

Challenges Facing the East African Community in the Effective Implementation of Human Trafficking Laws within the Region

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ABSTRACT

This article identifies some of the challenges faced by the East African Community in effectively implementing human trafficking laws within the region. It relies entirely on secondary data from documentary and online sources to reveal these emerging challenges. The findings show that to be relevant, strict adherence to the existing instruments, the establishment of more rigorous border checks to prevent the commodification of human beings and alignment of national legislation with comprehensive provisions in areas where human trafficking laws lack appropriateness and effective implementation should be taken into consideration. Furthermore, the EAC should establish a supranational legislative organ, similar to the European Commission, with the exclusive power to propose bills. This would contribute to a more centralized and efficient legislative process focused on serving the collective interests of the EAC community.

Keywords: Challenges, East African Community, Human Trafficking Laws, Region

INTRODUCTION

East African Community (EAC) is comprised of seven Member States: Uganda, Kenya, the United Republic of Tanzania, Rwanda, Burundi, South Sudan, and the Democratic Republic of Congo. It is a politically and economically integrated community with a single passport and free movement of persons, goods, and services[1]. It has five organs: the Council of Ministers, the East African Legislative Assembly, the East African Court of Justice, and Sectoral Committees, which conceptualize programmes and monitor their implementation and the Secretariat[2]. On matters of an anti-human trafficking legal framework, the community does not have one, and it has never put in place any other policies or initiatives. However, in 2016, a bill was passed, the East African Community Counter Trafficking in Persons Bill (EAC-CTIP Bill), though still pending presidential assent[3]. Although this is not a binding community law, the conclusions made by the Legislative Assembly in its report on the public hearing on the EAC-CTIP Bill in 2016 are worth noting and to be considered[4]. The report includes different thoughts and reactions from Member States, except South Sudan. In the report, all the participating countries agreed that human trafficking of a severe kind is prevalent and is significantly increasing in all EAC Member States despite unreliable statistical data and that all countries lack international minimum standards on human trafficking. It was also noted that, although all members have ratified the Palermo Protocol, anti-trafficking laws differ significantly in each jurisdiction, undermining cross-border crime mitigation, and as such, perpetrators operate freely in countries with poor anti-trafficking laws and penalties.

The Member States agreed that the new Bill should reflect the following issues: protection of people with disabilities such as albinism and children who are trafficked for ritual sacrifices; repatriation of victims from abroad; protection of victims including resettlement and physiological support; harmonization of laws

related to human trafficking; abolition of international adoption and the closing of national foster care centres; legal protection of witnesses; cooperate responsibility including all recruiting or employment agencies; exchange of perpetrators or extradition; establishing a specialized regional police force and community-based shelters to support victims from abroad[5].

Even though the EAC member states have signed and ratified various international, continental, regional, and national treaties, protocols, and agreements to address human trafficking collaboratively, ineffective and uncoordinated enforcement of these legal instruments, combined with inconsistencies in their domestication and issues like corruption, foster an environment conducive to the ongoing prevalence of this crime[6]. Additionally, challenges such as the East African Community's policy on the free movement of people and goods, concerns related to state sovereignty, and conflicting interests among member states further complicate efforts to combat human trafficking in the region effectively[7].

CHALLENGES FACED BY MEMBER STATES

Despite the existence of several laws, policies and international instruments that exist human trafficking is still a challenge in EAC member states[8]. The primary obstacle lies in the domestication of international legal instruments and guidelines designed to eradicate slavery and human trafficking, safeguard victims, and foster international cooperation[9]. While most East

African Community (EAC) member states have adopted these international legal instruments, translating them into national laws and ensuring effective implementation remains a significant challenge. Moreover, although many countries, including EAC member states, have adopted specific penalties for trafficking in persons, there is still considerable variation in the definition, interpretation, and understanding of the term "human trafficking". Simultaneously, some countries' legislation only recognizes specific forms of exploitation or particular categories of victims. Furthermore, these laws often lack comprehensiveness, failing to address all facets of human trafficking and failing to strike a balance between prosecution and ensuring the rights and protection of victims[10].

