

## **RAPPATOURS' REPORT**

### **SEMINAR ON HUMAN TRAFFICKING AND OTHER INTERNATIONAL ORGANIZED CRIMES**

**ORGANIZED BY CONFERENCE OF WESTERN ATTORNEYS GENERAL (CWAG) USA  
AND THE OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE**

**VENUE: WINDSOR GOLF HOTEL & COUNTRY CLUB, NAIROBI**

**DATE: WEDNESDAY 12<sup>TH</sup> APRIL 2017**

## Contents

Overview .....	2
Key statistics in relation to Kenya .....	2
Human Trafficking and Other International Organized Crimes .....	5
Key objective of the Seminar .....	5
Other objectives .....	5
Welcome and Opening Remarks – 9.15 a.m. ....	6
Question and Answer Session .....	8
Panel 1 – 10.07 a.m. ....	10
Human Trafficking: Causes, Responses and Current Debates .....	10
Question and Answer Session .....	12
Tea break and photo opportunity .....	13
Panel 2 – 11.50 a.m. ....	13
Roles and Responsibilities of Government Agencies in Enforcing Human Trafficking Law .....	13
Question and Answer Session .....	16
Lunch break .....	17
Panel 3 & 4 – 2.50 p.m. ....	18
Human Trafficking Locally and Globally .....	18
Panel 4- 3:50 .....	20
Other Internationally Organized Crimes .....	20
Question and Answer Session .....	22
End of panel discussions .....	22
Closing Remarks – 4.35 p.m. ....	23
Hon. David Kenani Maraga – Chief Justice of the Supreme Court of Kenya .....	23
Summary of achievements as reported in the seminar .....	24
Recommendations proposed at the seminar .....	24
Appendix 1: Conference of Western Attorney General (CWAG) .....	26
Appendix 2: Trafficking in Persons Act .....	26

## Overview

There has been an alarming increase in transnational crimes such as piracy, narcotics, terrorism, smuggling and trade in illicit wildlife trophies and human trafficking.

According to the International Labor Organization, 20.9 million people are victims of human trafficking, 26 per cent of them children and 55 per cent being women and girls.

Africa has particularly been affected by forced labor, sex exploitation and terrorism. Victims are usually those most vulnerable in society, for example, those going through civil strife and economic hardships.

Various reports have described Kenya as a country of origin, transit and destination in human trafficking. Kenya's unique geographical location, stability and infrastructural development make her an especially sought after transition point.

### <sup>1</sup>Key statistics in relation to Kenya

- External trafficking (i.e.) movement of people from Kenya to other nations was the most prevalent form of human trafficking.
- Labour and sex related forms of trafficking were the leading form of trafficking.
- Victims comprised 33 per cent men, 26 per cent women and 41 per cent children.
- Victims were from vulnerable socio-economical backgrounds.

In light of the rampant cases of human trafficking, Kenya acceded to the National Protocol to Prevent, Suppress and Punish trafficking in persons (Palermo Protocol) on 5<sup>th</sup> January 2005.

This protocol supplements the United Nations Convention against Transnational Organized Crime to which Kenya is a signatory.

In 2010, parliament enacted the Counter-Trafficking in Persons (CTIP) Act, 2010 providing the legal framework to prevent trafficking in persons.

The Act also established the Advisory Committee (AC), which comprises the following members under Section 19.

- The Ministry in-charge of immigration; foreign affairs and children; labour
- The Office of the Director of Public Prosecution (ODPP)
- Department of Justice and the Attorney General
- Kenya National Commission on Human Rights (KNCHR)
- Representatives from Civil Society

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<sup>1</sup> (SOURCE: National Crime Research Centre)

- Kenya Organization of Trade Unions (COTU)
- Federation of Kenya Employers (FKE)
- Secretariat (hosted by the department of Children Services)

The AC was launched on July 8<sup>th</sup> 2014, to the MOLSS (Ministry of Labor and Social Services).

The AC is tasked with the following:

- Formulation of policies.
- Coordination of activities.
- Monitoring and evaluation of Kenya's efforts on prevention, protection and prosecution of human trafficking in Kenya.

Other initiatives Kenya has taken to counteract Counter-Trafficking in Persons (CTIP) include:

- Development of the National Plan for Action for combating human trafficking
- Launch of the National Referral Mechanism (NRM) guidelines in December 2016.

The NRM received support from the United Nations Office on Drugs and Crime (UNODC), law enforcement agencies and other service providers.

