

Human trafficking ‘disguised’ as labour externalisation? Revisiting the law and practice in East Africa

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Abstract

Africa is the world’s youngest continent, with over 70 per cent of its population aged under 30 years. Several African governments, individually and collectively, have implemented laws and policies aimed at maximising the potential that the young population brings to the economy. This ranges from creating avenues for employment through agriculture to investment in the entertainment industry, vocational training, industrial development, and fostering trade through regional economic communities. With all these efforts, African governments have not been able to completely absorb the continental workforce in the domestic labour market, thereby fortifying the need for labour externalisation. However, the emergence of labour externalisation programmes has seen the rise of reports of African youths being abused, exploited, dispossessed of their passports and having their body organs harvested without their consent. Nevertheless, there is a dearth of literature analysing these incidents, their relation with the crime of human trafficking, as well as the legal and policy safeguards against these incidents. This chapter fills this void by analysing the legal norms in East Africa with Tanzania as a case study.

Key words: *human trafficking; labour externalisation; East African youths; organ harvests; exploitation; migrant workers*

1 Introduction

Human beings are full of surprises. At any moment, it is thought that a particular awful practice has been thrown into the dustbins of history, but they somehow find a way to recycle and clandestinely apply a similar practice in a different format. This is true with slavery and human trafficking. If history is anything to go by, the nineteenth century was a turning point for the horrific business of buying and selling human beings as a commodity in the market, famously known as the slave trade.¹ Little was it known that several decades later, a human being would unapologetically revive a similar business and victimise another human through what is now known as 'human trafficking'.²

Today, human trafficking is a crime under international and domestic legal frameworks of several states. In substance, it involves the 'recruitment, transportation, transfer, harbouring, or receipt of people through force, threat, abduction, fraud or deception with the intent to exploit them for profit'.³ For this crime to exist, three significant elements must be established. First, there should be an act of recruiting, transporting, transferring, harbouring or receiving persons. Second, the act must be supplemented by means that might take the form of threat, force, coercion, abduction, fraud, deception, abuse of power, or giving payments or benefits to persons in control of the victims. Third, the purpose should be to exploit the victims. This may take different forms,

1 E M'Mbokolo 'A hundred and fifty years after France abolished slavery: The impact of the slave trade on Africa', <https://mondediplo.com/1998/04/02africa> (accessed 15 October 2024). See also R Anderson & HB Lovejoy (eds) *Liberated Africans and the abolition of the slave trade 1807-1896* (2020).

2 It is important to note that the concepts 'human trafficking' and 'trafficking in persons' are used interchangeably to connote the same meaning. For details, see UNODC 'The crime of trafficking in persons', <https://www.unodc.org/e4j/en/tip-and-som/module-6/key-issues/crime-of-trafficking-in-persons.html> (accessed 15 October 2024).

3 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime of 2000 art 3(a).

such as sexual exploitation, forced labour, slavery and illegal removal of body organs of the victims.⁴

The crime of human trafficking is increasingly becoming a serious threat to mankind globally and, more so, to the African continent.⁵ Several aggravating factors place Africa in the spotlight for this crime. They include massive population increase,⁶ youth unemployment, refugee crises, protracted armed conflicts and poverty.⁷ Furthermore, studies indicate that, as of July 2024, Africa remains the youngest continent in the world, with 70 per cent of its population under 30 years of age.⁸ Although this comes as an advantage to the growing economies of Africa, which are guaranteed with the constant work force supply, it has also brought some challenges. The key among these is the inability of African governments to absorb the available workforce into the existing labour market. The recent overview report of the World Bank projected that the rapid population growth in Africa will further overwhelm the labour market in the next three decades. The report emphasises that over 12 million African youths will be available for the labour market,

4 A Altshuler 'The elements and penalties of human trafficking crimes', <https://www.altshulerlaw.com/blog/the-elements-and-penalties-of-human-trafficking-crimes/> (accessed 16 October 2024). See also UNODC 'Key elements of human trafficking factsheet', https://www.unodc.org/documents/e4j/Secondary/Human_Trafficking_11_Key_elements_of_human_trafficking.pdf (accessed 16 October 2024).

5 T Obokata 'Human trafficking in Africa: Opportunities and challenges for the African Court of Justice and Human Rights' in CC Jalloh, KM Clarke & VO Nmehielle (eds) *The African Court of Justice and Human and Peoples' Rights in context: Development and challenges* (2019) 529. See also SY Cho & KC Vadlamannat 'Compliance with the Anti-Trafficking Protocol' (2012) 28 *European Journal of Political Economy* 249.

6 From 2014 to 2024, Africa's population has grown from 1,1 billion to 1,5 billion people. For more details, see African Union 'Addressing migration and mobility in Africa: Challenges, opportunities and policy approaches' the State of Africa Population Report (2014). See also Population of Africa Worldometers 2024, <https://www.worldometers.info/world-population/africa-population/> (accessed 19 October 2024).

7 DDK Ayak & NF Kahimba 'Legal protection of victims of trafficking in persons in South Sudan' (2022) 49 *Eastern Africa Law Review* 33.

8 UN 'Young people's potential, the key to Africa's sustainable development' May 2024, <https://www.un.org/ohrls/news/young-people%20%99s-potential-key-africa%20%99s-sustainable-development> (accessed 17 October 2024). See also EH Dyvik 'World population by age and region 2023', <https://www.statista.com/statistics/265759/world-population-by-age-and-region/> (accessed 19 October 2024).

compared to the 3 million formal jobs currently created annually.⁹ This reality has fortified the need for and practice of labour externalisation on the continent. As it will be seen later, most African youths, skilled and semi-skilled, are increasingly being exported within and outside of the continent for work-related purposes.

However, the export of labour within and outside the continent of Africa has not been without controversies. In the name of labour externalisation, several reports have emerged showing most African youths falling victim to exploitation and abuse contrary to the prior work promises given to them. For instance, on 4 July 2024, BBC reported an incident involving a teenager called Maria (not her real name) from South Africa who was promised by two couples in the United Kingdom (UK) that they would provide her with accommodation, education and a good job if she accepted going to the UK.¹⁰ Based on these promises, Maria accepted and travelled to the UK. Nevertheless, the situation drastically changed after her arrival. She was taken to several homes of locals and coerced to have sex with them. Her hosts trapped her in that situation for over 30 years.¹¹

Maria's story is not the only incident. The 2022 Global Report on Trafficking in Persons of the United Nations Office on Drugs and Crime (UNODC) reported 700 cases of victims of human trafficking globally between 2008 and 2022 for purposes of organ removal.¹² Among such victims is Daniel, a 21 year-old from Nigeria (not his real name), who was promised a work opportunity in the UK by persons he believed to be potential employers. Upon arrival in the UK, Daniel was surprised to find himself in the Royal Free Hospital, where doctors explained to him the risks of a kidney removal operation. This caused Daniel to realise that the purpose of his travels to the UK was a scam. He had no job, but

9 World Bank 'Sub-Saharan Africa overview report (2024)', <https://www.worldbank.org/en/region/afr/overview> (accessed 18 October 2024).

10 N Heath 'Slavery gang masters beat us for fun' *BBC West Investigations* (Swindon) 4 July 2024, <https://www.bbc.com/news/articles/c6p2ldw2vg2o> (accessed 19 October 2024).

