

**The Role of the Civil Society and Grassroots Organizations in Promoting Human Rights and
Strengthening Counter Trafficking in Persons Initiatives in East Africa**

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In Collaboration with

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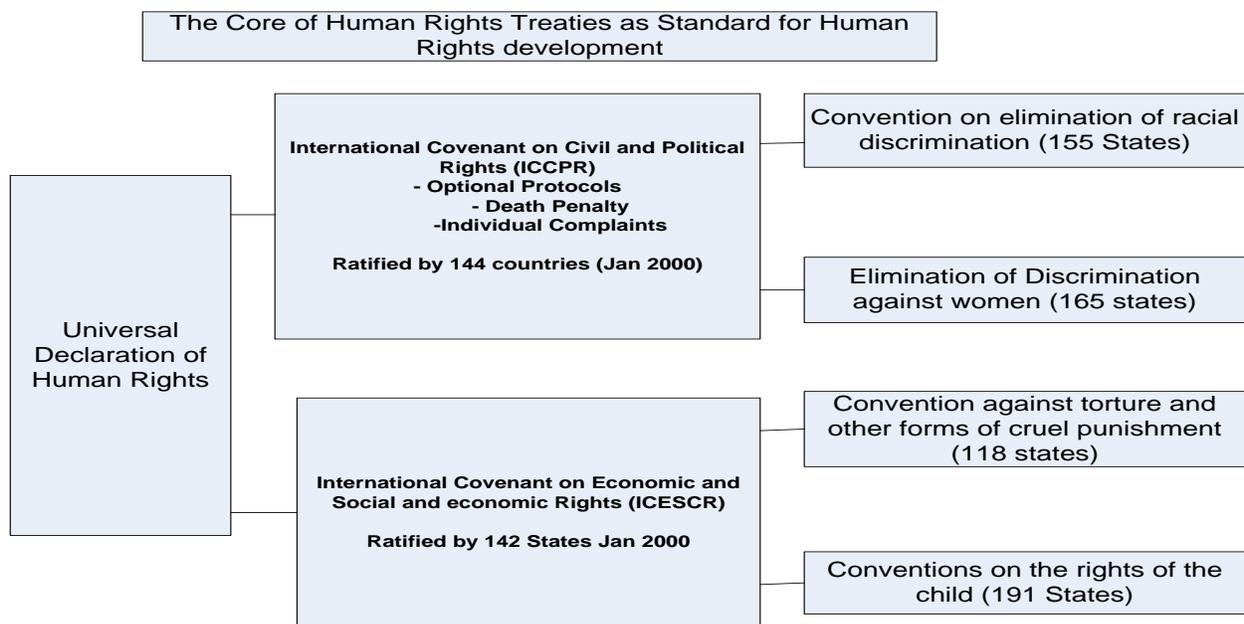
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Governance, Democracy and Human Rights in EAC and Efforts to Counter Trafficking in Persons

Governance refers to mechanisms, institutions and processes in which authority is exercised in the conduct of public affairs. The concept of good governance emerged in the 1980s to address failures in development policies due to governance concerns including failure to respect human rights.

Figure 2: Evolution of the Human Rights Treaties



Adapted from Werelt V. Patrick (2001)¹

The concept of good governance and human rights are mutually reinforcing, both being based on core principles of participation, accountability, transparency and state responsibility (UN,

¹ Van Werelt P. (2001), Human Rights Based Approach to Development Programming in UNDP-Missing Link. Geneva. UNDP.

2006)². Human rights are defined as the supreme, inherent and inalienable rights to life, to dignity, and to self development (Lundberg P. 2002)³.

Human rights and human development on the other hand share necessary outcomes for improving people's lives. Human rights are people centered hence reflecting a fundamental concern with policies and processes as possible, respecting the agency of all individuals. Human rights therefore dictate that development or technological advancement should be at the service of humanity and not vice versa, for human dignity is transcendental in nature (*Caritas in Veritate*). Human rights require a conducive and enabling environment in particular appropriate regulations, institutions and procedures framing the actions of the state. They provide a set of performance standards against which governments, individuals and other actors can be held accountable.

At the same time good governance policies are there to empower individuals to live with dignity and freedom. Although human rights empower people, they cannot be respected and protected in a sustainable manner without good governance. In addition to relevant laws, political, managerial and administrative processes and institutions are needed to respond to the rights and needs of populations. There is no single model for good governance as institutions and processes evolve over time⁴.

Human rights on the other hand strengthen good governance framework. In enforcing human rights states are required to move beyond the ratification of human rights treaties, integrating human rights effectively in legislation, state policy and practice; establishing the promotion of justice as the aim of the rule of law, understanding that the credibility of democracy depends on the effectiveness of its response to people's political, social and economic demands; promoting checks and balances between formal and informal institutions of governance; effecting necessary changes particularly regarding gender equality and cultural diversity; generating political will and public participation and awareness; and responding to key

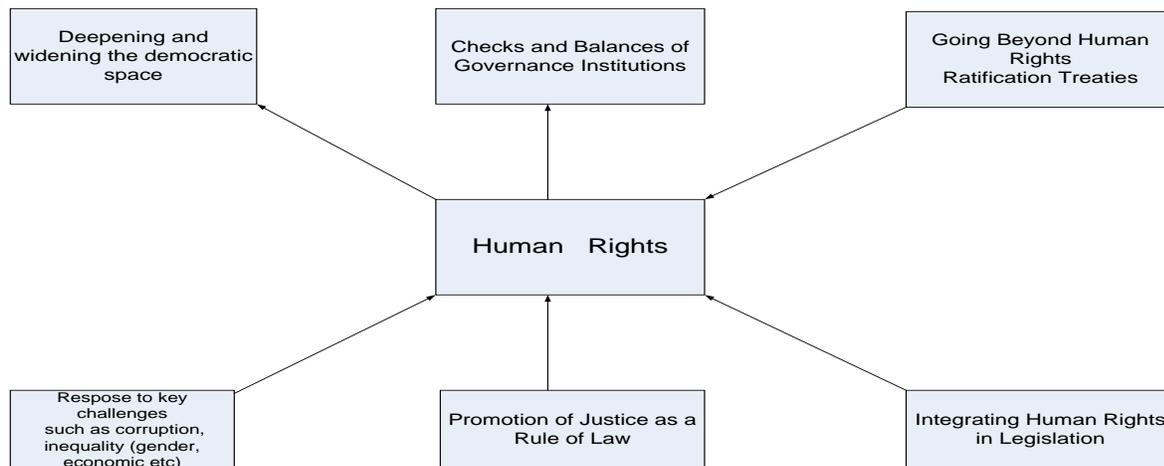
² Office of the United Nations High Commission for Human Rights (2006), *Frequently asked questions on a Human rights based Approach to Development Cooperation*. New York and Geneva. UN

³ Lundberg P. (2002) in his paper decentralized governance a human rights to development (HRBAD), argues that a decentralization process creates new opportunity to promote human rights as well as threats to protection.

⁴ Ibid

challenges such as corruption and violent conflict⁵. In 2010 August Kenya adopted a new constitution that has integrated the bill of rights to a greater extent. This document is seen as a progressive document which will help Kenya in its struggle to promote human rights⁶.

Figure 2: Human Rights Based Governance System



Certain economic, social and cultural rights maybe realized progressively overtime due to legitimate resource constraints. States should take appropriate actions to realize these rights as expeditiously as possible. Since resources are needed to realize such rights, their speedy realization depends on softening the resource constraint, which in turn requires a good level of economic growth. A faster rate of growth can ease the pain of making unavailable trade offs, by increasing available resources. Economic growth should always be seen as a means and not the end of development. Full achievement of human rights should be seen as the end of development. Hence the attainment of economic development is important for the realization of human rights. However, economic development must also be achieved in a manner consistent with human rights principles. According to *Populorum Progressio*⁷ development should aim at rescuing peoples, first and foremost from hunger, deprivation, endemic diseases and illiteracy. From the economic point of view, this means their active participation, on equal

⁵ Ibid

⁶ On 4th August 2010 about 12 million Kenyans participated in a constitutional referendum and 70% voted overwhelmingly for the new constitution. The country therefore got a new constitution after more than 30 years working on it and a humiliating defeat of the 2005 draft. A majority of the population felt that the adoption of the new constitution meant a new dawn for Kenya and offered a sure way to address the historical injustices.

⁷ Pope Paul Vi (1967), *Populorum Progressio*: Encyclical of Pope Paul VI on the Development of Peoples. Holy See.

terms in the international economic process; from the social point of view by evolving into educated societies marked by solidarity; and from the political point of view it means the consolidation of democratic regimes capable of ensuring freedom and peace. Hence profit is useful if it serves as a means towards an end that provides a sense both of how to produce it and how to make good use of it. Once profit becomes the exclusive goal, if it is produced by improper means and without the common good as its ultimate end, it risks destroying wealth and creating poverty (Caritas in Veritate)⁸. It is sad however that this same economic development has been and continues to be weighed down by malfunctions and dramatic problems dominated by selfishness causing a major global financial crisis in the late 2000s that has resulted to great human suffering; moreover human beings are have also become the objects of trade where they are subjects of slavery and are used as goods in the exchange process.

Brezinski (1995)⁹ enumerated three dimensions to human rights to include a. protection of the individual from the arbitrary actions of the state b. increase of the democratic space and lastly c. protection from the negative advances of science. The spread of literacy and urbanization in the world produced with it the process of mass political awakening. The populace today cannot be treated as passive objects by political systems. Totalitarian system of political compulsion aiming not only at social reconstruction or even ideological molding of the human being is also against the human rights. Democracy respects human rights and therefore institutionalizes the respect for the individual. In essence enforcement of democracy is a direct contribution to global peace. Though it is also argued that under certain conditions the denial of national freedoms is justified by the overriding interest in stability. Democracy in itself is not a failure but undemocratic politically powerful individuals do not respect it as happened in Eastern Europe, Asia, Latin America and in Africa.

The lack of democracy in Africa therefore cannot be attributed to the failure of democracy as such but to such individuals protecting their selfish interests. Hence Africa should avoid the

⁸ Pope Benedict XVI (2009) Caritas in Veritate: Holy See

⁹ Brizinski Z (1995), *The New Dimensions of Human Rights. Fourteenth Morgenthau Memorial Lecture on Ethics and Foreign Policy*. New York. Carnegie Council on Ethics and International Affairs.

temptation to debunk democracy as west’s parochial dogmatism. Another aspect of human rights is the protection of individuals from the negative advances of science and economics which challenge ethics and morality. These advances are capable of transforming the human being to a mechanistic entity subject to cloning, transplants, improvements of external appearance and even deliberate enhancement of intelligence; other issues would include euthanasia, unethical usage of people for scientific experiments that do not value their dignity etc. The most poignant abuse of human rights however in our times is the aspect of human trafficking. In the remainder of this section therefore we shall explore the challenge of applying these arguments in the East African community looking at some important historical events and statistics. The analysis will help in developing our arguments on how the EAC could in the long run help in strengthening the human rights based approach with respect to mainly countering human trafficking. The important tools of analysis include welfare indicators, religion, economic indicators, human rights analysis and lastly peaceful co-existence.

Human Development in the light of Democratic Governance and Human Rights

Table 2: Human Welfare Indicators

	Life expectancy 2008	Infant Mortality Rate (per 1000) 2008	HIV/AIDS Prevalence UNAIDS 2007	Adult Literacy rate 2007	Total ethnic groupings	Official languages
Tanzania	51.5	69.28	5.8-6.6	64.4%	130	S, E, A
Kenya	56.6	54.4	7.1-8.5	73.6%	42	S, E
Uganda	52.3	64.8	5.0-6.1	66.8%	48	E, S’ U
Rwanda	49.8	81.6	2.4-3.2	64.9%	3	F, R, E’, S’
Burundi	51.7	59.6	1.1-1.4	59.3%	5	F, B, E’, S’
Tot/avg	52.4	65.9	4.3-5.2	65.8%	225	S,E,F,U,R, B, A

Source: Governmental reports and World Fact Book. The official languages of EAC are S-Swahili, U-Buganda, R-Kinyarwanda, B-Kirundi, E-English, A-Arabic and F-French. The apostrophe (’)

symbolizes that the particular language is seldom spoken or is not well spread to the entire country.

The life expectancy of the EAC region is estimated at 52.4 on average. Life expectancy is longer in Kenya (56.6) and in Uganda (52.3) and shorter in Rwanda at 49.2. Infant mortality per 1000 children is 65.9; Burundi and Kenya have the lowest infant mortality rates (59.6 and 54.4), Rwanda on the other hand has the highest mortality rate (81.6). HIV/AIDS is a scourge that devastates most of the East African communities with Kenya reporting the highest prevalence rates (7.1 to 8.5) and Burundi reporting the lowest rates (1.1-1.4). The average adult literacy rate for the region is 65.8%. Kenya (73.6%) and Uganda (66.8%) lead the region in literacy. The region has a total of 225 ethnic communities the leading being Tanzania with 130 and followed by Uganda with 48, the lowest number of ethnic groups are in Rwanda (3).

Relevance of the Human Welfare Indicators in Enhancing Democratic Governance and Human Rights in the Light of Deepening Integration Efforts in EAC

The Human Rights Based Approach to Development (HRBAD) induces reforms in the overall governance to society by not only focusing on economic growth indicators but also on other important indicators of human welfare as above. Alexander Hamilton, one of the Architects of the Federal Constitution of US wrote “good governance is characterized by both its aptitude and its tendency.” These words summarize well the reasons for HRBAD approach. Hence both the aptitudes (capabilities) and tendency (incentives influencing behavior) are two important elements in building a good governance system. This orientation helps in building both the capabilities of government employees while at the same time changing their attitudes towards their constituents.

The socio economic development in the EAC faces myriad constraints stemming from basic poor functioning of key institutions. On a positive note East Africa continues to record strong achievements in key macro economic indicators including infrastructure development (Africa Competitiveness Report, 2009). Critically the progress of human development has always lagged behind that of standard economic indicators of growth as reflected in poor social

welfare indicators above on literacy, health, population growth and access to basic services for the poor and the marginalized in the society.

Lundberg (2002), identifies the major operational reasons for poor achievement in human development in Pakistan as a breakdown of basic service delivery mechanisms through corruption, staff absenteeism, poor maintenance, lack of accountability, transparency and politicization of personnel selection and resource allocation. In addition there are concerns regarding the fairness of the legal system and its ability to provide an enabling environment to promote social and economic development; lack of or selective enforcement of rules many of which may be outdated, poor coordination amongst government departments and the poor morale and work ethic of the civil service. This situation also applies greatly to the EAC countries and it contributes greatly in dampening the achievements of the human development indicators on one hand while leading to steady erosion in the quality of the governance institutions. In order for the EAC to achieve a mileage and benefit its populace, it should also focus on improvement of human welfare indicators. A bigger cooperation in EAC would certainly help a great deal in achieving a mileage in this area. The EAC common market protocol came into existence on August 2010 while it is hoped that the Monetary Union will be achieved by 2015. These progresses are important as they enhance closer collaboration between these government. This collaboration could help in ensuring that the welfare indicators for the entire region improve as people create a larger market for themselves on the other challenge it could offer opportunities for exploitation on the most vulnerable sections of the economies by people led by selfish interests.