NRM guidelines find their basis in the following:

- Constitution of Kenya, in particular Chapter Four on the Bill of Rights
- Counter Trafficking in Persons (CTIP) Act 2010
- Victim Protection Act 2014
- Witness protection Act 2006
- National Plan of Action for Combating Trafficking in Persons (TIP) in Kenya (2013-2017)

Other achievements of AC for the financial year 2016/2017) include:

- Conducting and participating in statutory meetings, hereby developing a work plan for the year 2015/2016.
- Began the process of amending of the Counter Trafficking in Persons Act 2010, in line with the Constitution 2010, to capture new realities that have been identified e.g. victim identification and place of transport companies in perpetuating that ecosystem, among others.
- Developed, with support of UNODC, guidelines with section 28 of the Counter Trafficking in Persons Act.
- Development of Standard Operation procedures for police and prosecution to assist victims of trafficking
- Lobbied for establishment of National Assistance Trust Fund For Victims of

Trafficking. (Note: Fund is yet to be launched).

- Instrumental in having Kenya moved to Tier 3 of watch list to Tier 2, indicative of efforts government is taking to be compliant with the US Trafficking Victims Protection Act's (TVPA) minimum standards. Dropping to Tier 3 has implications on donor relations.

## Human Trafficking and Other International Organized Crimes

The 12<sup>th</sup> April 2017 conference brought together Attorneys General, Prosecutors and representatives from key government agencies tasked with combating human trafficking and other related transnational crimes and other stakeholders.

### Key objective of the Seminar

The key objective was to review the progress made since the launch of the African Union Commission Initiative Against Trafficking in 2012 which operationalized the Ouagadougou Action Plan to combat trafficking in human beings especially women and children of 2006.

### Other objectives

- To reenergize the entire justice network.
- To develop a fully integrated response to this challenge.
- To compare notes drawing from best practices, identifying areas of common interest as well as form a confluence strong enough to harmonise the process of investigating and prosecuting human traffickers and smugglers of migrants.
- To share knowledge and experiences on topical issues that provide a possible nexus between these crimes and other related transnational organized crimes such as money laundering, wildlife crimes, drugs traffickers and terrorism.
- To explore causes, responses and current debate on human trafficking
- To be appraised by key government agencies on their roles and responsibilities in enforcing human trafficking laws.

## Welcome and Opening Remarks – 9.15 a.m

**Facilitator: John Jacob Kioria – Senior News Anchor, Kenya Broadcasting Corporation**

*Panelists: Prof. Githu Muigai – EGH, SC, Attorney General of the Republic of Kenya; Hon. Lady Justice P.M Mwilu – Deputy Chief Justice and Vice President of the Supreme Court; Markus Green ESQ. – Director Conference of Western Attorneys General African Alliance Partnerships and Assistant General Counsel for Pfizer, Inc.)*

**Prof. Githu Muigai – EGH, SC, Attorney General of the Republic of Kenya**

### *Key takeaways*

- Kenya needed to deal with weak law enforcement measures on corruption which has a devastating impact on the economy.
- Kenya's stability and infrastructure make it an attractive route of transition and destination due to its stability and infrastructure. The most popular routes are through the Northern Kenya, (Moyale, Marsabit, Isiolo) and North Eastern Kenya route.
- Differentiating between refugees and migrants from especially Somalia, Ethiopia, Eritrea, Sudan, among other countries poses difficulties.
- Kenya has ratified The UN Convention against Organized Crimes – UNTOC the first globally binding instrument where there was global agreement in the definition of trafficking in persons as a crime and the protocols.
- Enactment of laws e.g. the Counter Trafficking in Persons Act 2010 which was enacted in 2010, and came into force in 2012.
- Kenya has entered into agreements with other nations towards ending human trafficking.
- Kenya acknowledges the paramount importance of international cooperation in combating these crimes.

**Markus Green – Director Conference of Western Attorneys General African Alliance Partnership**

### *Key takeaways*

- Markus sits on the board of CWAG that handles human trafficking among other

internationally organized crimes.

- Encouragement of public-private partnerships to help stamp out human trafficking.

## **Hon. Philomena Mwilu - Deputy Chief Justice and Vice President of the Supreme Court**

### ***Key takeaways***

In view of the dire state of the local and international scene of human trafficking among other crimes, there is a critical need to analyze and interrogate the causes of and responses to these crimes in order to engage sustainable interventions.

The following was highlighted:

- The largest cache of drugs ever in Africa, over a tonne of heroine, was nabbed in 2014 by the Australian Navy off Kenya's coast.
- Influx of pirated and counterfeit products in Africa places the estimate of losses by African countries at over USD 500 million in annual tax revenues.
- Kenya has not been spared in the illicit trade and as an example, about 40% of all the malaria drugs in the Kenyan market are harmful to the end users as they are counterfeit.
- On trafficking in wildlife products, the global estimates on illegal trade in wildlife and related crimes indicate up to USD 20 billion annually. H.E President Uhuru recently oversaw the destruction of tusks from over 6,000 illegally killed elephants, the largest ever destruction of ivory stockpile.
- Human smuggling and trafficking are basically modern-day slavery, and that the illicit human trafficking industry, raking in over USD 150 billion, has had significant negative impact on Kenya and the neighboring region.
- The US 2016 Trafficking in Persons Report, indicated that Kenya was a source, transit, and destination country for women, men and children who were unfortunately being subjected to human rights violation through forced labor and sex trafficking. Due to the favorable conditions in Kenya, it has become a regional hub for human trafficking.
- H. E. the President Uhuru Kenyatta gave estimates in the annual report to parliament of over 650,000 illegal firearms that are in circulation in Kenya, which highlighted an alarming state of national security.
- Kenya remains vulnerable to money laundering crimes and financial fraud, and has even become a hub for transnational crimes.