Exclusion of specific International Legislative Provisions from domestic laws

Despite the formulation of normative frameworks at both national and regional levels, there is little consistency in the core definition of trafficking in persons, and national legislations often fall short of the comprehensive provisions of the Protocol[11]. States may focus on specific aspects such as commercial sexual exploitation or the trafficking of women and girls, omitting considerations for trafficking for forced labour or servitude. While the Protocol stipulates that, in the case of children, the various illegal means of trafficking are irrelevant, some legislation fails to reflect this provision, and different states define the age of a child inconsistently[12].

In addition, enforcing anti-trafficking laws poses challenges due to the transnational nature of trafficking, crossing jurisdictional boundaries and making the application of international law to Individuals residing in other states are costly and complex to undertake[13]. Furthermore, human trafficking typically involves multiple legal violations and is not a one-time occurrence; it

necessitates significant time, resources, and energy to build a case against traffickers. In countries with limited resources, like EAC member states, these complexities impede the effective enforcement of anti-trafficking laws[14].

Another impediment to the enforcement of anti-trafficking laws lies in the inadequate training of local enforcement officers within the state. Even if a state has implemented such laws, border patrol officers, federal agents, and local police officers may lack proficiency in international or domestic laws related to

human trafficking[15]. Moreover, trafficking victims are often treated as criminals or illegal immigrants, facing arrest or deportation[16]. Additionally, the language barrier between enforcement officers and victims, often not in their country of origin, complicates information-gathering[17]. Limited or unavailable resources in many states further constrain the ability to enforce anti-trafficking laws properly.

Lack of compliance in the Domestication of International Instruments

The greatest challenge in combating human trafficking is the domestication of international legal instruments and guidelines, as highlighted earlier. For example, while Kenya has adopted these instruments, the challenge persists in translating them into national laws and ensuring effective implementation, a problem shared with other EAC member states[18].

The East African States have primarily focused on detecting and prosecuting traffickers, identifying and assisting victims, and preventing human smuggling. Disparities in the application of global treaties have emerged, particularly in determining whether a trafficking crime has occurred. For instance, the issue of victims' consent varies among states, with some disregarding

it while others adhere to the Palermo Protocol[19]. In the United States, human trafficking is deemed to have occurred regardless of the victim's consent[20]. The legislation also exhibits differences in the transportation aspect, where some states only recognize human trafficking if the victim crosses international borders, neglecting cases of intra-national human trafficking, a prevalent concern in the East African Community[21].

In addition, the challenges of domesticating international instruments are compounded by difficulties in adopting specific penalties against trafficking in persons. Divergent understandings of the term "human trafficking" across East African countries hinder progress. Existing legislations lack comprehensiveness in addressing all forms and categories of human trafficking and safeguarding victims' rights across member states of the East African Community. Despite adopting specific penalties in all EAC member countries, diversity persists in defining, interpreting, and understanding the term. This impedes the development of a collective approach to protecting victims, prosecuting traffickers, and preventing further human trafficking activities. Consequently, the responses by states and governments to trafficking in persons vary globally among EAC member states. The lack of a shared understanding and concerted efforts towards human trafficking within the EAC necessitates a tailored and effective anti-trafficking strategy, along with subsequent monitoring, to ensure their desired impact[22].

Balancing State Sovereignty with Competing Political and Economic Interests.

Global, continental, regional legal instruments and norms lack clearly defined enforcing agencies, relying solely on the political will of individual sovereign states for implementation[23]. The principle of non-intervention, stemming from each state's right to sovereignty, territorial integrity,

and political independence, hinders regional economic blocs from monitoring a state's adherence to international commitments[24]. Given the transnational nature of human trafficking, collaborative efforts among states of origin, transit countries, and destination countries are imperative for the effective prosecution of traffickers[25].