11 As above.

12 US Department of State 'Trafficking in persons for purposes of organ removal' (2024) 1, https://www.state.gov/wp-content/uploads/2024/08/24-02934-TIP-Factsheet-Forced-Organ-Removal_Accessible-8.22.20224.pdf (accessed 19 October 2024). See also UNODC 'Global report on trafficking in persons' (2022), https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf (accessed 19 October 2024).

those who facilitated his travel were interested in his kidney.¹³ Luckily, the perpetrators were arrested, convicted and sentenced to nine years' imprisonment in the UK.¹⁴

Similarly, youths from East Africa have also fallen victim to different human trafficking incidents. Reports indicate that tens of thousands of East Africans, mostly women and children, migrate annually within and outside the region for work-related purposes.¹⁵ The East African regional integration project has opened up strategic fields of human mobility, such as the free movement of persons, labour, capital, goods and services, while assuring the right of residence and establishment for the citizens of the East African Community (EAC) member states.¹⁶ Although the opened fields are catalysts to economic growth, employability, innovation – raising people's living standards – and labour externalisation within the community, they have also aggravated the risks of trafficking in persons within the community. Simplified mobility has provided a fertile ground for traffickers, especially from Tanzania, to transport children and other persons with physical disabilities to Kenya while promising them jobs. In contrast, the real intention is to exploit them in forced begging-related activities.¹⁷

Other East Africans migrate to other regions, such as the Middle East, Europe and Asia, in search of employment. In such scenarios, reports of exploitation have also been disclosed. The Global Press Journal shows that most Ugandan migrant women migrate to the Middle East primarily for domestic work. One of the accounts provided by the Journal is that of a 27 year-old lady called Shakira Namusisi, who was facilitated to get a job

13 M Weaver's 'Nigerian politician jailed for nine years in UK over organ trafficking plot' *The Guardian News* (London) 5 May 2023, <https://www.theguardian.com/uk-news/2023/may/05/nigerian-politician-jailed-in-uk-over-organ-trafficking-plot-ekweremadu> (accessed 19 October 2024).

14 As above.

15 Migration Data in Eastern Africa (2024), <https://www.migrationdataportal.org/regional-data-overview/eastern-africa> (accessed 19 October 2024). See also IOM 'Labour mobility and regional integration in East and Horn of Africa' (2023) 2.

16 The Protocol on the Establishment of the East African Community Common Market, 2010, art 2(4). See also K Gastorn & W Masinde 'The EAC Common Market' in E Ugrishebuja and others (eds) *East African Community law: Institutional, substantive and comparative EU aspects* (2017) 289.

17 US Department of State '2024 Trafficking in persons report: Kenya', <https://www.state.gov/reports/2024-trafficking-in-persons-report/kenya/> (accessed 19 October 2024). See also L Anami 'Tanzanian jailed for 30 years for trafficking minors to Kenya' *The East African News* (Nairobi) 27 January 2023.

in Oman. However, in Oman, her movement and communication were restricted by her employer, and she was often raped and sexually abused by the four children of her employer.¹⁸ So, what she expected to be an opportunity to work, raise money and improve her economic situation became a nightmare that has haunted her conscience to this day.

Against this background, this chapter analyses the legal norms in East Africa to establish the extent to which they offer protection against human trafficking disguised as labour externalisation. The chapter chooses Tanzania as a case study for two main reasons: First, reports indicate that Tanzanians are increasingly trafficked within and outside the East African region, and, second, there is a dearth of literature analysing the legal framework and the increasing human trafficking incidents in the country. It is guided by the hypothesis that the existing legal norms in Tanzania do not adequately offer protection to youths from becoming victims of human trafficking resulting from labour externalisation. To achieve its objective, the chapter discusses the international legal regimes on human trafficking and labour externalisation, the domestic legal framework for Tanzania, the existing practice and, finally, offers a conclusion and recommendations.

2 Human trafficking and labour externalisation under international law

As depicted in the previous part, the increasing incidences of human trafficking in Africa have a strong connection with labour externalisation. This is indeed the case in two ways, where African youths, through recognised agents, move outside their countries of origin or are lured by the traffickers that they will get a job or life-changing opportunity and end up in an exploitative environment. For that purpose, this sub-part revisits the international legal framework for human trafficking and labour externalisation to point out the legal safeguards for protecting people against human trafficking contained in international legal instruments.

18 N Segawa 'Migrant workers abused in the Middle East Seek justice' *Global Press Journal* (Kampala) 9 December 2021, <https://globalpressjournal.com/africa-uganda/migrant-workers-abused-middle-east-seek-solace-justice/> (accessed 19 October 2024).

2.1 International law on human trafficking

The global fight against human trafficking reached its peak in the year 2000. This was a result of the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations (UN) Convention against Transnational Organised Crime of 15 November 2000 (TIP Protocol). The TIP Protocol was adopted through United Nations General Assembly Resolution 55/25 of 2000 and entered into force on 29 September 2003.¹⁹ The TIP Protocol acknowledges that no state, no matter how powerful, can stand alone and win a war against human trafficking. In that regard, the Protocol calls upon countries, be they of origin, transit or destination, to work together to punish perpetrators of trafficking in person and to protect the victims by guaranteeing their human rights as per internationally recognised standards, especially in the case of women and children.²⁰

The TIP Protocol emphasises that the crime of human trafficking will only be committed if the three elements of 'acts, means and purpose' as discussed in the introductory part of this chapter, are met.²¹ It also notes that the crime is established irrespective of the victim's consent where the means element has been satisfied. This entails that the trafficker cannot try to exonerate themselves from prosecution for claiming that the victim had consented, where such consent has been procured through the means of threat, force or other forms of coercion, abduction, deceit, fraud, abuse of power or position of vulnerability and giving or receiving payments or benefits to exploit the victim.²² Similarly, where the victims are children, the crime of human trafficking is committed by the presence of an act and purpose element. In other words, the Protocol insists that the prosecutor will need only to establish that there has been recruitment, transportation, transfer, harbouring or reception of children for exploitation. For that purpose, it is, therefore, not necessary

19 UNODC 'UN Convention against Transnational Organised Crime and the Protocols thereto: Status of Ratification', <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> (accessed 23 October 2024).

20 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime of 2000, Preamble and art 2.

