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WOMEN IN LAW AND DEVELOPMENT IN AFRICA,
TANZANIA CHAPTER
(WiLDAF TANZANIA)

A Simplified Information Booklet on
**Human Trafficking
and Gender in
Tanzania**





A Simplified Information Booklet on

Human Trafficking and Gender in Tanzania



Publisher



Women in Law and Development in Africa (WiLDAF)

Mikocheni "A" area, P. O. Box 76215,

Off Chwaku Street, Block F, Plot No. 635

Dar es salaam, Tanzania.

Telephone +255 22 270 1995

Email wildaf_tanzania@yahoo.com or wildaftanzania@gmail.com

Website: www.wildaftanzania.org

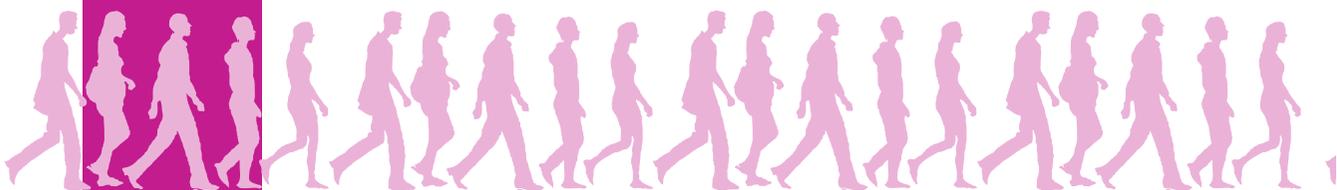
Author

Advocate Francis M. Magare

(Assistant Lecturer, Faculty of Law,

Tumaini University College, Dar es salaam)

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The problem of trafficking in persons seems to be a growing concern in Tanzania. The 2014 Global Slavery Report reported that Tanzania was leading in East Africa for having more than 350,000 people trafficked within and outside the country.¹ At the global level, Tanzania is ranked as the 33rd position out of 167 countries in the world in the list of notorious countries regarding trafficking. Victims of trafficking are taken away to other countries or continents or; if is within the country they are taken from rural to urban; and are forced to work in farms, mines or domestic help.

Tanzania is a source, transit, and destination country for women and children trafficking. The incidence of internal trafficking is higher than that of transnational trafficking and is usually facilitated by some victims' family members, friends, or intermediaries offering assistance with education or finding employment in urban areas like Dar es Salaam, Mwanza and Arusha. Some unscrupulous individuals manipulate the traditional practice of child fostering-in which poor children are entrusted into the care of wealthier relatives or respected members of the community commonly in regions like Iringa, Dodoma and Morogoro, to subject children to forced labor in Dar es Salaam in most cases, in areas like Buguruni Kimboka, Mwenge-Africa Sana, Kinondoni and many other places. Girls are exploited in sex trafficking in tourist areas within the country like Arusha City and some other attracting places within the country. Women and girls who are trafficked are normally subjected to sexual exploitation or labour exploitation for the benefits of those who engineered it.

Lack of awareness about human trafficking and low knowledge about the existence of Anti-Trafficking in Persons Act, 2008 renders women and girls being trafficked; as well as non-reporting of incidents of human trafficking offences. The study (IOM) indicates that only 56% of Tanzanians are aware of what human trafficking is.

It is from this basis that WiLDAF decides to publish a booklet on human trafficking to raise awareness to the public and the law enforcers on the need to join efforts to curb this problem. This booklet can also serve as a tool to develop activities to curb human trafficking.

Hon. Naomi A. M. Kaihula

Chairperson

¹ Global Slavery Index Report, 2014. Accessed it on 23rd December, 2015 from http://d3mj66ag90b5fy.cloudfront.net/wpcontent/uploads/2014/11/Global_Slavery_Index_2014_final_lowres.pdf.



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Human Trafficking and Gender in Tanzania

This booklet describes in a simplified manner, the phenomena of Human Trafficking and Gender in Tanzania. The booklet shall be used as a tool for dissemination and sensitization of people (citizens) about human trafficking. It will also be used as a tool to develop activities to curb human trafficking. It highlights the concept of human trafficking and its theoretical background, the laws in curbing human trafficking internationally and nationally. The Booklet also considers issues of gender in relation to human trafficking and their specific trends in Tanzania and elsewhere in the world in general.

The book is divided into three major parts. Part one is the theoretical foundation on human trafficking. This part gives an in-depth description on human trafficking. It expounds on what is Human Trafficking, the history of Trafficking in human history, analogy of Trafficking and Smuggling of Migrants, different faces of trafficking, drives for Trafficking, forms of trafficking and it finally analyses its contents. Part two is the legal framework within which human trafficking is combated. Part three which is the last part, discusses the phenomenon on human trafficking and Gender.

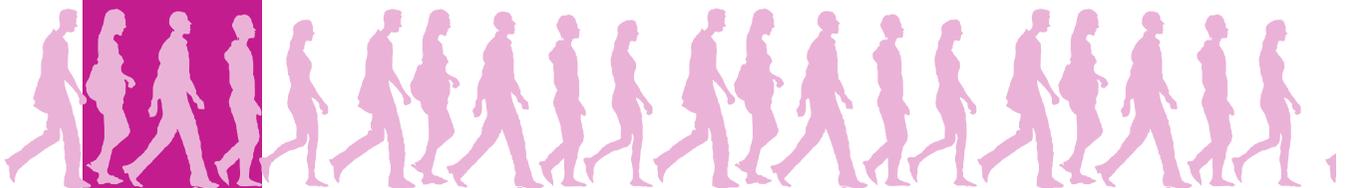
In fact, Human Trafficking is a real phenomenon in Tanzania and elsewhere in the world. When talking of trafficking and gender, it is evident that human trafficking and gender issues are inseparable. Despite the fact that men are also trafficked, women and children are more prone to this problem of human trafficking.

The Booklet has therefore provided an in-depth explanation on its scoped phenomena of human trafficking and Gender. And it is my modest belief that it will assist in developing the desired tools for success.

Dr. Judith N. Odunga

The National Coordinator,

Women in Law and Development in Africa (WiLDAF)





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This booklet is a collective effort by different stakeholders and individuals, who assisted in its preparation and production. The inputs and information from these stakeholders were very useful, for the final production and publication of this booklet.

WiLDAF extends special thanks to Advocate Francis M. Magare (LL.M) (an Assistant lecturer in law at the Department of International Law, Faculty of Law Tumaini University Dar es Salaam College) who authored the Booklet and presented its first draft, Mrs. Anna Kulaya the Deputy National Coordinator, WiLDAF for coordinating the drafting of the early versions of this Booklet.

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Lastly we appreciate the contiguous and generous support from the USAID Tanzania for her financial support that facilitated the publication of this Booklet.





List of Abbreviation and Acronyms

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AU	African Union.
ANS	Answer.
CAP	Chapter.
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women.
CRC	Convention on the Rights of the Child.
TVPA	Trafficking Victims Protection Assistance
CAT	Convention Against Torture.
ILO	International Labour Organization.
ITC	ILO's International Training Centre (ITC)
IOM	International Organization for Migration.
IPEC	International Program for Elimination of Child Labour.
ICCPR	International Covenant on Civil And Political Rights.
LTD	Limited.
PEPFAR	The President's Emergency Plan for Aids Relief.
RE	Revised Edition.
UDHR	Universal Declaration on Human Rights.
UN	United Nations.
UNICEF	United Nations Children's Fund (formerly United Nations International Children's Emergency Fund).
USAID	United States Agency For International Development

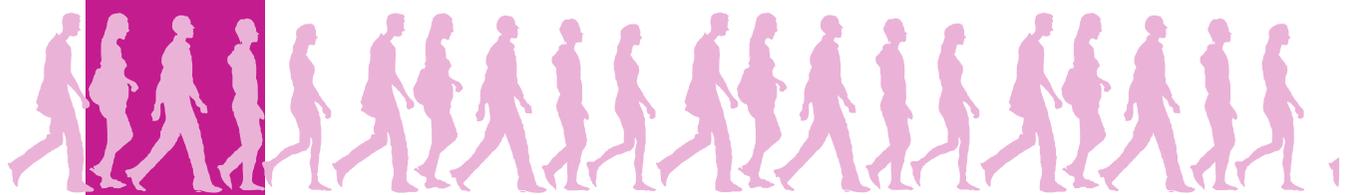




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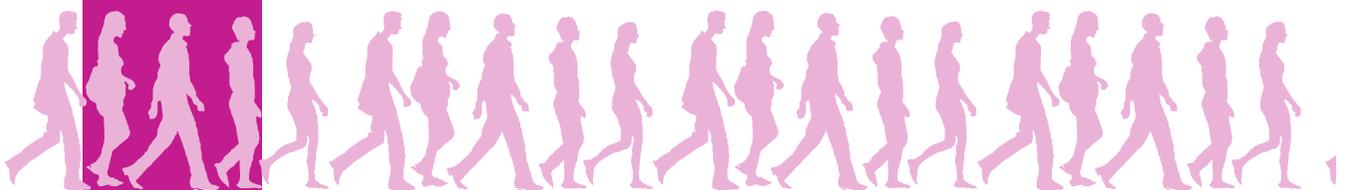
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Part One

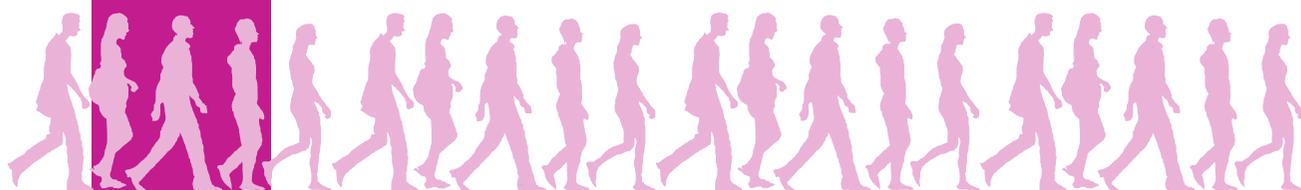
THEORETIC FOUNDATION ON HUMAN TRAFFICKING

1.1. Background

Human trafficking is one of the concerns in this period of globalization. The globalization triggers organized crimes with criminal networks, manipulating economic, political, cultural convergence and newly established relations, to achieve their own goals. The organized criminal groups, make good use of new opportunities offered by information technologies. In fact, human trafficking is slavery of the 21st century and is often referred to as “*white slavery*”. Despite the current lack of accurate data, it can be argued that Tanzania is among the predominant country of origin, that is to say, a “*supplier*” of potential victims of trafficking. Multiple cases of labor and sexual exploitation affecting women, men and children have been identified. **(S. R. Kamazima, *Human Trafficking Baseline Assessment In Tanzani, 2009*).**

Most of the victims of trafficking are among those people, who wish to avoid at all costs, their harsh living conditions. They therefore show imprudence to the said living conditions by agreeing to leave their homes and naively believe in empty promises of easy, quick and better lives. These people agree to be smuggled (human Smuggling) to other countries or be transported from one place to another, preferably urban areas. Consequently, they often find themselves in perilous situations, as they become exposed to ruthless physical and moral abuse. The victims are further forced to do unpaid hard work above their capacity. Sometimes, they are also subjected to humiliation, beatings and threats.

According to the standards currently applied to eliminate human trafficking, Tanzania is categorized under the second tier. **(US Department of States Report on Human Trafficking 2015).** The second tier Countries are those countries whose governments do not fully comply with the Trafficking Victims Protection Assistance (TVPA)’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards.