The Role of Religions in Enhancing Democratic Governance and Human Rights

Table 3: Distribution of EAC Religious Affiliations

	Catholic %	Protestant %	Indigenous %	Muslim %	Others %	Main Religions
Tanzania	30			35	35	C,P,I,M
Kenya	33	45	10	10	2	C,P,I,M
Uganda	41	42	3.1	12	0.9	C,P,I,M,O

Rwanda	56	26	0.1	4.6	1.7	C,P,I,M,O
Burundi	62	5	1.6	10	0.0	C,P,I,M,O
Total	38.4	24.4	3.0	14.3	7.9	C,P,I,M,O

Source: World Fact Book

The main religions are C-Catholic, P-Protestant, I-Indigenous, M-Muslim and O-Others (Hindu, etc). Most people of the EAC are affiliated to the Catholic religion (38.4%) followed by protestants who form about 24.4% of the distribution. The Muslims are 14.3%. Burundi and Rwanda lead the region with the population of Catholics at 62% and 56 respectively. Kenya and Uganda have the highest proportion of Protestants at 45% and 42%. Lastly Tanzania and Uganda lead the region with the highest proportion of Muslims at 35% and 12% respectively.

The positive thing in East Africa is the fact that the religious conflicts are few and there is generally a culture of tolerance amongst different religions. Cases of religious intolerance have only been witnessed in Kenya in 2003¹⁰. The constitutional debate in Kenya in 2002 and 2010 put Muslims and other religions at loggerheads as the Muslims were seeking to have the Kadhi courts entrenched in the new proposed draft constitutional documents. However, the endorsement of the new Kenyan constitution by a majority of the citizens despite the fact that it made special provisions for the Muslims Judicial System in a country of Christian majority during the August 2010 indicated the fact that religious differences are not so pronounced.

Relevance of the Religions in Enhancing Democratic Governance and Human Rights in the Light of Deepening Integration Efforts in EAC

The inter-religious conflicts are a reality on the African continent. Peaceful coexistence between Muslims, African Traditional Religionists (ATR) and Christians is important to all communities in Africa despite great challenges in some areas. There are many examples of cohabitation and positive dialogue through mutual support, collaboration and solidarity aimed at improving the human rights situations and to foster the practice of basic attitudes: mutual

¹⁰ The East African Standard, (20th June 2003), Five Churches Torched in Tana River.

respect, friendship, sincerity, reciprocity and mutual knowledge (Pax Romana-ICMICA, 2009)¹¹. There are instances where some religious sects arose in Uganda (Holy Spirit Sect) which led to the decimation of many of its followers in the late 1990's. Earlier on some other sects had developed to guerilla warfare movements against the government first under the direction of Lakwena's Holy Spirit Movement and later as Lord's Resistant Army under the directorship of Joseph Kony. In Kenya the Mungiki sect is responsible for extreme human rights abuses. In Rwanda and Burundi the mainstream religion was divided along political lines and hence was incapable of acting to defend the human rights during the time of intense political tension in the 1990s. It is also reported that in Tanzania there were cases of ritual murders (Ochanda, 2009).

Faith and social actors need to collaborate so as to avoid wastage and duplication of efforts. Faith based actors could do much in the promotion of human rights and widening democratic space. The FBO's have a role to first coexist peacefully, and secondly to accompany, serve and advocate for victims of human rights abuses and injustices. The FBO's should also be able to develop good analytical skills and diagnostic skills in order to be able to detect early (early warning early response) the likely occurrence of either conflict or situations of severe human rights violations. A program targeting to improve the capacity of FBO's can reach many people at once considering the fact that a large number of EAC people are considered to be connected to a specific religion.

EAC should promote programmes aimed at reinforcing positive experiences of inter religious dialogue, so as to enhance positive attitudes that could help in preventing an aggravation of conflicts. On the other hand it is important to ensure that upcoming religions, sects or cults do not adopt dangerous practices that would eventually contribute to the abuse of human rights or mutate into guerrilla warfare movement. Media education, advocacy and campaigns could

¹¹Pax Romana-ICMICA (October 2009), *Final Statement and Recommendations to the Special Assembly of the Synod of Bishops for Africa*. Rome, Italia.

also be used to promote positive attitudes and relationships among different faith communities to nurture mutual respect, friendship, sincerity, reciprocity and mutual knowledge.

It should be noted that religious conflicts are sources of severe human violation. These abuses could open up opportunities for abuses of various kinds by selfish individuals. These abuses could lead to situations of human trafficking. Religious biases on the other hand have the effect of prejudicing other people's religions and even deteriorating to dehumanizing situations. Religions in East Africa have presumably learnt from their past and certainly have a stake in promoting the common good of all the citizens in East Africa, hence their collaboration is quite important.

Economic Indicators in light of Democratic Governance and Human Rights Enhancement

Table 4: Distribution of the Population and other Economic Indicators of the EAC countries

	Population 2008	GDP Per Capita 2008 USD ppp	Pop. Under Poverty line 2008	Under USD 1 povert y 2008	Under USD 2 povert y 2008	Unempl t Rate 2008	HDI 2007/200 8 and 2008/200 9
Tanzani a	41,048,532	1,300	36%	88.5%	93.4%	NA	0.467- 0.530
Kenya	38,610,097	1,600	50%	19.7%	39.9%	40%	0.521- 0.541
Uganda	32,369,558	1,100	35%	51.5%	75.6%	NA	0.505- 0.514
Rwanda	10,473,282	900	60%	76.6%	90.3%	NA	0.452- 0.460
Burundi	8,988,091	400	68%	81.3%	93.4%	NA	0.413- 0.394

	131,489,560			63.5%	78.5%	NA	0.472-
Total	0	1060	49.80%				0.488

Sources: EAC website, worldfactbook and Human Development Report 2008¹²

The East African region covers an area of 1.8 million square kilometers with a combined population of about 131 million. The region has little minerals in comparison to many others. The average GDP per capita of the region is 1060 USD as at 2008 purchasing power parity. Kenya and Tanzania are the biggest contributors to the region's GDP. 49.8% of the population is considered to be below the national poverty lines. The one dollar poverty line is estimated at 63.5% while under 2 USD poverty line is estimated at 78.5% of the population. The unemployment rate for Kenya is estimated at 40%, other countries have either a much higher or lower employment rate. The Human Development Index for the region is estimated at 0.472 (the highest global scorer of HDI in 2007 was Iceland with 0.968 according to the 2006 computations). All countries had a significant improvement on their HDI apart from Burundi. The entire region has the responsibility of ensuring that they improve their HDI scores. This deterioration of Burundi should worry the entire EAC. Somehow, all the EAC countries should act to act to benchmark one another and to forge closer cooperation in the promotion of human rights.

Relevance of the Economic Indicators in Enhancing Democratic Governance and Human Rights in the Light of Deepening Integration Efforts in EAC

The total population in Eastern Africa is approximately 131 million. As can be seen 63% of this population lives under the USD 1 poverty line meaning that they live between 0 income to USD1 income. Life is extremely difficult for this section of the population infact, that they live in sub human conditions with little access to food, clean water, education and other basic necessities of life. It is a fact that a majority of the population is unemployed and have no access to gainful income opportunities. The worst affected are the vulnerable sections of the community such as women, youth and children. This section of the population has no property

¹² The recent census in Kenya found the total population to be 38,610,097 (Daily Nation, August 31th 2010 Census: Kenya has 38.6 million people). The figures released by the government differ by 3 million by those of the CIA factbook and UNDP development report.

and very scarce earning opportunities. Many of those whose incomes are low come from the rural areas; some of these areas are semi arid with harsh geographical conditions. Apart from being poor they are illiterate and hence this vulnerability opens up a chance for them to be victims of exploitation from people promising a better living condition.

Ideas of the poor populations in both the urban, rural areas and especially the most vulnerable should be sought in order to respond to their needs and working towards creating a conducive environment that provides for these needs echoing Armatya Sen’s basic needs approach. EAC governments must not only work to increase the GDP but primarily work to ensure an increase in food productivity, increased ability to feed its populations and the ability to provide for the basic services to all their people. Most farmers in EAC are small holders and hence improved productivity of these small farms will help millions of rural folk to escape from extreme poverty.

It is important therefore that governments guarantee access to land, quality seeds, water, credits and to local markets (through public investment) to the rural folks. Promotion of people’s livelihoods should be in tandem with environmental protection. Failure to protect the environment could lead to other undesired consequences. Hence the EAC governments should invest in promoting research geared to the development of effective and reliable models capable of increasing food productivity, invest in rural areas, support farmers cooperatives and improve the transport infrastructure linking the rural areas to the urban markets. EAC countries should also deepen their integration so that farmers may be able to access the entire EAC market and not only those of their countries. In conclusion, the EAC economic growth should be undertaken in tandem with the improvement of the lives of the poor and improved welfare of all its citizens. Hence economic growth should be at the service of the people¹³.

Democratic Governance and Human Rights in the Light of Deepening Integration Efforts

Table 5: Human Rights and Democratic Challenges (1 not a problem at all, 5 very much)

	Serious Internal	People displaced	Media freedom	Lacking Rule of	Gini Index	Insecurity
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¹³ Instrumentum Laboris

	conflicts	from the country		law		
Tanzania	Zanzibar on elections	Election time	Mwanahalisi ban	NA	38.2 in 1993 And 34.4 in 2000	Some cities
Kenya	During elections	IDP's and refugees	Media gag law	2007/08	44.9 in 1997 And 42.5 in 2008	Many cities and North of Kenya
Uganda	North (LRA)	IDPs and refugees due to LRA	Restrictive bill	No party state	38.4 in 1996 And 45.7 in 2002	North
Rwanda	Historical	Refugees and IDPs	Unease with foreign media	1994	28.9 in 1985 And 46.8 in 2000	NA
Burundi	5	5	5	4	42.4 in 1998	5
Total	19	20	21	16	-	17

These scores are subjective based on country analysis from Transparency International Reports and CIA worldfactbook.

Tanzania

Of the five EAC countries Tanzania has had a small occurrence of internal conflicts. Tanzania usually has these conflicts during the period of elections with Zanzibar secessionists. These conflicts do push a number of people to vulnerability as Internally displaced persons (IDPs) and refugees. The government has had a problem with the media to extents of banishing some of them. On distributive justice, the Gini Index for Tanzania has been improving unlike in all other East African countries. The Albinos in Tanzania and East Africa have become targets of criminal people. Their body parts are being sort for rituals and as mascots. Female genital mutilation (FGM) and other forms of violence against women and girls are always being reported. The protection of the vulnerable group of people in the society is a challenge not only to Tanzania

but the entire East Africa. Early 2008, there were some disagreements between the government's Chama Cha Mapinduzi (CCM) and Civil United Front (CUF) of Zanzibar. CCM-CUF represents an important dynamic in Tanzanian political front.

Kenya

Kenya has experienced serious conflicts after its 2007 elections. This violence brought to light serious inter ethnic discomfort. Before 2007 sparks of violence have always been experienced during electioneering time since 1992. All these spates of violence have always left people decimated, maimed and injured. The latest violence saw about a 1000 people decimated and 650,000 displaced. It is claimed that there were electioneering irregularities.

Recently the government passed a law that would permit it to raid media houses and confiscate equipment¹⁴ for purposes of national security. This law was criticized by the media and human rights activists. Kenya also has challenges with the rule of law as some vigilante groups such as Mungiki, Taliban, Sungusungu, Kaya Bombo and Angola Msumbiji amongst others, operate with impunity committing serious human rights violations. These groups kidnap, maim, destroy property and they also go to extents of killing. Some politicians have been blamed for supporting these groups. The groupings are terrorizing the public and the government machinery seems overwhelmed by them.

There are small arms which have infiltrated the country from Somalia, Ethiopia and Southern Sudan which are presumed to be in the hands of criminals. These weapons are used to perpetrate serious violations of human rights and commit crimes. The country also suffers from distributive and historical injustice which is considered to have been a major cause of the political violence experienced early 2008. As can be seen from above, though there seems to be an improvement in the Gini Index, the score is still quite unfavorable. The period after the post electoral violence provided the opportunity in addressing the past injustices and human rights abuses. The political class preferred to address these issues through Truth Justice and Reconciliation Commission (TJRC) in place of either a local tribunal or an International tribunal.

¹⁴ BBC (2 January 2009), Kenyan Media Gag Law Approved available on <http://news.bbc.co.uk/2/hi/africa/7808815.stm>

TJRC was preferred because of the restorative justice element that is not vindictive in nature. The proponents of a tribunal prefer the restitutive justice element which would ensure the perpetrators of human rights abuses are brought to book.

Most of the Internally Displaced Persons (IDPs) as a result of post elections violence are still at the camps. The Kenya National Commission for Human Rights vindicated the government for failing to investigate extra judicial killings carried out by police against some militia groupings (KNCHR, 2006). It also accused the government of high handedness in its operation against the Saboot Land Defense Force (SLDF). On the other hand great numbers of refugees of about 500,000 continued flocking into Kenya from Somalia. Kenya on the other hand continues to suffer as a result of terrorism attacks experienced in the past. Corruption remains a major issue in Kenya and it has permeated nearly all structures of governance. Most Kenyans hope that the new constitutional dispensation will help in solving most evils bedeviling the country.

Uganda

There were a number of agreements reached between Uganda Government's National Resistance Movement/Army and the Lord's Resistance Army (LRA) a terrorist organization responsible for serious human rights violations but peace agreement had not been signed by the end of 2008. The final framework that was reached between the government and the LRA did not address much of the human rights abuses (infact violence against women was not considered in this accord), a few of the 900,000 internally displaced people (24%) as a result of LRA insurgencies returned back to their homes in 2008 but many were skeptical and uncertain about the sustainability of the peace agreement. On the other hand the government seems uneasy with some of the opposition members. There is a bill yet to be debated restricting media freedom and several journalists have been charged.

Uganda like most of the other EAC countries suffers from corruption¹⁵. On a positive note the constitutional court ruled out against section 32 of the police Act Cap 303 of the laws of Uganda

¹⁵ BBC (9th April 2009), Uganda Spy Jailed for AIDS Fraud available online at <http://news.bbc.co.uk/2/hi/africa/7991676.stm>

which was repressive against freedom of assembly¹⁶ and ruled in favor of the opposition candidate. Uganda hosted 140,000 refugees from the Great lakes while there was a repatriation of those from South Sudan. There was ostracism of several minority groups with the state developing a law to penalize homosexuality¹⁷ making it punishable by death. Uganda still keeps the death penalty but there have been no recorded executions on the civil courts however this is not clear for Marshall courts as their proceedings are not open to general public.

Uganda has also had a traumatic past with the presence of a series of wars and a despotic president Idi Amin Dada¹⁸. After these major wars, it continues experiencing a civil war in its northern areas. Certainly, the problems in North Uganda, led to a serious violations of human rights and increase in people's vulnerability. Children and women were abducted and were later used for purposes of sexual exploitation or to carry out military operations.

Rwanda

As far as conflict is concerned, the government of Rwanda has had the worst trauma of all the East African countries. In 1994, it lost more than a half a million people in internal civil war after its president was killed in a plane crash. Many people were displaced from the country as a result and the rule of law became a great challenge during this time. The war was a result of historical distributive injustices which had taken too long to address and a failed dialogue mechanism.