21 Art 3 Protocol to Prevent, Suppress and Punish (n 20) art 3.

22 As above.

to establish the means through which the children were taken to exploitation. It is also essential to point out that the word 'exploitation' is defined by the Protocol to include, at a minimum, 'the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'.²³

The Protocol further obliges state parties to adopt legislative measures to criminalise the crime of human trafficking.²⁴ In so doing, states must ensure that their adopted pieces of domestic legislation codify proper and effective mechanisms for the prevention, investigation and prosecution of human trafficking.²⁵ In the same way, state parties are obliged to ensure victims of human trafficking are protected under the domestic legal framework. The protection referred to in the Protocol covers broad issues in criminal law. These include protecting the victim's privacy and identity; accessing information on the appropriate judicial or administrative body where they can file their claims; assisting the victims in having their views heard and determined by the competent authority; and providing them with physical, medical, and psychological recovery support.²⁶ Additionally, state parties to the Protocol are expected to ensure the physical safety of the victims within their territories, the unique needs of victims based on their age, gender and other special statuses are taken into account, and, lastly, the domestic legislation confers them the possibility of being compensated for the damage suffered.²⁷

The drafters of the Protocol realised that without comprehensive measures to be adopted by states in their quest to prevent, combat and protect victims of human trafficking, the whole body of law would be rendered nugatory. In that regard, they enshrined provisions in the Protocol that require state parties to adopt appropriate policies, programmes and other relevant measures of their choice in combating human trafficking. The explicit measures provided in the Protocol include embedding human trafficking courses in the training of law enforcers and ensuring they continue to be trained even after recruitment, encouraging research on human trafficking, conducting information and mass media

23 As above.

24 Art 5 Protocol to Prevent, Suppress and Punish (n 20).

25 Art 4 Protocol to Prevent, Suppress and Punish (n 20).

26 Art 6 Protocol to Prevent, Suppress and Punish (n 20).

27 As above.

sensitisation campaigns and taking necessary steps to alleviate poverty, underdevelopment and, at the same time, creating equal opportunities for all.²⁸

Despite the revolution brought by the TIP Protocol, its overwhelming inclination to the criminalisation of the crime of human trafficking has triggered its less focus on the victims' rights. As rightly pointed out by Ayak and Kahimba, 'the Anti-Trafficking Protocol was not intended to provide full protection of victim's rights, but rather the criminalisation of trafficking and cooperation between states to facilitate prosecution'.²⁹ For that reason, therefore, international human rights instruments have been applied to fill the void left by the TIP Protocol.

For centuries, the international human rights law regime has prohibited many acts linked to contemporary forms of human trafficking.³⁰ For instance, international human rights law demands that human beings be guaranteed the right to life, liberty and security. It prohibits acts that would place human beings in slavery, servitude or slave trade in all its forms. It further insists that every person has a right to just and favourable conditions of work, and they should be protected against forced or compulsory labour.³¹ Although the rights that are guaranteed under international human rights do not explicitly target the crime of human trafficking, they form a crucial part of protecting persons from falling victim to the crime. As seen in the previous parts of this chapter, the ultimate goal of traffickers is to exploit the victims. This may take the form of forced labour, organ harvest, forced prostitution, slavery or practices similar to slavery or servitude. International human rights prohibit all such practices and, therefore, fortify the protection of people against falling victim to human trafficking.

It is also crucial to point out that some international and regional human rights instruments explicitly oblige states to take necessary measures to combat trafficking in person. The Convention on the Rights of the Child of 1989 (CRC) is one of the international instruments

28 Arts 9 & 10 Protocol to Prevent, Suppress and Punish (n 20).

29 Ayak & Kahima (n 7) 29.

30 UNODC 'Human Rights and Human Trafficking' Fact Sheet 36 (2014) 5, https://www.ohchr.org/sites/default/files/Documents/Publications/FS36_en.pdf (accessed 24 October 2024).

31 Arts 3, 4, 5, 6 & 23 Universal Declaration of Human Rights of 1948. See also the International Covenant on Civil and Political Rights of 1966 arts 6, 7, 8 & 9.

which requires states to address the crime of human trafficking. Article 35 of CRC states as follows: 'States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.' Similar wording for protecting women, rather than children, is contained under article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW). The specific provision takes cognisance of the fact that for several years, women have been subject to exploitation in different forms, including prostitution. For that purpose, the provision demands that states take the appropriate measures, including the enactment of domestic law to 'suppress all forms of traffic in women and exploitation of the prostitution of women'.³²

Regarding regional instruments, the African Charter on the Rights and Welfare of the Child of 1990 (African Children's Charter) revolutionised the protection of children from exploitation. Among areas where African children have been victims of exploitation are recruitment as child soldiers in armed conflicts, bush wives for belligerents, the use of children in prostitution and other sexual practices and child labour such as in mines.³³ Fortunately, the drafters of the African Children's Charter had all such possibilities in mind and, therefore, extended protection to children. This has been achieved by enshrining provisions in the Charter, which require African states to put measures in place to protect children against child labour, torture, inhuman and degrading treatment, underage recruitment into the armed forces and sexual exploitation.³⁴ The Children's Charter explicitly requires African states to designate measures to prevent and protect children against incidences of human trafficking in two ways. First, states should closely monitor and regulate all incidences of intercountry adoption to ensure that they do not lead to

32 Art 6 Convention on the Elimination of All Forms of Discrimination Against Women of 1979.

33 BD Mezmur 'Taking measures without taking measurements? An insider's reflections on monitoring the implementation of the African Children's Charter in a changing context of armed conflict' (2019) 101 *International Review of the Red Cross* 632. See also J Maxted 'Children and armed conflict in Africa' (2003) 9 *Social Identities* 51. See also C Coulter *Bush wives and girl soldiers: Women's lives through war and peace in Sierra Leone* (2011). See also BK Savacool and others 'The decarbonisation divide: Contextualising landscapes of low-carbon exploitation and toxicity in Africa' (2020) 60 *Global Environmental Change* 102028.

34 Arts 15, 16, 22 & 27 African Charter on the Rights and Welfare of the Child of 1990 (African Children's Charter).

traffic in children.³⁵ Second, African states should implement measures that are geared toward preventing the abduction, sale or trafficking of children. Because the perpetrators may also be parents or other close relatives, the Charter insists that the adopted measures apply to everyone, including parents and legal guardians.³⁶

In a nutshell, it is vital to point out that the regime of international human rights law is critical in the protection of the rights of victims of human trafficking to the extent not reached by the Anti-Trafficking Protocol. States that have not yet signed or acceded to the Anti-Trafficking Protocol still have the duty to honour the obligation to protect victims of human trafficking under international human rights law. Since this chapter analyses the form of human trafficking disguised as labour externalisation, we now briefly revisit the international legal framework on labour externalisation.

2.2 International law on labour externalisation

Labour externalisation and the protection of migrant workers have a long history globally. However, the modern rules regulating labour externalisation are linked with the early initiatives of the International Labour Organisation (ILO).³⁷ Since its establishment in 1919, the ILO has been an essential forum for developing protection standards for migrant workers.³⁸ The standards require ILO member states to treat migrant workers who are lawfully in their territories in the same way as their citizens.³⁹ The ILO constitution captures this requirement as one of the most critical principles in maintaining social justice and global peace. The constitution, therefore, urges states to ensure that they 'protect the interest of workers when employed in countries other than their own'.⁴⁰

Additionally, the ILO standards require member states to adhere to, promote and achieve the five fundamental principles regarding workers'

³⁵ Art 24(4) African Children's Charter.

³⁶ Art 29 African Children's Charter.

³⁷ J Masabo 'The protection of the rights of migrant workers in Tanzania' PhD thesis, University of Cape Town, 2012 24.

³⁸ A Wisskirchen 'The standard setting role and the monitoring activity of the ILO: Legal questions and practical experience' (2005) 114 *International Labour Review* 254.

³⁹ Art 427 Peace Treaty of Versailles of 1919.