### ***Kenyan Judiciary Initiatives***

- The human resources and physical infrastructure have been significantly improved to deal with these matters.
- Judges and judicial officers continue to receive extensive training to increase their



capacity in dealing with these crimes.

- Noteworthy jurisprudence continues to be produced in the adjudication of these crimes, as seen when the decision was made to have hearings for cases involving piracy, irrespective of the place it was committed or the nationality of the victims or perpetrators.
- The judicial staff received training on terrorism in Nairobi at the time of this seminar (12/4/17).
- The need for continuous international collaboration was underscored.

There is need to engage collaboratively on these issues through for such as the National Council on the Administration of Justice (NCAJ). A positive result of such collaboration, with regard to international crimes, was the development the 'Enforcement Manual To Combat Illicit Trade in Kenya.'

It is hoped that the seminar would be a catalyst for an even more effective and committed engagement in dealing with these crimes.

### Question and Answer Session

#### *1. What legal gaps exist and what is the government's intervention?*

- The human trafficking chain consists of the following key contact points: Immigration (first contact point) - police - social welfare - courts.
- The government has provided police, social welfare officers, prosecutors and courts.
- Historically this chain was not always well connected. The system has, for example, inadvertently treated the victim as the criminal.

#### *2. How can suspects be kept from accessing bail and jeopardizing investigations?*

- The suspects' right to bail is protected in the constitution. It has never been the intention to release a suspect to interfere or in any way hamper the investigations, though it does happen sometimes.
- If evidence shows that the suspect is a flight risk if released on bail, then it would be denied. Such determinations are considered on case-to-case basis.
- Noteworthy is that the person on trial is not the victim. While victims' rights are certainly considered, the judiciary as the end of the chain is limited to working with evidence made available.
- Law enforcement agencies are encouraged to do everything required to ensure justice takes its course, including thorough investigation and providing sufficient evidence.
- Kenya's legal system has a high threshold meaning that the defender is entitled to the charge list. Potential perpetrators may use evidence provided to cover their tracks.

### *3. Witness Protection*

- Witnesses rarely come forward.
- Kenya has a model witness protection program and is lauded especially in cases involving terrorism.
- There is dire need for sharing real-time chain trafficking intelligence information, as without this, it becomes hard to track down perpetrators.
- In some cases, the court has been forced to withdraw cases because witnesses are afraid, which makes it harder to deal with cases in human trafficking. Sometimes, suspect and victims are also killed in revenge attacks.

### *4. Victims' fund*

- Treasury has been responsive in increasing funding in light of the fact that perpetrators of the crime are usually international characters with an abundance of wealth and resources, making them especially harder to nab.
- However, there is a lack of clarity because of multiplicity of statutes. Treasury has therefore asked the stakeholders to harmonize the statutes to ensure that the funds are received by legitimate victims.

### *Case of trafficking in Kiamaiko*

- Willis Otieno (Counter Trafficking Agency) noted that there was high level of trafficking of children from northern Kenya and Ethiopia. Perpetrators were said to be out on bail and interfering with cases.
- The law enforcement officers are not always conversant with counter-trafficking laws hence incorrect entries on charge sheets.

### *Case of Kenyans arrested in South Sudan*

Government is committed to the international relations and international laws. It is doing everything to work with the government of South Sudan to find a legal, political and diplomatic solution to the situation where 4 Kenyans have been arrested. ([See story](#)).

## Panel 1 – 10.07 a.m

### Human Trafficking: Causes, Responses and Current Debates

**Facilitator: John Jacob Kioria**

*Panelists: Lisa Madigan – Attorney General State of Illinois, USA; Gordon Kihlangwa – Director General of Immigration; Muthoni Kimani – Director Asset Recovery Agency*

**Lisa Madigan - Attorney General State of Illinois, USA**

#### *Key takeaways*

- One person enslaved in human trafficking is one too many and we are not where we need to be in this matter.
- Before the year 2000 there were no laws in the US specifically addressing human trafficking, and presently, knowledge of human trafficking in the US is still very low.
- The National hotline indicates that human trafficking, at 68%, is three times more common than sex trafficking globally.
- About 20-21 million people are involved in forced labor and the challenge is that labor trafficking victims are especially difficult to identify.