Recently Rwanda is considered to have had involvement with the rebels in DRC. During 2008, Rwanda's constitution was amended giving all former presidents immunity from prosecution for life and reducing judges' tenure of office from life to four years hence compromising the independence of the judiciary. War crimes against humanity that were committed during and

¹⁶ The Monitor (2nd June 2008), Uganda: Statement on the Ruling of the Constitutional Court.

¹⁷ Reuters (2nd December 2009), Uganda Set to pass anti gay bill, appease donors available at <http://af.reuters.com/article/topNews/idAFJ0E5B10FI20091202>

¹⁸ President Gen. Idi Amin Dada came to power through a military coup which ousted Dr. Milton Obote. Amin's leadership was considered ruthless and during his leadership there were many cases of human rights Violations. He also was ousted from power by Tanzanian and Ugandan Revolution movements. Immediately after Amin a transitional government was created with Yusuf Lule as the president, who was followed by Binasisa then Dr. Milton Obote who was ousted by Tito Okello who was also later ousted by the current President Yoweri Kaguta Museveni.

after genocide remained largely unprosecuted. There have been claims by Transparency International that government is too uneasy with the foreign media and foreign journalists, civil society and humanitarian work are also highly controlled. There are some people have been retained in prison despite a later realization of unfair trial.

Burundi

Burundi has had a long war which has seen many people decimated while others have been displaced. There have been various disagreements between opposition parties and the ruling party the National Council for the Defence of Democracy-Forces for the Defence of Democracy (CNDD-FDD). On the other hand divisions within the CNDD-FDD, led to expulsions and defections. In a special case the judiciary was used to get out the stubborn people from the party.

There is a slow ceasefire implementation between government and Paliphehutu National liberation Forces (P-FNL). On a positive note there is a draft revision of criminal code recognizing sexual offenses, unlawful civilian killings by both government army and FNL. There are arbitrary arrests and detention for suspected supporters of FNL. The government also prevented opposition parties from holding meetings without prior authorization in 2008 which was rejected by CNDD and Front for Democracy in Burundi (FRODEBU) and Union for Peace and Development (UPD-Zigamibanga) whose 21 members were arrested. Torture and ill treatment was also reported. There are high incidences of rape and other sexual violence against women and girls. MSF in 2008 reported about 131 rape victims a month, school teachers too were perpetrators of sexual violence against young girls.

Relevance of Enhancing Democratic Governance and Human Rights in the Light of Deepening Integration Efforts in EAC

A need arises to adopt a Human Rights Based Approach (HRBA) as a system that permeates the institutional framework in East Africa in order to strengthen governance and democracy processes. Development of the awareness of the HRBA (moral and ethical) should be promoted through the media, the civil society and the structures of the faith based organizations. Human rights should infiltrate the social, cultural (Ochanda, 2009), political and economic spheres.

Education programmes need to transform the society's perceptions and act as behavior change catalysts. Social actors can promote education through applied research, programmes evaluations and regulatory impact assessments. No matter the challenges mentioned for each of the EAC countries, the respect for human rights paves way for rational and objective governance which would eventually make the integration efforts much easier. Human rights based approach would also tend to reduce social dilemmas which are considered to be the main reason for the democratic challenges and rise in political tensions.

The East African democratic, governance and human rights challenges will be solved by East Africans and other Africans. This is in line with many past visionaries who believed in the regeneration of Africa by Africans themselves (Mwalimu Nyerere¹⁹, Daniel Comboni²⁰, etc). Africans are increasingly helping each other finding "the African interior solution to their own democratic challenges." Examples include Prof. Washington Jalango Okumu of Kenya who presided over the negotiations between the Inkatha and ANC Party in South Africa in 1994, late President Julius Kambarage Nyerere and later President Mandela in negotiating for the Burundi Peace Accord, Daniel Arap Moi of Kenya on Comprehensive Peace Agreement for Sudan, Former UN Secretary General Koffi Annan for negotiating the Kenya Peace Accord. The role of regional and local bodies and organizations such as IGAD, Civil associations and Faith based organizations in maintaining regional peace and ensuring human rights in East Africa is paramount.

Regional bodies such as EAC, African countries and AU have to be concerned about the lack of stringent human rights standards in their structures. While it is important to ratify, going further to implement them is very important. Despite their lack of resources there is need that to strive to enforce compliance amongst members countries. This will avoid the problem of double standard where human rights adherence is preached in other quarters while it is being

¹⁹ Nyerere (1996), In his speech Africa South of Sahara delivered to the South African parliament is optimistic on the role that African countries can play for the betterment of the continent. He urges greater collaboration amongst the African countries.

²⁰ Comboni D (1864), Associations of the Sacred Hearts of Jesus and Mary for the Conversion of Africa. Mazza institute. In this plan Comboni outlines the difficulties outsiders face while working in Africa and suggests an institute in Africa for the formation of African evangelizers.

violated in others. There is also need to realize that no outside savior will lead Africa to the Promised Land. EAC and Africa for that matter have to find creative ways to improve governance, democracy, rule of law and human rights. Africa must do this if it intends not to continue being the most trivialized society in the world. EAC, NEPAD and AU amongst others could contribute towards generating the home grown solutions if and only if they are norm and principles based.

There is a need to build an awareness of the situations leading to serious human abuses in Africa. In 2008 a few reasons can be cited in various countries. Kenya: tribalism, bloody electioneering violence, IDPs, impunity in bringing the perpetrators of human rights abuses (cooling by commissions) to justice. Tanzania: Talks break down between CCM and CUF, killing of Albinos, government move against some media house, forced repatriation of Burundi refugees, FGM and other forms of violence against women. Uganda: Accord reached with LRA not addressing human rights issues but yet to be signed, opposition leader on treason trial considered mainly political, media bill curtailing freedom, bill to make homosexuality punishable by death and charging of journalists. Rwanda: supporting DRC rebels, constitutional immunity granted to all former presidents for crimes against humanity, judges tenure reduced from life to four hence compromising their security, crimes during and after genocide remain majorly unpunished, hostility to media and civil society workers, tension with ICTR. Burundi: February tension between CNDD-FDD and others over dismissal of the first vice president, CNDD used the judiciary to expel its own stubborn members, slow ceasefire between FNL and government with violence against civilians, high incidence of violence against women and girls. FRODEBU and UPD were arrested for illegal assemblies.

In all the instances above, there are serious challenges to the democratic institution including the media, diverse political groupings and ethnicities. The respect for human rights is a challenge too. This needs to be taken up as a program promoting civic awareness. The EAC has a leading role through its structures to educate its own members and promote general awareness and set required standards for its members.

The EAC countries have a role to put pressure on their member countries to avoid internal conflicts, ensure that the IDP issue is solved, allow the freedom of the media, promote the rule of law, ensure distributive justice and lastly provide adequate security for all its citizens. Improving on these areas will certainly reduce susceptibility to vulnerability and exploitation amongst the East Africans.

Political Tensions in the Light of Deepening Integration Efforts

Table 6: Prevalence of Political Tensions Amongst EAC Member States or with other African Countries

(1 presence of conflict, 0 no conflict)

	Kenya	Tanzania	Uganda	Burundi	Rwanda
Kenya	1	0	1	0	0
Tanzania	0	1	1	0	0
Uganda	1	1	1	0	1
Burundi	0	0	0	1	0
Rwanda	0	0	1	0	1
Other	1	0	1	0	1
	3	2	5	1	3

These scores are subjective based on country analysis of history of tensions with other EAC members or its other neighbors.

In the analysis of conflicts above, there is some tension between Kenya and Uganda over Migingo Island which is located on Lake Victoria. Uganda argues that the water surrounding the lake belongs to her while the island belongs to Kenya. Kenya on the other hand claims that all the water and the island is hers. This problem led to bitter exchanges between the two

governments and nearly escalated to a war²¹. Recently Kenya went on a Security Alert against Somalia based on several issues such as kidnappings of its citizens. This saw the Kenya troops and military equipment deployed along the Somalia border ready for an attack signal²².

Tanzania in the past has had a war with Uganda. The Tanzanians were later joined by NRM/A. They fought and captured Kampala and got President Idi Amin out of power. Idi Amin triggered this war because of his disrespect for the territorial integrity of the neighboring countries around him.

Uganda has had tensions with nearly all the East African and other countries both at the time of Idi Amin and presently. The tensions with Kenya and Tanzania are mentioned above. It has in the past deployed troops to Rwanda. It has also had problems with other countries such as DRC and Sudan. In essence, the conflictual nature of Uganda has been interpreted by the media as harboring expansionist ambitions. It must be noted however that Uganda has played a great and positive role in promoting the East African Community.

Burundi seems to have only internal conflicts and has no political tensions with its neighbors apart from the fact that it produces refugees for the region. Rwanda on the other hand has had conflicts with Uganda as explained above. It also has had military operations in DRC.

Lastly, there is the issue of trust and confidence amongst the EAC countries arising from past history of collaboration. Trust seems to be one thing that lacks amongst these countries. Kenya seems to be a country that is the most distrusted in this cooperation. On a positive note however these countries are much closer at a cultural level and do share a common language and are at the moment creating joint structures of governance. Rising above the past bitter memories will be key in the restoration of trust and in the ultimate formation of a greater collective economic region capable of improving the democratic and governance structures locally. According to *Caritas in Veritate*, truth preserves and expresses charity's power to

²¹ The Migingo Island saga just showed how complex the relationship amongst East Africans is. In any case the East African Justice Tribunal was ignored in the search of a solution bringing a great doubt on the effectiveness of some of the structures being set to address the objectives they were set to achieve. (East African Business week (25th April 2009), East Africa: Ownership of Migingo won't be Easily Solved).

²² Reuters (3rd January 2007), Kenya on Alert as Somalia Fight Nears Border available online here <http://www.alertnet.org/thenews/newsdesk/L0383709.htm>

liberate in the ever changing events of history. Truth is the prerequisite for development and social wellbeing. Truth is the grave of socio economic problems besetting humanity. Without truth, without trust and love for what is true, there is no social conscience and responsibility. Social action ends up serving private interests and the logic of power, resulting in social fragmentation²³. As part of promoting organic solidarity²⁴ in EAC, there would be a need of practical acceptance of all members of the community. Emphasis of this idea is centered on the care of others, promotion of solidarity, healthy relationships, acceptance dialogue and trust. Hence the community should avoid ethnocentrism and excessive particularism favoring reconciliation and true communion between different ethnicities, promoting solidarity and trade among EAC without ethnic considerations. This acceptance of each other is a great asset in the promotion of human rights and improving people's living standards in the region. The law enforcement machine will also be able to collaborate in bringing criminals against human rights to book. This will also call for harmonization of the legal instruments in due course.

Reducing Political Tensions in order to enhance Democratic Governance and Human Rights in the Light of Deepening Integration Efforts in EAC

The East African countries are at the initial stages of state formation, the oldest country is about 50 years. The history of all EAC countries began with colonization. This history includes geographical borders and the national political, economic and linguistic structures. However, the colonizers left about fifty years ago and therefore EAC countries should not blame their present woes on the artificial borders, colonizers or the structures that were left. Instead they should work to create innovative statesmen and women capable of rising above the present challenges and focus on working towards relevant and reliable solutions for the region.

It is a fact that each country has some negatives that do not conform to overall objective of the nation state (corruption, nepotism, tribalism etc). These negatives are sources of various social dilemmas which do require creative solutions. Wangari Maathai a Kenyan Nobel Laureate calls each African ethnic community a nation and each African country a "nation of nations or a

²³ Caritas in Veritate (5)

²⁴ Ecclesia in Africa (63)

confederation". If each ethnicity constitutes a nation, therefore the EAC countries have a heavy task of nation building; EAC is building a federation of federations. The problem therefore assumes the nature of the old time France where there was a popular saying "We now have France, but the problem is to build the French." This saying could provide important insights to solutions in the EAC state formation too. "We now have East Africa but the problem is to build East Africans". The entire African continent too has a task of nation building and will in the long or short run find its own stability within the framework of history. However one important glue in this building process should include the strengthening of the human rights agenda.

Conclusion

In concluding an important reflection arises on what the role of the EAC deepening integration will be in promoting: Human Rights, Widening and deepening Democracy; Good governance and Rule of law. So far as the EAC moves closer to forming a political union or a federation, our analysis above shows that there are so many grey areas that each country brings with it to this deepening integration. There are also several fears stemming from the grey areas prevalent in each country. This may mean that the union will have challenges to intervene in some aspects of its member countries and cannot in essence enforce common standards especially as far as human rights are concerned.

Presently there are many complexities as captured above embodying human rights concerns in each country. These complexities present a great challenge to the region, and makes the human rights agenda a very sensitive issue. Secondly a pessimist focusing on the present weaknesses of the region will conclude that joining the EAC together in a political union could aggregate the weaknesses from each country and hence contribute to a deterioration of the human rights situation in general. If the purpose of the federation is only based on economic motivations, then a situation of beggar thy neighbor will arise and hence weaker partners to the EAC will experience a worsening of their living standards at the expense of the other partners. The beggar thy neighbor situation will in essence promote opportunities for exploitation of the lesser neighbors. On the other hand, an optimist sees the entire situation as

that of the aggregation of the EAC's strengths and this will involve not only the countries but the cooperation of all citizens in enforcing the human rights agenda,

In any regional integration Endeavour Liemt (2004)²⁵ identifies the following social concerns: a) on employment: opponents of regional integration argue for job losses while proponents argue for job creation, b) uneven distribution of benefits: the less endowed countries of disproportionate benefits from trading partners, c) regulatory competition: fears that free trade induced competition would pressure higher standard countries downwards and d) uneven bargaining power: capital owners gain more leverage as they can shift their resources to lower labour countries. One question remains; how should the EAC political leaders face the issue of a political federation despite all these concerns within the framework of human rights? If most of the concerns raised are not addressed well, they could dampen the achievements so far made.

A second question arises how will human rights abuses arising from the process of deepening integration be investigated and addressed at the EAF level? From the institutional point of view there are some structures existing in each country with a mandate to enhance the quality of the human rights, rule of law and democratic governance. These institutions are known as Human Rights Commissions (HRC). Unfortunately some of these institutions seems to lack independence in some countries and while in other countries the human rights abuses are sensitive and do jeopardize the staff of the HRCs intending to investigate them. It is important however to have a body at the secretariat that is independent from each country and with a mandate to promote human rights agenda in each of the member countries.

Most countries in East Africa too have institutions to investigate corruption. Corruption too contributes greatly to worsen human rights situation in the region. In order to address human rights at an EAC regional level it would be important to establish an Anti Corruption Commission at the EAC level which would be an independent institution and given the mandate to traverse all the countries of Eastern Africa and expose cases of corruption.

²⁵ Van Liemt G. (2004) The Social Dimension of Integration: More than a Minimum Floor? ILO

These two structures suggested; i.e. East African Human Rights Commission (EAHRC) and East African Anti Corruption Commission (EAACC) will help as a first stage in setting up standards to enhance the rule of law and democratic governance which in essence will promote human rights in the region. In finalizing our analysis we conclude that the EAHRC and the EAACC will be very important structures in solidifying the move towards East African Federation making it people based and more stable. Pushing forwards for the political union without due consideration of human rights and good governance in the region is like placing the cart before the horse.