⁴⁰ The ILO Constitution of 1919 Preamble.

rights. These include freedom of association and the right of collective bargaining, suppressing forced or compulsory labour and all its forms, abolition of child labour, addressing discrimination in employment and occupation, and the right to a safe and healthy working environment.⁴¹ Masabo correctly points out that 'these principles are universal and apply to all workers and all states irrespective of the level of development'.⁴² It is worth noting that the ILO's fundamental principles were not meant to combat the crime of human trafficking. However, the standards put forth by the principles have the potential to address incidences of human trafficking. For instance, suppressing child labour, forced labour and all its forms, creating a safe and healthy working environment, and addressing discrimination in workplaces have the consequences of avoiding exploitation, which is one of the key elements of the crime of human trafficking.

A human rights-focused approach to labour externalisation gained strength in 1990 following the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.⁴³ The Convention defines a migrant worker as 'a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national'.⁴⁴ Persons sent or employed by international organisations and state employees outside the respective state for official duties or who participate in development or cooperation programmes on behalf of the state are excluded from this definition.⁴⁵ The list also includes investors, refugees, stateless persons, students and trainees, seafarers as well as workers on an offshore installation who have not been admitted as residents.⁴⁶ Since the Convention is concerned with extending rights to migrant workers and

41 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted at the 86th session of the International Labour Conference in 1998 and amended at the 110th session in 2022, <https://www.ilo.org/resource-conference-paper/ilo-1998-declaration-fundamental-principles-and-rights-work-and-its-follow> (accessed 25 October 2024).

42 Masabo (n 37) 28.

43 It was adopted via United Nations General Assembly Resolution 45/158 on 18 December 1990 and entered into force on 1 July 2003.

44 Art 2 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990.

45 Art 3 International Convention on the Protection (n 44).

46 As above.

members of their families, it generously defines the phrase 'members of the family' in the following words:⁴⁷

For the purposes of the present Convention, the term 'members of the family' refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognised as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the states concerned.

This definition is flexible and progressive. It does not restrict itself to officially married migrant workers but recognises other relationships with equivalent effects to marriage depending on the applicable law in the respective country. In that regard, couples who have lived together for a long time without formal marriage, have children and have other dependents may qualify depending on the applicable legislation or agreement between respective states.

The Convention recognises several human problems involved in labour externalisation and wildly irregular migration. These include the trafficking of migrant workers and clandestine movements that water down the fundamental human rights of migrants.⁴⁸ Therefore, the Convention urges states to take appropriate measures to eradicate irregular migration and the trafficking of migrant workers.⁴⁹ To achieve this goal, the Convention codifies the standards to be adhered to by states in the three significant phases of labour externalisation: pre-departure (preparation for emigration), admission and residence abroad, and, lastly, return and reintegration in the home country. We briefly expand the Convention's standards in each phase.

2.2.1 *Pre-departure phase*

The pre-departure phase is preoccupied with proper preparations for emigration. The rationale behind the preparations is to ensure that migrant workers and members of their families do not become prey to traffickers or face difficulties upon admission to the destination states. To achieve this aim, the Convention obliges states to formulate and

47 Art 4 International Convention on the Protection (n 44).

48 Preamble International Convention on the Protection (n 44).

49 As above.

implement policies that will guide persons aspiring to work in other countries to get credible information about the available opportunities in the destination state.⁵⁰ The Convention envisages the implementation of the said policies to involve cooperation between competent authorities of member states in exchanging genuine information about the existence of work opportunities.⁵¹ States should also endeavour to ensure that all appropriate information relating to adopted policies, laws, regulations or agreements concluded within or between states on migration and employment is available and accessible to relevant stakeholders such as employers, workers, and workers' organisations.⁵²

To avoid incidents of exploitation and other difficulties in the destination state, the Convention requires member states to provide proper assistance to migrant workers and their family members in several key areas. These include information and assistance concerning the necessary authorisations and formalities that must be met before departure, travel, stay, exit and return. This also covers information on the types of remunerated activities, taxes and customs, work and life conditions in the destination state and other relevant laws and regulations they may need to know.⁵³ These pieces of information are crucial in enabling migrant workers to make informed decisions about whether to migrate. States are also obliged to facilitate the provision of appropriate and adequate consular services necessary to accommodate the protection needs of migrant workers and members of their families in the destination states.⁵⁴

The quick observation of the pre-departure standards under the Convention focuses on addressing irregular or clandestine movement of people. In most cases, such movements have resulted in human trafficking and severe violations of the fundamental rights of migrant workers.⁵⁵ To address the situation, the Convention requires states to impose effective sanctions on any person, group thereof, or entity that operates clandestinely or illegally to organise the movement of migrant workers

50 Art 65(1)(a) International Convention on the Protection (n 44).

51 Art 65(1)(b) International Convention on the Protection (n 44).

52 Art 65(1)(c) International Convention on the Protection (n 44).

53 Art 65(1)(d) International Convention on the Protection (n 44).

54 Art 65(2) International Convention on the Protection (n 44).

55 Art 68 International Convention on the Protection (n 44).

or use violence, threats or intimidation methods in dealing with them.⁵⁶ States are also obliged to deter, through domestic law, any dissemination of misleading information intended to induce the emigration and immigration of migrant workers.⁵⁷

Furthermore, the Convention vests the power to recruit workers intending to be employed in another country to public service or bodies of every state.⁵⁸ However, this is not necessarily a reality in today's world, where the private sector is also leading in matters of employment and recruitment. For that purpose, the Convention recognises the role of private agencies in the recruitment process. Nevertheless, it emphasises that such agencies must work under public authorities' authorisation, approval and supervision.⁵⁹ In most states, recruitment agencies cannot function without registration and licence as required under the relevant domestic legal framework, and there is always a government monitoring body to ensure their efficiency. In cases of inefficiency or performing their functions in violation of the law, they may have their registration withdrawn and their licence cancelled.⁶⁰

2.2.2 *Admission and residence abroad*

Generally, after migrant workers have departed from their countries of origin, the next and, probably the most important, stage is their admission and residence abroad. This is because working in a new environment away from home has never been easy. Reports are showing that most often, migrant workers and members of their families have met with unreceptive, harsh and humiliating hosts, xenophobic attacks and racism.⁶¹ The International Convention on the Protection of the Rights

56 As above.

57 Art 68 International Convention on the Protection (n 44).

58 Art 66(1) International Convention on the Protection (n 44).

59 Art 66(2) International Convention on the Protection (n 44).

60 I Mwangi '20 recruitment agencies deregistered for non-compliance' *Capital FM* 4 September 2024, <https://www.capitalfm.co.ke/business/2024/09/20-recruitment-agencies-deregistered-for-non-compliance/> (accessed 27 October 2024). See also W Kamusiime's Li\$\$pended in Uganda *Uganda Police Force* 28 June 2021, <https://upf.go.ug/list-of-private-recruitment-companies-suspended-by-the-ministry-of-gender-labour-and-social-development/> (accessed 27 October 2024).