#### *Causes of human trafficking*

- Demand: There is demand for services and demand for money. It has proved profitable to use people as commodities.
- Supply: Many of the vulnerable people include immigrants, refugees, runaways and people living with disabilities, and they become victims mainly due to lack of access to good education and other amenities. They become easy prey for traffickers, who mainly consist of people with a lot of disposable income which is channeled to human trafficking. The traffickers lure their victims with the promise of a better life, and with this they create a trusting situation. Runaways are especially targeted as they are picked up by traffickers in the first 48 hours.

#### *Responses to human trafficking*

- Raising awareness, as the public is not often sure how to respond.
- Working with business communities, hotels, hospitals, airlines and transport industry and the hospitality industries where human trafficking is likely to intersect.
- Ensuring the law is enforced and continuously engaging in conversations with the public to eradicate human trafficking.
- Providing a police hotline dedicated to trafficking offences and place it in bars, airports, private job recruitment centres, etc.
- Improving data collection and making it available to governments and other

- funding agencies.
- Providing compensation to facilitate the removal of tattoos and other branding that identify victims.
- Removing criminal convictions from victims of sex trafficking so they can access legitimate jobs.
- Prosecuting buyers of sex. 90% of vendors are likely to be victims.

#### *What the US is doing*

- Though labor trafficking is not getting as much attention as it needs in the United States, efforts are being made towards reducing demand for human trafficking by de-normalizing purchase of sex. Prosecuting those involved in human trafficking.

### **Gordon Kihlangwa - Director General of Immigration**

#### ***Key takeaways***

- Push and pull factors facilitate the thriving of this illicit industry in human trafficking, for instance, there are over 320 million people moving around the world daily. It can be very difficult to track these movements in detail.
- Traffickers are invisible because they use proxies and all countries in the world are affected.
- The porous borders in most countries help to escalate this problem.

#### *Situation in Kenya*

- The instability in neighboring countries i.e. Somalia, Eritrea and Democratic republic of Congo (DRC), coupled with our borders porous, has made Kenya vulnerable as a transit point.
- Perpetrators often have more than one passport hence can still exit the country if one passport is confiscated. The enforcement of e-passports will solve this problem.
- There is difficulty in differentiating between the smuggler and victim.
- There is availability of cheap labor in Kenya.
- Closed up societies where things are not openly discussed encourage human trafficking in secrecy and this allows practices like prostitution to thrive.
- There is no holding facility in Kenya for trafficking victims once identified further compounding the problem.
- Human trafficking is a great challenge, and a costly one, as up to 4.5 million Kenyan shillings has been used to repatriate and deport victims.

### **Muthoni Kimani – Senior Deputy Solicitor General and Director Asset Recovery Agency**

#### ***Key takeaways***

- Human trafficking has been highly priced as a major source of income, and the ultimate beneficiaries need to be identified and nabbed to curb the flow of cash.

- Asset recovery agents and the office of the Solicitor General are working towards nabbing the beneficiaries to curb the flow of income within human trafficking channels.
- Scaling up data collection and sharing of information needs to be improved to increase the volume of evidence in the work being done in Kenya.
- Online child sexual abuse has become rampant, and indeed human trafficking can disseminate entire communities if not dealt with sternly. There are laws in place prohibiting child labor that can be useful in dealing with the perpetrators.
- Using beggars and street children has also been categorized as human trafficking.

#### *Some of the solutions to these challenges*

- Conducting lifestyle audits for people whose economic status suddenly changes.
- Investigating proceeds of crime and allocating them to victim compensation.
- Curbing money laundering by ensuring tax compliance and proper licensing of businesses.
- Scaling up data collection to capture rescues, prosecutions and other pertinent information.

#### **Question and Answer Session**

##### *What is being done as a prevention measure?*

- Dealing with the causes, for instance, asking what makes victims vulnerable in the first place. Improving access to education, creating job opportunities, ending the demand, and ensuring that companies are held responsible to make sure there is no forced labor in their supply chain.
- Continually educating the public to as to increase awareness of the dangers of human trafficking, and encourage them to put a check on the desire for 'good things' to avoid being victims.

##### *What is the ministry doing to ensure the safety of Kenyans going, for instance, to Middle Eastern countries?*

- Security laws put forth in 2014 saw 500 employment agencies exporting Kenyans reduced to 23. These stringent measures ensure safety of people.
- Employment agencies are also required to provide a 1.5 million Kenya shillings bond and can be held liable for their clients.
- Enforcing bilateral agreements with Qatar and Saudi Arabia, and other counties employing Kenyans, to ensure proper regulations are put in place and followed.
- Ensuring that the conversations continue and the public is included in this discussion.