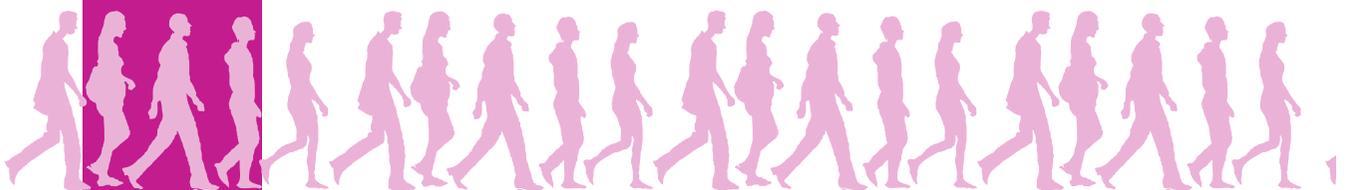




These countries are featured by the following:- (1)the **absolute number of victims** of severe forms of trafficking, is very significant or is significantly increasing. (2) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons in the past or the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional steps in the future.

The problem of human trafficking has become a matter of serious concern to the entire civilized humanity. Some available data suggest that every year one million people worldwide fall victim to the exploitation in their countries of origin, while another million people are moved over to other countries. The annual profit gained from human trafficking by criminal networks and individual criminals' amounts to some 7.5 Billion USD.(*US Department of States Report on Human Trafficking supra*)

All these happen despite the fact that the period following the World War II marked a new milestone in human rights protection as the human life came to be proclaimed as the supreme value along with the fundamental and inalienable rights and freedoms of the person. Democratic countries embarked on a mission to become guarantors of human rights protection. At this juncture many countries including Tanzania, committed themselves with the international efforts to the promotion of human rights by adopting rights contained in the Universal Declaration of Human Rights and other human rights treaties. This was done in the hope that the social development would eradicate the human exploitation along with other forms of degrading treatment and punishment. Nevertheless, by the end of the 20th Century and the onset of the third millennium, it had become quite clear that there was still much to be done in order to create a world without violence and infringement of human rights. In some countries, seemingly governed by the rule of law, numerous cases of enslavement, labor and sexual exploitation were revealed. As a result, the society decided to start a war on modern forms of slavery through its political framework, i.e. the state.



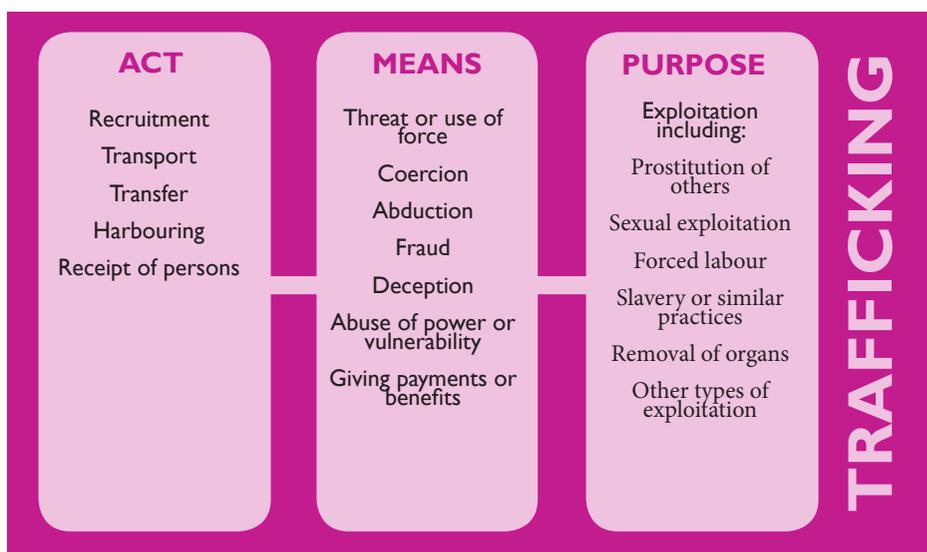
1.2. What is Human Trafficking?

Trafficking, whether of children or of adults, is a form of exploitation and a gross violation of human rights. In the case of children, it additionally violates their rights as children, in particular their right to protection from exploitation. The concept of Trafficking is understood in different ways. Likewise, there are a number of different approaches to combat it. It is important to stress that these variations do not constitute disagreement, they reflect differences in the mandates of agencies that combat trafficking or reinforce protection, different legal and policy frameworks, and different developments and facets of trafficking crosses countries and regions.

By definition, in article 3(1) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000 (the Palermo Protocol) Human trafficking entails the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. It is therefore-

- **the action** of recruitment, transportation, transfer, harboring or receipt of persons
- **by means** of the threat or use of force, coercion, abduction, fraud, deception, abuse of power or position of vulnerability or giving payments or benefits to a person in control of the victim and,
- **for the purposes of exploitation**, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs.

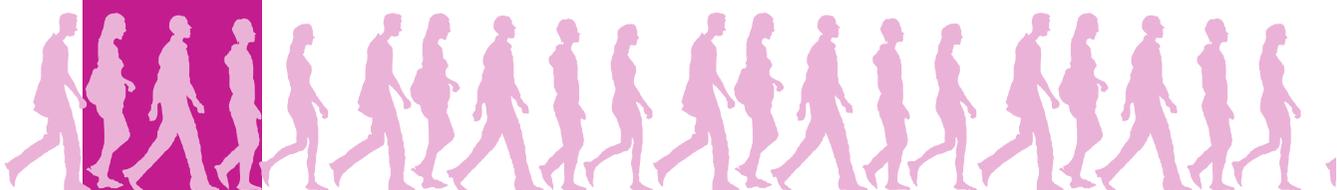




The ‘consent’ of a victim of trafficking is irrelevant in cases of child trafficking and this proves the exception. See the figure below for illustration on what Constitutes Trafficking.

See also the illustration of human exploitation characterizing Human Trafficking, described above in the Box below.

1. *Mr. Msambazaji recruited a group of men in Shinyanga to work on construction sites and transferred them to Dar es Salaam. These persons were subjected to coercion; they were forced to work, and Msambazaji and his associates embezzled the sums payable to them.*
2. *Mr. K. stayed in the country X as an illegal alien with his visa already expired, but did not wish to return to Tanzania, because he needed a certain amount of money to cover the surgery expenses for his sick spouse. He therefore asked his ‘acquaintances’ to take to Tanzania his underage son who had accompanied him to the country of destination as this would enable the man to seek employment. The ‘acquaintances’ of Mr. K. took advantage of his vulnerable situation and handed the child over to a “charitable” family where the boy was forced to work virtually as a slave.*



3. *Miss M was engaged in prostitution in her hometown. She agreed to leave for country Y. she was taken in by the recruiter's promise of double income for her "work". However, Miss. M. actually worked twice as much but was not paid since her money went into the pockets of pimps and their associates, who had seized her identification papers.*

At the level of analysis, trafficking happens when someone or a group of people are transported from one place to another; within a country or across the border and are subjected, into a situation in which they are exploited. This exploitation may take different forms but usually involves dirty, dangerous work for little or no payments, with inadequate rest time, no safety nets like health insurance or social assistance, and often with a degree of force or violence.

1.3. Different faces of Human Trafficking

1.3.1. Human Trafficking as a Criminal Offence

Internationally and domestically, human trafficking is a criminal offence. It disrupts families and communities. In relation to the exploitation of trafficked children, it also undermines financial structures and the national economy, since goods and services produced with trafficked labour are often from enterprises working outside regulated markets. It destabilizes the workings of the regular labour market, under-cutting prices and wages and encouraging corruption and unfair practices.

1.3.2. Human Trafficking as a Security Issue

Human Trafficking is also a security issue, when it includes crossing of national borders because traffickers make large profits from introducing people illegally into a country and exploiting their labour. Many traffickers are also involved in moving other forms of contraband such as cigarettes,



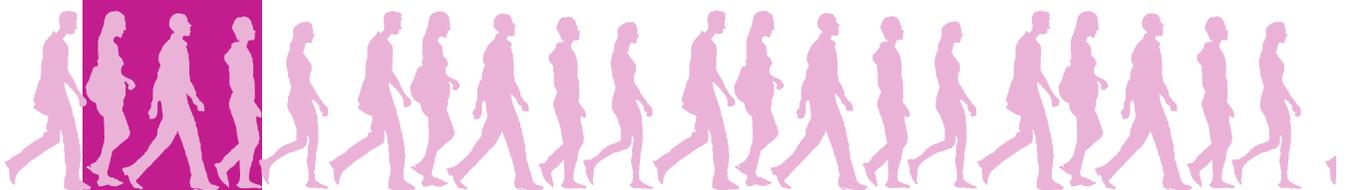
stolen cars or ‘dirty’ money, along the same routes as their human cargo, so governments across the world have increasingly become concerned about the operations of traffickers. In some parts of the world, there are insidious links between the trafficking of children and the drug trade. Children are trafficked into exploitation as drug couriers and dealers, and are often ‘paid’ in drugs in order that they become addicted and so entrapped. Such children are at high risk of other forms of violence and even murder. Because of the illicit nature of drug dealing and trafficking, children who are caught are more often than not treated as serious criminals whereas they are, in fact, in need of specialized help.

1.3.3. Human Trafficking is a violation of Human Rights

Human trafficking, whether of children or of adults, is a gross violation of human rights. In the case of people who have not yet attained the age of majority, it additionally violates their rights as children, in particular their right to be protected from exploitation. On these points, there is universal agreements manifested in a number of instruments as we shall see in this booklet on the part concerning the legal framework on human trafficking. As we explore the detail of trafficking, however, it becomes clear that there is some variation in the way common concepts are interpreted or understood and that there are a number of different approaches to combat child trafficking.

1.4. The History of Human Trafficking

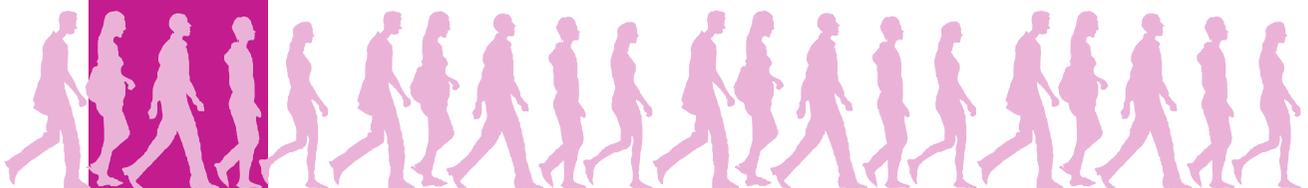
Carried by the fact that human trafficking is a form of human exploitation, the said has quite a long history. The oldest form of human exploitation is slavery. Thus human trafficking on its inception, took a form of slavery and slave trade (*Rutgers University Campus coalition against Trafficking, URL, 2015*) The first stage of human trafficking was exploitation and sale of slaves as articles of





trade was, considered common practice in ancient Greece or Rome, the possible reason for this was the fact that people did not see much difference between their domestic animals and slaves. (*Rutgers..... ibid*) As time went by, people abolished slavery for slaves' work was not based on their own motivation and gradually grew unprofitable thereby, making the slave owners to find ways to enhance their motivation. To this end, they gradually emancipated their slaves, gave them some land with a right to ownership and thereby tried to promote the efficiency of their labor. It is also well known that in ancient times the need to have warriors made many sovereigns prohibit debt bondage of free citizens, particularly, a record on this is found in the code of Hammurabi.