61 H Solomon & HK Osaka 'Xenophobia in South Africa: Reflections, narratives and recommendations' (2013) 2 *Southern Africa Peace and Security Studies* 10. See also SA Olofinbiyi 'Anti-immigrant violence and xenophobia in South Africa:

of Migrant Workers and Members of their Families requires states to ensure that migrant workers receive equal treatment with nationals to guarantee their protection. They should not receive less remuneration, be forced to work overtime without compensation, or be denied the right to enjoy holidays, join trade unions or participate in social security schemes because of their immigration statuses.⁶²

The Convention further prohibits any person, including employers or recruitment agencies, from confiscating, destroying, or attempting to destroy travel documents, identification documents, work permits, and other relevant documents belonging to migrant workers and members of their families.⁶³ The Convention insists that such acts are unlawful and urges state parties to take necessary actions to deter them. Additionally, state parties to the Convention are required to ensure that migrant workers enjoy the right to life and protection from forced labour, torture, slavery and servitude.⁶⁴ They should also have the right to access neutral and impartial judicial and administrative bodies to seek redress in all events of dissatisfaction with administrative or legal actions in the host state.⁶⁵

It is vital to note that the Convention offers protection to migrant workers and members of their families in both regular and irregular situations. States have found it easy to extend protection to migrant workers in regular situations but not irregular migrants.⁶⁶ In most cases, political leaders have faced criticisms and even risked re-election for appearing to favour irregular migrants, who, in the eyes of many, have

Untreated malady and potential snag for national development' (2022) 14 *Insight on Africa* 201. See also J Jager 'Immigration and support for anti-immigrant parties in Europe' (2023) Working Paper 76, <https://www.wiso.uni-hamburg.de/forschung/forschungslabor/working-papers/pdfs-wp/wp76.pdf> (accessed 27 October 2024). See also D Stockemer and others 'Immigration, anti-immigrant attitudes and Euroscepticism: A meta-analysis' (2018) 16 *Fr Polit* 329. See also J Dennison & M Nasr 'Attitudes to Immigration in the Arab world: Explaining an overlooked anomaly' (2020) 62 *Migration Research Series* 11.

62 Arts 25, 26 & 27 International Convention on the Protection (n 44).

63 Art 21 International Convention on the Protection (n 44).

64 Arts 9-17 International Convention on the Protection (n 44).

65 Art 18 International Convention on the Protection (n 44).

66 A Pecoud 'The politics of the UN Convention on Migrant Workers' Rights' (2017) 5 *Groningen Journal of International Law* 67. See also W Palmer & A Missbach 'Enforcing labour rights of irregular migrants in Indonesia' (2018) 40 *Third World Quarterly* 908.

violated immigration laws.⁶⁷ This explains the hesitation of many states to ratify the Convention. To date, the Convention remains one of the least ratified conventions in the world, with only 59 states having fully ratified it.⁶⁸ Lyon captures this phenomenon in the following words: 'There seems to little doubt that by offering protection to unauthorised workers, the framers of the treaty risked what has been to date the result; most countries of migrant employment have shunned the treaty'.⁶⁹ The low ratification rate is also arguably contributed by the Convention's stance of not permitting signatory states to enter reservations that would ignore the protection of irregular migrant workers.⁷⁰

Despite the fewest ratifications by states, irregular migrants continue to flood the labour market of many countries in the world. Experience depicts that irregular migrants engage in the 'three-D jobs – dirty, dangerous and degrading' in the destination states.⁷¹ Most are found in the less-monitored sectors, such as domestic work, maids in bars, seasonal agricultural work, mining extraction, construction and the sex industry.⁷² Most employers and intermediaries in the destination states prefer to use irregular migrant workers because they are cheap and can

67 M Wagner and others 'EU Policy Framework on Irregular Migrants' (2024) 8 MIRREM Working Paper 32. See also CF Ruhs & M Ruhs 'The Fundamental rights of irregular migrant workers in the EU: Understanding and reducing protection gaps' (2022) 63 *European Union* 9, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/702670/IPOL_STU\(2022\)702670_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/702670/IPOL_STU(2022)702670_EN.pdf) (accessed 27 October 2024).

68 UN Treaty Body Database, Ratification Status for the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CMW&Lang=en (accessed 27 October 2024).

69 B Lyon 'The unsigned United Nations Migrant Worker Rights Convention: An overlooked opportunity to change the brown collar migration paradigm' (2010) 58 *Working Paper Series* 4.

70 Art 88 International Convention on the Protection (n 44). See also Pecoud (n 66).

71 M Lenko and others 'Migrant work conditions and health status – A longitudinal study on "dirty work" among undocumented and newly regularised workers' (2024) 26 *Journal of International Migration and Integration* 213. See also Masabo (n 37) 37. See also J Benach and others 'Migration and "low-skilled" workers in destination countries' (2011) 8 *PLoS Med* 6.

72 ILO 'In search of decent work-migrant workers' rights: A manual for trade unionists' (2008) 20, https://www.servicestelle-gegen-zwangsarbeit.de/wp-content/uploads/2018/08/ILO-Guide_migrant-workers.pdf (accessed 28 October 2024). See also C O'Cinneide 'The human rights of migrants with irregular status: Giving substance to aspirations of universalism' in S Spencer & A Triandafylidou (eds) *Migrant with irregular status in Europe: Evolving conceptual and policy challenges* (2020) 53.

easily be exploited.⁷³ Employers neither provide them with employment contracts nor pay government taxes for the said employment.⁷⁴ They can also terminate irregular migrant workers from work at any time without the fear of consequences.⁷⁵ For these reasons, such employers enjoy lower productivity costs, which give them a competitive advantage over businesses, companies or employers who comply with the rules.

It is for the above facts, in the interest of states and governments, to combat incidences of irregular migration. However, this chapter argues that governments are losing this battle by employing the wrong tactics in the fight against irregular migration. Many employers and intermediaries have become significant players in the irregular migration business due to the benefits that accompany it. Therefore, recognising irregular migrants and tasking employers and intermediaries to accord them all employment benefits will disincentivise their use rather than encourage it. In that regard, the demand for irregular migrant workers will decrease as employers and intermediaries find themselves incurring the same or even more costs as in the employment of regular migrants. This is precisely the technique introduced by the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families. It does not encourage irregular migration, but equips states with the right weapon to fight it through recognition.

Therefore, the Convention requires state parties to designate appropriate measures to ensure migrant workers are not denied the rights stipulated in the Convention because of their irregular statuses. These rights include the rights to life, protection against forced labour, slavery or servitude, and not to be treated less favourably than nationals in the same employment with respect to remuneration.⁷⁶ It also requires that states take appropriate measures, be they legal or administrative, to ensure that employers are not relieved of their obligations arising out of the employment of undocumented or irregular migrants.⁷⁷ Implementation of this obligation by states is essential, as it will potentially disincentivise the clandestine movement of people, which

⁷³ Ruhs & Ruhs (n 67) 55.

⁷⁴ A Triandafyllidou & L Bartolini 'Irregular migration and irregular work: A chicken and egg dilemma' in Spencer & Triandafyllidou (n 72) 139.

⁷⁵ As above.

⁷⁶ Art 25 International Convention on the Protection (n 44).

⁷⁷ As above.

is often pioneered by employers and intermediaries. This is also critical in the fight against human trafficking because reducing the clandestine movement of people has a trickle-down effect in combating incidences of labour externalisation for exploitation purposes across the globe.