*What is the role of corruption in human trafficking, and what practical measures are in place to curb it?*

- Corruption, as a human problem, exists both in the public and private sector. It requires a multi-agency approach.
- This multiagency approach will ensure intelligence leads to arrest and prosecution with leads to asset recovery. Key agencies for example, those disbursing work permits, job hiring agencies, intelligence, the police, and other labor agencies should collaborate even more.
- Ignorance contributes more towards human trafficking than corruption (e.g. classifying perpetrators as illegal aliens).
- Total eradication of human trafficking may be a difficult thing as the perpetrators are cunning; they obtain bail and continue in the vice.
- Differences in the way neighboring countries handle human trafficking situations poses a challenge.
- Freezing of perpetrators' assets will help curb corruption.

*Does internal child trafficking happen in the US, and what is being done?*

- There are 300,000 children in sex trafficking in the US, this unfortunately is earning the perpetrators more money than what is earned in drug trafficking.
- Laws are in place for child internal trafficking so that offenders can be prosecuted.
- In the US, some of victims are not coming forward to ask for help because they are afraid of being prosecuted for being undocumented.

### Tea break and photo opportunity

#### Panel 2 – 11.50 a.m

#### **Roles and Responsibilities of Government Agencies in Enforcing Human Trafficking Law**

**Facilitator: John Jacob Kioria (Senior News Anchor KBC)**

*Panelists: Karl A. Racine – Attorney General District of Colombia in Washington DC, USA; Dorcas Agik Oduor – Secretary Public Prosecutions; Ndegwa Muhoro – Director of Criminal Investigations*

## Karl A. Racine – Attorney General District of Colombia in Washington DC

### *Key takeaways*

- Human and sex trafficking is currently a 32 billion USD industry, and second only to drug trafficking. It is the fastest-growing criminal enterprise in the world.
- Profits are extraordinary because unlike other commodities e.g. a pair of shoes that can only be bought once, this 'product' i.e. sex workers can be used over and over again. Sex workers have been used for as many as 25 times in a day.
- Inclusion of private sector into the war against human trafficking is critical. Case in point is Pfizer, (represented by Markus Green) a pharmaceutical company joining in this war.
- In the US, 50-90% of young people who are victims came through the Child Abuse/Neglect System. It shows that removing children from their homes often produces terrible outcomes. Note that in foster care, adults are paid to take care of these children as they await adoption.
- Ushering young criminals into the criminal justice system is a surefire way of ensuring they will commit the offence again.
- Resources should be put into prosecution, enforcement and treatment.

### *Some of the solutions to human trafficking*

- Providing healthcare – involving both mental and psychological rehabilitation.
- Providing basic housing, and educating/training the victims so they can provide for themselves.
- Grassroots organizations need a place at the table so they can be empowered to handle human trafficking.
- Creative posters highlighting this vice and encouraging public vigilance displayed in public places. (NOTE: Speaker provided poster developed in the District of Columbia, Washington DC, designed by local teens in conjunction with other law enforcement agencies.

## Dorcas Agik Oduor - Secretary Public Prosecutions

### *Key takeaways*

Some of the instruments that are available to the Office of Director of Public Prosecution to help deal with these crimes include:

- The Constitution
- Prosecution policy document
- Acts of parliament
- Penal code
- Department of Central Facilitation Services



- Signatory to Rome statutes and UN Conventions
- To curb human trafficking, government aims at specialization, hence the many departments in place, and decentralized across the 47 counties to narrow down on issues.
- Since the office of the public prosecution left the office of the Attorney General in 2010 there are 700 prosecutors. This ensures enforcement of higher standards. Currently, at least 99 per cent of all cases in the country are being prosecuted.
- The main victims of human trafficking are women and children, as well as vulnerable men.
- As previously mentioned, corruption is a major catalyst of human trafficking, and it has been noted that organized crimes and trafficking persons are integrally linked.

### *Challenges experienced*

- Underreporting and non-reporting because of threat of stigmatization.
- Lack of awareness
- Lack of trust in the justice system keeps the victims silent.
- Lack of awareness among the victims, for instance, not knowing their rights so as to go ahead and report.
- Handling of reports once made.
- Thin line between victims, accomplice, witness and perpetrators.
- Delay between initial reporting and prosecution may compromise investigations.
- Overreliance on oral evidence which is not effective, since no scientific evidence is available.
- Inadequate safe homes for victims, and limited healthcare facilities and recovery centres.
- Access to victim compensation is difficult.

### **Ndegwa Muhoro – Director of Criminal Investigations**

#### ***Key takeaways***

- Transnational organized gangs have a profit motive.
- There is a critical need for capacity building among officers so they can be equipped to handle new and emerging crimes.
- The challenge, as pointed out earlier, is not in the legal structure, but in the coordination of the structures in the chain, which needs to be refined. Solutions need to be sought through combined effort to ensure efficiency and effectiveness.
- There is also need for harmony between Kenya Revenue Authority (KRA) and immigration officers at border entry points. It has been noted that KRA has more



interest in revenue collection than in security.

