

‘Consensual’ Women Trafficking in Kenya: Can Intersectional Feminism Provide a Solution?

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Abstract

The plight of women trafficked for domestic work from and through Kenya to the Middle East and other parts of the world is often whitewashed by the fact that many of the victims were not forced to travel abroad. They signed up for it. This seems to absolve the supposed work agencies and the government of any wrongdoing. However, the victims are unaware that they are in fact being transported as commodities, subject to the whims and fancies of their masters. Another often overlooked reality is that these work agents would not exist if the women they recruited were not vulnerable. African women face oppressive conditions, often overlapping, that push them to the brink. The options they have are to either remain at home and suffer lack or travel to the Middle East and suffer abuse. Twenty years after the establishment of the Maputo Protocol, they are not yet emancipated. Whereas much effort is currently employed towards bringing perpetrators to book and rescuing and rehabilitating victims, this paper examines whether the scourge of trafficking women under the guise of lucrative employment abroad can be eliminated through the application of intersectional feminism which seeks to increase the options available to women.

Key Words

Women; Trafficking; Feminism; Vulnerable; Intersectionality; Forced labour.

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1. Introduction

The government of Kenya identified 556 victims of human trafficking in 2022.¹ Of these, 275, were trafficked for labour exploitation.² While the scourge affects all - women, children and men, most of the victims are women.³ Economic hardships, limited access to education, COVID-19 exigences and other challenges have rendered African women easy prey.⁴ The human trafficking rings, that often operate as work agencies, lure poor women with promises of lucrative employment opportunities abroad.⁵ Unbeknownst to the women, they are not new hires, but slaves being delivered to their masters. Horrifying stories continue to hit the airwaves, and despite victims naming the agents, much remains to be done to protect other potential victims.⁶ Survivors are often trolled online and offline for being too gullible while in actual fact, their vulnerability was not of their own making.⁷ It is these challenges that promote and sustain the trade of women that is run under the guise of labour export.⁸

¹ U.S. Department of State, '2023 Trafficking in Persons Report: Kenya', <www.state.gov/reports/2023-trafficking-in-persons-report/kenya/> accessed 19 May 2024.

² As above.

³ K Maichuhie, 'Report: Sex trafficking still prevalent in Kenya', Nation 20 June 2020 <www.nation.africa/kenya/news/gender/report-sex-trafficking-still-prevalent-in-kenya-3244814> accessed 19 May 2024.

⁴ N Laiboni 'A Job at Any Cost: Experiences of African Women Migrant Domestic Workers in the Middle East' Global Alliance Against Traffic in Women, 2020; The World Bank, 'Kenya Economic Update: COVID-19 Erodes Progress in Poverty Reduction in Kenya, Increases Number of Poor Citizens', <www.worldbank.org/en/country/kenya/publication/kenya-economic-update-covid-19-erodes-progress-in-poverty-reduction-in-kenya-increases-number-of-poor-citizens> accessed 8 September 2023.

⁵ M Daghar 'East African human trafficking rings expand their operations' (2020) Institute of Security Studies <www.issafrica.org/iss-today/east-african-human-trafficking-rings-expand-their-operations> (accessed 21st May, 2023).

⁶ N Kiage 'Diana Chepkemoi: I almost died in the hands of a Saudi Royal family', *Nation* 7 September 2022.

⁷ M Kinyanjui 'Foreign Affairs PS Kamau On Kenyans Dying In Saudi Arabia: You've Chosen Not To Listen', *Citizen Digital* 5 September 2022 <www.citizen.digital/news/foreign-affairs-ps-kamau-on-kenyans-dying-in-saudi-arabia-youve-chosen-not-to-listen-n305065> (accessed 3 July 2023).

⁸ International Organization for Migration 'Human Trafficking in Eastern Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda, and Burundi' (2008).

There are a number of legal instruments, international, regional and national that speak to the issue of women trafficking for domestic labour. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) and the United Nations Convention against Transnational Organized Crime (UNTOC) promote inter-state cooperation in combating trafficking.⁹ The International Labour Organization (ILO) also has two conventions that provide for the elimination of forced labour and one that specifically addresses the plight of domestic workers, guaranteeing among others, their right to work to safe and healthy working conditions.¹⁰ At the regional level, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa's (Maputo Protocol) which provides for the rights to life, integrity and security of the person and the elimination of harmful practices against women.¹¹ Further, target 5.2 of the Sustainable Development Goals provides for the elimination of all forms of violence against women, including trafficking.¹² It is therefore recognised globally that central to human flourishing, is the elimination of violence against women and their liberation.