2.2.3 Return and re-integration in the home country

Return and reintegration in the country of origin is the last stage of labour externalisation. It is built on the idea that the phenomenon of people working in a country other than their own is not permanent. Save for migrant workers and members of their families who ultimately acquire citizenship in the destination states, the rest of the migrant workers may decide to return to their home country upon the expiration of their residence permit or employment contract. Most of the time, the returnees are in a disadvantaged position because their stay abroad typically affects their social, cultural and economic link with their home country. For that reason, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families obliges states to designate appropriate measures that guarantee the orderly return of migrant workers and their family members.⁷⁸

Interestingly, the Convention requires that the adopted measures for returnees benefit both regular and irregular migrant workers and members of their families. In other words, states are barred from using the 'irregular status card' as a justification not to facilitate the orderly return of migrant workers who were employed but lived in an irregular situation in the destination state.⁷⁹ With respect to migrant workers and members of their families in regular circumstances, the Convention obliges states to cooperate and agree on their own terms to ensure suitable environments for their resettlement and reintegration in economic, social and cultural fields.⁸⁰ The relevant provision states the following:⁸¹

Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall cooperate as appropriate, on terms agreed upon by those states, with a view to promoting adequate economic conditions for their

78 Art 67(1) International Convention on the Protection (n 44).

79 As above.

80 Art 67(2) International Convention on the Protection (n 44).

81 As above.

resettlement and to facilitating their durable social and cultural reintegration in the state of origin.

As noted in the previous part, the extension of rights to regular migrants and members of their families has never been an area of contestation between states. The same is not the case with irregular migrant workers and members of their families. However, contrary to the position taken by several states, this chapter emphasises that the extension of rights to irregular migrant workers will help to deter irregularity rather than incentivise it. This, therefore, has the potential to strengthen the global fight against human trafficking, primarily because most traffickers generally obtain most of their prey from irregular migration.

3 Human trafficking and labour externalisation: The law and practice in East Africa

Human trafficking and labour externalisation cannot be separated from one another in East Africa. Most human trafficking incidents in East Africa are linked with the movement of people outside of their countries both within and, in several other cases, beyond the East African Community (EAC) region.⁸² The main push factor for these movements has been the need to search for jobs and other life-changing opportunities. Of course, this search is triggered by the urge to fight poverty, the rapid population increase in the region, and dwindling employment opportunities.⁸³ Statistics show that from 1990 to 2023, the population in the EAC has drastically grown from 127,4 million to 332 million.⁸⁴ It is expected to reach 560 million people in 2043.⁸⁵ However, the existing job market in individual EAC countries is not large enough to absorb the population that needs job opportunities. As a result, labour externalisation has become inevitable. Despite the benefits of labour externalisation, several

82 Obokata (n 5) 529.

83 IOM 'Human trafficking in Eastern Africa: Research assessment and baseline information in Tanzania, Kenya, Uganda and Burundi 2008', <https://publications.iom.int/system/files/pdf/kenyahumantraffickingbaselineassessment.pdf> (accessed 24 October 2024).

84 ISS-African Futures 'East African Community: Current path', <https://futures.issafrica.org/geographic/recs/eac/#:~:text=The%20EAC%20experienced%20rapid%20population,equates%20to%20a%2069%25%20increase> (accessed 24 October 2024).

85 As above.

incidences of human trafficking related to seeking employment away from home have also been reported. This sub-part, therefore, revisits the law and practice in East Africa, using Tanzania as case study.

3.1 Tanzania: Global ranking and ground experience

For several years now, Tanzania has been placed in a group of countries that fall in Tier 2 in combating and preventing human trafficking globally.⁸⁶ Countries falling under Tier 2 are those that have not fully met the global minimum standards for eliminating trafficking in persons but are making substantial efforts to address the problem.⁸⁷ Countries falling into Tier 2 are differentiated from those in Tiers 1 and 3 by checking the compliance level. While Tier 1 is made up of countries that fully comply with the minimum standards for eliminating trafficking in persons, Tier 3 is completely the opposite, with no compliance or efforts to address human trafficking.⁸⁸

As a Tier 2 country, it has always been easy for researchers and policy makers to obtain statistics on human trafficking. Nevertheless, several incidences of Tanzanians falling victim to human trafficking within and outside the country have been reported. For instance, in 2024, hundreds of Tanzanian children with disabilities were found in the exploitative begging business in Nairobi, Kenya.⁸⁹ Similarly, several other Tanzanians who have utilised opportunities that come with labour externalisation to obtain jobs in the Middle East, Asia and South Africa have found themselves in trafficking circumstances. In 2024, the government of Tanzania, through its embassy in Oman, had to interfere to assist two potential victims of human trafficking who were exploited in domestic work in Oman.⁹⁰ Nevertheless, intervention of this nature is not new:

86 US Department of State '2024 trafficking in persons report: Tanzania,' <https://www.state.gov/reports/2024-trafficking-in-persons-report/tanzania/#:~:text=A%20research%20study%20released%20in,trafficking%20during%20their%20employment%20abroad> (accessed 29 October 2024).

87 International Association of Women Judges 'The 2024 trafficking in persons report,' <https://www.iawj.org/the-2024-trafficking-in-persons-report#:~:text=%2D%20Tier%202%20%3A%20Countries%20not%20fully,%2C%20Hong%20Kong%2C%20Nepal> (accessed 24 October 2024).

88 As above.

89 N Mwangi 'Forced to beg: Tanzania's trafficked kids – BBC Africa Eye documentary' *BBC Africa News* (Nairobi) 2022, <https://www.youtube.com/watch?v=sz8ZyCmV0N8> (accessed 25 October 2024).

90 US Department of State (n 86).

Between 2015 and 2016, Tanzania took stringent measures to suspend more than 70 recruiting agencies that were reported to have recruited young Tanzanians who ended up being mistreated abroad.⁹¹ From 2023 onwards, Tanzania has rigorously, through the immigration department, intensified the pre-departure screening procedures to identify trafficking indicators for domestic workers travelling abroad.⁹²

3.2 Legal and institutional landscape

The primary law addressing human trafficking in Tanzania is the Anti-Trafficking in Persons Act of 2008. This Act is union legislation applicable in both mainland Tanzania and Zanzibar.⁹³ At this juncture, it is pertinent to note that Tanzania emerged from the union of the two former independent states, Tanganyika and Zanzibar.⁹⁴ Due to the nature of the union, certain laws are considered ‘union laws’ that apply to the entire territory of the United Republic of Tanzania, while others are ‘specific laws’ limited to each part of the territory of the Union.⁹⁵ The Anti-Trafficking in Persons Act of 2008 enjoys the status of ‘union law’ and, therefore, has the force of law in mainland Tanzania and Zanzibar. Under this law, human trafficking is designated as an offence punishable by a prison sentence of not less than 20 years but not exceeding 30 years, with the court having the option of ordering a fine ranging from 50 to 100 million Tanzanian Shillings.⁹⁶

The law proceeds to designate specific incidents as ‘severe human trafficking in persons’. These include the trafficking of children or disabled persons, adoption for prostitution, sexual exploitation, pornography, forced labour or slavery, as well as when the offence is committed by a syndicate, parents, guardians or any other person who exercises authority over the trafficked person.⁹⁷ It is pertinent to note that the accused cannot raise as a defence that the child, the parent or the guardian had consented

91 D Msafiri ‘Finding work, escaping poverty drive potential emigrants in Tanzania’ (2019) 284 *Research on Poverty Alleviation* 1.