The second stage of human trafficking is associated with slavery and racial discrimination, when representatives of white race considered themselves superior and began to enslave representatives of the black race. This process unfolded during the exploration of American and African continents. It lasted to late 19th century. In East Africa, the Arab slave traders took huge numbers of slaves from Tanzania and exported them to their countries. (*East African Slave Trade, URL, 2015*). This type of slavery draw firm condemnation from humanist thinkers who argued that all races belonged to the same species of "homo sapiens" and could not be exploited by one another. Nevertheless, in one form or another, such slavery persisted throughout the 19th century. Unfortunately, it cannot be argued that society was free from slavery at any stage of civilization, as it has always been exposed to some form of bondage. Sexual exploitation was very common in Oriental countries: the majority of women held in harems were, in fact, enslaved. (*S. Petrosyan, et al*)

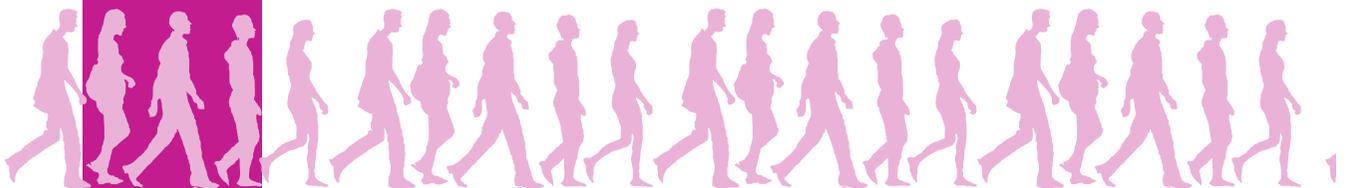




There is however, one fundamental difference between the classical concept of slavery and modern forms of exploitation and trafficking in particular. In certain periods of history, slavery was legitimized in one way or another (and for this reason is often called legitimate slavery), while trafficking in all cases transgresses the scope of the law and is, therefore, considered illegitimate slavery. Although in the past, slave owners openly demonstrated their slaves, prided themselves of their number and their abilities, nowadays, “slave owners” seek to hide their slaves at all costs because of illegitimacy of human trafficking. They usually hide their victims from the public eye, and keep them in underground accommodations or in so-called “labor camps” located in the woods. If victims are exploited as domestic servants, the traffickers simply hide the fact that they are kept in slavery as victims work without remuneration, days off and are exposed to beatings and threats. Unfortunately, human trafficking cannot exist without the connivance of competent authorities, which (corrupted by traffickers) appear to stop noticing things that happen in hotels or on construction sites and also allegedly fail to discern obviously forged documents at border check points, for instance, when girls aged between 15 and 20 years appear aged 30 on their documents.

1.5. Human Trafficking and Human Smuggling

Trafficking in persons and human smuggling are some of the fastest growing areas of international criminal activities. They often involve a number of different crimes, spanning several countries, and involving an increasing number of victims. Human smuggling is the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries laws, either clandestinely or through deception, such as the use of fraudulent documents. Often, human smuggling is conducted in order to obtain a financial or other material benefit





for the smuggler, although financial gain or material benefit are not necessarily elements of the crime. For instance, sometimes people engage in smuggling to reunite their families. Human smuggling is generally with the consent of the person(s) being smuggled, who often pay large sums of money. Smuggled persons may become victims of other crimes. In addition to being subjected to unsafe conditions on the smuggling journeys, smuggled aliens may be subjected to physical and sexual violence. Frequently, at the end of the journey, smuggled aliens are held hostages until their family members or others pay off their debts, usually the transportation debts.

A person being smuggled may at any point become a trafficking victim. Unlike smuggling, which is often a criminal commercial transaction between two willing parties who go their separate ways once their business is complete, trafficking specifically targets the trafficked person as an object of criminal exploitation. The purpose from the beginning of the trafficking enterprise is to profit from the exploitation of the victim (The US Department of State, *Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking 2006*)

It follows that fraud, force or coercion all play a major role in trafficking. It may be difficult to make a determination between smuggling and trafficking in the initial phase. Trafficking often includes an element of smuggling, specifically, the illegal crossing of a border. In some cases, the victims may believe they are being smuggled, but are in actual fact being trafficked, as they are unaware of their fate.

For example, there have been cases where women trafficked for sexual exploitation may have knowingly agreed to work in the sex industry and believed that they would have decent conditions and be paid a decent wage. What they did not realize is that the traffickers would take most or all of their income, keep them in bondage and





subject them to physical force or sexual violence. Alternatively, the victims may have believed they were being smuggled where they would be given a job as a nanny or model, later realizing that the so-called smugglers deceived them and that they would be forced to work in the sex industry. Conversely, persons being smuggled may sometimes willingly enter into “contracts” with the smugglers to work off a smuggling debt. Unless the aliens’ labor or services are enforced through the forms of coercion set forth in the trafficking statutes, such deferred repayment does not make these people trafficking victims. However, a work-based debt can be an “indicator” of trafficking, and such a situation could trigger further examination to determine whether the aliens are victims of trafficking or extortion.

Human trafficking does not require the crossing of an international border it does not even require the transportation of victims from one locale to another. Victims of severe forms of trafficking are not all irregular migrants; they may, in fact, be citizens of a particular country; Tanzania for instance, or legal residents, or visitors. Victims do not have to be women or children; they may also be adult males. While trafficking victims are often found in sweatshops, domestic work, restaurant work, agricultural labor, prostitution and sex entertainment, they may be found anywhere in the in the World doing almost anything profitable to their handlers. Victims may not even recognize that they have been victimized, or may be forced into protecting their exploiters, so self-proclamation of their status is not required.

See the following illustrations on the difference between trafficking and smuggling:

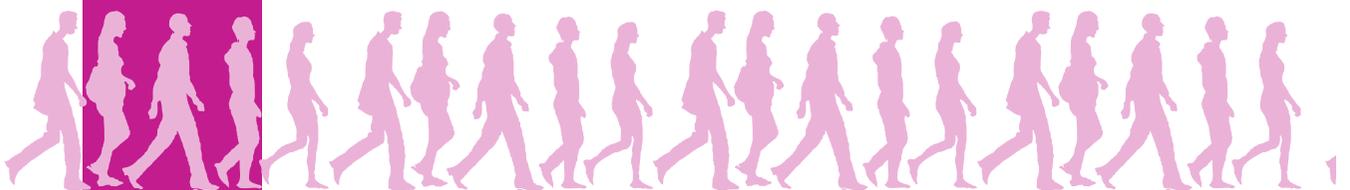


Illustration 1.

1. *Suzan (Hypothetical Name) was invited to come to Tanzania by family friends from Kenya, and was told that she could work for them as a housekeeper, and they would pay her Tsh 100,000 per week. Suzan was provided with fraudulent documents and departed to Tanzania with her new employer. She knew that this was illegal, but she needed the money, and was willing to take the risk. Qn. Was Suzan smuggled or trafficked? Ans. Suzana was smuggled to Tanzania. She left willingly with full knowledge that she was entering Tanzania illegally.*

2. *Upon arriving in Tanzania, Suzan was kept in isolation, she was given a place to sleep in the basement and told not to speak to anyone or she would be turned over to the Immigration Service. Suzana was never paid for her work and felt that she had no one to turn to for help. Qn. Was Suzan smuggled or trafficked? Ans. At this point Suzan was restricted from leaving the house, threatened with deportation if she attempted to talk to anyone, and forced into involuntary servitude. Suzan is a victim of trafficking.*

At the level of analysis, there are four main differences between human trafficking and migrant smuggling.

- (i) **Consent** - migrant smuggling, while often undertaken in dangerous or degrading conditions, involves consent. Trafficking victims, on the other hand, have either never consented or if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive action of the traffickers.
- (ii) **Exploitation** - migrant smuggling ends with the migrants' arrival at their destination, whereas trafficking involves the ongoing exploitation of the victim.
- (iii) **Transnationality** - smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another state or moved within a state's borders.
- (iv) **Source of profits** - in smuggling cases, profits are derived from the transportation and facilitation of the illegal entry

or stay of a person, into another country, while in trafficking cases profits are derived from exploitation.

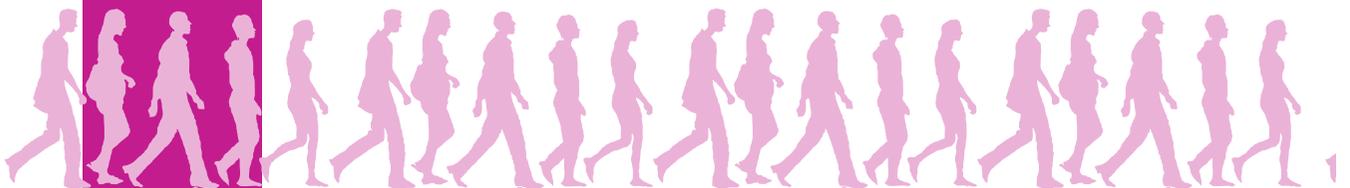
1.6. Causes/Drive for Human Trafficking.

Trafficking is a complex phenomenon that is often driven or influenced by social, economic, cultural and other factors. Many of these factors are specific to individual trafficking patterns and to the States in which they occur. However, many factors tend to be common to trafficking in general or found in a wide range of different regions, patterns or cases (A tool kit to combat trafficking in persons, URL, 2015)

Some of the common factors are local conditions that make populations want to migrate in search of a better life. Such conditions include:-

- Poverty,
- Oppressions in different levels of life. i.e. Family, Society and so on.
- Lack of human rights, and lack of social or economic opportunities,
- Dangers from conflict or instability and similar conditions,
- Political instability,
- Militarism,
- Civil unrest, internal armed conflict and
- Natural disasters.

These may result in an increase of trafficking. The deterioration and displacement of populations increase their vulnerability to exploitation and abuse through trafficking and forced labour. War and civil strife may lead to massive displacements of populations, leaving orphans and street children extremely vulnerable to trafficking. These factors tend to exert pressures on victims that “push” them into migration and hence into the control of traffickers, but other factors that tend to “pull” potential victims can be significant. Poverty and wealth are relative concepts, which lead to both migration and trafficking patterns in which victims move from conditions



of extreme poverty to conditions of less-extreme poverty. In that context, the rapid expansion of broadcast and telecommunication media, including the Internet, across the developing World may have increased the desire to migrate to developed countries and, with it, the vulnerability of would-be migrants to traffickers. The practice of entrusting poor children to more affluent friends or relatives may create vulnerability. Some parents sell their children, not just for the money, but also in the hope that their children will escape a situation of chronic poverty and move to a place where they will have a better life and more opportunities.

In some States, social or cultural practices also contribute to trafficking. For example, the devaluation of women and girls in a society makes them disproportionately vulnerable to trafficking.

Added to these factors are the issues of porous borders, corrupt Government officials, the involvement of international organized criminal groups or networks and limited capacity of or commitment by immigration and law enforcement officers to control borders. Lack of adequate legislation and of political will and commitment to enforce existing legislation or mandates are other factors that facilitate trafficking in persons.

1.7. Forms of Human Trafficking

There are many forms of trafficking, but one consistent aspect is the abuse of the inherent vulnerability of the victims. The following are the obvious forms of human or trafficking in persons;-

1.7.1. Forced Labor

The majority of human trafficking in the world takes the form of forced labor, according to the ILO's estimate on forced labor. Also known as involuntary servitude, forced labor may result when unscrupulous employers take advantage of gaps in law



enforcement to exploit vulnerable workers. These workers are made more vulnerable to forced labor practices because of high rates of unemployment, poverty, crime, discrimination, corruption, political conflict, and cultural acceptance of the practice.

Immigrants are particularly vulnerable, but individuals are also forced into labor in their own countries. Female victims of forced or bonded labor, especially women and girls in domestic servitude, are often sexually exploited as well. Forced labor is a form of human trafficking that is often harder to identify and estimate than sex trafficking. It may not involve the same criminal networks profiting from transnational sex trafficking. Instead, it may involve individuals who subject workers to involuntary servitude, perhaps through forced or coerced household or factory work.

1.7.2. Bonded Labor

One form of force or coercion is the use of a bond, or debt, to keep a person under subjugation. This is referred to in law and policy as “bonded labor” or “debt bondage.” It is a form of trafficking related exploitation. Workers around the world fall victim to debt bondage when traffickers or recruiters unlawfully exploit an initial debt the worker assumed as part of the terms of employment. Workers may also inherit debt in more traditional systems of bonded labor. Traditional bonded labor, for example, enslaves huge numbers of people from generation to generation.