⁸ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) 2001, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000; United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25 of 15 November 2000.

⁹ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) 2001, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000; United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25 of 15 November 2000.

¹⁰International Labour Organization, Abolition of Forced Labour Convention, 1957 (No. 105); International Labour Organization, Forced Labour Convention, 1930 (No. 29); International Labour Organization, Domestic Workers Convention, 2011 (No. 189)

¹¹ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) 2003 articles 4 & 5.

¹² Ritchie, Roser, Mispy & Ortiz-Ospina 'Measuring progress towards the Sustainable Development Goals' SDG Tracker <[SDG-Tracker.org](https://www.sdg-tracker.org)> accessed 18 July 2023.

This research considers the trafficking of women from Kenya for purposes of domestic work, especially focusing on that perpetrated by traffickers that pose as employment agents.¹³ It highlights factors that increase women’s vulnerabilities, steering them to such exploitation and suggests mitigation through the adoption of an intersectional feminist lens. It is divided into five sections. Following this introduction, is an overview of the problem – human trafficking and forced labour. It defines the terms and narrows down to the situation of Kenyan women trafficked to the Middle East. The third section contains a discussion on intersectionality in the context of human trafficking. It highlights the vulnerabilities that lead to Kenyan women being victims of human trafficking and forced labour in the Middle East. The fourth section then brings in the research’s contribution, which is an intersectional application of the Maputo Protocol in addressing the vulnerabilities identified in the previous section. Finally, the conclusion and recommendations section sums up the findings.

2. Human Trafficking and Forced Labour in Context

2.1. An Overview of Human Trafficking and Forced Labour

The United Nations Office on Drugs and Crime (UNODC) defines human trafficking as ‘the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit’.¹⁴ Article 3(a) of the Palermo Protocol provides a more comprehensive definition which consists of 3 elements, namely: the act, the means and the purpose.¹⁵ The act includes ‘the recruitment, transportation, transfer, harbouring or receipt of persons’, the means includes ‘the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or

¹³ United Nations Office on Drugs and Crime ‘Human Trafficking’ <www.unodc.org/unodc/en/human-Trafficking/Human-Trafficking.html> (accessed 21 June 2023).

¹⁴ *Ibid.*

¹⁵ Palermo Protocol *supra* note 9.

of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person’ and the purpose is exploitation.¹⁶

Human trafficking can be national or transnational, depending on the destination of the victims.¹⁷ It can also be for various reasons, including sexual exploitation, forced labour, debt bondage, domestic servitude, organ removal, forced begging, forced marriage and for minors, forced recruitment as child soldiers.¹⁸ Forced labour is defined under the Forced Labour Convention as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.¹⁹ Accordingly, the trafficking of women for domestic labour also amounts to forced labour.

In 2020 the number of detected victims of human trafficking globally was 53,800.²⁰ This figure signifies a first-time decline in the number of victims detected, having gone down by 11 percent within a year.²¹ However, the drop does not necessarily mean that the situation is getting better as the COVID-19 situation also negatively impacted institutions’ detection capacity.²² Notably, 60% of the victims were women and girls.²³ In 2016, the number of people

¹⁶ *Ibid.*

¹⁷ United Nations Office on Drugs and Crime ‘Kenya and Uganda work closer to counter organized crime in East Africa’ < www.unodc.org/unodc/en/human-trafficking/Webstories2021/kenya-and-uganda-work-webstory.html> (accessed 8 July 2023).

¹⁸ United Nations Office on Drugs and Crime ‘Human Trafficking: The Crime’, www.unodc.org/unodc/en/human-trafficking/crime.html (accessed 26 June 2023).

¹⁹ International Labour Organization (ILO), *Forced Labour Convention, C29*, 28 June 1930.

²⁰ United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons 2022 (New York 2023).