Certainly there is a hope that the Federation will help in many areas as captured in the words of the EAC leaders. Benjamin Mkapa²⁶ is quoted to have said “We have everything to gain in the East African Federation in terms of political stability, greater feeling in safety in numbers and as an economic entity better able to fight poverty.” President Emilio Mwai Kibaki of Kenya believes that regional integration is not a choice but a necessary strategy for sustainable development.... helping solidifying the unity of communities with personal ties and common history, language and culture.

Lastly this essay would not be complete without quoting Mwalimu Julius Kambarage Nyerere²⁷ one of the EAC founding fathers “Africa south of the Sahara is isolated.... totally on her own. She is also changing. That stereotype of there is trouble in Africa all the time is nonsensical. .. we should all encourage Africa to get that realization more and more that we have to depend upon our selves, both at national level and at the collective level.” Voices of these leaders echo the vision of the EAC which is political stability and sustainable development through regional collaboration. The hope of this study is that the expected gains extracted from these voices of EAC leaders embody better respect for human rights, rule of law, democratic governance, poverty reduction and ultimately better economic prospects. Economic growth should not be

²⁶ Benjamin Mkapa was a former President of Tanzania who played a great role alongside Daniel Arap Moi of Kenya and President Yoweri Museveni to revive the East African Community in 1980s.

²⁷ Mwalimu Julius Kambarage Nyerere is the founding President of Tanzania considered in the ranks of Kwame Nkrumah as a Pan Africanist. Nyerere is accredited for a great work that united Tanzania and created a great national identity with little ethnicity component as opposed to all other East African countries. Other founding fathers of the EAC are Jomo Kenyatta the founding President of Kenya and Dr. Milton Obote the founding President of Uganda.

the end of this closer collaboration but concern for ending vulnerability and opportunity for the exploitation of East Africans.

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Analysis of the 2010 Counter Trafficking in Persons Bill in Kenya in the Light of Morality, Legality and Culture

History of the Bill

Back in 2004 Kenya ratified the Palermo protocol. In 2007 the government with the help of IOM developed a national plan of action to counter human trafficking. This plan centered on government ministries and had an opening for the civil society participation. It elaborated activities in prevention, protection and prosecution (commonly known as the 3P). However the main stumbling block towards the implementation of this plan was the lack of a specific legal instrument. From 2008 to 2009, efforts were intensified to prepare a Kenyan bill to counter human trafficking in and out of the country. The organization that steered this process is known as **The Cradle**. The preparation of the bill was not easy as earlier versions of the bill were not accepted by the Attorney General. However, by December 2009 the refined bill had been forwarded to the speaker of the national assembly and it underwent the first reading. On the 15th of June it underwent a second reading as a private member's bill. On the 6th of July 2010 the third reading was done and the bill was passed. It is currently with the Attorney General of the republic pending its being forwarded to the president who will sign and make it a law of the republic. Our hope remains that the president signs the bill soon enough so that we may have a legal framework in which to prosecute human traffickers.

Rationale

The principal object of the bill is to implement Kenya's obligations under the UN Conventions Against Transnational Organized Crime including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children and all other relevant international conventions to which Kenya is party. The Bill further seeks to establish the necessary institutional mechanisms for the protection and support of trafficked persons and to ensure just and effective punishment of traffickers.

It outlines the offence of trafficking in persons and related offences. This will be very important as once this bill is passed onto a law, it will serve as an important reference to bring human traffickers to book and it could forbid child labour, forced detention for exploitative purposes

such as labour and sexual exploitation of women and children. The bill is comprehensive enough in curbing various forms of exploitation that occur within the chain process of human trafficking here in referred to as recruiting, transporting, transferring, harboring and receiving (RTTHR henceforth). Some of the past laws related to trafficking of children and women include the Immigration Act 1984, Penal Code 1985, Employment Act 2007, Sexual Offences Act 2006, Children Act 2001, Education Policy, Adoption Guidelines, Vision 2030, Children's Policy and draft national policy on orphans and vulnerable children.

The existence of various bills meant that there was no particular reference frame for the offense of human trafficking. In Kenya bringing culprits of human trafficking to justice has always been an uphill task because of the lack of this legal framework. Stakeholders of the bill therefore, hope that the government will move swiftly to pass it into law.

The offense of Human Trafficking

In accordance with the Bill the offenses of trafficking in persons to include i) trafficking in persons ii) acts that promote child trafficking iii) promotion of trafficking in persons iv) acquisition of travel documents by fraud or misrepresentation v) facilitating entry into and exit out of the country vi) interfering with documents and travel effects vii) life threatening circumstances or death and lastly viii) trafficking in persons for organized crime.

i. Trafficking in persons simply defined by the bill as recruiting, transporting, transferring, harboring and receiving (RTTHR) another person for the purpose of exploitation by means of a) threat or use of force or other forms of coercion b) abduction, c) fraud, d) deception, e) abuse of power or position of vulnerability, f) giving payments or benefits to obtain the consent of the victim of trafficking in persons and g) giving or receiving payments or benefits to obtain the consent of a person having control over another person. The bill considers irrelevant the consent of the trafficked person. RTTHR of a child for purposes of exploitation is considered trafficking in persons too. The bill takes into account acts of trafficking committed internally within the borders of Kenya or internationally across the borders of Kenya. The ultimate penalty is life imprisonment in subsequent convictions. If found guilty one is liable to fifteen years imprisonment or to a fine of five million shillings or to both.

ii. The bill defines child trafficking as adopting, fostering and offering guardianship to a child for human trafficking purposes. This offence is punishable by a fine of not less than fifteen years of a fine Kshs. 10 million or both. Subsequent conviction could lead to life imprisonment.

iii. Promotion of trafficking in persons occurs when knowingly a person gives his/her premises for human trafficking purposes; publishes or imports or exports materials to promote human trafficking; or promoting trafficking in persons in any other way. The punishment for this is ten years imprisonment and a fine of Kshs. 5million or both. Upon subsequent convictions the imprisonment term is fifteen years without the option for a fine.

iv) Facilitating entry into or exit out of the country occurs when a person facilitates, aids or abets the exit or entry of persons from or to the country at international airports, territorial boundaries for purposes of trafficking in persons. The punishment is as iii above but on subsequent convictions one is liable for 10 years.

v) Interfering with travel documents and personal effects includes a) confiscating, concealing, altering, destroying or using identification or travel documents of another person in furtherance of trafficking in persons or b)) confiscating, concealing, altering, destroying or using personal effects of another person or threatening to do so in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from government or appropriate agencies. Punishment is as iv above.

vi) Life threatening circumstances or death: If during the commission of a human trafficking offence the victim suffers life threatening bodily harm that is permanent or dies or is afflicted with life threatening health condition; the person convicted shall be liable for life imprisonment.

vii) Trafficking in persons for organized crime: Occurs when a person engages in trafficking in persons as part of an organized criminal group or the person organizes and directs other persons to commit an offense as an activity of an organized group. The punishment for this is imprisonment for life.

An omission in this section includes the treatment of diplomats. Diplomatic immunity is also a factor in many cases of human trafficking²⁸. The Bill has not addressed this issue. This means that the person should be separable when it comes to the commission of criminal acts. The miscellaneous section of the Bill however criminalizes acts by government officers facilitating the acquisition of travel documents for purposes of human trafficking.

Victim Protection

In recognition of the fact that victims of trafficking pass through horrendous experiences during their ordeals the bill provides for their privacy during hearings. The courts may even decide that some of the sessions be held in camera. It is therefore important in this case that those who bring a suit on behalf of the victim to the courts (i.e. the state) understand fully the circumstances that the victim passed through so as a determination may be made as to whether the sessions should be held in camera or not. This requires good level of competence in dealing with cases of this nature.

The Bill also proposes that publishing the proceedings held in camera is an offence. The court apart from imprisoning the culprit may also order him or her to compensate the victim. The victim is also given immunity from prosecution. While this immunity is important for the genuine victims, care must be taken that it is not used as a loophole to advance criminal activities. The bill empowers the minister in charge of gender formulate plans for the provision of appropriate services for victims of trafficking in the light of the 3P's. In order to help the victim find recourse the bill provides that

- The victim will be eligible to work during their duration of necessary presence in Kenya
- Remain in Kenya until their legal proceeding are concluded
- Be communicated to in a language he/she understands
- Exempted from court fines
- Assistance in repatriation

²⁸ Slave next door

So far there are many challenges in today's Kenya as far as victim assistance is concerned. It will be important to ensure that the legal system is made to work faster in cases of this nature so as it does not become burdensome for a victim taking time in Kenya waiting for justice. Secondly, there are very few "safe havens" for trafficking victims. At times, victims have been placed in police custody while waiting for the final recourse. Repatriation always poses a challenge; is it enough to give the victim money to go home or to put him/her in an efficient transport means back home? Certainly not, as the victim will need to be assisted reintegrate back to her/his original society fully. Reintegration is first self restoration and second the ability to fit into the society. It must be observed here that the victim coming from a trafficking ordeal, might have been subjected to a heavy legal ordeal and other energy draining ordeals in a strange place. Many a times they experience shame and bitterness which is directed to their home societies. Hence the costs of rehabilitation and reintegration are just too enormous and can only be met superficially in order to fully meet the needs of the victims. Lastly issues of psycho social accompaniment in order to help the victim deal with the aftermath effects of trauma are important; including psychological counseling and religious accompaniment.

National Advisory Committee Against Trafficking in Persons

The Bill proposes a national committee headed by the PS in the Ministry of Home Affairs. Other members of this committee include PS for immigration, PS foreign affairs, PS gender, PS children, PS Labour, PS health, PS tourism, the Attorney General, Commissioner of Police, Kenya National Commission for Human Rights representative, two representatives of the civil society, trade unions representatives, Federation of Kenya Employers representative.

The two representatives of the civil society, trade unions representative, Federation of Kenya Employers representative will be appointed by the Minister for Gender issues and shall hold office for a term of three years renewable once.

The National Advisory Committee will have a role of first advising the minister on inter agency activities aimed at combating trafficking and the implementation of prevention, protection and prosecution. The committee shall advice the minister on formulation of integrated programs, coordination of policies and programs, coordination of the dissemination on the law,

formulation of local and international reintegration programs, progress monitoring and evaluation, consultancy and advocacy, compilation and documentation of data, coordinated and effective response, multi lateral and bilateral cooperation for enhancement of the 3Ps. On victim support, the committee shall advice on education and protective programs, provision of psycho-social support, community based support mechanisms and self help centers; victim screening, public campaigns and lastly provide information on overseas employment.

Certainly this section has included the many of the involved ministries and other relevant bodies such as the civil societies, trade unions and federation of Kenya employers. One suggestion would have been the inclusion of a representative of the trafficked persons; as the saying goes *“no one knows the pain of the shoe apart from the shoe wearer.”*

National Assistance Trust Fund for Victims of Trafficking in Persons

The Bill establishes a National Assistance Trust Fund for TIP victims. The fund shall be used for the assistance of victims of trafficking in persons. Financing of the funding will be through a) income generated by investments made by the Board of Trustees b) proceeds confiscated and forfeited from criminals of TIP and c) donations made for the purposes of the fund. This fund will provide for expenses of human trafficking victims, also the balance of damages and any other purpose the advisory committee recommends.

The Board of Trustees consists of the secretary of the advisory committee who is the PS home affairs, one person with experience in financial management and another person conversant with issues related to TIP. The Board of Trustees shall be appointed by the minister of Gender by notice in the Kenya Gazette.

Miscellaneous Provisions

The Bill once enacted will apply to crimes committed within and out of Kenya with the same intensity. It will however consider acquittals and convictions in countries where the offence was committed and hence not re-penalize the culprit. Non citizens shall be deported immediately after serving their sentences. Government employees who issue travel documents without observing prescribed laws and procedures with the intention of committing TIP will find themselves liable to twenty five years imprisonment or to a fine not less than five million. An

adopter or foster or guardian of a child with an intention to commit a crime shall rescind the adoption and be dealt with in accordance to the provisions of Children Act 2001.

Schedules

The first schedule of the Bill sets the conduct of business and affairs of the advisory committee. This includes appointment, removal from office and the frequency and procedure of meetings. The second schedule provides for consequential amendments which are in relation to some sections of other Acts such as the Penal Code Cap 63 (amends Sec 260, Sec 266 and repeals Sec 264, Sec 265) sexual offences Act 2006 (Sec 13(3)) and Children's Act 2001 (Sec 2(8) and Sec 76(8)).

Moral Reflections

*Pacem in Terris*²⁹ provides that “each man has God's order in his conscience. The conscience will always want to preserve the order. The conscience stands in the scale of perfection... Natural law confers both rights and duties... Right to live (and to take care of others) - duty to preserve life, right for freedom means the duty to seek for truth”. This same teaching has been echoed by *Caritas in Veritate*³⁰ which calls ar social actors to look beyond the law “Jesus bore witness to Charity in Truth and is the driving force behind authentic development of every person and all humanity. Love-caritas- is an extraordinary force which leads people to opt for courageous and generous engagement in the field of J&P. It is a force having its origin in God, eternal love and absolute truth (Jn 14:6). ... Everything has its origin in God's love, is shaped by it and directed towards it. Love is God's greatest gift to humanity, it is his promise and our hope. Charity continues to be misconstrued and emptied of meaning, it is easily dismissed as irrelevant for interpreting and giving directions to moral responsibility. Hence the need to link charity with truth. Truth needs to be sought and expressed within the "economy of charity," but charity needs to be understood and practiced in the light of truth. This is important in a social and cultural context which relativizes truth, often paying little heed to it and showing increasing reluctance to acknowledge its existence.

²⁹ John XXIII (1963) *Pacem in Terris*. Holy See.

³⁰ Benedict XVI (2008) *Caritas In Veritate*. Holy See.

As social actors therefore we are called to go beyond the minimal requirements of the law. There is need to propagate the fact that we see in each person an inherent and inalienable dignity that has its origin in God. If the human being has dignity therefore, he or she should be treated in the same way I would like to be treated. With respect, which is contrary to subjecting another person to sub-human treatment in any way.

Conclusions

In paraphrasing the words of the Kevin Bales and Ron Soodalter in their most popular book the slave next door:

There are certain things we know to be true. We know that slavery is a bad thing, perpetrated by bad people. We also know that slavery not only exists in the world today but flourishes. With approximately twenty seven million people in bondage, it is thought to be the third most profitable criminal enterprise of our time, following only drugs and guns. Infact, more than twice as many people are in bondage today than were taken in Africa during the entire years of the Atlantic slave trade. And we know that slavery is alive And practiced in many forms in places where you would least expect it.³¹

There have been very few convictions on issues of human trafficking in the USA despite there having being a much mature anti trafficking in persons practices. NAPTIP in Nigeria was set in 2003 when the human trafficking laws were passed. It also acknowledges how difficult it is to bring the culprits of human trafficking to book. More so it has been found to be difficult when done in collaboration with other states. The onus of the stakeholders of this bill will be to educate the society and to promote preventive activities against TIP.