Moreover, the challenge of conflicting regional interests has impeded effective coordination among member countries in the East African Community. Therefore, combating human trafficking requires a coherent multi-sectorial and multi-disciplinary approach, achievable only when states prioritize regional goals over individual ones. In the East African Community, however, competing commercial and political interests have hindered collaborative efforts to combat human trafficking[26]. The delayed signing of the EAC

Human Trafficking Act 2016 by heads of state indicates this situation. While meetings have occurred over commercial and trade discussions, the bill's passage into law has yet to be prioritized. The reluctance is further fueled by overlapping membership in regional organizations, where heads of state may be hesitant to sign a bill into law when a country is a member of two regional blocs.

For instance, Tanzania is a member of SADC and EAC, while Kenya, Uganda, and Burundi are members of EAC and COMESA[27]. The existence of different trading blocs with vested competing commercial interests have led to the enactment of diverse trading and migration policies. Individual states may only be willing to support another state's interests if they align with their own. Unless human trafficking is recognized as a regional issue, states may not voluntarily collaborate to address the problem. For example, while Kenya allows East African Community state members access to its markets and investment opportunities, not all EAC

member states reciprocate this openness due to concerns about competition that may not serve their interests [28].

Corruption in Human Tracking

Corruption stands out as the predominant challenge in the fight against human trafficking in East Africa, with unanimous agreement among key informants on its pervasive nature. Corruption manifests at every stage of human trafficking, from the recruitment of victims to their transportation across borders and eventual exploitation[29]. During transportation, corrupt practices facilitate victims' movement within countries and across borders without detection, either by obscuring officials from checking documentation or evading investigation[30]. Upon reaching their destination, traffickers rely on corruption to avoid detection by law enforcement or to silence victims. The U.S. Department of State attributes this to glaring conviction statistics, indicating that only one out of ten detected cases results in a conviction[31].

Furthermore, institutions responsible for combating human trafficking are weakened by corruption, as bribes to police officers, court officials, immigration officers, and other public service officers render these institutions ineffective despite existing legal instruments and norms. Corruption allows officers to disregard trafficking activities or even actively participate in them[32]. These corrupt practices reduce the risk of traffickers being apprehended by law enforcement, creating a "Low Risk/High Return" scenario that motivates traffickers to expand their illicit operations.

Within the East African Community, human trafficking finds fertile ground in corruption, as indicated by elevated corruption rates in many origin and transit countries and reported by the Corruption Perceptions Index from the U.S. Department of State. Ineffectiveness at border checkpoints is attributed to a lack of modern screening equipment and corruption among enforcement officers[33]. The African Report in 2013 revealed that border patrol officers receive bribes to facilitate human trafficking, and immigration officials at common border points accept bribes to regularize documents for international travel. Traffickers' international connections with law enforcement agencies make convictions challenging[34]. For instance, in the City-County of Nairobi, Kenya, findings revealed the difficulty in addressing situations where trafficked children from Tanzania end up on the streets of Nairobi for begging. Once arrested, traffickers and children conspire to bribe police and prosecutors, preventing court appearances. Deportation attempts are defeated through bribery of officers, and relatives of trafficked victims may also be bribed or promised incentives to keep quiet or withdraw cases from courts[35].

CHALLENGES FACED BY EAC COMMUNITY

East African Community is grappling with the escalation of regional trafficking. The prevalence of porous

borders and inadequate anti-trafficking laws has transformed regional trafficking into a pressing policy concern within EAC member states[36].

The weak supranational institutions within the East African Community (EAC) also contribute to challenges in EAC law. In contrast to the European Union (EU), the EAC institutions exhibit

fragility, particularly evident in the legislative procedures for enacting Community Acts[37]. Notably, the absence of exceptions to the unanimity rule and the lack of direct democratic legitimacy for stakeholders at the Community level impact the legislative process. The unanimity rule necessitates that a bill, approved by the Legislative Assembly, must receive assent from the Heads of States individually rather than collectively as a Community organ. This regulatory approach reflects a mere aggregation of traditional law-making powers of the Heads of State, lacking a vesting of these powers within the Community[38].