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

estimated to have been victims of modern slavery, which includes forced labour and forced marriages globally was a staggering 40.3 million.²⁴ Of these, victims of forced labour accounted for 24.9 million.²⁵ These numbers are estimates because it is impossible to track all cases.²⁶ Based on statistics by the International Labour Office, women and girls formed the bulk of the victims, amounting to 57.6% of people forced into labour exploitation.²⁷ Despite a decline in the number of detected cases of forced labour being recorded, in 2021, it was estimated that 49.6 million people were victims of modern slavery, a sharp increase, surpassing pre-COVID-19 numbers.²⁸ Of these, victims of forced labour accounted for 27.6 million.²⁹

2.2. *Trafficking of Women from Kenya for Domestic Work*

As the world is now a ‘global village’, labour migration has become increasingly common.³⁰ Borders have opened up for foreign employees and many Kenyans have been seizing these opportunities, often motivated by better earnings.³¹ Consequently, foreign remittances are now a key driver of the Kenyan economy.³² A majority of labour migrants from Kenya end up in countries located around the southern and eastern shores of the Mediterranean Sea, a region

²⁴ International Labour Office (ILO) Global estimates of modern slavery: Forced labour and forced marriage (Geneva 2017).

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ M Daghar ‘The New Slavery: Kenyan Workers in The Middle East’ Enhancing Africa’s Response to Transnational Organized Crime (ENACT) (2020) *Policy Brief*.

³¹ As above.

³² As above.

commonly referred to as the Middle East, most of them as domestic workers.³³ The term domestic worker has been defined to include people who work in or for households.³⁴ Some of the tasks that entail domestic work include cleaning, cooking, ironing, tending gardens and taking care of children, the old and sick.³⁵ Perturbingly however, many Kenyan women who have worked or are currently working in the Middle East as domestic helps tell a tale of human trafficking and forced labour.³⁶ Some have even died under suspicious circumstances.³⁷

In Saudi Arabia alone, the Ministry of Labour reported that there were over 80,000 Kenyans working there in 2019.³⁸ To start on the ‘paperwork’ for employment, the agent requires the job seeker to pay a substantial fee upfront.³⁹ Because job seekers are hardly ever in a financial position to afford the amount, they often borrow, with some even attaching their property.⁴⁰ If not for anything else, this financial commitment forces them to see the process through. Upon landing in the country to work, their passport is often confiscated and they find themselves working under conditions that were not disclosed by the agent, including long hours and poor pay.⁴¹ Contracts are not always signed between the migrants and the agencies and where they are, they have been found to be deficient.⁴² For example, some are in Arabic, a language most migrants do not understand, others do not have the names or contact details of the agencies and yet, others have details that could be termed irrelevant, including the weight and number of

³³ International Labour Office *supra* note 10.

³⁴ Domestic Workers Convention 2011 (No. 189).

³⁵ S Marchetti Migration and Domestic Work (IMISCOE 2022) 2-5.

³⁶ As above.

³⁷ C Kimeu ‘Urgent Action Needed to Protect ‘Dying’ Kenyan Domestic Workers in Gulf, Say Rights Groups’ *The Guardian* 27 June 2023.

³⁸ Standing Committee on Labour and Social Welfare ‘Report on Labour Migration, Senate Study Visit to The Middle East and Policy Implications’ The Senate, Republic of Kenya, Twelfth Parliament – Fifth Session, 2021.

³⁹ Migrant Rights ‘Life under Kafala: A Migrant Worker’s Perspective’ <https://www.migrant-rights.org/infographics/migrant-difficult-decisions-in-the-gulf/> (accessed 29 June 2023).

⁴⁰ As above.

⁴¹ As above.

⁴² Daghar *supra* note 30.

children of the migrants.⁴³ The migrants are usually ignorant, having not made such travels before and are completely dependent on the agents for direction.⁴⁴ This has contributed to the use of deception, threats of violence and even violence by the agents.⁴⁵ There is also a subversion of the law on such recruitment. For example, the contracts of service are required by law to be attested to by the Ministry of Labour, a process usually skipped by the agents.⁴⁶ The costs of migration and other incidentals are also required to be met by the employers.⁴⁷ However, the agents, despite receiving the monies from the employers, require the migrants to meet the same costs, essentially deceiving both the employers and the migrants.⁴⁸

In the Middle East, women form the majority of victims of persons trafficked for forced labour.⁴⁹ The injustices they experience in the recruitment process pale in comparison to what awaits them in their countries of destination. A 2020 study conducted on their lived experiences indicates high levels of abuse.⁵⁰ In terms of the living conditions experienced there is often a lack of privacy, including the installation of CCTV cameras in living quarters and bathrooms which negatively impacts their dignity.⁵¹ Harassment in the form of verbal and physical abuse is frequently reported.⁵² Sickness is at times treated as indiscipline, with beatings being received by workers and no medical attention being offered.⁵³ The work given is also a lot,

⁴³ Daghar *supra* note 30.