Adam Smith two centuries ago playfully wrote "it is not from the benevolence of the butcher that we expect our dinner, but from his regard to his own self interest. ... Referring to the motivations as to the enterprise spirit he wrote that man intends his only own gain ... and is led by an invisible hand to promote an end which was no part of his own intentions. Somehow

³¹ Kevin Bales and Ron Soodalter (2009), *The Slave next door*, USA. University of California Press. P3 where a comparison is made between the old slavery and now. It must however be noted that if the figures of cross Atlantic Slave Trade were extrapolated to today, they would be enormous than the years slave trade occurred.

Adam Smith's selfishness postulates were reinforced by Richard Dawkins' *Selfish Gene* which was criticized as meant to justify abhorrent and nasty self serving human actions by appealing to our biological makeup.

John Rawls (1999) argues that each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. Therefore in a just society the rights secured by justice are not subject to political bargaining or to the calculus of social interests³². Mark Hauser (2006) provides that Rawls' *veil of ignorance* must be the dominant guiding principle in the dispensing of justice. The veil covers up personal biases arising from our innate perceptions. Our self serving biases are morally irrelevant and distort our capacity to articulate the principles of justice from an impartial perspective.

One important example in this would be seeing a child as a child and applying the same rule to all children. This does not exclude the fact that the child is mine or belonging to another. The veil therefore removes all personal biases that do cloud our judgment. Hence, if I am not likely to subject my own child or my own sister to human trafficking situations.. I would apply this rule universally.

Our moral instincts are immune to the explicitly articulated commandments handed down by religions and governments³³. Sometimes our moral intuitions will converge with those that culture spells out, and sometimes they will diverge. Legal policies often ignore to cover up essential psychological and cultural issues such as traditional practices and behaviors generally accepted as moral in our communities but when tested under the litmus of the legal framework would be seen as illegal e.g. early marriages of girl children, giving away of under age girl-children for domestic work, denying women of their right to inherit because of cultural reasons etc. There will always be a great dilemma in our societies today on how we treat morality, legality and culture.

³² John Rawls (1999 Eds), *A theory of Justice*. USA. Harvard University Press.

³³ Marc D. Hauser (2006), *Moral Minds: The Nature of Rights and Wrongs*. USA. Harper Collins Publishers.

Analysis of the 2008 Anti Trafficking in Persons Law in Tanzania in the Light of Morality, Legality and Culture

Introduction

Enough efforts have gone to develop the Tanzanian Anti Trafficking in Persons Act 2008. By April 2008 the Bill had gone through the third reading . It was given the presidential assent in 2008 August. Before the eventual development of this bill, it was extremely difficult to bring criminals to book for the offense of human trafficking. By 2009, while waiting to operationalize the bill, some of the offenses that could have well be considered as human trafficking were still tried under the offense of illegal immigration. Using illegal immigration as a charge meant that some of the people charged might have been victims of human trafficking. It is rare that a perpetrator of human trafficking would fall in the category of illegal immigrant as most of them have good connections with the immigration officers both in their home countries and the foreign countries. In any case, they would also not have any problems with documentation.

Human trafficking as an offense before the enactment of the Tanzanian Anti Trafficking in Persons Act 2008 was barely referred by other laws of Tanzania. The enactment of this law has hence introduced human trafficking to several other laws such as The immigration Act, The Police Force Act, Criminal Procedures Act, The Penal Code and the Anti-Money Laundering Act. Reference to trafficking by criminal procedures Act is made under chapter XVII on nuisances and offenses against health and convenience section 175 where a police officer is empowered to arrest a person suspected of trafficking in obscene publications. Once such a person is successfully convicted, he may be imprisoned for two years. The other reference to trafficking by criminal procedures Act is in section 5a(ii) which criminalizes drug trafficking. The penal code did not have the word “trafficking” in it.

The sexual offenses Act of 1998 had a much more detailed on human trafficking under section 139a(i). It defined human trafficking as buying, selling or bartering of any person; promotion of trading in people; any act promoting or assisting the trade in people; getting consent to adopt unborn child from a pregnant mother; recruiting people for purposes of trafficking; and procuring children from hospitals, shelters of houses of care and protection and lastly impersonating oneself as a parent. The act provided a minimum sentence of 20 to a maximum of 30 years imprisonment. The fine imposed was Tshs. 100,000.

The enactment of the anti-trafficking in persons Act 2008 therefore is a great leap towards protecting the poor and the vulnerable. The preamble sees the enactment of the law as a positive step towards valuing the dignity of every human person and guaranteeing the respect of individual rights. It is hoped that the law will lead to the development of programs that will promote human dignity, protect people from threat of violence and exploitation, eliminate human trafficking and lead to development of assistance measures to trafficked victims.

The offense of Human Trafficking

The law divides the offence of human trafficking into three viz; acts of trafficking in persons; acts that promote or facilitate trafficking in persons, severe trafficking in persons; trafficking in persons by intermediary; and lastly use of trafficked persons.

A person commits an offense in human trafficking if he recruits, transports, harbours, provides or receives a person for purposes of human trafficking. This may include marriage; sex tourism and exploitation; trafficking of a child under the false pretexts of adoption or guardianship. The consent of the victim is immaterial as a defense in court. The culprit is liable to between two and ten years imprisonment or a fine of a hundred million Tanzanian shillings.

Acts that promote trafficking in persons include offering one's premises for human trafficking purposes; faking or issuance of government documents for purposes of promoting trafficking in persons; promoting in any way propaganda advancing human trafficking; obtaining government documents for purposes of trafficking in persons; facilitating entry and exit or preventing exit for purposes of promoting trafficking in persons : and benefiting from proceeds of human trafficking. The penalty for acts that promote trafficking in persons is two million to fifty million shillings fine and one to seven years imprisonment.

Acts promoting severe trafficking in persons include circumstances where a child has been trafficked under the pretext of adoption or otherwise for exploitative purposes; the offense is committed by a syndicate (2 or more); the offender has a kin or a power relationship with the victim; the offender is a military; or the victim suffers life threatening conditions. The penalty for severe acts of trafficking include a fine imposition of five million to one hundred and fifty million shillings and imprisonment ten to twenty years.

A person who acts as an intermediary for purpose of trafficking commits an offence. The intermediary submits to take a person; gives consent; receives at any place; enters into oral or written agreement for purposes of trafficking in persons. Intermediary acts for purpose of trafficking attract a fine of four million to one hundred and fifty million Tanzanian and imprisonment of seven to fifteen years. Lastly is the person who makes use of the trafficked person for purposes of trafficking. The fine for using trafficked people is between one to thirty million Tanzanian shillings and imprisonment is between one to seven years.

Investigations and Judicial Proceedings

The law provides the right to confidentiality to the victim and the accused and the courts after considering all the circumstances may grant that the proceedings be held in camera. The personal particulars of the victim will not be disclosed to the public and no transmission of this information is permitted by any means whether electronic or print. This section further provides mechanisms of reporting a trafficking crime, the role of the police in assisting the victim, investigating the crime and finally arresting the accused. Lastly it empowers the courts to impose severe penalties for subsequent

convictions and provides compensation to the victim emanating from the proceeds of the crime by the accused.

Rescue, Rehabilitation, Protection and Assistance to Victims

The public officers in security services are responsible for the rescue and rehabilitation of the trafficked person. Social welfare officers are responsible for psycho social assistance. Special provision is made in respect to children and the disabled. Support to victims shall not be conditioned upon willingness to bring the perpetrators to book. Services to victims shall be dependent on resource availability and do include interpretation, legal counsel, safe housing, psycho-social, repatriation etc. The government through its social welfare programme is empowered by the act to establish programmes for prevention, protection and rehabilitation of trafficked persons. These programmes will be established in collaboration with various ministries such as foreign affairs, social welfare, labour and employment and lastly legal affairs ministry.

The anti trafficking Fund and anti trafficking Committee

The Act establishes an anti-trafficking fund which includes appropriations by the parliament; voluntary contributions from individuals, NGOs and private sector; grants from bi lateral and multi-lateral organizations; monies and property that may become payable or vested in the fund; and all other sums that may be disbursed for the fund. The funds shall be applied to support material needs of victims; training of victims; family tracing; and any matters concerned with rehabilitation and reintegration of victims in persons to countries of origin.

The Act also establishes an anti trafficking committee which will be responsible for defining, promoting and coordinating the policy of the government for prevention and control of trafficking in persons. The secretariat of this committee shall be supported by nine people appointed by the minister of social welfare. Representatives of the committee will comprise of ministries of social welfare in Mainland and Zanzibar, women and children in Mainland and Zanzibar, AG's chamber lawyer, local government, foreign affairs, labour police force or other security services such as immigration, Tanzania Intelligence security Services and the Refugee services, representative of NGOs in Mainland and Zanzibar, representative commission for Human Rights and Good Governance; two representatives from other civil organizations appointed by the minister.

The Child Trafficking Challenge

Trafficking in human beings and, more specially, trafficking in children is a highly emotional issue on the international agenda for more time immemorial now³⁴. The trafficking of children is a serious human rights violation.

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 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 'labor', 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 especially, providing sexual services to adult combatants³⁵.

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

³⁴ Consolationtanzania.wordpress.com has uploaded video clips from the media showing disappearance of girls in a particular village. In another video clip a little Tanzanian boy is rescued from her kidnappers in Uganda.

³⁵ Ochanda R. M, Akinyi V. and Mungai M. N (2009) *Human Trafficking and Commercial Sexual Exploitation of Women and Children in East Africa*. Nairobi. Karosip Enterprises.

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, the registration and monitoring of recruitment and adoption agencies is important in preventing the trafficking of children and babies.

Child trafficking will be discussed in the light of Kenyan and Tanzanian laws:

- _ Definitions and approaches to child trafficking – Defining 'child', child trafficking and the differences between trafficking, migration and people smuggling and ways of analyzing and acting against child trafficking;
- _ Key concepts and risk and vulnerability – Important concepts that are at the heart of understanding child trafficking and in particular what puts children at risk;
- _ How child trafficking works – Looking at the different stages in what is sometimes called the 'trafficking chain';
- _ The people involved – Not only traffickers but those who cooperate or facilitate their actions;
- _ The scope and impact of child trafficking – The numbers involved and the impact trafficking has at different levels;

Who is a Child?

According to the United Nations Convention on the Rights of the Child (1989), "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier."

According to the ILO Worst Forms of Child Labor Convention, 1999 (No.182), "the term child shall apply to all persons under the age of 18"; According to the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (known as the Palermo Protocol), "child shall mean any person under eighteen years of age".

The Children Act of Kenya Act 2001 defines a child as any human being under the age of eighteen years. It defines child abuse to include physical, sexual, psychological and mental injury. The child of tender years means a child under the age of ten years³⁶.

The law of the child in Tanzania defines a child as a person below the age of eighteen. Marriage to girls however is permitted under this law at the age of 15. There is need therefore for the Civil society to lobby that the girl children be not exposed to marriage at the age of 15 as this denies them of their childhood³⁷.

Trafficking of Children

According to the Kenya Anti Trafficking Bill 2010 adopting; fostering or offering a child for fostering; guardianship or offering a child for guardianship for purposes of trafficking in persons commits a crime of child trafficking³⁸.

The Tanzanian Anti trafficking in persons defines child trafficking within the broader spectrum of human trafficking as recruiting, transporting, harboring, providing and receiving a person by any means, including those done under the pretext of domestic or overseas employment, training or apprenticeship, for purposes of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage. A section that seems to refer to the children is the one stipulating; adopting or facilitating the adoption of persons (children) for purposes of prostitution, pornography, sexual exploitation, forced labour and slavery or involuntary servitude or debt bondage³⁹.

³⁶ The Children Act of Kenya Act 2001 (No 8 of 2001); Part I Preliminary under interpretation.

³⁷ The law of the Child Act (2009)

³⁸ The Counter trafficking in persons bill 2010-Kenya. Section 4(1a-c and 2)

³⁹ Anti trafficking in Persons Act Tanzania (2008) Section 4(a and f)

Trafficking vs. Illegal Migration or Smuggling.

It is very important to remember that trafficking is not the same as migration (whether legal or illegal – also called regular or irregular), or people smuggling. Section 3 of the Tanzanian ATIPA provides:

Exploitation in relation to trafficking in persons means people smuggling, prostitution and other forms of sexual exploitation..

In both Kenya and Tanzania facilitating a person to get travel permits under pretexts is a crime. Smuggling falls in this crime. Many people move legally for work, temporarily or on a more permanent basis. If people cannot move legally to find work – for example because a country will not accept workers from elsewhere, or because they do not meet that country's requirements, or maybe just because they do not know how to use legal channels for migration – then they may turn to illegal means. For example, they may obtain fake documents that allow them to enter a country fraudulently, or they may enter with a tourist visa and then not leave the country when the visa expires.

Sometimes they may just enter a country using a route that avoids official border crossings, so that they arrive without any entry papers, thus becoming 'undocumented'. For children especially, legal migration channels might be closed because they are too young to migrate or are not accompanied by family members (leading to the phenomenon known in Europe as 'UAMs', unaccompanied minor). All of these constitute irregular migration. If would-be irregular migrants pay someone to move them into a country clandestinely, then they are considered to be 'smuggled'.

Child Trafficking as a violation of the rights of a child.

All children should be enjoying all the rights under the UN Convention on the Rights of the Child. Trafficking is a serious violation of children's rights, including specifically their rights to be protected from exploitation, to remain with their family, to go to school, to be protected from sexual violence and to have time to play. These rights have been enshrined in the Kenyan Children's act part II⁴⁰.

When children are trafficked, they almost always end up in work that is dangerous to their health, safety and sometimes morals. They are not able to go to school and so lose the opportunity to improve their lives in the future. They are often cut off from their families and at risk of sexual abuse and other forms of violence. Apart from the dangers that a child faces while being trafficked and then being exploited, child trafficking violates many other rights promised to children in international law. In addition to the special rights guaranteed to children, of course, all children should also enjoy all the rights accorded to all human beings. Article 4 of the Universal Declaration of Human Rights (1948) reminds us that "No-one shall be held in slavery or servitude" and Article 1 is clear that "All human beings are born free and equal in dignity and rights". By its very nature, child trafficking threatens these rights.

Child Trafficking in context of labor migration and exploitation.

Child trafficking happens when a child is moved from one place to another – within a country or across a border — into a situation in which they are exploited, and this exploitation can take many different forms. The movement part of the trafficking 'event' accompanied by the action of someone who intends to exploit the child for profit is essential to the difference between child trafficking and migration into child labour. The movement away from home, local community, support and safety mechanisms into an environment where the child is isolated

⁴⁰ Part II of the Children's Act 2001-Kenya sets 22 rights while 23 speaks about the enforcement of these rights.

and manipulated by others greatly increases the child's vulnerability and makes child trafficking a particularly despicable crime and a violation of their rights.

Employment of children robs them of their childhood. In any case they have not reached a majority age and hence cannot be able to effect any contracts because of their minority status.

Trafficking as a criminal act and an issue of national security.

In international law and in most countries' national laws, trafficking is a criminal offence. It disrupts families and communities, earns profits for criminals and criminal networks. 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.