The EAC's reliance on national actors for introducing bills, with contributions from the Council and Legislative Assembly members, lacks the counterbalance of involvement from EAC servants. This stands in contrast to the EU, where the European Commission, designed as a robust political organ serving community interests, can propose bills exclusively[39]. Moreover, the procedure outlined applies specifically to Community Acts, not accounting for other forms of secondary legislation like regulations and directives. The absence of a uniform procedure for their enactment creates challenges, limiting parliamentary participation in the law-making process on the EAC plane[40]. This institutional design makes it challenging to enact legislation beyond being a mere compromise of national elite interests, hindering the creation of legislation with a strong impetus.

Toward integration. What is notably absent is a robust institution exclusively designed to serve the interests of the EAC community, a feature present in the European Commission and the European Parliament, contributing to a high level of legalization in Europe as a result of a

supranational entity's establishment[41]. Furthermore, the East African Community (EAC) witnessed a rise in human trafficking facilitated by the free movement of persons and goods within its member states. The constraints within the East African Court of Justice organ also present an additional challenge.

EAC Free Movement of Persons and Goods Policy.

Free movement of persons and goods has facilitated human trafficking[42]. The Treaty for the Establishment of the East African Community, EAC, in article 104[43] of the Treaty, allows for eased cross-border movement of persons, Labor Services, Rights of Establishment and Residence. The substantive article postulates, "Partner States agree to adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community". While this is an essential component towards economic growth among individual states and East African Communities, traffickers are taking advantage of these policies to advance illegal transactions alongside legal businesses.

Besides the free movement of people and goods, the lack of effective integrated border management is one of the challenges that has affected strategies for human trafficking. According to the findings, Kenya needs a better border control system with its neighbouring countries. A situation that has only served to bolster the efforts of human smugglers through Kenya as an exit point[44]. Furthermore, it emerged from the findings that the lack of an integrated

border system is strengthened through corruption. For example, a considerable number of victims apprehended during smuggling operations secure their release through corrupt means[45].

East African Court of Justice

Despite notable progress in various aspects of its mandate, such as formulating Rules of Procedure and Arbitration and enhancing accessibility, the EACJ encounters challenges in realizing human rights within the East African Community[46]. Some key challenges include:

1. **Absence of Specific Legal Provision for Human Rights Jurisdiction:** The EACJ needs an explicit legal mandate for dealing with human rights violation cases, as the Treaty establishing the Court needs to address this. The absence of an explicit provision has sparked debates regarding the Court's validity in handling human rights cases[47].
2. **Working on an Ad Hoc Basis:** The Court operates on an ad hoc basis, and its judges need to be at the seat of the Court, making it challenging to assemble a panel of judges due to their commitments in their respective countries. The Court schedules hearings through sessions to manage the workload, causing delays and inefficiencies. The Registrar, rather than the Court's President or Principal Judge, mainly organizes the judicial work, contributing to delays in case disposal[48].
3. **Slowness of Protocol Adoption:** The decision to extend the Court's jurisdiction to include appellate and human rights was made in November 2004. However, the jurisdiction of the East African Court of Justice (EACJ) faces challenges, particularly concerning Article 27.2[49], which outlines its extended jurisdiction over human rights matters[50]. This provision specifies that operationalizing the Court's human rights jurisdiction requires a subsequent protocol. However, this protocol has yet to be concluded, leading the Court to view this inaction as a violation of the Treaty[51].

In conclusion, it is crucial to note that the EACJ lacks criminal authority, limiting its capacity to address human rights violations comprehensively.