⁴⁴ K Atong, E Mayah & Odigie 'Africa Labour Migration to the GCC States: The Case of Ghana, Kenya, Nigeria and Uganda' African Regional Organisation of the International Trade Union Confederation (ITUC-Africa) 2018.

⁴⁵ International Labour Organization (n 45 above).

⁴⁶ Employment Act, Cap 226 Laws of Kenya, 2007 (as revised in 2012).

⁴⁷ As above.

⁴⁸ R Mwambingu, 'MPs unearth how rogue agencies dupe job seekers' (People Daily 11 March 2024) <<https://www.pd.co.ke/news/mps-unearth-how-rogue-agencies-dupe-job-seekers-225425/>> accessed 30 May 2024.

⁴⁹ United Nations Office on Drugs and Crime *supra* note 13.

⁵⁰ N Laiboni *supra* note 4.

⁵¹ As above.

⁵² As above.

⁵³ As above.

with very little time being allowed by employers for rest, leading to extreme fatigue.⁵⁴ In some cases, salaries would be unduly delayed, or not paid at all.⁵⁵ Complete subservience to employers would be ensured through the issuance of threats of abuse and of implication in crime.⁵⁶

In most of the countries in the region, the migrants' relationship with their employer is governed by the *kafala* system.⁵⁷ Under it, the government gives certain individuals and companies, referred to as sponsors, autonomy over the employment and immigration status of migrant workers.⁵⁸ These sponsors often work with hiring agencies in the migrant workers' countries of origin to recruit and facilitate travel on their behalf.⁵⁹ Because the system is not regulated by the labour ministry, workers have no protection under the host countries' labour laws.⁶⁰ They thus cannot form labour unions or institute legal proceedings over employment matters.⁶¹ Most of these sponsors even require the workers to seek their permission before changing jobs or leaving the country, failure to which, the workers face imprisonment or deportation.⁶² The nearly unfettered powers of the sponsors has led to many domestic workers being held in situations of bondage where their travel documents and mobile phones are confiscated.⁶³ Forced labour thus thrives under such conditions as the workers are left vulnerable and voiceless. The situation was ostensibly worse during the COVID-19

⁵⁴ As above.

⁵⁵ As above.

⁵⁶ As above.

⁵⁷ A Azhari, 'The Kafala 'Sponsorship' System in Saudi Arabia: A Critical Analysis from the Perspective of International Human Rights and Islamic Law' *The SOAS Journal of Postgraduate Research*, Volume 10 (2016-17), Pages 61-80; International Labour Organization 'Employer-Migrant Worker Relationships in the Middle East: Exploring Scope for Internal Labour Market Mobility and Fair Migration' White Paper, March 2017.

⁵⁸ As above.

⁵⁹ As above.

⁶⁰ As above.

⁶¹ As above.

⁶² As above.

⁶³ As above.

pandemic.⁶⁴ For many, fleeing, where possible, remains the only recourse.⁶⁵ It is not possible for all workers, considering that in many cases, their passports are confiscated and that the agents are hardly ever sympathetic to their suffering, with reports of escapees being beaten, raped and returned to their employers by the agents.⁶⁶ Many of those who manage to get back to Kenya find themselves jobless, poor and indebted because they often have to borrow money to travel back.⁶⁷

The unfortunate situation of many Kenyans being exploited in the Middle East has become a news staple.⁶⁸ One that was particularly highlighted was of Diana Chepkemoi, a young girl who endured torture and cruelty from her employer in Saudi Arabia, with an emaciated body to show for it.⁶⁹ After dropping out of university for lack of fees, she looked for jobs to raise her fees and help her ailing mother and school her siblings.⁷⁰ However, 4 years down the line, no job was forthcoming.⁷¹ Consequently, she approached an agency, looking for work abroad. She got domestic work in Saudi Arabia.⁷² However, she landed in the hands of a callous employer who would abuse her and remark that there was nothing she could do about it as he had bought her.⁷³ It took government intervention, following a social media frenzy about her

⁶⁴ Standing Committee on Labour and Social Welfare *supra* note 38.