In both Kenya and Tanzania there have been reports that children are trafficked for various purposes, some of which entail them losing their lives. Some of these purposes include the sale of organs, for ritual purposes, work or sexual purposes or other forms of scary exploitation.

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 along the same routes as their human cargo, such as cigarettes, stolen cars or 'dirty' money, 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.

The Culprits Involved: Traffickers and intermediaries

Traffickers are people who contribute to child trafficking with the intent to exploit. They include recruiters, intermediaries, document providers, transporters, corrupt officials, service providers and employers of trafficked children, even though most of these people take part in only one element of the whole trafficking process.

Trafficking intermediaries include, for example, people who specialize in providing information to traffickers about which border crossings are open and when, and who give advice on the best times to move people. Some intermediaries take responsibility for identifying and bribing corrupt border guards or immigration officers. At the place of destination, there may be intermediaries whose job is to keep watch over the trafficked children as perverse guardians, and sometimes bodyguards who are there not so much to protect the children but the investment of the trafficker. Institutional players such as corrupt police, government officers and consular staff may be involved in trafficking, and governments have a responsibility to exercise due diligence in ensuring that all those who work in the various arms of government, no matter how far removed they may seem from the centre of power, are held accountable for their actions.

Private sector organizations also have a responsibility to ensure that their representatives do not facilitate or profit from trafficking. The transport sector is an example of a work sector that needs to be vigilant, as do companies involved in recruitment and work placement (including agencies for temporary employment), and tourism-related industries such as hotels and entertainment. In all sectors, owners and executives need to pay due diligence, also, to the possible involvement of their sub-contractors in trafficking or exploitation of children.

Key Concepts on Child Trafficking

It entails the following:

- the geography of trafficking
 - Supply and demand.
 - Risk and vulnerability.

The geography of child trafficking

If child trafficking were to be drawn as a shape, it would be something that has a beginning, a middle and an end. The beginning would be the place that children come from; the middle would be the journey they take as a trafficking victim, and the end would be the place where they are exploited.

The following terms are used to describe this shape: source, transit and destination.

Source: sending	This is the country, town or village or other source of origin of the trafficked child	
Transit	This is a route or a point on that route which is between the source and the destination	
Destination: receiving	This is the place where the child ends up in exploitation (the child could also be temporarily in exploitation in the place of transit, depending on the circumstances)	

Means

Countries could be source, transit or destination countries or any combination of these and/or may face internal trafficking from for instance rural areas to cities within the country. Sometimes children who have been trafficked are identified and returned to the place they came from. In some cases, sadly, nothing has changed for them in that place and they are likely to fall victim to traffickers again for the same reasons they did the first time. In such cases, trafficking has the shape of a loop as opposed rather than a straight line. However, in practical terms, every separate incident of child trafficking has a beginning, a middle and an end, even if eventually the child is returned to the beginning and effectively starts again.

Supply and demand

A concept borrowed from economic analysis is often used in connection with trafficking: supply and demand. This has been adopted partly because it is relevant to looking at trafficking within the context of labour market realities, but also because the people involved in trafficking – traffickers and victims – are in many ways two sides of an equation. Trafficked people are often called the ‘supply’ side of trafficking. They are a factor of production when their labour is exploited. For example, a rural community with high levels of unemployment may have a ‘supply’ of young people desperate to find work and these adolescents may be recruited by traffickers into exploitation in a nearby city in factories producing clothes. The community impacted by unemployment is effectively ‘supplying’ the children. The people buying the clothes are creating ‘demand’ – although this demand is for the clothes, not the children, and this is an important distinction. The true ‘demand’ for the children comes from the factory operator who is trying to keep prices low and therefore profit margins robust and who is willing to take trafficked children in order to do that. It is also coming from the traffickers, who hope to make money out of trafficking the children. It is important to distinguish between consumer (or primary) demand and derived demand by exploiters, and recognize that they occur at different points of the trafficking chain.

Consumer demand is generated directly by people who actively or passively buy the products or services of trafficked labour, for example the tourist who buys a cheap T-shirt made by a trafficked child in a sweatshop. Research suggests that most of this kind of demand does not directly influence the trafficking — for example, the tourist buying a cheap T-shirt does not specially ask traffickers to exploit children and so cannot be said to be an ‘accomplice’ in the trafficking.

Derived demand is a very different matter because it is generated by the people who stand to make a profit from the trafficking. These might include pimps and brothel owners, the various intermediaries involved in trafficking, corrupt factory owners or farmers who exploit trafficked

labour to keep their costs down, prices low and profits flowing. Understanding the different types of demand is important if appropriate actions are going to be designed and implemented to target the right people in the right way.

Risk and Vulnerability.

Risk and vulnerability at source

When asked why they think some children become victims of trafficking, many people would immediately answer, “because they are poor”. It is true that poverty is an important element at play in explaining why some children are trafficked. However, poverty can mean many things and it is not by itself the answer to the question. Poverty alone cannot explain why some countries have more child trafficking than others; some cities have more worst forms of child labour than others; traffickers are active in some places and not in others; some communities face more child trafficking than others; some families are more at risk of trafficking than others; girls are most at risk in some instances and boys in others. There are many children living in poverty who do not fall victim to trafficking, and understanding the nature of poverty and differences between these children and victims of trafficking is important if we are to know how to protect children at risk.

In fact, poverty is only one of a range of risk factors that create vulnerability to trafficking. Often children experience several risk factors at the same time, and one of them may act as a trigger that sets the trafficking event in motion. This is sometimes called ‘poverty plus’, a situation in which poverty does not by itself lead to a person being trafficked, but where a ‘plus’ factor such as illness combines with poverty to increase vulnerability. The many factors that may come into play in determining the level of vulnerability of a child are often described as ‘individual, family, community or institutional-level risk factors’. There are for example family disruptions that can be considered as vulnerability or ‘plus’ factors: the men in the family going

off to war or being killed in conflict, for example, or one or both parents dying of AIDS and leaving children with no adult support. There are also wider social/economic factors that disrupt family finances, such as drought or floods that leave a rural family with no food stocks and no income. In addition to such natural disasters, there are man-made emergencies, such as conflict, that might drive a family from their home into a refugee camp where recruiters will be active rounding up children whose families have lost everything. Domestic violence has also been shown to be a factor in increasing the vulnerability of children to trafficking. Children who witness or suffer violence in the home may run away and live on the streets, where their vulnerability to exploitation, violence and trafficking is acute. Left to fend for themselves, they become easy prey to traffickers because they have no means of survival. At the level of the community, also, violence can increase risk. Conflict breaks up families and communities and increases the vulnerability of the whole community, but especially the children. Street or gang violence may lead children who feel threatened to seek to leave the community. Other forms of violence – at school, for example — may also trigger the urge to escape and make children easier prey for traffickers. Where communities have a tradition of movement (for example if they live on a border and have always crossed that border to find seasonal work), children's vulnerability to recruitment into trafficking may be increased. Sometimes also the nature of the community is itself a risk factor: for example children from farming families may be at risk of trafficking if they aspire not to work on the land and so leave for the city.

There are also, of course, risk factors that are specific to individual children or groups of children. These include discrimination, disability, involvement in criminal activity or drugs, or belonging to a caste or ethnic minority that is disadvantaged in employment or social services. Some triggers, additionally, can be said to occur at 'institutional' level, that is to say that children and families are vulnerable because of social development gaps such as lack of access to education, discriminatory policies that marginalize some ethnic groups within a country; poor or not used systems of birth registration that make it impossible to keep track of children's welfare; as well as geographical factors such as climate change that devastates the livelihoods of fishing or farming communities. Institutional risk factors also include situations in which

children are separated from their families and find themselves in reunification channels. These generally legal and monitored processes have been known to be infiltrated by those seeking to divert children into exploitation. The responsibility of the state to police mechanisms which see unaccompanied children being transferred from one place to another is paramount in these situations. These 'plus' factors show that vulnerability is not a static state. It changes over time, often as the result of factors that come into play only in certain circumstances and may or may not result in vulnerability.

Most often, however, it is not the extreme situations that underpin trafficking events but an accumulation of the everyday realities of survival. Many families live in poverty partly because the adult members of the household do not have jobs that provide enough money for the family to survive. It may be that there are no jobs in the area where they live, but often it is because the adults are not equipped for the jobs that do exist. This is why getting parents jobs and keeping children in school and then some sort of training is so important – it is the only way to break the cycle of unemployment and poverty that puts whole families at risk.

In many societies, if a child is to be sent to work, it is often the girl who is chosen. Girls are more readily taken out of school (or never sent in the first place) because many parents believe that education is wasted on girls who will one day marry and leave their parents. They think that 'life experience' is more useful and likely to make the girl a better wife and mother. It is not surprising, therefore, that domestic labour constitutes the most common form of child labour for girls under the age of 16. Child domestic labour, in fact, is often the end result of trafficking because, by its nature, it most often involves a child going to live in someone else's home, leaving family behind.

Trafficking into child domestic labour also illustrates another vulnerability factor because, in some countries, children from ethnic minority groups or certain castes are traditionally exploited as domestic servants and may be trafficked into this servitude. Discrimination on the basis of sex, ethnicity, disability or race increases vulnerability to trafficking as well as to other forms of violence and abuse. Age is also a factor in assessing children's risk profile. The younger

the children are, the more easy their vulnerability is exploited. However, as they mature, children are more likely to make choices that may put them at risk – for example getting involved in drugs or petty criminal activity, or wanting to break away from family or just explore the world.

Risk and vulnerability in transit

A number of risk factors are particular to transit places and to the situation of children in transit. 'Transit place' can refer to a country or a town, for example, that children pass through temporarily, or to a specific venue en route between two places, such as a railway station or a bus terminus. Children are particularly at risk in transit places when they are travelling alone, at night, without money, unprepared and uninformed, undocumented or in an irregular situation with regard to the law. They are also at risk because they may not have or know what their final destination is. This may be particularly true if they have used an unregistered agency or agent to organize the travel.

Often, also, trafficked children are moved in transport that is not safe – unlicensed fishing boats, unroadworthy vehicles, or trucks that have been adapted to carry a human cargo, and these may also be considered as 'transit risks'.

Risk and vulnerability at destination

Risk and vulnerability to trafficking also occurs at destination. Children separated from their families may run out of money or may lose their identity papers, for example, or an intermediary may make children more dependent by introducing them to drugs so that they become addicted. Such risk factors at destination also make children vulnerable to being lured into exploitation.

An absence of workplace inspection or policing is also a risk factor, even though it does not relate to the individual child. Any policies or programmes – or lack of them – that allow exploitative workplaces and practices to flourish, increase the likelihood of exploitation and/or trafficking for both adults and children. These factors are often described as ‘workplace risk factors’. It is vital to understand risk and vulnerability, and to put in place processes to identify it and keep track of it, so that programmes to prevent trafficking and protect children can be targeted first at the children who are most at risk. Broad protection and prevention programmes that contribute towards building a protective environment in which risk is reduced for all children are, of course, the ultimate goal of anti-trafficking programming. However, where resources or other limitations dictate phased programming, then it is important to act promptly in those areas where children’s risk to trafficking is identified as being particularly high. If risk factors are not addressed, then children who are returned after having been trafficked will find themselves in the same at-risk situation and are vulnerable to being trafficked again.

The Impact Of Child Trafficking

Child trafficking has a significant negative impact, first and foremost on the trafficked children and their families, but also on their communities and on the nation as a whole. A thorough understanding of the human and economic costs should provide the arguments for the allocation of sufficient government resources to address child trafficking effectively, and to mobilize all those who can make a difference.

Impact on the trafficked children and their families.

Trafficking has devastating consequences for those who fall victim to it, but it is especially damaging for children because its impact will last into the child’s future. In the worst cases, trafficking and the exploitation it involves can cause a child’s death, serious illness or

permanent injury. The journey might be treacherous; the conditions of work are often dangerous; the standard of living provided by traffickers is invariably substandard. Trafficked children may be denied access to doctors and health workers who could report their situation to the authorities. Often children who fall ill are simply turned out onto the streets by their exploiters and left to fend for themselves or in some cases may suffer a worse fate. Trafficked children are subjected to violence of many kinds. They may be beaten or burned to keep them obedient. The threat of such physical violence is in itself a form of psychological violence. Often, trafficked children are badly fed or even starved, again to make sure that they do as they are told. Girls are at risk of sexual abuse, although boys may also face sexual violence. Depending on the type of labour they will have to undertake, the children will face different health repercussions: agricultural work, for example, may expose them to toxic chemicals. Factory work may include operating machinery that is beyond their capacity. Commercial sex work carries its own particular risks, including unprotected sex that results in STD (including HIV) infection, unwanted pregnancy or reproductive illnesses. Many trafficked children are exposed to substance abuse. They may be given drugs to keep them quiet and exploitable or to ensure that they become dependent on their supplier and therefore less likely to try to run away.

Being in a trafficking situation also has severe psychological risks for children: they are separated from family, friends and community. They may be totally isolated by fear, including fear of threats against their families. Trafficked children often end up in a vicious cycle of desperation, trafficking, exploitation, dependence and re-trafficking. For these many reasons, children who have become victims of trafficking may lose all sense of hope and plunge into depression, leading them to do harm to themselves or even attempt suicide.

The impact on families is severe. While many families may believe that sending or allowing their child to relocate to find work will bring benefits, in reality many families never see the trafficked child again. Many more never receive any of the promised income.

Impact of child trafficking on communities.

The social impacts of child trafficking are similarly wide-ranging and long-lasting. The impact on the family of losing a child to traffickers can be long-term, especially if the family was enthusiastic about the child's leaving to find work. Conversely, if the child does send some money home or even returns to the community, this might be an incentive to other families to send their children into a trafficking situation so that a whole community can be 'corrupted' by trafficking. There is also a severe impact on the community, as well as on the child and her/his family, when the trafficked child's education is cut short. This has both a social and an economic impact. The child's future is less assured because s/he will not have the skills required to earn a living or progress in life. Girls may find their marriage prospects are diminished, especially if they are known— or thought — to have been victims of sexual exploitation. Social development efforts are undermined and the cycle of poverty continues, putting younger generations at risk of trafficking too.

Impact on a country's social development.

At a national level, economic development is stymied both by the lack of educational development and also because potentially productive future workers are lost to the economy. Children and adults who return from trafficking with injuries or diseases also put a financial burden on their families and on the country, not least because the young and middle-aged people who are trafficking's most likely victims are unable to work and support the older people who depend on them. There are important long-term — but vitally necessary — costs involved in the rehabilitation of trafficked children (as well as adults) and costs involved in making sure they can rebuild their lives and prepare a safer future.

It is clear that government efforts to combat child trafficking can not only result in improved protection of children's rights but are an important contribution to social development broadly defined. There is consequently a strong imperative for mainstreaming anti-child trafficking

policies and programmes in national development efforts, coordinating such policies and programmes across all relevant government departments, and allocating sufficient resources to tackle this problem.

Tackling the problem

No one government, organization or even network can take on all of these tasks. The secret to effective anti-trafficking activity is mobilizing a range of relevant partners (governments, international organizations, NGOs, FBOs, Grassroots organizations, academic institutions etc.) who can all bring their specific expertise and experience to bear on the problem, and this in a coordinated way that minimizes repetition and overlap and maximizes strengths and resources. This is often called a 'multi-sectoral' or 'multi-disciplinary' approach.