*The following are some of the levels at which the situation is being addressed*

- At the East African and regional level.
- Networking among the police departments in their investigations and operations.
- The Child Protection Unit has been established and is doing very well.
- There are concerted efforts towards improving the centralization of intelligence so that it can be disseminated for action.

*Some of the challenges encountered include:*

- Human trafficking training has not been mainstreamed into the curriculum.
- Corruption has become an enabler of human trafficking, particularly in the police department.
- The slow process of institutionalizing laws curbs effectiveness, thus the victims are often treated as suspects and are kept in deplorable conditions.
- There are about 35 million lost or stolen travel documents which are used by criminals, and the help of Interpol, among other tools, is sought to track these lost documents.
- Media has not given enough prominence to child protection, thus there is not much awareness among the public.

### Question and Answer Session

*What efforts are being made towards addressing the lack of synergy among government agencies?*

- The various agencies are organically dependent but functionally independent, hence have different priorities.
- In addition, the Department of Criminal Investigations' main work is to follow up, not to initiate action; that is, the investigation can only commence after reporting has happened.
- Synergy is highly encouraged between agencies.
- Reducing bureaucracy to facilitate the capture of criminals will also be helpful.

*How effective is the Nyumba Kumi Initiative in dealing with these crimes?*

- Kenyans are encouraged to borrow a leaf from Tanzania and be on the lookout for suspicious people in their vicinity.
- Learning best practices from other countries.

*Kenya has been ranked as Tier 2 on countries that have human trafficking laws. Is there any oversight body that ranks the US?*

- No

*How does the federal system of government in the United States harmonize the human trafficking laws and ensure there is uniformity in enforcement?*

- Through use of best practices that are constantly being revised and sought through networking so as to ensure operations are uniform.

*Who is dropping the ball in the fight against human trafficking?*

- There isn't any particular person or agency that isn't doing what they ought. Note that criminals are not tied by any jurisdiction, but agencies are, and the perpetrators know this. Therefore, the criminals are almost always ahead of the agencies and law enforcers.

**Susan Mochache - Principal Secretary State Department of Social Protection**

#### **Government role in Prevention**

- Government is providing cash transfers for orphans and vulnerable people (e.g. those with severe disabilities).
- Uwezo Fund, Women Enterprise Fund, among others providing opportunity for economic empowerment.
- Stringent rules imposed on employment agencies exporting Kenyans.
- Counter-trafficking secretariat has received funding for the next financial year to deal with these issues.
- Identifying tell-tale signs of traffickers e.g. body language, level of comfort of travellers, etc.
- Bilateral agreements between Kenya and labor importing countries to ensure safety of citizens.

**Lunch break**

## Panel 3 & 4 – 2.50 p.m

### Human Trafficking Locally and Globally

**Facilitator: Sophia Wanuna, Senior Anchor KTN**

*Panelists: Dr. Philista Onyango - Regional Director (ANPPCAN); Ruth Juliet Gachanja – Chair of Counter Trafficking Committee*

**Dr. Philista Onyango - Regional Director (ANPPCAN)**

#### *Key takeaways*

- Presentation of a brief history of (African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN))
- Presentation of a summary of the situation on the ground contained in ANPPCAN's 2017 publication: 'Building The Foundation for Child Trafficking Free Zones in Urban and Rural Kenya: Baseline Survey on Child Trafficking in Busia, Mandera and Marsabit Counties in Kenya' presented to all participants of the seminar. As summarized below:
  - 80% of group trafficked had gone through at least years of primary school.
  - Significant number had gone through secondary school.
  - Most victims were either orphaned or had just one parent.
  - Sometimes victims were trafficked in full knowledge of the parents and guardians.
  - Perpetrators were often relatives, family and friends of the victims.
  - Very few programs, that is, policies and legislation are in place to handle these crimes.
  - Many of the children, when interviewed did not want to go home, and also, there was no place to take rescued victims.
  - Children are trafficked out of Kenya for harvesting body parts.
  - They are also taken from rural areas to urban areas to be used as human sacrifice.
  - Unfortunately, it is not just the trafficking that is taking place, but the exploitation of those trafficked people.

#### *Some of the solutions on identified problems include:*

- Looking at the root causes and making schooling compulsory for children up to a certain age.
- Coordination and examining which country is leading in the matter in the region so as to look up to them and learn from them.
- Identifying key people within the communities, e.g. chiefs etc, and furnishing them

with policies to champion the cause.

- Avoiding over-reliance on international donors which often lead to shutting down of programs when funding ceases. Kenya should take a role in providing funding.

#### *Progress made thus far in eradicating these crimes*

- Government submits information on trafficking to the US Department of States, which is laudable.
- Of the over 700 arrests that have been made, over 400 prosecutions have been made which is great progress.
- Ensuring that the systems in place are working efficiently to completely eliminate these crimes.