⁶⁵ S Rasmussen “‘They Called Me ‘Slave’: Beirut Blast Exposes Migrant Workers’ Plight in Mideast’ *The Wall Street Journal*, 2 September 2020 < <https://www.wsj.com/articles/they-called-me-slave-beirut-blast-exposes-migrant-workers-plight-in-mideast-11599048000>> (accessed 3 July 2023).

⁶⁶ N Laiboni *supra* note 4.

⁶⁷ M Daghar *supra* note 30.

⁶⁸ International Labour Organization *supra* note 57.

⁶⁹ N Kiage (n 13 above).

⁷⁰ As above.

⁷¹ As above.

⁷² As above.

⁷³ As above.

situation for her to be released and sent back to Kenya.⁷⁴ However, addressing the media upon her return, she explained that she had friends back in Saudi Arabia who were going through worse than what she did and implored the government to intervene.⁷⁵ In extreme cases, migrants have lost their lives from their employers' abuse and others through suicide, following the abuse which takes a toll on their mental health.⁷⁶ According to Kenya's Ministry of Labour, ninety three Kenyans died in the Middle East between 2019 and 2021.⁷⁷

In response to a tweet by a concerned Kenyan asking the government to intervene after the case of Diana Chepkemoi above was highlighted by the media, the Principal Secretary in the Ministry of Foreign Affairs tweeted: "Please. We have told Kenyans repeatedly to stop sending this category of workers to Saudi. You've chosen not to listen".⁷⁸ He seemed to blame the migrants for poor decision-making. The tweet is a sign of the aloofness of government officials and the elite in Kenya to the situations of many Kenyan women. In yet another instance, the same government official remarked that Kenyan women are being abused in Saudi Arabia because they are not obedient, justifying the ordeals they go through.⁷⁹ There is little sympathy for exploited migrants, as they are seen as having made the decision to be exploited. However, Article 3(b) of the Palermo Protocol provides that consent is irrelevant where any of the means

⁷⁴ As above.

⁷⁵ M Anyango 'Diana Chepkemoi returns from Saudi Arabia' *The Star* 6 September 2022 < <https://www.the-star.co.ke/counties/rift-valley/2022-09-06-kenyan-girl-diana-chepkemoi-returns-from-saudi-arabia/>> (accessed 3 July 2023).

⁷⁶ M Archambault 'Modern Day Slavery Under the Guise of Domestic Work: The Plight of Kenyan Workers in the Middle East' *The McGill International Review* < <https://www.mironline.ca/modern-day-slavery-under-the-guise-of-domestic-work-the-plight-of-kenyan-workers-in-the-middle-east/>> (accessed 4 July 2023).

⁷⁷ Standing Committee on Labour and Social Welfare *supra* note 38.

⁷⁸ M Kinyanjui *supra* note 7.

⁷⁹ A Khaemba 'PS Macharia Kamau Claims Most Kenyans Who Get Abused in Saudi Aren't Obedient' <https://www.tuko.co.ke/politics/473876-ps-macharia-kamau-claims-kenyans-abused-saudi-arent-obedient/> (accessed 19 July 2023).

constituting the crime of human trafficking was used.⁸⁰ By virtue of this provision, the labour migrants are indeed victims of human trafficking, with all three elements of the crime being satisfied.⁸¹

The government of Kenya has stepped in different ways to remedy the situation, but not quite effectively. In 2014, following public outcry over the rise in cases of Kenyan women being abused in the Middle East by their employers, the Kenyan government imposed a moratorium on the recruitment of people for work in the Middle East by recruitment agencies.⁸² In *Khobesh Agencies Limited & 32 others v The Minister of Foreign Affairs & International Relations & 4 others (Khobesh)*, the applicants, who were recruiting agencies, applied to have the court issue an order of certiorari, quashing the moratorium and an order of prohibition, barring the respondents from recruiting employees for work in the Middle East.⁸³ They argued that the decision taken by the respondents was arbitrary and illegal in nature, as the agencies had nothing to do with the ill treatment of the migrants.⁸⁴ Instead, they averred that the issue was one between governments that they should not suffer for.⁸⁵ Declining to grant the orders, the High Court held that in its view, the actions by the government were aimed at protecting its citizens until the situation changed for the better.⁸⁶ However, the Court also directed the respondents to engage the government of Saudi Arabia and have measures adopted to protect the Kenyans working there.⁸⁷

⁸⁰ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime 15 November 2000.

