are not enough. As a result, there are numerous incidents of victims facing more human rights violations after rescue. An example of such violations includes spending time in the remand section of the closest prison to where they are rescued instead of a shelter as provided for in the CTiP Act 2010.

Recommendations

Part III, Section 15(1) of the CTiP Act (2010) provides that, *'The Minister shall in consultation with the Advisory Committee formulate plans for the provision of appropriate services for victims of trafficking in persons and children accompanying the victims, including—return to and from Kenya, resettlement, re-integration, appropriate shelter and other basic needs, psychosocial support, appropriate medical assistance, legal assistance or legal information, including information on the relevant judicial and administrative proceedings or any other necessary assistance that a victim may require.'* Based on this, we recommend that:

1. The Minister, in consultation with the Advisory Committee, should formulate standard guidelines that ensure the protection of victims and the provision of all services provided for in the CTiP Act. These services are: return to and from Kenya, resettlement, re-integration, appropriate shelter and other basic needs, psychosocial support, appropriate medical assistance, legal assistance or legal information, including information on the relevant judicial and administrative proceedings or any other necessary assistance that a victim may require



2. The State develops minimum standards of care for victims of trafficking. Have the minimum standards validated, adopted and included as part of the National Referral Mechanism guidelines (NRM).
3. The State identifies premises for shelter by October 2020. This shelter should be identified taking into consideration the minimum international standards for shelter for victims of trafficking.
4. The State develops, validates and adopts standard operating procedures for shelters run by both the government and Civil Society Organizations.

Issue 5: Limited capacity of Criminal Justice Practitioners

In the National Plan of Action (2013-2017) the Kenyan government committed to the capacity building of 900 criminal justice practitioners and duty bearers who include Children's Officers as well as the Judiciary and Immigration Officers. There is however a lack of data on the number of criminal justice practitioners who have undergone training.

The limited capacity of criminal justice practitioners on the implementation of the Act has resulted to human trafficking cases being prosecuted as civil cases. At times perpetrators are charged with offenses which make up an aspect of the trafficking case which often have lesser penalties. Additionally, the limited capacity of the criminal justice practitioners makes it a challenge to properly identify cases and victims of human trafficking.

Recommendations

We recommend that the State:

1. Provides additional training to all levels of the government, particularly front-line responders, on identifying and handling trafficking cases. There should be monitoring, and evaluation of the curriculum used in this training.
2. Builds the capacity of criminal justice officials; police and anti-human trafficking committees to investigate and prosecute trafficking cases and set-up and contribute to a national database system to measure human trafficking.
3. Ensures that victims are treated with dignity and respect by training law enforcement agencies in trauma- informed and child-friendly approaches and interview techniques.



4. Strengthens the capacity of law enforcement agencies, judiciary and corrections on protection issues such as on the interlinked nature of most trafficking cases. Show how sexual exploitation, cybercrime and even money laundering can be linked to human trafficking.
5. Incorporates the Counter Trafficking in Persons Act (2010) in training in the basic curriculum for law enforcement agencies, judiciary and corrections.
6. Develops and compiles human trafficking case law.

Issue 6: Limited Implementation of Legal and Policy Frameworks

There are gaps, challenges and concerns either within the law or that have arisen from the application of the Counter Trafficking in Persons Act (2010). Reports also indicate that human trafficking continues to be on the rise in Kenya. For instance, the National Plan of Action for Children in Kenya 2015- 2022 indicates that around 17,500 Kenyans are trafficked annually for domestic work, forced labour, and commercial sexual exploitation.

There are low levels of prosecution for the offence of trafficking under the Counter Trafficking in Persons Act, 2010. Section 1 of the Act as read together with Section 3(5) provides for the offence of trafficking and prescribes a minimum punishment of 15 years imprisonment. A close look at prosecution practice reveals that suspected cases of trafficking are not prosecuted under the CTiP Act since securing evidence of trafficking proves difficult. The punishment is meant to create a deterrent measure for would be offenders, but this is not the case as the offenders are charged with lighter offences as created in other legislations especially under the Sexual Offences Act.

The National Plan of Action to Combat Human Trafficking 2013- 2017 expired and basic review of the results achieved thereto done. However, a new plan is yet to be put in place thus currently there is no framework to guide the government and the key stakeholders in the prevention and response to CTiP Act. The National Plan of Action on Children in Kenya 2015-2022 lumps child trafficking with all other categories children's rights violations. There is also no clear monitoring framework as far as child trafficking is concerned.