### **Ruth Juliet Gachanja – Chair of Counter Trafficking Committee**

#### *Key takeaways*

- Counter Trafficking Committee has a multi- sectoral membership. It is a policy-making body tasked with formulation of policies, monitoring and coordinating of all other areas.
- Some of the key achievements include that it formulated the National Plan of Action (NPA) and was able to cost it and establish that protection has a big budget.
- 60 million Kenya shillings has been put aside by the government for this work.

#### *Way forward*

- Charging trafficking under the right laws (i.e. counter trafficking laws)
- Training of law enforcement officers on counter trafficking issues
- The National Referral Mechanism (NRM) was launched in 2016 as a tool to provide information on what to do in cases of counter trafficking crimes. (Available at the Children's Department: Contact person Hellen 0722792508)

## Panel 4- 3:50

### Other Internationally Organized Crimes

**Facilitator: Sophia Wanuna, Senior Anchor KTN**

*Panelists: Dr. Willy Mutunga – Former Chief Justice of the Supreme Court of Kenya, Commonwealth Secretary-General’s Special Envoy for Maldives; Florence Mwangangi – Advocate of the High Court of Kenya*

**Dr. Willy Mutunga – Former Chief Justice of the Supreme Court of Kenya, Commonwealth Secretary-General’s Special Envoy for Maldives**

#### ***Key takeaways***

- By 2015, organized crime was a 3.5 billion dollar industry. In fact, it is so big, it is considered a member of the G8. This figure is likely to have increased.
- Between 1980 and 2012 African countries suffered a staggering 789 billion US dollars, lost to capital outflows.
- There are no greater drivers of this loss than off-shore tax havens and illicit trafficking.
- Developing countries have a lot of assets in developed countries – Africa’s external assets vastly exceed its debt.
- Human trafficking is a political issue. Dealing with it will require a political solution. According to a global report, the perpetrators of human trafficking are invisible government agents either currently in the system or those who have captured existing leaders. Leadership that is opposed to human trafficking and other crimes needs to be in place for these vices to be minimized.
- The movie, ‘Untouchables’ provides an excellent case in point of how political goodwill can bring an end to organized crime.

Florence Mwangangi – Advocate of the High Court of Kenya and Convener of the ICT/Intellectual Property Rights Committee

(Spoke on her own behalf and also held brief for Rev. Sam Kobia – Senior Advisor in the Executive Office of the President)

### *Key takeaways*

Some of the main forms of international organized crime include:

- Counterfeiting (e.g. medicine, software, gas cylinders)
- Environmental crimes e.g. illegal trade in flora and fauna
- Trafficking in fire arms
- Drug trafficking
- Money laundering
- Piracy – which is a multi-million dollar industry
- Terrorism
- Players in the crime scenes are often the same.
- Internationally organized crimes are all linked, each feeds the other and the perpetrators basically move where they can get more money.
- Traditional crimes are now referred to as cyber crimes when committed digitally. Terrorism presently includes information terrorism, which takes various forms, for example, hacking into classified information in organizations such as banks and the KRA.

### *Use of technology has the following implications:*

- It is used by criminals to facilitate crime, particularly because mobile phone penetration is at 80% in Kenya.
- It provides anonymity for the perpetrators.
- It allows criminal communication to be encrypted, thus becomes an enabler to internationally organized crimes.
- It provides possibilities and opportunities to exploit vulnerability of systems.
- It allows the coordination and distribution of propaganda.
- It enables and facilitates convert banking (electronic funds transfers) which can be used to enable crime.
- Criminals can use ICT to monitor security agencies.

### *Possible mitigating tactics*

- Working closely with Communications Authority of Kenya (CA) to counter cyber crime.
- Addressing the issue of corruption to curb funds that are used in crime.
- Understanding the operations of the criminals better in order to counter their efforts.
- Developing warning and crisis management capabilities.

- Using integrated public safety communication and surveillance to tackle crime in real time.
- Making use of legislation and effecting policy formulation.

### Question and Answer Session

*What is the appropriate awareness strategy for educating children about human trafficking?*

- Children are of vulnerable thinking capacity, and thus when educating them about human trafficking. Guardians and parents have to clarify issues for them, e.g. cautioning them that watching pornography is wrong as sadly many children consume these images in illicit video dens in the neighborhoods.

*What is the connection between Small Arms and Light Weapons (SALW) and human trafficking?*

- The money earned from human trafficking is used to acquire the weapons which can also be used in drug trafficking as well as torturing or guarding the victims of these crimes.

*How will all the information that is discussed in such forum reach the masses that need it most?*

- The information should be passed on in a way that the communities will understand and assimilate.
- Since human trafficking is in transit, and not located at one place, it should be dealt with through cooperation, with often forgotten stakeholders like the health sector, the media and the academic institutions.
- There is need to adopt lessons from District of Columbia by having fliers in various hotspots.