⁸¹ Palermo Protocol *supra* note 9.

⁸² Daghar *supra* note 30.

⁸³ *Khobesh Agencies Limited & 32 others v Minister of Foreign Affairs & International Relations & 4 others [2013] eKLR* <<http://kenyalaw.org/caselaw/cases/view/88273>> (accessed 4 July 2023).

⁸⁴ As above.

⁸⁵ As above.

⁸⁶ As above.

⁸⁷ As above.

The government has regulated the work agency sector and the ban on recruiting domestic workers for the Middle East was lifted in 2020.⁸⁸ Some of the measures taken include the adoption of a curriculum that migrant workers should go through before leaving the country⁸⁹, new accreditation regulations for recruitment agencies and signing bilateral agreements with countries in the Middle East regarding the welfare of Kenyan migrants.⁹⁰ However, the terms of the bilateral agreements are unknown to the public, including the recruitment agencies, so migrant workers remain uninformed about the rights that have been negotiated for them by their government.⁹¹ Unregistered agents also continue to operate in Kenya.⁹² They are attractive to job seekers because their services are cheaper compared to the registered ones.⁹³ Due to these reasons, trafficking to the Middle East continues to be a scourge.⁹⁴

2.2.1 Applicable Laws

The go-to law for the prosecution of human trafficking and forced labour in Kenya is the Counter-Trafficking in Persons Act which was enacted in line with the country's aim of fulfilling its obligations under the Palermo Convention.⁹⁵ It provides that forced labour is a form of exploitation and defines it as 'the extraction of work or services from any person for

⁸⁸ A Mutambo 'State clears way for Kenyans to work in Saudi Arabia' *Nation* 28 June 2020 < <https://nation.africa/kenya/news/state-clears-way-for-kenyans-to-work-in-saudi-arabia-130214>> (accessed 7 July 2023).

⁸⁹ N Laiboni *supra* note 4.

⁹⁰ J Keenan & N Rugene 'They see us as slaves': Kenyan women head for the Gulf despite abuse fears' *The Guardian* 29 October 2019 < <https://www.theguardian.com/global-development/2019/oct/29/kenyan-women-gulf-despite-abuse-fears-domestic-workers>> (accessed 7 July 2023).

⁹¹ As above.

⁹² A Bisong 'Regional Solutions: Regulating Recruitment and Protection of African Migrant Workers in The Gulf and The Middle East' European Centre for Development Policy Management, Discussion Paper No.292, 2021.

⁹³ As above.

⁹⁴ M Daghar *supra* note 30.

⁹⁵ Counter-Trafficking in Persons Act, No. 8 of 2010, Laws of Kenya.

the purpose of exploitation'.⁹⁶ It also defines trafficking in persons, largely borrowing from the Palermo Convention and criminalises it, including the use of job recruitment agencies for such trafficking.⁹⁷ Further, interfering with the travel documents or personal effects of another with the aim of barring them from leaving a country or seeking help attracts a minimum jail term of ten years or a minimum fine of ten years or both.⁹⁸ Where due to trafficking, the victim suffers permanent or life-threatening bodily harm or dies, the Act prescribes life imprisonment.⁹⁹

Other laws also protect women against trafficking for forced labour. Part VII of the Labour Institutions Act provides for the regulation of employment agencies.¹⁰⁰ It states that employment agencies must be registered and provides the registration requirements and procedures.¹⁰¹ The agencies are also to abide by regulations developed under the Act and to ensure compliance, employment officers are to enter their premises without notice and carry out checks.¹⁰² Part XI of the Employment Act provides regulations on foreign contracts of service.¹⁰³ They are to be signed not only by the employees and employers, but also by a labour officer who among others, should be satisfied that the employee consented to entering the contract without fraud, coercion, undue influence, mistake or misrepresentation and that they understood the terms and conditions of the contract.¹⁰⁴ Where the employer in a foreign contract of service is not a resident or does not carry out business in Kenya, they (or their agents, as the case may be) are required to deposit a security bond and sureties who are Kenyan

⁹⁶ *Ibid.*, section 2.

⁹⁷ *Ibid.*, section 5.