Kenya has not ratified the Optional Protocol to the United Nations Convention on the Rights of the Child (UNCRC) on the Sale of Children, Child Prostitution and Child Pornography as well as the Communications Procedure. Both protocols creating vital enabling framework to fight child trafficking and a mechanism for seeking redress by individuals or a group of individuals whose rights have been protected under the UNCRC.



Kenya being a state party to the African Union and having signed and ratified the African Charter on the Rights and Welfare of the Child (ACRW) in 2000, has not submitted a single report as required under Article 43 of ACRW. The ACRW reporting mechanism is a vital framework within which issues on child trafficking in Kenya can be addressed and progress reviewed periodically.

Recommendations

1. The State must ratify key international human rights instruments including; (1)the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography and Optional Protocol which came into force in the year 2000, and (2)Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. Both protocols creating vital enabling framework to fight child trafficking and a mechanism for seeking redress by individuals or a group of individuals whose rights have been violated under the UNCRC.
2. State to put in place practical measures and finalize the review (review ongoing) of the National Plan for Combating Human Trafficking 2013-2017 and develop a new framework 2019 - 2023. The State should further allocate adequate resources for its full implementation.
3. The State should ensure National and Regional regulatory framework is put in place to monitor in- country and cross border movements of people.
4. State should review strategy documents by engaging government officials and partners to review the National Plan of Action of Children in Kenya 2015-2022, national child protection systems strategy, the national child protection systems, and the county child protection systems guidelines in developing a harmonized implementation strategy for a national child protection system
5. The State should ensure full implementation of and compliance to developed protocols, standards and regulations to improve the standards of child protection services to children; National Standards on Best Practice in Charitable Children Institutions (2011), Standards of Practices for Child Protection Centers (2010), Standards for Quality Improvement for Orphan and Vulnerable Children Services (2010-2012), County Child Protection Systems Guidelines (2013) and Guidelines for the Alternative Family Care of Children (2014).



6. The state should ensure that all adopted policies are implemented, monitored and evaluated whilst ensuring that duty bearers have a comprehensive understanding of the various protection laws and policies, regulations and guidelines through capacity building.

Issue 7: Limited State Focus in Addressing the Root Causes of Trafficking

Poverty continues to be a major driving factor for human trafficking, child abuse and retrogressive social cultural practices such as early marriage and dowry seeking. The increase in the number of people living in poverty within the country has also led to debt bondage becoming more acceptable for both children and adults.

Across Kenya, socio-cultural perceptions, beliefs and practices predispose children to violence and exploitation. These perceptions include; the place of children in society, early marriage and child labour. Despite improved education enrolment, there remains major challenges on school retention and transition resulting in a lot of children facing exploitation and abuse.

The expanding access to information through technological innovations and advancement in Kenya has also led to more children and adults being exposed to online sexual and commercial exploitation.

Recommendations

1. We recommend that the state must address the root causes of human trafficking which include poverty, lack of education, amongst other factors by:
 - i. Strengthening families through skillful parenting including, the provision of alternative family care for children in need of care and protection.
 - ii. Expanding parenting education and development of parent support groups at the community level (and engaging religious and community leaders who have been trained to facilitate such groups).
 - iii. Providing socio-economic empowerment of vulnerable groups including people living with disability.
 - iv. Providing gender sensitive and market driven vocational training to all rescued victims who are not interested in formal education.



2. We recommend that the State enhances community victim protection structures. It is important to strengthen community-based protection structures that will be capable of preventing and responding to issues related to human trafficking and further support prosecution by being aware of legal procedures.

Conclusion

The Kenyan Government has made positive strides in combating trafficking especially through the enactment of the Counter Trafficking in Persons Act and the establishment of the Counter Trafficking in Persons Advisory Committee. However, much needs to be done in the implementation of the law and related policies. There is need to ensure adequate resources have been allocated to key bodies mandated with counter trafficking efforts in the country. As part of a long-lasting solution, root causes of human trafficking must be addressed.

ⁱ Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol) 2000

ⁱⁱ National Crime Research Centre Human Trafficking Report 2015

ⁱⁱⁱ [Global Slavery Index- Findings](#)

^{iv} [Human Rights First- Trafficking Numbers](#)

^v [Economics of Forced Labour](#)

^{vi} [Economic Survey 2015](#)

^{vii} [Country Data- Kenya](#)

^{viii} Statistics from the National Crime Research Center in Kenya 2014

^{ix} Human Trafficking in Kenya Report November 2014, National Crime Research Centre

^x Trafficking routes however keep changing depending on government interventions.

^{xi} Ibid

^{xii} Section 19 (4) of the Counter Trafficking in Persons Act

^{xiii} [Using A Multi-Agency Approach to Combat Trafficking in Persons](#)

^{xiv} [Operationalization of the National Referral Mechanism](#)