**End of panel discussions**

## Closing Remarks – 4.35 p.m

### Hon. David Kenani Maraga – Chief Justice of the Supreme Court of Kenya

- There is a strategic blue print – Sustaining Judicial Improvement – that aims at the restructuring of the judicial system at the individual and overall level.
- The Judiciary is committed to improving speed and quality delivery of service.
- Plans towards the establishment of International Organized Crime department in the Judiciary are underway.

The Judiciary Training Institute will facilitate in:

- Training and enhancing capacity of judges.
- Ensuring officers remain well-acquainted with the law.

This is to facilitate a coordinated, efficient and coordinated approach towards human trafficking and other international organized crimes.

**END OF SEMINAR**



### Summary of achievements as reported in the seminar

- Kenya's development of a model witness protection program.
- Securing funding for witness protection has been successful.
- Stringent security laws put forth in 2014 saw 500 companies exporting Kenyans reducing to 23. These stringent measures ensure safety of people.
- Law requiring employment agencies to provide a KES 1.5 million bond and can be held liable for their clients.
- Bilateral agreements between Kenya and countries like Qatar and Saudi Arabia to ensure proper regulations are followed and that Kenyans working in these countries are safe.
- Government providing cash transfers for orphans and vulnerable people (e.g. those with severe disabilities).
- Uwezo Fund, Women Enterprise Fund, among others providing opportunity for economic empowerment.
- Counter trafficking secretariat has received funding for the next financial year.
- Enhanced surveillance in identifying tell-tale signs of traffickers e.g. body language, level of comfort of travellers, etc.
- Considerable synergy existing in different government agencies.
- The launch of The National Referral Mechanism (NRM) by the Counter Trafficking Committee in 2016; to provide information on what to do in cases of crimes.

### Recommendations proposed at the seminar

- Ensuring suspects who pose risk to the investigations are not released on bail.
- Differentiating between victim and perpetrator.
- Looking into legislation that ensures the rights of the suspect does not impede investigations.
- Harmonizing statutes regarding victim's compensation fund to facilitate faster disbursement to legitimate victims.
- Creating safe houses for rescued victims.
- Strengthening witness protection programs.
- Improving real-time access to intelligence information.
- Mainstreaming counter trafficking laws into the law enforcement training curriculum.
- Raising awareness. Public is not often sure how to respond to human trafficking.
- Collaborating with the business community, especially the hotel and transport industry where trafficking is likely to intersect.
- Providing a police hotline dedicated to trafficking offences and place it in bars, airports, private job recruitment centres, etc.
- Improving data collection and reporting mechanisms.
- Removing criminal convictions from victims of sex trafficking so they can access legitimate jobs.
- Prosecuting buyers of sex.

- Conducting lifestyle audits for people whose economic status suddenly changes.
- Investigating proceeds of crime and allocate them to victim compensation.
- Improving access to education and creating job opportunities.
- Ensuring companies are held responsible to ensure there is no forced labor in their supply chain.
- Provision of conducive atmosphere for businesses to thrive to prevent the problem in the first place.
- Highlighting issues of child protection in the media.
- Spearheading *Nyumba Kumi-type* initiative by reporting suspicious activity in the neighborhood. Encouraging citizens to be the eyes and ears of law enforcement on the ground
- Increasing synergy between agencies.
- Reducing bureaucracy to facilitate capture of criminals.
- Learning best practices from other countries (favorable copying).
- Making school-attendance compulsory for all children.
- Identifying key people within the community and furnish them with policies to rally support and champion the cases.
- Avoiding overreliance on international donors which often lead to shutting down of programs when funding ceases. Kenya should take a lead role in providing funding.
- Inclusion of often forgotten stakeholders like the health sector, and academia and more public participation.

## Appendix 1: Conference of Western Attorney General (CWAG)

The Conference of Western Attorney General (CWAG) is a bipartisan group comprising of Chief legal officers from 15 Western states and three pacific territories.

These include: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. Pacific jurisdictions of America include, American Samoa, Commonwealth of the Northern Mariana, Islands and Guam. Associate members include the states of Arkansas, Florida, Iowa, Louisiana, Michigan, Nebraska, North Carolina, Oklahoma, Rhode Island, Texas, Vermont, West Virginia and Wisconsin.

CWAG's key role is to provide a platform for legal officers to cultivate knowledge, cooperate on concerns and coordinate actions with a view to improve the quality of legal services available to different institutions. Rwanda, Nigeria and South Africa are some of the countries CWAG has worked with.

## Appendix 2: Trafficking in Persons Act

Trafficking in Persons (TIP) is defined in Counter Trafficking in Persons Act section 3 as the recruitment, transportation, transfer, harboring or recipient of persons, by means of threat, use of force or other forms of coercion of abduction of abduction, of fraud or deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve consent of a person having control over another person for the purpose of exploitation.

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