⁹⁸ *Ibid.*, section 8.

⁹⁹ *Ibid.*, section 9.

¹⁰⁰ Labour Institutions Act, Cap 234, Laws of Kenya, 2012 (as revised in 2013).

¹⁰¹ *Ibid.*, section 55 & 56.

¹⁰² *Ibid.*, section 57- 60.

¹⁰³ Employment Act, *supra* note 46.

¹⁰⁴ *Ibid.*, section 83-84.

residents to guarantee adherence to the contract.¹⁰⁵ Engaging a person in service without the stipulated contract attracts a maximum penalty of two hundred thousand shillings or imprisonment of a maximum of 6 months or both.¹⁰⁶ Although this provision is necessary, it is very lenient, compared to the penalties under the Counter-Trafficking Act.¹⁰⁷ The laws therefore seem to contradict each other, leaving room for disparate judgements in similar trafficking and forced labour cases, based on the laws the prosecution chooses to rely on in court.

The Constitution of Kenya guarantees human dignity, gender equality and non-discrimination.¹⁰⁸ It also provides for security of the person, and prohibits slavery, servitude and forced labour.¹⁰⁹ It further states that there are rights that cannot be limited, and among others, these include ‘freedom from torture and cruel, inhuman or degrading treatment or punishment’ and ‘freedom from slavery or servitude’.¹¹⁰

These laws, although very much needing harmonisation and strict enforcement, serve to criminalise human trafficking and forced labour. In effect then, women should not be trafficked from Kenya to the Middle East or any other destination for that matter for purposes of forced labour.

¹⁰⁵ *Ibid.*, section 85.

¹⁰⁶ *Ibid.*, section 86.

¹⁰⁷ Counter-Trafficking in Persons Act, *supra* note 95, sections 8 & 9.

¹⁰⁸ Constitution of Kenya, 2010 Article 27 & 28.

¹⁰⁹ *Ibid.*, article 29 & 30.

¹¹⁰ *Ibid.*, article 25.

3 **The Intersectionality of Human Trafficking**

Social phenomena that are results of power dynamics are related.¹¹¹ For example, sexism, racism and classism are distinct but branches of the same tree, which is discrimination.¹¹²

Human beings never have just one social identity. With multiple identities, victimhood also tends to be multi-tiered.¹¹³ Intersectionality is a recognition that the root causes of all inequalities are multiple and interrelated.¹¹⁴ It highlights the social justice objective of addressing not just the manifested problems, but their mainsprings as well.¹¹⁵ It therefore calls for more effort in the identification of factors that create inequity and drawing linkages between them as opposed to using single factors to explain and address complex social ills. Thus, through the lenses of intersectional feminism, the vulnerability of victims of human trafficking and forced labour is understood to be a result of unfair notions, policies and social constructs which have all together, shaped lives and sealed fates.

The trafficking of women is a multi-tiered problem and needs to be viewed as such in order for responses to be effective. Of all the peoples of the world, Africans are the most vulnerable to modern slavery.¹¹⁶ This increased vulnerability is as a result of discrimination on grounds such as race and ethnic background.¹¹⁷ It is a widely recognised fact that Africans and

¹¹¹ O. Hankivsky 'Intersectionality 101' *The Institute for Intersectionality Research & Policy*, SFU, 2014.

¹¹² K. Branson 'Do Racism and Sexism Go Together?' Rutgers University www.rutgers.edu/news/do-racism-and-sexism-go-together (accessed 21 July 2023).

¹¹³ A. Carastathis 'The Concept of Intersectionality in Feminist Theory' 9:5 *Philosophy Compass* (2014).

¹¹⁴ Hankivsky, *supra* note 111.

¹¹⁵ Hankivsky, *supra* note 111.

¹¹⁶ Walk Free 'Regional Findings: Africa' *The Global Slavery Index 2023*, Minderoo Foundation.

¹¹⁷ *Ibid.*

people of African descent suffer racism.¹¹⁸ Gender is also a contributing factor.¹¹⁹ In the Middle East labour trafficking context, abuse is disproportionately meted against dark-skinned persons, who face racism and women who may be victims of rape in addition to other forms of exploitation.¹²⁰ Therefore, African women, who also happen to be racial and ethnic minorities, are at the highest risk.¹²¹ Many ‘economic, social, cultural, and legal’ factors contribute to the vulnerabilities that ultimately lead to victimhood.¹²² Some aggravating factors in the Kenyan context are discussed below.