1.7.3. Debt Bondage among Migrant Laborers

The vulnerability of migrant laborers to trafficking schemes is especially disturbing because the population is sizeable in some regions. There are three potential contributing factors: (1) abuse of contracts; (2) inadequate local laws governing the recruitment and employment of migrant laborers;



and (3) intentional imposition of exploitative and often illegal costs and debts on these laborers in the source country, often with the support of labor agencies and employers in the destination country.

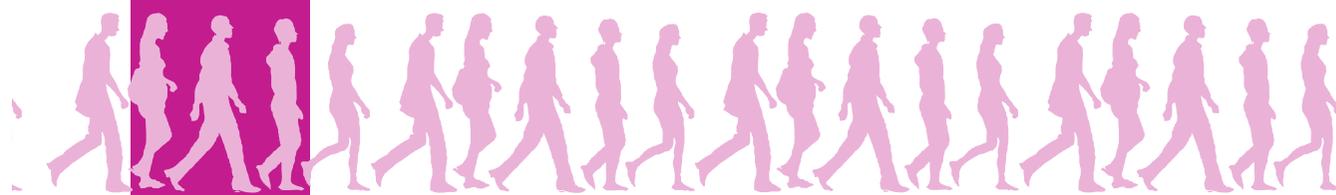
Abuses of contracts and hazardous conditions of employment do not in themselves constitute involuntary servitude. However, the use or threat of physical force or restraint to keep a person working may convert a situation into one of forced labor. Costs imposed on laborers for the “privilege” of working abroad can make laborers vulnerable to debt bondage. While the costs alone do not constitute debt bondage, when they become excessive and involve exploitation by unscrupulous employers in the destination country, they can lead to involuntary servitude.

1.7.4. Involuntary Domestic Servitude

A unique form of forced labor is that of involuntary domestic workers, whose workplace is informal, connected to their off-duty living quarters, and not often shared with other workers. Such an environment is conducive to exploitation since authorities cannot inspect private property as easily as they can inspect formal workplaces.

Without protections, foreign domestic workers may have fewer options for seeking help when faced with their employer’s threat of or use of force. If they are confined to a home, either through physical restraint or through the confiscation of identity and travel documents, they may find it very difficult to reach out to NGOs or public authorities for assistance due to lack of awareness and fear of their employers.

This high degree of vulnerability calls for a vigorous law enforcement and victim protection response when domestic servants are found in conditions of involuntary servitude in a home. Those domestic servants who choose to escape from abusive employers are sometimes termed “runaways” and



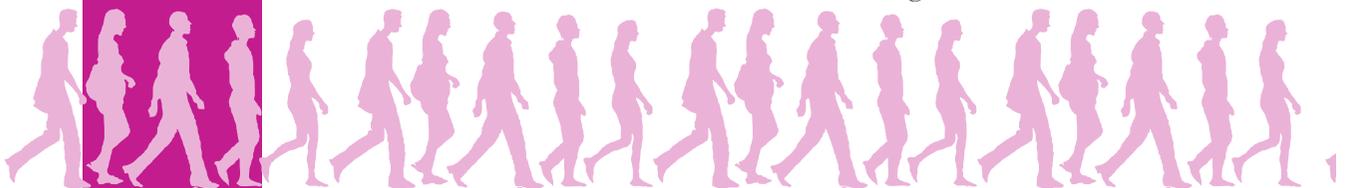
seen as criminals, though they should be considered as possible victims of trafficking.

1.7.5. Forced Child Labor

Most international organizations and national laws recognize that children may legally engage in light work. There is a growing consensus, however, that the worst forms of child labor should be eradicated. The sale and trafficking of children and their entrapment in bonded and forced labor are among the worst forms of child labor. Any child, who is subject to involuntary servitude, debt bondage, peonage, or slavery with force, fraud, or coercion, is a victim of human trafficking regardless of the location of that exploitation. Indicators of possible forced labor of a child include situations in which the child appears to be in the custody of a non-family member who has the child perform work that financially benefits someone outside the child's family and does not offer the child an option of leaving.

1.7.6. Child Soldiers

Child soldiering is a unique and severe manifestation of trafficking in persons that involves the unlawful recruitment of children often through force, fraud, or coercion for labor or sexual exploitation in conflict areas. Perpetrators may be government forces, paramilitary organizations, or rebel groups. While the majority of child soldiers are between the ages of 15 and 18, some of whom may have been unlawfully recruited and used in hostilities, others are as young as 7 or 8, which is unlawful under international law. Child soldiers exist in almost all regions of the world. Many children are abducted to be used as combatants. Others are made unlawfully to work as porters, cooks, guards, servants, messengers, or spies. Young girls are forced to marry or have sex with male combatants. Both male and female child soldiers are often sexually abused and are at high risk of contracting sexually transmitted diseases. Some children have been forced to commit atrocities against their families and



communities. Child soldiers are often killed or wounded, and survivors suffer multiple traumas and psychological scarring. Their personal development is irreparably damaged, and their home communities often reject them when they return. Child soldiering is a global phenomenon. The problem is most critical in Africa and Asia, but armed groups in conflict areas elsewhere also use children unlawfully.

1.7.7. Sex Trafficking

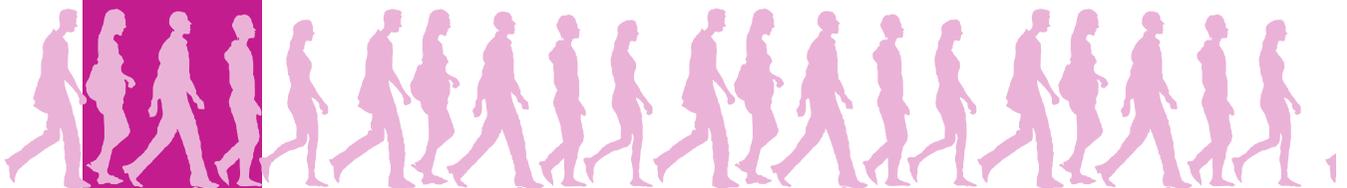
Sex trafficking comprises a significant portion of overall human trafficking. When a person is coerced, forced, or deceived into prostitution, or maintained in prostitution through coercion, that person is a victim of trafficking. All of those involved in recruiting, transporting, harboring, receiving, or obtaining the person for that purpose have committed a trafficking crime. Sex trafficking can also occur alongside debt bondage, as women and girls are forced to continue in prostitution through the use of unlawful “debt” purportedly incurred through their transportation or recruitment—or their crude “sale” which exploiters insist they must pay off before they can be free.

1.8. Conclusion

At the level of analysis, Trafficking, whether of children or of adults, is a form of exploitation and a gross violation of human rights. Different faces of Trafficking is that it is internationally and domestically, criminal offence, a violation of human rights and a security issue. And while carried with its meaning, human trafficking is a form of human exploitation, and the said has quite a long history from slavery. Trafficking in persons and human smuggling are some of the fastest growing areas of international criminal activities. Trafficking is a complex phenomenon that is often driven or influenced by social, economic, cultural and other factors. Many of these factors are specific to individual trafficking patterns and to the



States in which they occur and there are many forms of trafficking, but one consistent aspect is the abuse of the inherent vulnerability of the victims



Part Two

THE LEGAL FRAMEWORK ON HUMAN TRAFFICKING

2.1. Introduction

Effective action to prevent and combat human trafficking, especially in women and children, is coupled with a comprehensive International and National approaches in the countries of origin, transit and destination, that covers measures to prevent trafficking, punish the traffickers and protect the victims, by promotion of their internationally recognized human rights. In actual sense, there exists, International and Municipal efforts in laws to scrub the phenomena of human trafficking.

This part focuses on the description of the legal framework on human trafficking. It describes the International laws on human trafficking and the domestic/municipal laws on the same. In description of these laws, this part introduces us as to the relevancy of International law and its relationship with the municipal law. The discussion of the municipal laws on this behalf, covers the laws on human trafficking in Tanzania. Therefore, the relationship between international law and municipal law is discussed with special focus in Tanzania.

2.2. International law and its Applicability in States

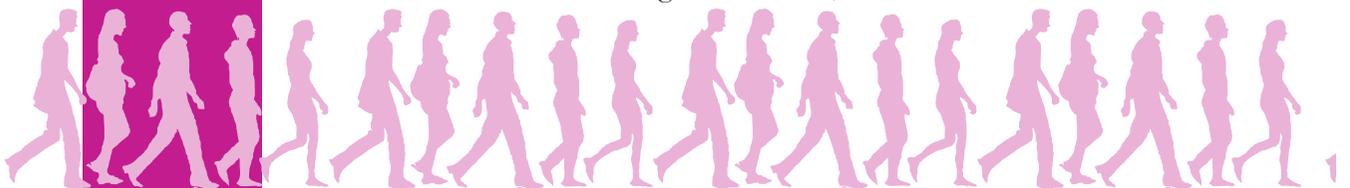
International legal instruments may be ‘Charter based’ or ‘Treaty based’. Charter based instruments are those drafted as a result of resolutions and decisions of the United Nations. The other kind of International legal instruments are Agreements or Covenants signed by State Parties, and these act as a commitment by the respective State Governments to abide by the provisions of the treaties or agreements. A State Party may show its acceptance of a treaty in some important ways. The first is that of signing the treaty at a time when the treaty is passed and a period is reserved for



signatures. The next is that of ratification, at which stage, State Parties may ratify the whole convention or may ratify with reservations or conditions on specific Articles that they cannot comply with, citing reasons. The third is that of accession by State Parties to a treaty. Those parties who have not signed the treaty previously may do so after the period, which was open for signatures. Ratification by a State Party of any agreement makes it binding on that State to report to Committees and treaty monitoring bodies about what progressive steps it has taken for the realization of the rights contained in that treaty.

The International instruments on human trafficking fall within categories of Conventions. These are of general applications on human rights and those, which are specific on Trafficking to wit;-

- The Universal Declaration of Human Rights (UDHR) 1948
- The Suppression of Trafficking Convention, 1949
- The International Covenant for Civil and Political Rights (ICCPR),1966.
- The International Covenant for Economic, Social, and Cultural Rights, (ICESCR)1966
- The Convention on Elimination of all Forms of Discrimination Against Women (CEDAW)1979
- The Convention on the Rights of the Child (CRC), 1989
- Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery,1956
- The Forced Labour Convention of the International Labour Organization., 1956
- Convention Against Torture, 1984

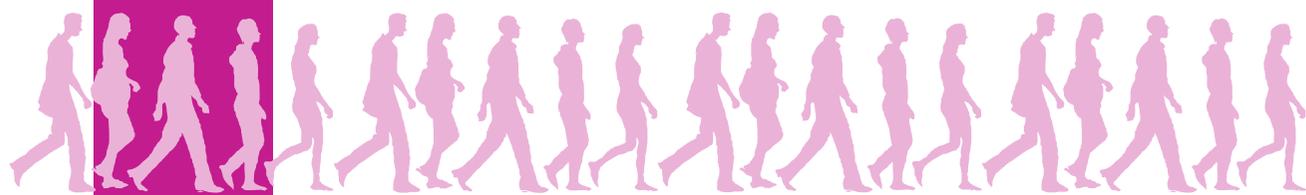


- UN Convention on Transnational Organized Crime , 2000
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,2000

A. Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights, 1948 is the first document with universal value on Human rights adopted by an international organization. For the first time, the human rights and fundamental freedoms were set forth in such detail. The Declaration is a defense and advancement of people's rights. Its principles continue to inspire national legislation and the Constitutions of many newly independent states. In Tanzania for instance, the High Court did categorically state that the human rights and fundamental freedoms in the international instruments are standards below which any civilized nation will be ashamed to fall.