Typically, the national actors who will participate in coordinated action include government, law enforcement, judiciary, employers' and workers' organizations, NGOs, other civil society actors and in some instances funding bodies or the media. Coordination may transcend national entities and borders.

The NGO Role in Promoting Initiatives to Counter Trafficking in Persons

Introduction

NGO's were criticized in the 1990s on two grounds: a) Not representing the poor and the marginalized well and b) They were seen as fatally flawed institutions because of some of its failures during 1980's. Now NGOs face enough challenges as they confront the future. A great dimension traversing all the challenges is attributed to the changing nature of human suffering. Hence their relevance needs to be analyzed thoroughly within specificities of contexts and time. There is a general belief that NGO's are inherently incapable of achieving the lofty aims they have set themselves. On the other hand, it must be acknowledged however that NGO's generally do good work at all levels. There are some however that are ineffective, fraudulent or otherwise function poorly. These bad NGOs are not a big representation of the sector. Many NGO's contain staff who are committed to a vision of ending poverty and of ensuring a just and equitable world in which economic growth, technological innovation, advances in health etc are spread equally and according to need. The NGO staff are not naive enthusiasts assuming that with only their efforts poverty and suffering in the world would end. They need to promote collaboration at all fronts.

Events in the operational contexts have shaped the work of the NGOs. Within the operational contexts constraints as well as enabling factors do emerge. Hence while trying to minimize the constraints made of economic, legal, cultural and social-political NGOs have become great organizations capable of influencing policy nationally and internationally. On the negative NGO's have acted to advance the negative power of the state and authoritarian rule. They became the surrogates of the state against the will of the general populace⁴¹. They did this without questioning or evaluating their actions. NGO's have also achieved an unparalleled level

⁴¹ Jennings Michael (2008) Surrogates of the state: NGOs Development and Ujamaa in Tanzania. USA. Kumarian Press. Michael Jennings in this book shows how both the local and international NGOs including the faith based organizations became part of the state machine forcing the general population to adopt an unpopular development approach.

of power and strength of voice over 2000's. They have put pressure on the G8 leaders, World Bank, World Trade Organizations, many national and international institutions and the national governments on various issues touching global human welfare. They have lobbied governments to adopt measures to protect the environment and tackle global warming; end trade imbalances and inequity in the world markets; opposed wars and promoted peace; and advocated for imposition of greater regulations on multi national organizations. Today the NGO sector sits alongside representative governments at national and international levels not as a privileged but as a right.

NGO Recognition

NGO's were first recognized after the UN article 71 in 1950's called upon UN Economic and Social Council (ECOSOC) to recognize the existence of NGO's which were challenging the nation-states on various issues. Some opposed wars or particular actions of the state or advocated for some specific changes that were necessary for their communities. Over the years NGOs have managed to amass vast resources. Their power, scale and capacity has grown tremendously over successive decades. Hence NGO's in the west are seen in the light of two fronts a) As charity and run by apolitical non professionals (a world of collection boxes, raffles and collection boxes) and b) Predecessors of the anti-globalization movement. They are hence radical political activists challenging the negative power of the state and the market. In developing countries such as Kenya and Tanzania NGOs work to reduce human suffering, advocating for the poor and ensuring redistributive justice. By criticizing the global and national policies NGOs are not undermining the national and global structures in any way but ensuring that these policies became bearable for the poorest.

The onset of structural adjustment programmes, global free market and rising dominance of WB, IMF and WTO however had a great influence in orientating NGOs from their traditional roles. They became subsumed into development discourse and became subservient to the interests of the development industry acting as agents of Northern donors and could thus no longer continue their radical agendas for change. NGOs hence became the favored children of

donors instead of advocates for the marginalized. They gained unparalleled access to the corridors and back rooms of power and became complicit insiders.

In understanding the evolution of NGO's it is important to acknowledge that there are various factors that have affected them since the beginning. These raise questions about them: the nature of the NGO, its organization, influences on the NGO, and lastly constraints and opportunities.

Africa and NGOs

African Government and local NGO's on the one hand learnt the art of proposal writing in accordance to the needs of the funding agencies and not so much what the needs of their communities were. On the other hand, they learnt the art of pleasing the donor and would not speak what they really felt was driven by people's needs. The International NGO sector hence became an important development industry in the post colonial Africa commanding vast resources.

International NGOs on the other hand continue investing large sums of money in the developing worlds but unfortunately they may be working with non vision driven people who do not understand what going beyond the minimal requirements really means. It is difficult to record accurately the total number of NGOs that are in existence today. Most figures rely on officially registered organizations leaving out a large number of the unofficial. Africa has a large cluster of informal organizations that have so much impact at the grassroots village levels. Though the resources of these organizations are scarce, they do contribute in a big way to promote the common good.

Defining NGOs

The NGO's are a massive array of self governing private organizations not dedicated to distributing profits to shareholders or directors pursuing public purposes outside the formal apparatus of the state. The proliferation of these groups may be permanently altering the relationship between state and citizens with an impact extending far beyond the material service they provide. Hence NGOs form a part of associational revolution: the number of organizations, size of resources they command and impact on raising global perceptions and knowledge on poverty and development issues are considerable.

UN charter Article 71 provided that the ECOSOC may make suitable arrangements for consultation with NGOs which are concerned with matters within its competence. Hence Article 71 made no attempt to define the NGOs. In 1968 an ECOSOC resolution defined the NGO as governmental agreement, that pursued economic and social objectives that matched those of the UN charter and that functioned with an international representative structure. This definition failed to capture the range and variety of organizational structures characterizing the emerging NGO community then. It stressed the international perspective hence leaving quite a number operating within the boundaries of the nations.

In 1996 following a three year consultative process, ECOSOC resolution 1996/31 sought to define NGO more definitively taking into account the full diversity of the non governmental organizations national, regional and international, while encouraging greater participation of NGOs from developing countries. The resolution set some minimal qualifications: An NGO requires an established headquarters, an executive officer and an executive organ that is responsible to a policy making body. It should function according to a democratically adopted constitution, with a representative structure, accountable to its members. It is separate from the state, not established by governmental or intergovernmental agreement (government appointed individuals are permitted to be members of the NGO. Resolution 1996/31 was not

intended to be a definitive description of an NGO but a means for accrediting certain organizations to the ECOSOC.

However most definitions focus on three elements: a) the private (non-state) character of the organization; b) non profit seeking nature; and c) reliance on a degree of voluntarism at its heart. These are principles mainly describing the charitable institutions in the UK. On the other hand The Commonwealth Foundation define NGOs according to four criteria: voluntary, independent, non profit making and not self serving.

Mushi⁴² defines an NGO as a NPO established and governed by a group of private citizens operating outside direct state control," working toward the relief of poverty or human suffering and promotion of the social and economic development of communities. NGOs have also been defined as private, non profit, professional organizations with a distinct legal character concerned with public welfare goals⁴³. The social objectives pursued by an NGO should be geared towards improving the lives of the disadvantaged people⁴⁴.

Salamon and Anheier⁴⁵ have provided seven key characteristics: i. formal meaning that they have an institutional character ii. private meaning that they are separate from the government iii. not profit sharing i.e. profits are invested for the good of the society iv. self governing: own governance structure v. voluntary i.e. depending on a degree of voluntary effort on part of individuals vi. Non-religious in character and vii. non political. Their analysis is somehow constrictive as Faith Based Organizations play a major role in development. On the other hand

⁴² E.N. Mushi (1996) Consultancy of Legal, Regulatory and Institutional Aspects of NGO Operations, UNDP/ILO Study on NGO Policy.

⁴³ Clarke Gerald (1998) *The politics of NGOs in South East Asia: Participation and Protest in the Philippines*. London: Routledge. 2-3

⁴⁴ Vakil A. C (1997): The Classification Problem: Towards a Taxonomy of NGOs, *World Development* 12

⁴⁵ Salamon L. M. and Anheier H. K (1995), *The emerging non profit sector: An overview*. Manchester. Manchester University Press

it is increasingly difficult to maintain that NGOs are non political given their work in advocacy etc. It is hence important that NGOs understand themselves as political organizations.

One defining characteristic of NGOs has been the extent of voluntarism: How much is voluntarism part of their classification? 1980s NGOs have become more formalized with little voluntarism. The rise of professional qualifications in international development has led to replacement of the enthusiastic amateur with professional development workers in the North. In the south it is questionable whether this voluntary principle has ever been an adequate defining characteristic of NGO's.

The NGO is hence a private self governing organization with a distinct legal character. It is not profit making, in that any income generated from its activities is channeled back into the primary activities of that organization and it is working toward the relief of poverty or similar public welfare objectives through humanitarian activity⁴⁶. The international NGOs are understood in three fronds i. delivery of aid, ii. provision of services and iii. advocacy activities. The role of indigenous organization is seen in the light of ii and iii with an additional aspect of community organization and mobilization for resources or for any purposes.

Scholars decry the non-contemporary nature in the study of NGO's⁴⁷. This non-contemporary nature of the literature on NGOs is blamed on the sector's orientation to development whose focus is now and the future. It rarely looks at the past and this has contributed to the lack of institutional memory with a consequence of repetition of past failures under new guises as previous initiatives are repackaged and recycled, often unknowingly. The sector emerged from coming together of two forces: philanthropic and charitable endeavors on one hand and on the other international development. It is important that continuous assessments of the merging of these two forces is taken into account on a continuous basis so as to better the NGO practice.

⁴⁶ Jennings Michael (2008) Surrogates of the state: NGOs Development and Ujamaa in Tanzania. USA. Kumarian Press.

⁴⁷ Ibid

The Modern Face of Charity

NGO's are the modern face of charity. The charitable impulse stretches back through human history. Among some of the global cultures, ingrained into the essence of natural nobility was generosity towards others. In ancient Egypt the concern for the poor was deeply ingrained into the cultural discourse. The inscription on one of the sixth dynasty rulers at Saqqara reads

"I rescued the weak from one stronger than he as much as was in my power. I gave bread to the hungry, clothes to the naked, I brought the boatless to land. I buried him who had no son, I made a boat for him who lacked one."

Other tombs were inscribed with maxims on the virtues of generosity; *"be courageous as long as you live, what leaves the storehouse does not return; it is the food to be shared which is coveted. The Hammurabi code also asserted the need to "give justice to the orphaned girl and to the widow."*

The limited scope of the colonial state left Africans with an increasing number of unmet needs, especially as modernization under colonial rule changed their habits and their expectations. Many African associations were therefore formed to meet needs that the colonial state either explicitly ignored or to which it paid scant attention⁴⁸.

Most care for the poor in Africa across the centuries was not however vested in the formal institutions of the state, voluntary associations or religious institutions, but in the informal rural networks that existed across the continent. These networks, built on notions of trust and mutual obligation, provided entitlements not only to daily subsistence but also to assistance in times of stress. This was referred to as the economy of affection⁴⁹ characterized by the mode of existence outside the formal capitalistic system. It provided a safety net for the poor and also served a development role by transferring surpluses from the formal to the informal sector.

⁴⁸ Hyden G, (1995) Bringing Voluntarism Back In: Eastern Africa in Comparative Perspective: In Semboja J. and Therkildsen O., *Service Provision Under Stress in East Africa: The State, NGOs and People's Organizations in Kenya, Tanzania and Uganda* London. James Currey

⁴⁹ Ibid

Even as formal institutional structures have expanded their responsibility, the role the economy of affection plays in providing for those in need remains powerful.

Hyden (1995) argued the economy of affection proved itself more important as a mechanism for basic survival than where endless flows of refugees overwhelm a country. He observed that while it most refugees ended up in camps and settlements and were handled by formal structures of governments or voluntary agencies, the number of spontaneous settled refugees was high throughout Africa. Independent of the institutions of international charity and provisions for the poor, then there is a charitable impulse across Africa. The care for the displaced, the dispossessed, the marginalized, the needy, resides today as it always has within Africa itself. The formal and informal networks of care have been the main source of sustenance and subsistence for the poor in Africa; more hidden, perhaps than the world of the NGO and formal development, but no less significant or important for that.

Charity in Africa, then, has had a long and complex history. By the mid twentieth century African welfare consisted of a myriad of differing institutions, systems and standards, a mosaic of efforts with control and funds scattered wide⁵⁰. Each of the European colonial powers had introduced its own welfare system, but the limited spread of those systems reaching no more than a small percentage of the population left the formal and the semi formal African and European networks fragmented. This complex system of relief and care undoubtedly let many fall through the gaps. For those missed by this patchwork of institutions and associations, reliance on family, kin and ethnic linkages and networks was the first and last resort, the only source of assistance and support.

⁵⁰ Mbiti P and Rasmusson R (1977) , Self Reliance in Kenya, the Case of Harambee. Sweden. Bohuslaningens AB, Uddevalla

The Role of the NGO

The NGO sector has been called the new missionary organization. This designation only partially reflects global shifts in responsibilities for non state public welfare. The NGO by its existence has a conflictual relationship with the state. Its existence does not reflect a fully functioning social order but rather the result of the failure of market and state adequately to meet the needs of the poor and the vulnerable⁵¹. Europe was characterized by a rise in welfare states after 1945. The welfare state primary postulate was the principle that the state was ultimately responsible for the welfare of its citizens⁵². Hence the NGO discourse does not exist to replace or complement governments in their relief and development activities but rather to take action when the state has failed to do so.

1992 World Bank WDR presented a new role to the NGOs as promoters and protectors of civil society. The civil society became regarded as critical to effective development: vital for holding governments to account; ensuring the maintenance of functioning democracies; protecting human rights and articulating the needs of the poorest. NGO's were also set up in opposition to the state and expected by donors to criticize states that were performing poorly or failing to address the needs of the poorest.

Criticisms of NGOs

There have been many criticisms of the NGOs. According to Bebbinton (2005) the critical view of NGOs as sources of development alternatives has made it clearer clearer that NGOs were actually not that good at promoting participation, addressing poverty, understanding the needs of the poor or therefore doing much that was especially alternative⁵³. Other criticism to NGO's include the fact that their work is contributing marginally to poverty relief, the approach has

⁵¹ Jennings Michael (2008) Surrogates of the state: NGOs Development and Ujamaa in Tanzania. USA. Kumarian

⁵² Jennings M (2002 Eds) Introduction: In Barrow O and Jennings M., *The charitable Impulse: NGOs and Development in East and North East Africa*. Oxford: James Currey, 4-8

⁵³ Anthony Bebbington (2005); Donor-NGO relations and Representations of Livelihood on Non Governmental Aid Chains, *World Development* 3, No 6

always been criticized at being ambulatory in nature as opposed to being a strategic approach and lastly representing elitist interests and insensitive to the real interests of the poor and dispossessed

The Political Nature of the NGO

The NGO is a political body and cannot delineate it self from its political mandate. Its contribution in development is hence largely political and not economic⁵⁴. Development is seen as a process of allocation and reallocation of resources amongst different groups. Politics on the other hand consists of decisions over the allocation of resources and the struggle among groups to appropriate and re-appropriate these resources (88); and the creation of social meaning and identity through ideology, cultural relations and social groupings. NGOs hence seek to influence resource allocation and participate in creating social groupings coalescing around particular social meaning and identities. The NGO henceforth is not political by accident or chance but by design.