92 US Department of State (n 86).

93 Sec 2 Anti-Trafficking in Persons Act of 2008.

94 Arts 2, 4, 34 & First Schedule Constitution of the United Republic of Tanzania, 1977.

95 As above.

96 Sec 4(5) Anti-Trafficking in Persons Act of 2008 (n 93).

97 Sec 6 Anti-Trafficking in Persons Act of 2008 (n 93).

to be trafficked, especially when the victim is the child or the consent has been obtained by deceit, coercion, violence or intimidation.⁹⁸

The Tanzanian government has developed the National Anti-Trafficking in Persons Plan of Action 2021-2024 to ensure that the law is effectively implemented.⁹⁹ The Plan adopted a victim-centred approach to preventing, suppressing and punishing the offence of human trafficking. To achieve this approach, three specific objectives were put in place. These include the following: to create an enabling policy environment to facilitate interventions in combating human trafficking; to provide an implementation framework guided by a victim-centred approach in developing appropriate skills for effective detection, investigation and prosecution of the crime of human trafficking; and, lastly, to strengthen coordination and partnerships among relevant stakeholders.¹⁰⁰ As will be seen in the subsequent part, some of these specific objectives have not been fully achieved even though the Plan of Action's timelines have ended.

Since labour externalisation also involves the challenge of human trafficking, the government of Tanzania decided to take another massive legal step to establish the Tanzania Employment Services Agency (TAESA) in 2008. TAESA was established through Government Notice 189 of 2008, as required under section 3 of the Executive Agency Act of 1997.¹⁰¹ Currently, TAESA is a unit within the Labour, Youth, Employment and Persons with Disabilities Department under the Prime Minister's office. Its functions include coordinating, monitoring and facilitating cross-border placement; helping job seekers find jobs within and outside Tanzania; sharing labour market information with members of the public and relevant stakeholders; regulating, registering and monitoring public and private recruitment agencies; and providing career guidance as well as pre-departure training for labour emigrants. Additionally, in its efforts to address human trafficking in Tanzania, the government, in collaboration with other interested partners, established the Anti-Trafficking and Child Protection Task Force in the office of the

98 Sec 4(3) Anti-Trafficking in Persons Act of 2008 (n 93).

99 Ministry of Home Affairs, National Anti-Trafficking in Persons Plan of Action 2021-2024, https://www.unodc.org/documents/easternafrica/TOC/TNZ_NPA_2022.pdf (accessed 29 October 2024).

100 As above.

101 Ch 245 of Laws of Tanzania.

Director of Public Prosecutions (DPP) in 2022. The task force has been pivotal in training law enforcers on the identification and protection of human trafficking victims and the investigation of human trafficking incidences.¹⁰²

Moreover, several other legal efforts to address the challenge of human trafficking are seen with the enactment of labour laws in Tanzania. Key legislation in this category includes the Employment and Labour Relations Act of 2004 and the Non-Citizens (Employment Regulations) Act of 2015. Although these pieces of legislation do not explicitly deal with human trafficking, they provide crucial safeguards for the protection of workers from becoming victims of human trafficking. For instance, the Employment and Labour Relations Act of 2004 prohibits child labour, forced labour and workplace discrimination.¹⁰³ Such prohibitions potentially protect workers against exploitation, which is one of the prerequisite conditions for the existence of the crime of human trafficking. Likewise, the Non-Citizens (Employment Regulations) Act of 2015 regulates the conditions for employment of non-citizens in Tanzania. Categorically, the law requires non-citizens wishing to work in Tanzania to obtain relevant work permits.¹⁰⁴ Once that is done, the non-citizen engaging in any occupation for reward, profit or non-profit can benefit from all other rights accorded to workers in Tanzania. It is essential to point out that the Employment and Labour Relations Act of 2004 and the Non-Citizens (Employment Regulations) Act of 2015 focus on regulating workers residing in Tanzania. In that regard, this chapter does not dwell much on analysing the two pieces of legislation because the chapter's focus is on human trafficking resulting from labour externalisation. It suffices to note that Tanzania has taken some legal and institutional steps as far as preventing and suppressing the crime of human trafficking are concerned.

102 US Department of State 2023 Trafficking in Persons Report: Tanzania, <https://www.state.gov/reports/2023-trafficking-in-persons-report/tanzania/#:~:text=In%20July%202022%2C%20the%20government,and%20prosecutions%2C%20and%20victim%20identification> (accessed 29 October 2023).

103 Secs 5-7 Employment and Labour Relations Act of 2004.

104 Sec 9 Non-Citizens (Employment Regulations) Act of 2015.

3.3 Challenging issues

Despite efforts made by Tanzania to address the crime of human trafficking, several challenging issues persist, especially in dealing with human trafficking disguised as labour externalisation. These include poor prosecution and investigation of trafficking cases; the absence of specific legislation addressing labour externalisation; delays in giving legal effects to union pieces of legislation; non-ratification of relevant international legal frameworks; and absence of specific officers to deal with labour externalisation in Tanzanian consulates. These challenges are individually discussed below.

First, there is poor prosecution and investigation of human trafficking cases. This has always been one of the significant challenges in the Tanzanian criminal justice system, and it has affected the outcome of numerous human trafficking cases. The case of *Elias Njile v Republic*¹⁰⁵ is one among the Tanzanian High Court cases on human trafficking whose outcome has been badly affected by poor investigation. In this case, Mr Elias Njile was charged with the offence of severe trafficking in person contrary to sections 4 and 6 of the Anti-Trafficking in Persons Act of 2008. The accused had transported a seven year-old disabled child from Tanzania to Kenya to exploit him in the begging business. An investigation by a Kenyan police officer led to the arrest of Grace Simon, who told Kenyan authorities that she was employed by the accused to move the victim in the streets of Nairobi for begging. However, the authorities in Kenya could not arrest the accused because he was in Tanzania at the time of the investigation. As a result, the accused was arrested in Tanzania and charged with committing severe trafficking in persons in the Tanzanian resident magistrate's court, where the prosecution team secured a conviction based on the accused's admission in the caution statement.

Nonetheless, the conviction and sentence were set aside on appeal to the High Court due to poor prosecution and investigation. This was because the prosecution team failed to produce key witnesses to prove the case beyond reasonable doubt. For instance, they obtained neither testimonial evidence from Grace Simon nor from the child victim, which could have helped to establish the exploitation of the child in

¹⁰⁵ *Elias Njile v Republic* High Court of Tanzania Criminal Appeal 21/2023.

the begging business. As discussed earlier in this chapter, an offence of trafficking in person can only be committed if all the three elements of act, means and purpose are fully met. Therefore, weak investigation and prosecution have prevented the prosecution team from proving the element of '*purpose*', which in the case at hand was 'the exploitation of the victim in the begging business', as a result of which the conviction and sentence were set aside. Sadly, the prosecution team only examined the testimonial evidence of the Kenyan police officer who informed the Court what Grace Simon told her, rendering the whole evidence hearsay and not admissible before the Court.