References to the Declaration are evident in Charters and Resolutions of regional intergovernmental organizations as well as in treaties and resolutions adopted by the United Nations system. The General Assembly proclaimed the Declaration as a “common standard of achievement for all peoples and all nations,” towards which individuals and societies should “strive by progressive measures, national and international, to secure their universal and effective recognition and observance.” Even though this Declaration does not foresee a formal entry into force and consequent ratification or acceptance, it plays a fundamental role among the UN legal instruments for the protection of human rights. It specifically condemns trafficking in persons in articles 3, 4 and 5 as practices that contravene the dignity of human and concord.

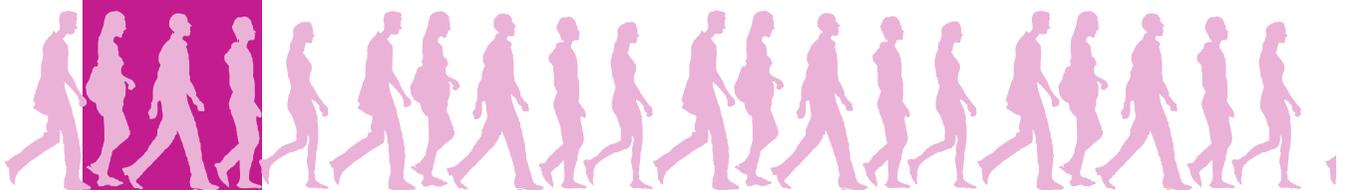


B. Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others, GA Res No.7 (IV) of 2 December 1949.

The Convention declares that the enslavement of women and children or their subjection into commercial sexual exploitation is incompatible with the dignity and fundamental rights of the human person. See for instance Articles 1, 2, 4, 16, 17 and 20. The Convention foresees a number of activities aiming at preventing commercial sexual exploitation through, among others, education and improvement of the role of women in the society and at curbing pornography through criminalization and punishment of all forms of procurement. Member States commit themselves to eliminating all forms of discriminations that ostracize victims of commercial sexual exploitation and to cooperate in the identification of international networks of procurers and, if they are members of the International Criminal Police Organization, to cooperate with that organization to make the suppression of the traffic in persons one of its priorities.

C. International Bill of Rights

The International Covenant on Economic, Social, and Cultural Rights (1966), together with the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), make up the International Bill of Human Rights. The Covenants recognize that the ideal of human freedom can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social, and cultural rights. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”



**D. Convention Against Torture (CAT) GA Res. 39/46 of 10
December 1984**

The United Nations Convention against Torture and other Cruel, in human, Degrading Treatment, or Punishment adopted in 1984. The Convention defines the concept of torture. Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Accordingly, it is relevant in the cases of trafficking as most cases; the traffickers subject the victims into torture, while realizing their exploitative aims towards the victims.

**E. Convention on the Elimination of all forms of Discrimination
against Women (CEDAW) Adopted in 1979 by the UN General
Assembly**

The Convention is often described as the international Bill of women's rights. The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life including the right to vote and to stand for election as well as education, health and employment. States parties also agree to respond appropriately against all forms of trafficking in women and exploitation of women.

It relevant in curbing trafficking by ensuring that states are fulfilling their obligations under article 2, for non-discrimination, prevention of Trafficking





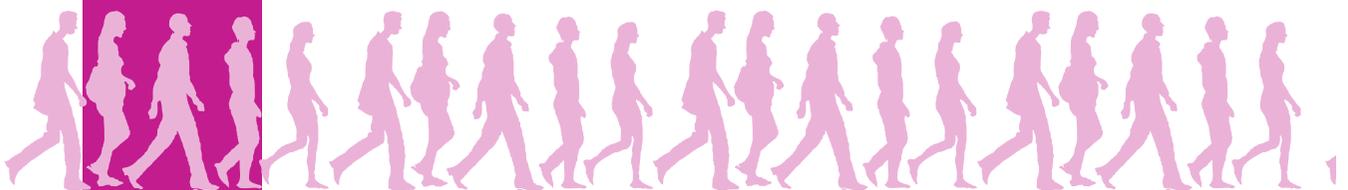
in article 6, equality in education in article 10, equality in employment 15 (4) and guaranteeing the freedom of Movement. All these were interpreted in the general recommendations 12 and 19 on Violence against Women; and general recommendation 26 on the rights of the Migrant Women Workers, it is therefore critical in the prevention and elimination of trafficking and labour exploitation and trafficking.

F. Convention on the Rights of the Child, Adopted by GA Res 44/25 of 20 November 1989

The Convention offers a vision of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development. The Convention focuses on the following principles: the child is an individual, he/ she is unique, has special needs, needs support and protection, the child's integrity must be respected; the child's right to express his/her opinion, the child has his/ her own rights. Prior to or shortly after ratifying the Convention on the Rights of the Child, States are required to bring their national legislation into line with its provisions except where the national standards are already higher. In this way, child rights standards are no longer merely an aspiration but, rather, are nationally binding on States. The Convention's rights are universal and relevant in times of peace, war, and other armed conflicts.

G. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, GA Res 608 (XXI) of 30 April 1956

The Convention aims at condemning new forms of slavery and servitude similar to slavery (not foreseen in the 1926 Slavery Convention), such as abuses arising from the adoption of children and the marriage of women without their consent, and provides for penal sanctions against the slave trade. These abuses, in other words are trafficking acts of the recent century, different from the circumstances when the slavery convention of 1926 was



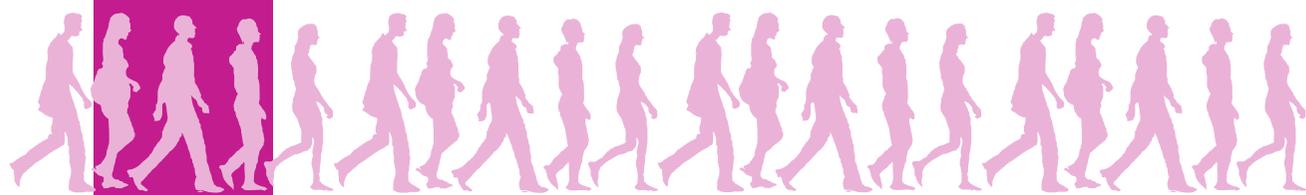
adopted. Any disputes relating to the convention are to be referred to the International Court of Justice. Under Article 1(d) parties to the Convention are required to adopt measures to bring about the complete abolition of any institution or practice whereby a person under the age of 18 years is handed over by the natural parents or the guardian to another person, whether for reward or not, with the purpose of exploitation.

H. ILO Convention Concerning Forced Labour No. 29 608(XXI) of 30 April 1956

This Convention calls for the suppression of forced or compulsory labour in all its forms. Forced labour is defined as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.’ The Convention is the most widely ratified among all the fundamental ILO Conventions.

I. United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25 of 15 November 2000

Human Trafficking is a transnational crime in nature. An offence is transnational in nature if: (a) It is committed in more than one State;(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State. This Convention by defining the crime transnational, develop in a protocol the mechanism to curb it. Obligations in protocols extents only to the parties to this convention.



J. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

This protocol is Supplementing the United Nations Convention against Transnational Organized Crime of December 12, 2000. In as far as, human trafficking is concerned; this protocol is the mother law, laying the international standards to scrub human Trafficking. The purposes of this Protocol are:

- To prevent and combat trafficking in persons, paying particular attention to women and children;
- To protect and assist the victims of such trafficking, with full respect for their human rights; and
- To promote cooperation among States Parties in order to meet these objectives.

The Protocol defines the concept of trafficking in persons and its elements. Accordingly, trafficking cases entail one element of each of these three categories (action, means, objective). This protocol comes with the following approaches and standards in fighting the trafficking in persons;-

- **The legislative Approach**

Under this approach, State Parties assume responsibility to adopt such legislative measures as may be necessary to criminalize (establish as a criminally punishable acts) deliberate actions committed internationally and involving actionable offence.

- ✓ Such actions include recruitment, Transportation, transfer, harboring or receipt of persons,
- ✓ by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,



- ✓ for the purpose of exploitation.

Attempts to commit such crimes, complicity in their commitment, organization or direction of others to commit such crimes fall under the same category. Additionally, States Parties undertake to adopt or strengthen legislative or other measures, in the area of education, social security or culture, including through bilateral and multilateral cooperation in order to prevent trafficking in persons.

- **International cooperation**

The protocol comes with the principle of international Cooperation. This is implemented, following the principles of both international and national legislation on the criminalization of socially dangerous acts, as well as a coherent penal policy for them, based on the principles of protecting human rights and freedoms, particularly in the area of restoring violated rights, such as right to life, liberty and personal immunity, right to dignity, right to privacy, right to return to one's country of permanent residence, right to compensation, right to information, right to work and education, right to receive medical care, right to use services and legal aid.

International cooperation according to this protocol covers the following areas: Assistance to and protection of victims of trafficking in persons, Repatriation of victims of trafficking in persons, Prevention of trafficking in persons, Information exchange and training of relevant specialists, Border control measures, Control of authenticity and validity of documents.

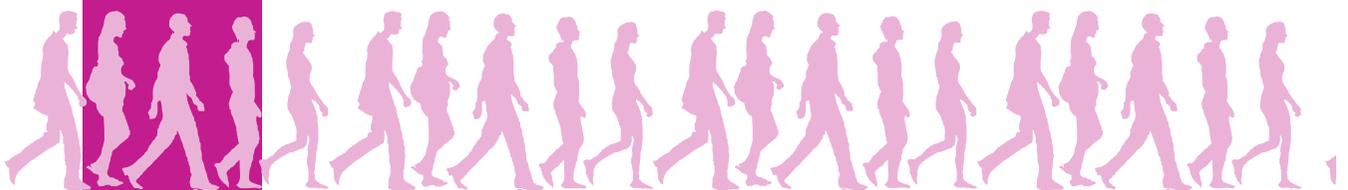
- **Assistance to the victims of trafficking**

Each State Party consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to stay in its

territory, temporarily or permanently, in appropriate cases. Moreover, each State Party consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, and, in particular, the provision of: (a) Appropriate housing;(b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities. In addition, each State Party shall provide:- Privacy and identity of victims of trafficking in persons, Information on relevant court and administrative proceedings, Legal aid in court proceedings, Physical safety of victims of trafficking in persons and Possibility of compensation to the victims of trafficking for the damage incurred.

- **Prevention of trafficking in persons**

States Parties are obliged to establish comprehensive policies, programs and other measures, as well as: take measures such as research, information and mass media campaigns, Develop social and economic initiatives to prevent and combat trafficking in persons, Take or strengthen measures to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity, Adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of human exploitation, especially of women and children, that leads to trafficking. Policies, programs and other measures established to prevent exploitation of persons shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.



Information exchange and training States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues.

2.3. Domestic Instruments on Human Trafficking in Tanzania

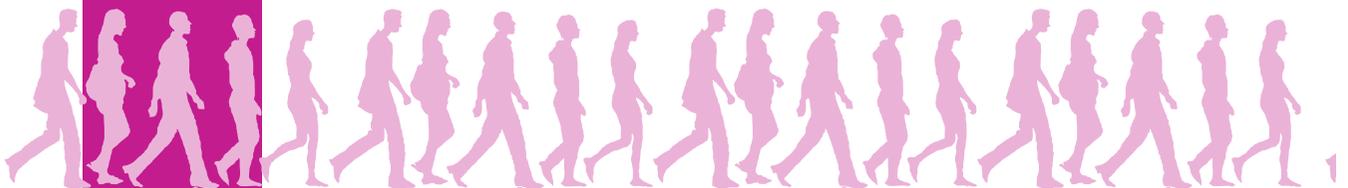
This is purely the question on the relationship between international law and municipal law. The place of international law in domestic law is generally described by two theories; dualism and Monism (P. Malanczuk, I. Brownlie, pg. 61-62; ,pg. 31-34; M. Shaw,pg121-124). The former considers international law and municipal law, as two and distinct entities; independent of one another. International law primarily, regulates the conducts of sovereign states and other entities with international legal personality. On this view, neither legal system has the power to create or alter rules of the other. On primacy, the international law is the primary law in International tribunals or courts. International law similarly, applies to all aspects of municipal law; to its constitutional provisions, ordinary legislation and to the decisions of courts. This general rule is however not adhered in dualist states. In them, municipal law is primary over international law, and whenever municipal law provides that international law be applied in whole or in part within the jurisdiction, this is merely an exercise of the authority of same law in the “adoption” “transformation” or “incorporation” of the rules of International law, into its legal system. The national law has a supremacy over the International Law; in the case of a conflict between them, a municipal court would apply national law. In the some dualist states a treaty, once ratified and domesticated, in relation to other municipal legislations is given a constitutional status superior to national legislations. In order for the rules of international law to be applied in dualist states, municipal courts or in other arena, must: -



first be adopted by the state and secondly be incorporated or transformed. Hence, the imminent organ for this exercise is the legislature, which enacts the enabling law or simply ratifies the Treaties.