RECOMMENDATIONS AND CONCLUSION

Recommendations

Taking into consideration the challenges identified, this article recommends:

To the member States

EAC member states should harmonize definitions of trafficking in persons and align national legislation with comprehensive provisions outlined in the Protocol. This includes addressing inconsistencies in defining the age of a child and ensuring that legislation covers all aspects specified in the Protocol, such as forced labour and servitude, in addition to commercial sexual exploitation. This ensures that legal frameworks adequately address human trafficking as outlined in the Protocol.

EAC member states should equally increase collaboration and information-sharing among themselves to address the transnational challenges associated with human trafficking.

EAC member states should establish a unified understanding and application of global treaties related to human trafficking and address disparities in determining whether a trafficking crime has occurred, particularly concerning victims' consent. They should also overcome divergent understandings of the term "human trafficking" by adopting specific penalties consistently across

member states to strengthen the collective approach to protecting victims, prosecuting traffickers, and preventing further human trafficking activities.

EAC member states should furthermore recognize and address intra-national human trafficking within member states. Overcome the limitation of legislation that solely focuses on cross-border trafficking and acknowledging the prevalence of human trafficking occurring within national borders in the East African Community.

EAC member states should finally implement rigorous anti-corruption measures, including regular audits, training programs, and strict penalties for officers engaged in corrupt practices.

To the East African Community

EAC should introduce exceptions to the unanimity rule in the legislative process, allowing for a more flexible decision-making mechanism. This can facilitate quicker approval of bills related to regional issues, such as anti-trafficking laws, without being hindered by the requirement for individual assent from Heads of State. Furthermore, the EAC should establish a supranational legislative organ, similar to the European Commission, with the exclusive power to propose bills. This would contribute to a more centralized and efficient legislative process focused on serving the collective interests of the EAC community.

The EAC should additionally actively advocate for an amendment to the Treaty establishing the EACJ, explicitly incorporating a legal mandate to address cases of human rights violations. Clarifying the Court's authority and role in handling human rights issues within the East African Community is crucial. Efforts should be directed towards establishing a permanent panel of judges who reside at the Court's seat. This would reduce the challenges associated with assembling judges on an ad hoc basis and improve the efficiency of case handling. A comprehensive review of the organizational structure of the EACJ is recommended to ensure that judicial work is primarily organized by the Court's President or Principal Judge rather than predominantly by the Registrar. This restructuring could lead to a more expeditious case disposal process and streamline the overall operations of the Court.

Conclusion

With the idea of analyzing the Challenges Facing the East African community in the Effective Implementation of Human Trafficking Laws within the Region, this article also points out several legal ways to make anti-trafficking laws more appropriate and effective. In particular, it emphasizes the vital role of domestication of international, continental, and regional legal instruments so that the prevention initiatives of anti-trafficking efforts are successfully made.

Given the diverse and, at times, conflicting recommendations provided to EAC member states by various international and regional organizations and specialized agencies, it is perhaps unsurprising that responses to trafficking have exhibited such diversity. The attention given in recent years through implementing different legal instruments is encouraging, but the procedures for adopting the instruments at the national level still need to be revised. Overcoming this challenge and making it a priority to agree on how to make the anti-trafficking laws effective and appropriate in the future should ensure the cooperation of EAC member states and the implication of EAC.

The discussion surrounding human trafficking laws appears to be significantly detached from the prevailing reality. Countries' decisions heavily influence this discourse, and, at this juncture, anti-trafficking laws in EAC member states seem to be more driven by the political agendas of states prioritizing their interests rather than being grounded in a factual basis. While there is no doubt about the genuine concern of EAC member states in responding to human trafficking, the persistence of this crime despite the initiation, signing, and ratification of legal instruments necessitates a closer examination. Many involved in the fight against human trafficking exhibit good intentions; however, a critical evaluation of why the crime persists is

essential. Therefore, there is a pressing need to understand the situation to take appropriate action.

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FOOTNOTE

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