Second, Tanzania has not yet amended its labour laws to regulate labour externalisation. Typically, the amendment would ensure that the Tanzanian labour laws adequately govern the recruitment and placement of Tanzanian migrant workers abroad. This would encompass establishing a mechanism to oversee recruitment agencies and safeguard the rights and dignity of Tanzanian migrant workers, both before and after their placement overseas for employment purposes. Zambia, for instance, requires the labour commissioner to cooperate with the appropriate authorities in the foreign country where Zambians are employed.¹⁰⁶ The principal aim of such a requirement is to ensure that Zambian migrant workers are protected even when abroad. The law further criminalises any inducement or attempts to induce Zambians to proceed to work abroad without complying with the conditions under Zambian law.¹⁰⁷ Zambia is not the only country in this regard; Uganda has also enacted the Employment (Recruitment of Ugandan Migrant Workers) Regulations 47 of 2021 to protect Ugandans from human trafficking incidents when opting to seek employment abroad. Since Tanzania is experiencing rapid population growth¹⁰⁸ and the labour market cannot accommodate the fast-growing working age population, the number of persons seeking jobs abroad is expected to increase.¹⁰⁹ It

¹⁰⁶ Sec 31(1)(c) Employment Code Act of 2019.

¹⁰⁷ Sec 32 Employment Code Act of 2019.

¹⁰⁸ Currently, there are 61.7 million people in Tanzania, an increase of more than 16.8 million people in just one decade. For more details, see the 2022 Population and Housing Census: Initial Results. Dodoma, Tanzania, October 2022, <https://www.nbs.go.tz/uploads/statistics/documents/sw-1720088450-2022%20PHC%20Initial%20Results%20-%20English.pdf> (accessed 29 October 2024).

¹⁰⁹ L Ndyali 'Higher education system and jobless graduates in Tanzania' (2016) 7 *Journal of Education and Practice* 116. See also DTDA Labour Market Profile

is crucial, therefore, that Tanzania enact specific legislation to regulate labour externalisation to fortify the protection of her citizens and guard them against human trafficking.

Third, there is a delay in giving the legal effects to union legislation. The Anti-Trafficking in Persons Act of 2008 is a union legislation that applies equally to mainland Tanzania and Zanzibar. However, the applicability of union legislation in Zanzibar is not automatic. The Constitution of Zanzibar, enacted in 2010, stipulates that every piece of union legislation passed by the union parliament must concern union matters and be presented before the House of Representatives to acquire the force of law in Zanzibar.¹¹⁰ The High Court of Zanzibar also emphasised this position in the case of *Director of Public Prosecutions v Abdallah Suleiman Mwinyi & 6 Others*¹¹¹ by ruling that the Firearms and Ammunition Control Act of 2015, which was the union legislation, had no force of law in Zanzibar because, at the time of litigation, it had not yet been tabled before the House of Representatives. Similarly, the Anti-Trafficking in Persons Act was enacted in 2008 as a union legislation and was immediately applied in mainland Tanzania. However, it was not until 14 years later that the Act became operational in Zanzibar. Consequently, in 2022, the majority of law enforcement officers in Zanzibar were still unaware of its existence, which undermined efforts to combat human trafficking in Tanzania.

Fourth, the non-ratification syndrome. As this chapter notes, most states have not yet ratified some crucial treaties regulating labour externalisation, thereby affecting efforts to combat human trafficking. Tanzania is no exception in this category. It has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990. By so doing, the country has robbed itself of the tools for ensuring the safety of migrants in terms of combating the exploitation of migrant workers, which is one of the key aspects in the fight against human trafficking.

Fifth, Tanzania has not yet appointed and deployed labour attachés in its embassies to address labour concerns of Tanzanian migrant workers.

Tanzania and Zanzibar 2024/2025 2, <https://www.ulandssekretariatet.dk/wp-content/uploads/2024/10/Tanzania-LMP-2024-final1.pdf> (accessed 29 October 2024).

110 Art 132(2) Constitution of Zanzibar, 2010.

111 Criminal Case 7/2016 (unreported).

As the number of migrant workers continues to grow, the role of embassies has significantly evolved. The International Organisation for Migration (IOM) emphasises that the embassies have 'often become the first port of call for migrant workers in need and the first line of action for establishing trust between government and their diaspora communities'.¹¹² Realising this reality, most governments have started to appoint and deploy labour attachés in their embassies. The responsibilities of labour attachés have included monitoring and conducting physical follow-ups to ensure that their citizens are not subjected to discrimination or exploitation in the workplace, supporting the documentation of migrant workers, offering legal counselling and welfare assistance and providing credible information on the availability of jobs abroad.¹¹³ Despite their crucial responsibilities, Tanzania has not yet deployed them. The country remains dependent on online engagement with TAESA for verifying Tanzanian migrant workers, which diminishes its ability to effectively monitor the working conditions of these workers and to combat human trafficking disguised as labour externalisation.

4 Concluding remarks

This chapter demonstrates that Africa is the world's youngest continent, with 70 per cent of its population under the age of 30. While this presents an advantage in terms of having a sufficient workforce, it also poses a challenge: the labour market has struggled to absorb the large number of readily available youths seeking employment. Consequently, many youths are engaging in labour externalisation programmes to secure jobs outside their countries of origin. In the grabbing of job opportunities outside one's country, reports have shown that some of the said youths fall prey to incidents of human trafficking. As a result, this study was conducted, using Tanzania as a case study, to analyse the extent to which the law and practice in East Africa, particularly in Tanzania, protect

¹¹² IOM 'The role of consular staff in protecting the rights of migrant workers in crisis situations,' <https://eastandhornofafrica.iom.int/sites/g/files/tmzbdl701/files/documents/THE%20ROLE%20OF%20CONSULAR%20STAFF%20IN%20CRISIS%20SITUATIONS%20EN.pdf> (accessed 29 October 2024).

¹¹³ ILO 'The role of ASEAN labour attachés in the protection of migrant workers' (2015) Policy Brief 1, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/documents/projectdocumentation/wcms_417372.pdf (accessed 29 October 2024).

youths from becoming victims of human trafficking disguised as a labour externalisation initiative.

The study has demonstrated that significant efforts have been made in East Africa, particularly in Tanzania, regarding the fight against human trafficking. These efforts include the enactment of the Anti-Trafficking in Persons Act in 2008, the development of the National Anti-Trafficking in Persons Plan of Action 2021-2024, the establishment of an Executive Agency with a mandate to monitor, among other things, recruitment agencies, the formation of the Anti-Trafficking and Child Protection Task Force in the DPP's office, and the ratification of various international human rights instruments, as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime 2000. As a result of these efforts, Tanzania has been categorised among Tier 2 countries in the battle against human trafficking. This suggests that it is not fully adhering to international standards to eradicate this heinous crime, although substantial efforts are underway.

Despite the identified efforts, the chapter highlighted specific areas that, if addressed by Tanzania, would significantly enhance the protection of Tanzanian migrant workers from becoming victims of human trafficking through labour externalisation initiatives. These include improving the prosecution and investigation of human trafficking cases, specifically by establishing special training programmes for law enforcement officers, amending labour laws to regulate labour externalisation programmes, avoiding delays in implementing union legislation in Zanzibar, ensuring that the relevant international legal instruments addressing incidences of human trafficking are ratified and domesticated, and, lastly, appointing specific officers in Tanzanian embassies abroad to coordinate all matters related to labour externalisation.