The monist theory on the other hand, goes for the unity of all law; the international law and Municipal law. It is commonly applied in civil jurisdiction countries as opposed to the common law countries. It argues that international law and municipal law is one and the same thing. However, it asserts the supremacy of International Law over national law even within the national sphere; in the case of a conflict between the two laws, International Law is supreme.

Tanzania like other common law countries, takes the dualism approach. The ascertainment of the extent to which, international law is accorded in Tanzanian laws, starts with the mention of the Constitution of United Republic of Tanzania, the trend of drafting laws and the approach taken by the courts of law in applying the rules of international law. International law and the laws of Tanzania are two distinct things. In other words, the fact that Tanzania has signed an international Convention or other instruments doesn't make such a convention or instrument automatically apply in Tanzania. The Constitution provide that the parliament must ratify the international rules (instruments) and whenever their application require a law, then legislate a law to enable the provisions of the said instruments to be applied in Tanzania. The two terms above; "ratification" and "domestication" are too technical for the purposes of Practice. In the drafting, the wording of the constitution empowers the parliamentary drafts persons to enact legislation, where implementation requires legislation or to incorporate the rules within the laws, the provisions of the International Legal Instruments. For instance, the draft of the Anti-trafficking in persons and the Refugees Acts among other laws, the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000 and the United Convention on Status Refugees of 1951, respectively are incorporated therein. The two are among the international legal instruments that Tanzania has acceded, ratified and domesticated. On



top of that, the jurisprudence of high court of Tanzania in promotion and protection of human rights however, suggested that courts may take passive and liberal approach incorporation of the rules of international law, which have not been ratified in Tanzania. In the cases of *Bernado s/o Ephraim v Holaria Patory & Another (1990)* and in the case of *D. P. Valambia v Transport Equipment LTD(1993)*. In *Valambia's* case it was held that:

“the fact that an International Convention to which Tanzania is a party is not incorporated into Tanzanian law does not absolve the government of its duty to adhere to its undertakings in the agreement.” [Emphasis is mine]

In addition, in the case of Ephraim it was held

“that the principles contained in the human rights instruments constitute a standard below which any civilized nation will be ashamed to fall” [Emphasis is mine]

The Draft Constitution, 2013 proposed a significant development in the area of human rights and the relationship between international law and municipal law in that behalf. It declares them part of the Constitution, save where reservation is entered, article 53(3). This was a very positive development, in the manner and the extent to which, international human rights instruments could be accorded weight in Tanzania. It took monistic approach other than duality, which existed before. However, very unfortunately in the proposed Constitution, the provision does not appear.

In this regard, one can argue that the relationship between International Law and Municipal law in Tanzania, is to a nature that, the latter is not applying automatically in Tanzania, unless is ratified and domesticated. Domestication however, takes place upon enactment of an enabling legislation or the provisions be incorporated into the laws as section or schedules. The court



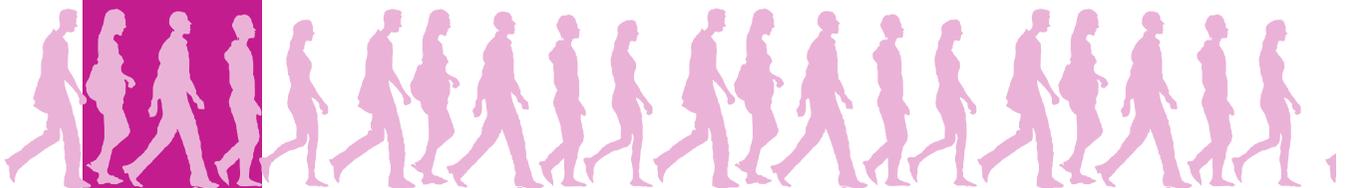
of law on the other hand, may exercises their powers to passively, incorporate the rules of international law regardless of the same, being ratified or adopted by the parliament. In line with this assumption, the next question is how then human Trafficking is managed in Tanzania according international law standards; is there a law or passive incorporation of the law?

Tanzania acceded to the Convention and trafficking Protocol since 24th may 2006. Being a party to these instruments, Tanzania has the following legal obligations; to criminalize, prosecute and sanction all cases of human trafficking, to assist the victims of trafficking and to repatriate them, to strengthen border management to detect & prevent trafficking and to co-operate with other state parties to these instruments. There is a specific statutory law on human trafficking in Tanzania, the Anti Trafficking in persons Act No 6 of 2008. Together with this Act, Human Trafficking is combated alongside with;-

- The Constitution of United Republic of Tanzania, 1977.
- The Penal Code Cap 16 RE 2002
- The Law of the Child Act, 2009
- The Immigration Act No. 7 of 1995 Cap 54 RE 2004,
- The Refugees Act No. 9 of 1998 Cap 37 RE 2002.
- The Prevention and Combating of Corruption Act No. 21 of 2007 Cap 329, and
- The Economic and Organized Crimes Control Act No. 27 of 2008.
- The Anti-Trafficking in Persons Act No. 6 of 2008

A. The Constitution, 1977

The constitution is the mother law of the land, its relevance is fighting trafficking in persons is seen in the general spectrum of human rights and



fundamental freedoms. The constitution categorically provides for the liberty of people and condemnation of discrimination and exploitation. It gives the right to earn wages for work done, hence do away with exploitation. In this aspect, it lays a general framework for fighting any forms of exploitation in Tanzania.

B. The Penal Code, Cap 16 RE 2002

The Penal Code is a penal law in Tanzania. It generally defines offences and prescribe their punishments. It is a law of general application in that behalf. At the instance of human Trafficking, Penal Code establishes offences associated with abduction, prostitution and procuring of prostitution. (Section 133 and 134). These are relevant when it comes to trafficking in form of sex or prostitution. It also prohibits trafficking in persons by mentioning it as a specific offence under section 139A though repealed by the Act No 6 of 2008. Apart from that, the Penal Code, defines other offences declared in chapter xv offences as against morality and Chapter XXVI for offences against liberty. Including offences like kidnapping, enslavement, forced labour and habitual dealing with slaves. All these in one way or another are related with the phenomena of trafficking though in a general sense of criminalization.

C. The Immigration Act No. 7 of 1995 Cap 54 RE 2004

This is relevant in human trafficking for prohibiting entry in Tanzania without pass in that behalf. It is also relevant by creating offences in respect to those harboring persons they know or have reasonable grounds for believing has entered Tanzania illegally. It also criminalize those, whether within or outside Tanzania, who make false declarations, returns or statements for the purpose of obtaining or assisting another person to obtain any permit, certificate, authorization pass, visa or endorsement for a person to enter and stay in Tanzania (See section 31).



This Act is however short sighted in criminalizing human trafficking for it does not directly mention trafficking nor criminalizes it as such. A person may be criminalized for harboring but not trafficking in purview of this Act.

D. The Refugee Act No. 9 of 1998 Cap 37 RE 2002

Human trafficking forms part of the mixed migratory flow, some of its participants may be refugees and asylum seekers, whom for one reason or another fall prey in the hands of the traffickers. This makes the provisions for the manner asylum seekers and refugee situations may be administered in Tanzania. It is relevant in dealing with cases of trafficking since the asylum seekers and refugees may be among the Trafficked persons. This Act however strictly scoped at protection of refugees; a person who are outside their countries of origin or permanent resident because has or had a well founded fear of persecution by reason of race, religion, nationality membership of a particular social group or political opinion and is unable or, because of such fear is unwilling to avail himself of the protection of the Government of the country of his nationality or permanent residence(See Section 4).

At the level of analysis, the Act does not focus on other migrants who might be the victims of trafficking from one country to another for reasons other than those linked with fear of persecution. Even with the refugees and asylum seekers, the Act is only mapping their rights and standards of treatments in the country, but not the means of getting entry; whether smuggled or just entry in individual endeavors.



**E. The Prevention and Combating of Corruption Act No. 21 of 2007
Cap 329.**

This is relevant in fighting corruption in Tanzania. It is relevant in human Trafficking for preventing the possibilities of the individuals, mainly public servants to engage in Trafficking activities on grounds of corruption. For instance assisting the traffickers in illegal ways to obtain passes or refraining from reporting traffickers for corrupt basis.

F. The Economic and organized Crimes Control Act No. 27 of 2008

This Act generally makes provision for the control and eradication of certain crimes and culpable non-criminal misconducts. It does this through prescription of modified investigation and trial procedures, and new penal prohibitions as well as enhanced sanctions and remedies.(See the long title). This Act is relevant in human trafficking for it establishes as a crime; participation in organized crimes and corrupt transactions. (See section 57(1) and the fist schedule to the Act, column 1, 2, and 4). These are relevant in cranking down human trafficking. Simply because the same is an organized crime and the conduct of which, may be aided by corrupt transaction between traffickers, their agents, or the migrants themselves, corrupting the officials. Even though, this Act is of very general application it does not deal with the root cause of trafficking rather the results of trafficking.

G. Anti Trafficking in Persons Act No. 6 of 2008

This is relevant for prohibition of trafficking in persons in Tanzania. It was enacted to comprehensively fight against trafficking in persons despite the existence of the multiple international instruments. The Act is relevant in both human smuggling and trafficking since smuggling might in one way change into a trafficking and the smuggled persons turned victims of trafficking. Hence, the protection of the victims of trafficking is accorded in purview of this Act. Apart from that, this Act is a direct domestication



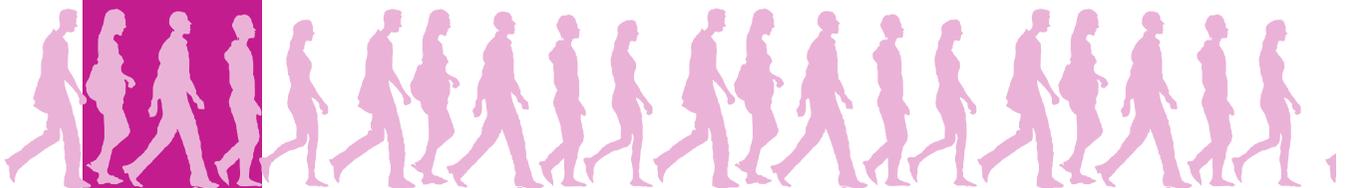
of the international standards on dealing with organized crimes as developed by the Convention on Transnational Organized Crimes and its protocols. It is the parental law in as far as the cases of human trafficking are concerned. It contains in a broader sense, the international standards of treatments for the trafficked persons and showing the Tanzanian's adherence to the its international obligation in combating human trafficking.

2.4. The Compliance with International Standards on Human Trafficking in Tanzania

A. Criminalization of Trafficking

Tanzania's 2008 Anti-Trafficking in Persons Act criminalizes all forms of trafficking and it calls for one or both of the following: a prison sentence of one to 20 years' imprisonment or a fine of five million to one hundred and fifty million shillings, depending on the particular trafficking offense. The first section of the Act prohibits coercing, recruiting, or transporting a person by any means "for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage"(see Section 4). A person may also be guilty of a trafficking offense if he or she "promotes, procures or facilitates the commission of trafficking in persons, "which includes creating or distributing "unissued, tampered or fake certificates, registration or stickers of any government agency" or leasing or subleasing any "house, building or establishment for the purpose of trafficking in persons. (See section 5(1)).