NGOs help in de-politicizing politics. One of the instrumental effects of development is the expansion of state power and control. The purpose of de-politicizing does in fact advance the development process for the betterment of humanity. Hence today therefore more than ever the NGO sector matters. Important however is the fact that the nature of NGO action should not be seen in the palliative form but preventive.

⁵⁴ Bratton M. (1989) The Politics of Government-NGO Relations in Africa, *World Development* 17, No 4: 569-87

The contributions Self Helps and Grassroots Harambee groups in Countering Trafficking in Persons.

Introduction

The evolution of the Self Help initiatives can be traced long before the onset of colonialism in Kenya. During this time the Kenyan culture and traditional practices within various ethnicities demonstrated that cooperation and self help was already being practiced within the various communities⁵⁵. This practice was either in the form of household work parties⁵⁶, communal work or contribution towards both individual and communal causes that required attention. Various authors were able to find different names from various ethnic groups in Kenya referring to the self help and cooperation activities.

The colonial Influence

The influences of the colonial government did much to help in strengthening the self help idea amongst the Kenyans. The main way that self help was propagated was in the form of community development work that was carried out by the Social Welfare Organization established in 1946 as a section of the administration and was headed by the Commissioner for Community Development from 1950 to 1961. In 1954 the Social Welfare Organization became one of the departments of the newly created Ministry of Community Development and remained in this ministry until 1963.

In 1925, the colonial government established the Jeans School in Kabete for training of village guides. In 1946 the Jeans school started playing a key role in the training of Social Welfare Workers (SWWs) who later became known as Community Development Assistants (CDAs). In the beginning social welfare work was concentrated around social (community) welfare centers or halls mainly during 1946 to 1952. The centers were aimed at uplifting the economic and social well being of communities through informal education, social and recreational activities. The centers also served as meeting places for local people and their associations. They were

⁵⁵ Ouma, S. J. (1987), Development of Kenya through Cooperatives. Nairobi. Shirikon Management and Book Marketing Services.

⁵⁶ Smith D.

managed by Community Development Assistants (CDAs) with the help of District Officers for Community Development (DOs-CD).

Major social welfare work began after the Second World War. Immediately after the war, Family Remittance Officers who later became known as Civil Reabsorption Officers (CROs) had been appointed to a few districts with a specific mandate of ensuring the welfare of veteran soldiers. In 1949, CROs were re-appointed as DOs-CD. In 1950 they were re-designated as DO-CDs. Owing to settlers' opposition to the work of DOs-CD, they were compelled to find alternative work. In the same light after the Second World War, the Colonial government encouraged women's self help work amongst the African communities. The self help activities took the form of spinning and weaving at small centers which were established and run by European Women. These centers later grew into District Home Craft Centers or District Training Centers. These centers encouraged African women to form women's club once they get home. In 1950 these clubs were headed by the women section of the Department of Community Development.

The social welfare activities were there after replaced by community betterment work in late 1940's. Later in 1950's the women's clubs too also became involved in community betterment activities too. The betterment work done included fencing of homesteads, digging of pit latrines and improvement of houses. From 1957 with the appointment of Community Development Officers (CDOs), more betterment work was done and included soil conservation, homestead improvement, farm planning, building of cattle sheds, bush clearing, road making, building of separate kitchens and water dams. This work was done by self help groups and continued up to 1963.

As far as policy framework is concerned Phelps Stokes (1922) wrote a report critiquing the education provided to Africans for not providing community based skills. This report became an impetus for enactment of policies in this area by the Colonial governments. Hence in 1925 the Advisory Committee of Education in British Tropical Africa in their Education Policy in British Tropical Africa saw the need for education to emphasize the welfare of the whole community and inculcating in the people ideals of citizenship and service. The committee's memorandum

of 1935 stressed cooperation, initiative and self help among African people in improving the conditions of their communities. In 1944 the committee's report known as Mass education in African society emphasized the need for enhanced cooperation amongst the people in order that democracy may become a positive force in changing lives for the better and championed for mass education to eliminate illiteracy amongst the young and the old members of the community. In 1947 the British Colonial Office developed a paper with a focus on local government in Africa. The summer school of 1948 at Cambridge had concerns on reforms and development of the colonies in preparation for self government. Hence it was generally felt that generation of more programs in the colonies lay in the encouragement of local initiatives. In 1949 at London University Institute of Education for Tropical Areas initiated a clearing house for community development. In 1953, the British colonial territories were receiving the community development bulletin and were carrying out community development activities.

There are many reasons to justify the efforts of the colonial government to encourage community development through self help amongst the African population. At that time there was the cold war which posed about the threat of domination of the world by communism. The USA therefore saw community development as a strategy which could build stable domestic societies and as a result could help check the communist threat. Hence the USA invested in community development propagation in Kenya through the colonial government. In Kenya, development work was concentrated and restricted in the African areas as one of the measures to help reduce tensions between Europeans and Africans. The tensions at the time were brought about by European settlement into large arable areas of the land, forbidding Africans from growing cash crops, restricting the free movement of the Africans and racial discrimination in all walks of life.

Community Development a Planners Model

The community development approach was based on the planners model which was criticized by Mbithi and Ramusson in 1970. First, force was used to induce people to do community work hence it became punitive instead as being seen as a tool to bring about development. Secondly the planning model placed too much trust on hypotheses founded using social scientific

methods and was not tolerant to competing hypotheses. Thirdly, it also developed models that were generalized into creating uniform programs ignoring micro level variations. Fourthly, abstract planning was considered superior and was used to generate self development at the communities. This type of planning was however, highly insensitive to various localized contexts. Lastly, knowledge was presumed to only flow from top down and not the other way round. Hence the trained community development officers were considered knowledgeable in comparison to the community members whom they worked with.

The initial years of independence saw many African countries experiencing some successes, challenges and frustrations in planning and implementing development endeavors. Much of the frustration was based on the inability to achieve broad based development for the rural populations. Many of the governmental programmes, some of them pushed by international donors at that time relied on weak grounds and proved to be irrelevant or even alien to the nature of grassroots developmental effort (Mbiti and Ramusson, 1970). This realization made most countries attempt bottom up approaches to development in order to improve self reliance through the use of indigenous resources and ensuring that the projects were designed to meet local needs.

The Emergence of the Harambee Self Help In Kenya

Grassroots organizations include Harambee or self-help groups and community-based organizations (CBOs) such as neighborhood associations. Self-help groups and CBOs are formally recognized through registration under the Department of Social Services in the Ministry of Gender and Children Affairs. As the largest group in the CSO sector, they are operating primarily at the village and community level. Grassroots organizations exist to advance the interests of their members and the immediate needs of the local communities in which they operate.

Grassroots organizations are founded by individuals. Elected officials of the self-help group may, on a voluntary basis, meet with a local community development assistant or the district officer in charge of social development to formally request registration. There is no minimum

number of founders or members required for registration. There are also no requirements for minimum capital or assets at the time of registration. To be registered, self-help groups are expected to submit an application letter, their constitution (with a clearly defined purpose or project), a list of members, evidence of local resource mobilization and detailed minutes of democratic elections. An application fee of between Ksh 1000 and 2000 is payable when the application forms are accepted. Non-compliance with these requirements can lead to denial of registration.

In practice, the registration process can take up to four weeks because all applications are approved by the district officer in charge of social development. In some cases, applicants may be asked to seek the consent of the local chief and district officer before their application for registration is finalized. The registration process is complete when the group receives a certificate of registration. The law requires self-help groups to renew their certificates every year. This renewal is done by the payment of an annual fee which at present is Kshs. 1000.

The District Social Development Office in every district has regulatory authority over self-help groups and CBOs. The Department of Social Development in the Ministry of Gender has overall regulatory authority and sets the general regulations and criteria for operation. Depending on where a CBO or self-help group operates, it may give notice to the District Officer in charge of social development in its district of its intended dissolution. Generally, Kenyan law provides a conducive framework for CSOs to seek and secure funding. Local resource mobilization through Harambee (public fund-raisers) is recognized, as long as it adheres to the guidelines in the Public Collections Act, which are generally enabling.

The greatest problem with my study is the fact that there is no systematic legislation of the CBOs and a refined treatment in law like with the other community service organizations (CSOs) such as NGOs, Societies etc. It seems that the only place that they are recognized is the sessional paper no 10 of 1965 and in the speeches of Mzee Jomo Kenyatta. With this lacuna, there will always be a lacuna as the poor members of the CBO's cannot be able to defend themselves in the courts of law.

There are no legal instruments in regard to self help Groups and CBos registrations and operation. Hence they are not legal entities but Department of Gender and Social Development registers, We now Have a draft National Community Policy that has made an attempt to give CBOs registration a home-regime.

Contributions of the Grassroots Harambee Self Helps

1. Community Health

From the above data it is evident that the activities bent on promoting health in the community have been given a high priority as follow: HIV/AIDS interventions, religious accompaniment, guidance and counseling, health care, feeding programs, rehabilitation, sports development, drugs awareness, psycho-social support, disability support, sanitation water services, environmental concern, disaster management and CSW support.

The concern showed by the CBO's to promote community health is really positive from the grassroots point of view. **A healthy community includes:** Clean and safe physical environment; Peace, equity and social justice; Adequate access to food, water, shelter, income, safety, work and recreation for all; Adequate access to health care services; Opportunities for learning and skill development; Strong, mutually supportive relationships and networks; Workplaces that is supportive of individual and family well-being; Wide participation of residents in decision-making; Strong local cultural and spiritual heritage; Diverse and vital economy; Protection of the natural environment; Responsible use of resources to ensure long term sustainability.

These CBO's could be used to educate the people of Riruta and Kawangware on importance of proper refuse disposal in order to prevent spread of infections and which will prevent breeding of pests and insects. They could also help the local authority in assisting minimize substance abuse, its availability and ultimate consumption. On the other hand, health education is presently limited at the health centres however there is need for the CBO's to help in encouraging primary prevention methods since prevention is better than cure. Many deliveries occur at homes and hence the CBOs in collaboration with health center could find a way to collaborate in order to expand maternity services.

Water is a big problem in Riruta. The local government can initiate programmes aimed at providing water to community members at an affordable cost to encourage access of it. This can be through digging boreholes or tanker vehicles. CBO's too could be encouraged to venture in this area that would help in reducing the current burden faced by the communities. Lastly in collaboration with the local government, ways could be introduced of proper solid and liquid waste management in order to promote a clean environment⁵⁷. The CBO's being grassroots in nature their initiatives have greater impact in the areas of their operation.

2. Economic Empowerment

Economic and entrepreneurial activities are as follow: business support and economic empowerment, socio-economic welfare, property investment, agri-business, merry go round, sales and marketing, finance mobilization and revolving fund. These economic activities adopt a community needs driven type of enterprise and my hence be rightly referred to as "Social Enterprises." The 1986 Participatory Poverty Assessment (PPA)⁵⁸ report showed that because of the difficulty in accessing government services the poor form indigenous social networks which become the basis for social networking, resource mobilization and reciprocity through labour, assistance and gifts exchanges. The social capital embodied in these social networks binds the poor people together and fuels innovation that springs up in entrepreneurial activities. Hence the PPA made the following important observations about the CBOs:

- The indigenous self help system of Harambee is stressed, and the informal safety nets of the poor are breaking down in the absence of timely support from outside.
- There are a large number of strong indigenous self help groups but they do not reach the poor or are under capitalized and therefore cannot meet the needs of their potential clients.

⁵⁷ Aghakhan University: Community Diagnosis Report on Kawangware and Surrounding areas of Riruta. The recommendations by this report could be of benefit to all organizations working to address matters of community health.

⁵⁸ Social Development Notes (1986) Kenya Participatory Poverty Assessment. Note no 26

In order to survive or minimize risks and survive, the PPA reported that the poor people had diversified their income. The nature of their income generating activities including small subsistence farming, peddling, manual labour, brewing, welding, cobbling and several other micro businesses depending on opportunities available to a locality.

Women's World Banking (2010), ask questions such as "who lost Africa?" And "who will salvage Africa." It however does not provide a direct answer to this question but provides that Africa must solve its problems from its own perspective. It stresses the need to adopt an African driven social enterprise model that addresses all dimensions of poverty⁵⁹. This model could be part of a strategy that accelerates development and business of subsectors and institutions that target the poor people. The problem however is that the CBO's are limited finance wise. Access to finance would be vital to break the vicious cycle of poverty and create tools that will enable households to address all the multiple challenges facing them. Enterprises therefore need to be stimulated amongst the CBO's as these will help them become more independent and increase their capability to meet their social objectives.

3. Community Education and Capacity Building

Community education includes: school education, vocational training, skills development, capacity development, sponsorships, research and dissemination, corruption awareness, civic education, child rights, women empowerment, human rights, peace building, reintegration, legal aid, gender empowerment and maintenance of community libraries.

The concept of capacity development is the center of development discourse⁶⁰. The existing programs of the government and NGO's cannot be felt at all levels and hence a need to focus on the existing grassroots capacities. Equally the capacity development of the CBO's is a big step towards assisting the government and big actors such as the NGO's to accelerate the process of development through the collaboration of the grassroots actors.

⁵⁹ Women's World Banking (2010), Diagnostics to Action: Micro Finance in Africa. The Africa Micro Finance Forum (AMAF)

⁶⁰ Inger Ulleberg (2009), The Role and Impact of NGOs in Capacity Development. Paris. UNESCO

CBO's though acting in a local perspective, do contribute in a localized innovative way towards the development of skills and tools for strengthening the society. This local knowledge could be an important input to the overall education sector and the civil societies organizations sector. The localized capacity building activities are very diverse and have various types of impacts as can be seen in our analysis above. The vibrancy of a grassroots movement in essence strengthens the efforts of the national government. CBO's being in their localities of operation are part and parcel of the community structure, they are the first to respond to any delightful or stress call in their communities much faster and quicker than big actors. CBO's henceforth have the capacity to innovate but are plagued with severe obstacles. They should hence be provided with both a conducive legal structure, resources and be seen as not estranged but collaborators in the process of community capacity building.

4. Community Development

Lastly the role of the CBO's in promoting community development cannot be overemphasized. The activities in this area include: local resource mobilization, youth empowerment, employment creation, performing arts, public transport, networking, social cohesion, culture development, legal aid, infrastructure development and entertainment.

The CBO's being part of the Harambee spirit, have contributed in a great way to community development in Kenya. Accounts of this are given by Mbithi and Rasmusson (1977) who first castigate the macro perspective to development for being based on weak assumptions in terms of knowledge and aspirations and expectations of those who are to be developed. They propose a development strategy that is based on bottom up principles. In our case in Kenya, this becomes the Harambee self help strategy.

Harambee was curved as the true meaning of our African development strategy. Harambee on one hand came to mean public collections which were meant to be used for local development and on the other people's self driven local initiatives to improve their lot. Many problems did

bedevil the Harambee movement prompting the government to institute an investigation⁶¹ which were used to review the public collections Act Cap 106⁶².

⁶¹ Kenya Gazette Vol. CV-No 45 of 17th April 2003.

⁶² Adili (June 2003), News service from Transparency International.