Additionally, the Act enumerates "severe trafficking" offenses: trafficking involving children or disabled victims, adoption for sexual or labor exploitation, and offenses committed by crime syndicates, groups of two or more persons, religious leaders, or other authority figures. Anyone who "buys or engages the services of trafficked persons for prostitution" must either pay a fine of one to thirty million shillings or serve a prison term of twelve months to seven years, or both. The Act allows judges to impose heavier penalties for second-time or multiple trafficking offenders. (See Section 10)



B. General Border Management

The immigration department of Tanzania is having a unit on boarder management. And this is a today's fundamental requirement for effective national governance, friendly international relations and full participation in international and regional institutions. Same is required for proper handling of the trafficking. Border management is inextricably linked to human development, human rights, human mobility and human security. In Tanzania, border management obviously assures the management of entry and exit of people in and from Tanzania. However, it is challenged by the absence of law and policy on human smuggling. And in such absence of the law and policy, human smuggling is managed in the shadow of immigration laws, particularly, the Immigration Act (*infra*). Yet irregular movements of migrants from the horn of Africa, through Tanzania, to South Africa and beyond have increased during the last years. (Various sources in Custody of the Author)

Apart from that, the physical location of the bounders and immigrations offices is another challenge in combating human Trafficking. One finds that there are multiple entries points with no immigration offices or the offices are located but cannot effectively monitor who enters and who leaves, as migrants have developed a transit method in which they are transported in trucks and containers as cargo. With these challenges, it is expected that irregular movements are expected to continue creating a humanitarian situation for many of these vulnerable migrants.

C. Dealing with the Victims of Trafficking

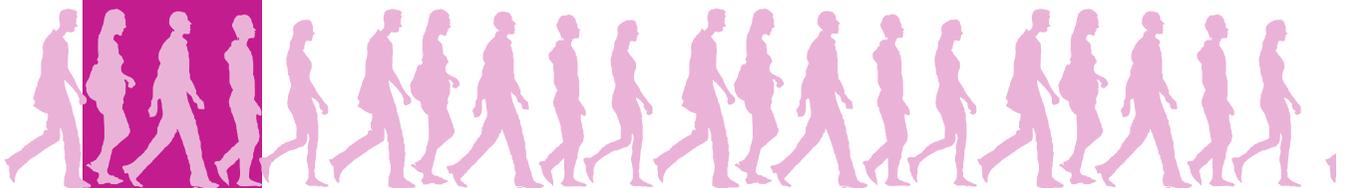
The Anti Trafficking in persons requires victims of trafficking to report any information known about any person committing an offence of trafficking in persons elsewhere. (See Section 10 of the Act No. 6 of 2008). A police officer who discovers a victim of trafficking must "assist the victim to obtain medical and psychological treatment," get the victim to a safe place if necessary, and "inform the victim of his rights and any basic support which may



be available.(Ibid section11(2)(a)-(c)) A police officer may arrest a suspected trafficker without a warrant if the trafficking offense is committed “in the presence of that police officer,” if the police officer “is obstructed by the suspect from conducting investigation,” or if “a person is about to commit an offence of trafficking in persons and there is no other way to prevent commission of the offence.(Ibid section 12(2)(a)-(c)) A convicted trafficker is liable to compensate the victims of trafficking and shall be ordered by the court to pay compensation to the injured person.(Ibid 15(1)-(3)) If the trafficker has insufficient assets to pay the victim, the “balance shall be made good from the proceeds of the confiscated and forfeited properties.(Ibid section 14(2)) If properties obtained through trafficking have been destroyed, changed in value, or somehow rendered worthless, the convicted trafficker shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offence.

The Anti trafficking in Persons Act, apart from the provisions on punishments do accords a protection and assistance to the victims by requiring the government to establish, implement and coordinate preventive, protective and rehabilitative programs for trafficked persons. These measures include making the resources of the Ministry responsible for Foreign Affairs available to trafficked persons, establishing a “pre-marriage, on-site and pre-departure counseling programme on intermarriages, and providing “rehabilitative and protective programmes,” as well as “counseling and temporary shelter” for trafficked persons through the “Ministry responsible for social welfare. The “Ministry responsible for labour and employment” must monitor and “ensure strict implementation and compliance” with employment rules and guidelines, and report trafficking incidents involving employers. The “Ministry responsible for legal affairs” must “ensure the prompt prosecution” of traffickers and “establish a mechanism for free legal assistance for victims of trafficking in persons.

The activities required under the Act are to be supported in part by an “Anti-Trafficking Fund” and the “Anti-Trafficking Committee” created by the Act.(See sections 25 and 30 *ibid*) The nineteen-member Anti-Trafficking

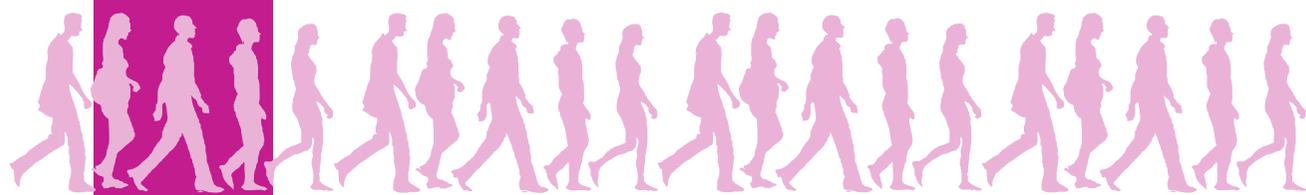


Committee is comprised of government representatives, at least one lawyer, and several members of nongovernmental organizations. The Act provides that a trafficked person shall not be prosecuted for crimes he or she committed while being trafficked.

D. International Cooperation

Tanzania is cooperating with international Non-governmental organizations to curb the problem of human trafficking. This is with a purpose of developing action plans and networks for managing human smuggling and other forms of mobility. For instance, in curbing the situation of smuggling of migrants and other mixed flow in east and horn (as well as the Great Lakes region) who takes the route towards Southern Africa. The Government of Tanzania, in 2010 had a joint International Organization on Migration (IOM)-United Nations High Commissioner for Refugee (UNHCR) regional conference in Dar es Salaam, on Refugee Protection and International Migration: Mixed Movements and Irregular Migration from the East and Horn of Africa and the Great Lakes Region to Southern Africa. This brought a call for strengthened national, bi-lateral and regional cooperation on refugee protection, mixed migration and irregular migration issues.

At the national level, it noted the need for the establishment of inter-ministerial task forces to ensure communication between different government agencies, as well as “mixed migration task forces” to bring together government officials, civil society and international organizations. At the regional level, the role of the African Union (AU) and the Regional Economic Communities as platforms for coordination was emphasized. This conference also pointed to the need for improved national policy and legal frameworks to address the challenges of mixed migration flows, in particular on such issues as national asylum procedures, detention of irregular migrants and asylum seekers, and local integration/livelihoods opportunities for refugees and migrants.

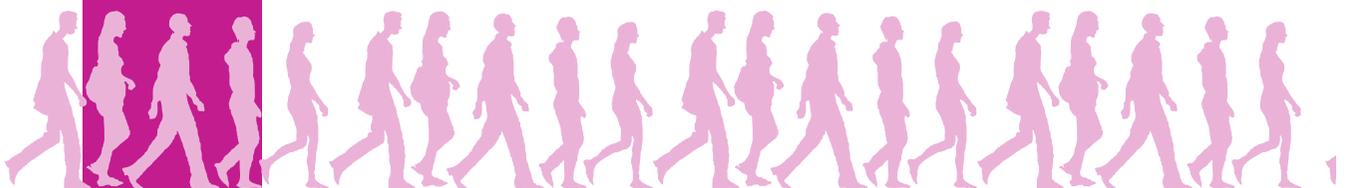


On top of that, participants reiterated the need to strengthen the national capacity, in particular with regard to border management, to respond to the challenges of mixed migratory movements in a human rights and protection-sensitive manner. This included, for example, the need for integrated training among different government departments and external stakeholders at both the capital level and in border areas.

2.5. Conclusion

One finds that the effective action to prevent and combat human trafficking, especially in women and children, is coupled with a comprehensive national and international approaches in the countries of origin, transit and destination, that covers measures to prevent trafficking, punish the traffickers and protect the victims, by promotion of their internationally recognized human rights. In fact, there exists, international and municipal efforts in laws to fight the phenomena of human Trafficking.

In Tanzania, as a focal point, human trafficking is combated in purview of the Anti Trafficking in persons Act No 6 of 2008 alongside with other laws. And the bottom line is that human trafficking is a criminal offense in Tanzania.



HUMAN TRAFFICKING AND GENDER

“I am waiting to give birth to my baby. I hope it is not a girl. She must not suffer like me....”

3.1. Introduction

The quoted words above were uttered by one woman, who was a victim of trafficking. Carried by the worries, women victim of trafficking are facing, she never wanted her inborn child to suffer the way she did suffer. (*A Comparative Study of Women Trafficked in the Migration Process; Coalition Against Trafficking in Women (CATW), 2002*). Women suffers the consequences of the social orientations. This scrap depicts the extents some mothers do not even wish to bear girl children.

Talking of the human trafficking and gender, one must draw a line of distinction between the terms “sex” (biological distinctions) and “gender” –(the different roles, attributes and conduct) that society deems socially appropriate for men and women. Gender is simply a relative status and position of men and women in the society. Women are greater disadvantage in most societies, as not just biologically but socially determined. Women have less valued roles; marginalized from ownership and control over material (land, income) and non-material resources (political participation, time). The interaction between gender and other social categories such as class and ethnicity; and holds that as gender inequities are socially conditioned, they can be changed at an individual and societal level in the direction of justice, equity, and partnership between men and women.

In considering the problem of trafficking, it is also necessary to take into account the issue of inequality between men and women. It is not surprising at all that human trafficking is often called trafficking in women or sex-business although men also fall victim to this crime.



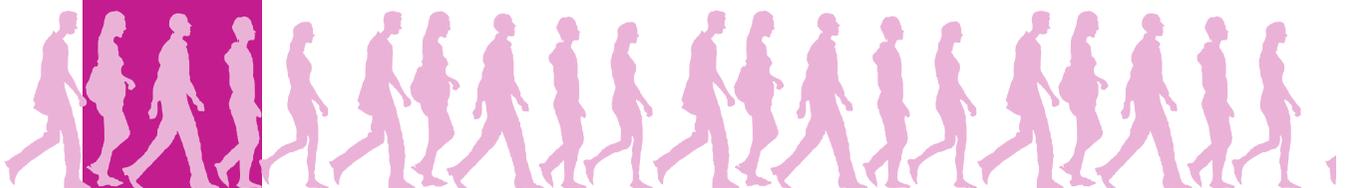
Examination of problems related to trafficking often links it to the concept of discrimination against women. Problems of legal equality between men and women, absence of equal opportunities and demand for sexual services are the main triggers of the continued existence of trafficking, which mainly affects women. Consistent application of the principle of privacy of personal life frequently conceals the facts of violence and abuse against women and children leaving them without proper attention.

3.2. Trafficking from a Gender Perspective

Gendered stereotypes that present men as powerful and in control and women as passive and mostly relegated to private or domestic roles feed into the perception that ‘men migrate, but women are trafficked’. (*Trafficking in Persons Rights Perspective & Gender; Briefing Kit, URL, August 2015*). However, what is often not recognized is that men too are trafficked, and that women are not only trafficked, but also migrate. A gender perspective on trafficking achieves change by:- acknowledging trafficking in both men and women; addressing the similarities and differences in the trafficking experience of women and men in relation to vulnerabilities, violations and consequences; and addressing the differential impacts of policies on men and women. (*Trafficking in Persons Rights Perspective & Gender; Briefing Kit*) But at the bottom line, women and children are endangered when it comes to the issues of Trafficking.

3.3. Trafficking of Women and Children

Trafficking in Women and children has been high on the international agenda for more than a decade. It is a serious human rights violation. Only recently, however, has the international community recognized that child trafficking is also undeniably a labour issue. (*The ILO, Training Manual to Fight Trafficking in Children for Labour, Sexual and other forms of Exploitation, 2009.*) While most people are now aware that



children and women (and sometimes boys and men) are trafficked into the world's commercial sex trade, children's right to be free of exploitation is violated in many other ways. Children are frequently trafficked into labour exploitation in agriculture, both long-term and on a seasonal basis. They may toil in a variety of manufacturing industries, from large-scale sweatshops to small craft workshops. In some parts of the world, children are exploited in mining or in fisheries.

Girls Children and Women in particular are trafficked into child domestic labour. Children are also trafficked into the militia and into armed gangs in conflict zones and, while this may not strictly be 'labour', it is nevertheless true that the children are effectively put to work in these situations, not only as soldiers but in a variety of jobs such as cooking, acting as couriers and, for girls and women especially, providing sexual services to adult combatants. Many children are moved away from their homes and are exploited in the informal economy, where they are even more difficult to trace and at high risk of many forms of violence. Criminal networks and individuals exploit children in begging, street hawking, car window cleaning and other street-based activities. Some children are exploited as drug couriers or dealers or in petty crime such as pick-pocketing or burglary. Some of these activities may not immediately be seen as 'labour'. The reality is, however, that they have a commercial motive and the child is seen by those seeking to make a profit from trafficking as easy prey to exploit.

The same commercial motive is at work in the specific case of trafficking of babies for adoption and, although the element of 'labour' might be missing in this case, there are areas where programme responses of ILO, UNICEF and other agencies might coincide; for example the registration and monitoring of recruitment agencies is important in anti-trafficking efforts and similarly the



registration and monitoring of adoption agencies is important in actions to prevent baby trafficking.

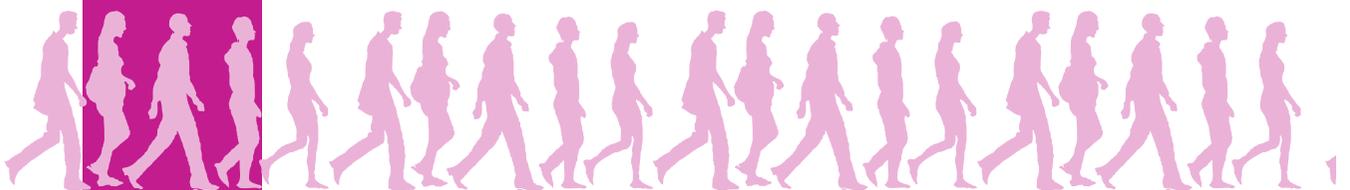
The ILO has thorough experience in the world of work. Its unique tripartite structure facilitates analysis and action that is anchored in the realities of labour markets and structures. For almost a decade, ILO's International Programme on the Elimination of Child (IPEC) and its partner organizations have worked to combat the trafficking of children as a 'worst form of child labour' and have built up considerable expertise in the vital links between child trafficking and labour exploitation. IPEC, together with the ILO's International Training Centre (ITC) in Turin, Italy, has pioneered training for a broad range of actors involved in combating child trafficking. UNICEF is the United Nations' primary agency focusing on the rights of children and approaches trafficking as a serious violation of these rights. UNICEF's work in the area of child protection is based on the need to create a 'protective environment' that will reduce children's vulnerability to being trafficked, as well as increasing their protection from other threats to the full enjoyment of all their rights. Work within the framework of the 'protective environment' emphasizes the importance of prevention. By working to reinforce the protective environment for all children, UNICEF's approach strives to reduce the vulnerability of children to abuse, violence and exploitation of all kinds.

3.4. Contributing Factors for Women Trafficking

In economic or trading terms, these are categorized into two namely, factors contributing to demand and supply of women and children for trafficking.

Factors contributing demand

- (i) The perception on suitability for work in labour-intensive production and the growing informal sector which is characterized

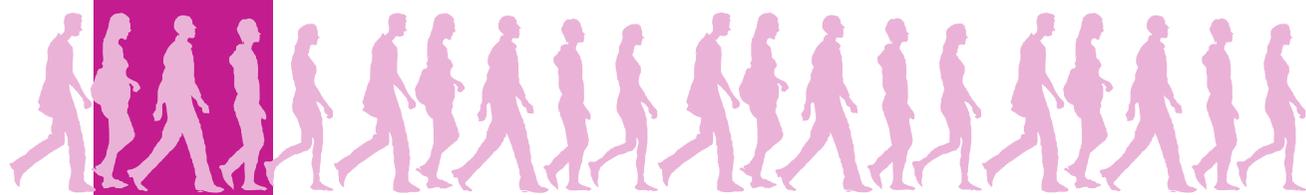


by low wages, casual employment, hazardous work conditions and the absence of collective bargaining mechanisms.

- (ii) The increasing demand for foreign workers for domestic and care-giving roles, and lack of adequate regulatory frameworks to support this.
- (iii) The growth of the billion-dollar sex and entertainment industry, tolerated as a ‘necessary evil’ while women in prostitution are criminalized and discriminated against
- (iv) The low risk-high profit nature of trafficking encouraged by a lack of will on the part of enforcement agencies to prosecute traffickers (which includes owners/managers of institutions into which persons are trafficked)
- (v) The ease in controlling and manipulating vulnerable women
- (vi) Lack of access to legal redress or remedies, for victims of traffickers; and devaluation of women and children’s human rights.

Factors Contributing to Supply

- (i) Unequal access to education that limits women’s opportunities to increase their earnings in more skilled occupations.
- (ii) Lack of legitimate and fulfilling employment opportunities particularly in rural communities.
- (iii) Sex-selective migration policies and restrictive emigration policies/laws, instituted often as a “protective” measure, limit women’s legitimate migration. Most legal channels of migration offer opportunities in typically male-dominated sectors (construction and agriculture work).





- (iv) Less access to information on migration/job opportunities, recruitment channels, and a greater lack of awareness of the risks of migration compared to men.
- (v) Disruption of support systems due to natural and human created catastrophes; and traditional community attitudes and practices, which tolerate violence against women.

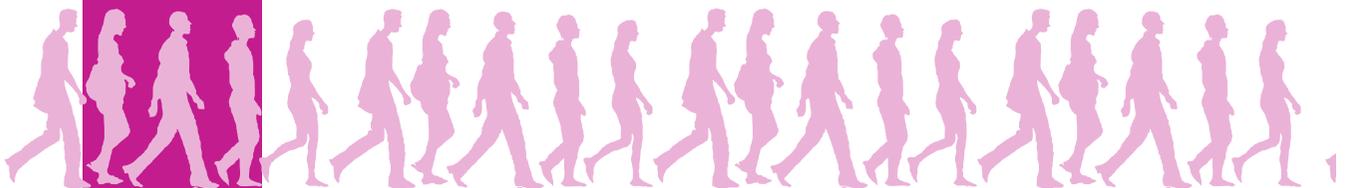
3.5. Fighting Trafficking: Right and Gender Based Approaches

The gender and rights based approach to development ensures fundamental human entitlements on social, economic and political advantages to expand choices, promote human well being and empowerment in equitable and sustainable ways. The claim of human rights has a strong moral force and imposes an obligation on States to respect and ensure their realization. Women's rights as human rights must lie at the core of any meaningful development and anti-trafficking strategy.

A gender and rights orientation to trafficking must address the different and specific needs of women and of children at all stages of the trafficking process. It must focus on realizing rights equally for men and women, girls and boys by empowering them to claim their rights and by ensuring enabling policy, institutional and social environments.

3.6. Specific Trends of Gender Based Trafficking in Tanzania

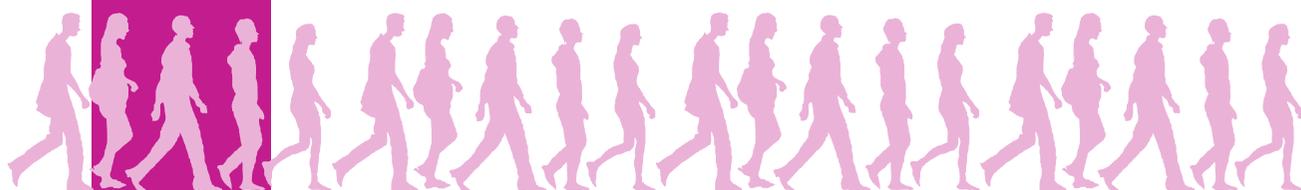
Tanzania is a source, transit, and destination country for men, women, and children trafficked for the purposes of forced labor and sexual exploitation. Boys are trafficked within the country for forced labor on farms, in mines, and in the informal business sector. Tanzanian girls from rural areas are trafficked to urban centers and the island of Zanzibar for domestic servitude and commercial sexual exploitation; some domestic workers fleeing abusive employers fall



prey to forced prostitution.

In some regions, unregistered employment agencies are involved in recruiting minors from rural areas to work as domestic helpers in the capital, where they are subject to exploitation. Tanzanian children and adults are reportedly trafficked to other countries including Mozambique, Uganda, Kenya, South Africa, Ethiopia, Yemen, Oman, the United Arab Emirates, Saudi Arabia, Pakistan, the United Kingdom, the United States, France, Italy and China. Trafficked children from Burundi and Kenya, as well as adults from Bangladesh, India, Nepal and Yemen, are trafficked for forced labor in Tanzania's mining, agricultural and domestic service sectors, and are sometimes subjected to sex trafficking.

The incidence of internal trafficking is higher than that of transnational trafficking and is usually facilitated by some victims' family members, friends, or intermediaries offering assistance with education or finding employment in urban areas like Dar es Salaam, Mwanza and Arusha. Some unscrupulous individuals manipulate the traditional practice of child fostering—in which poor children are entrusted into the care of wealthier relatives or respected members of the community commonly in regions like Iringa, Dodoma and Morogoro, to subject children to forced labor in Dar es Salaam in most Cases. The exploitation of young girls in domestic servitude continues to be Tanzania's largest human trafficking problem, though child sex trafficking, particularly along the Kenya-Tanzania border, Dar es Salaam in areas like Buguruni Kimboka, Mwenge-Africa Sana, Kinondoni and many other places. Girls are exploited in sex trafficking in tourist areas within the country like Arusha City and some other attracting places within the country.



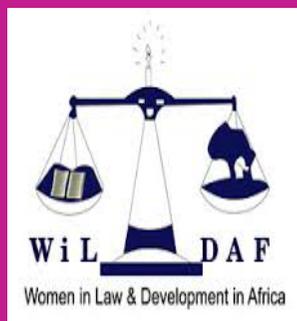


3.7. Conclusion

It can be argued that Anti-trafficking move is an increasingly important development issue, particularly for many of the poorest countries and poorer regions of less poor countries. Trafficking in women and children is a dominant component of global trafficking, although the precise magnitude is not known due to the lack of accurate data. Although anti-trafficking activities are largely focused on women and girls, and the International Community is generally aware of the rights violations involved, trafficking projects, programmes and interventions remain largely gender blind and are often incompatible with a rights based development perspective. This makes it important for practitioners to address trafficking from a gender and rights-based development framework.







Mikocheni "A" area, off Chwaku street Block F, Plot No. 635

P.O. Box 76215 Dar es Salaam, Tanzania.

T:+255 22 270 1995

wildaf_tanzania@yahoo.com

info@wildaftanzania.org

www.wildaftanzania.org