3.1 *Compounding Vulnerabilities*

A majority of the victims of trafficking for forced labour are poor, vulnerable and from marginalised groups.¹²³ Globally, more women live in poverty compared to men.¹²⁴ It is the same case with Kenya where female-headed households are generally poorer than male-headed ones.¹²⁵ This is because of unequal access to resources and opportunities. For example, denying women access to education, common in rural areas, significantly increases their chances of being poor.¹²⁶ Most of the labour migrants from Kenya to the Middle East had their education

¹¹⁸ United Nations ‘Fight Racism’ < www.un.org/en/fight-racism/vulnerable-groups/people-of-african-descent> (accessed 19 July 2023).

¹¹⁹ T. Paiz & A. Van Schooneveld ‘Race and Human Trafficking: How this Crime Disproportionately Affects Ethnic Minorities and Indigenous Persons’ < www.theexodusroad.com/race-and-human-trafficking/> (accessed 30 June 2023).

¹²⁰ A. Tang, ‘Domestic workers from Asia, Africa beaten, raped, overworked in UAE – HRW’ (Thompson Reuters Foundation 23 October 2014) <https://news.trust.org/item/20141023104335-s8zo7> accessed 30 May 2024.

¹²¹ Paiz & Schooneveld, *supra* note XX.

¹²² International Labour Office, *supra* note 25.

¹²³ United Nations Human Rights ‘Special Rapporteur on contemporary forms of slavery’ < www.ohchr.org/en/special-procedures/sr-slavery> (accessed 30 June 2023).

¹²⁴ UN Women, ‘Spotlight on Goal 1: Gender Differences in Poverty and Household Composition Through The Life Cycle’ (2018) 2.

¹²⁵ Y. Xu, A. Delius & U. Pape, ‘Gender Differences in Household Coping Strategies for COVID-19 in Kenya’ *World Bank Group Policy Research Working Paper* 9959 (2022) 11.

¹²⁶ Partnership for Economic Policy, ‘Women at high risk of poverty in rural Africa’ < www.pep-net.org/women-at-high-risk-poverty-rural-africa> accessed 19 May 2024.

cut short.¹²⁷ In the above highlighted case of Diana Chepkemoi, she dropped out of university due to lack of fees and became a labour migrant with the hopes of raising enough money to go back to school.¹²⁸ In addition to lack of resources to attend school, there are factors such as female genital mutilation, child marriages and unwanted pregnancies that could contribute to girls not continuing with education.¹²⁹

Lack of proper education also limits the ability of women to speak up for themselves. Kenyans who have been victims of human trafficking and forced labour in the Middle East have specifically expressed lack of awareness of the rights they had and remedies available to them.¹³⁰ In *Stella Mukoko Amutabi v Saijal Shikotra*, the court found that during the course of the claimant's employment to the respondent as a domestic worker, she had been grossly underpaid and ordered that the difference be remitted to her.¹³¹ Despite being a win for the claimant, she was actually seeking for more than was awarded but could not prove her claims because she did not have a contract she could produce in court.¹³² As the court noted, this was partly because she was illiterate.¹³³ The situation is the same for many domestic workers in Kenya.¹³⁴ Many employers hire them on informal terms which means that they have little to no recourse in law.¹³⁵ Unbeknownst to the employers, they are contributing to human trafficking and forced labour as despite some of the domestic workers having knowledge of abuse in the Middle East, they still opt to migrate because of the promise of better pay which

¹²⁷ Bisong, *supra* note 92.

¹²⁸ Kiage, *supra* note 7.

¹²⁹ Sessional Paper No. 02 of 2019 on National Policy on Gender and Development, Republic of Kenya.

¹³⁰ *Ibid.*

¹³¹ [2015] eKLR < www.kenyalaw.org/caselaw/cases/view/106889> (accessed 18 July 2023).

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ M. Kanyogo 'Sisi Pia Ni Watu', *The Republic*, 7 November 2022 < www.republic.com.ng/october-november-2022/kenya-domestic-workers-resist-exploitation/> (accessed 18 July 2023).

¹³⁵ C. Mputhia 'Why You Should Sign Contracts with Your Domestic Employees', *Business Daily*, 9 August 2020 www.businessdailyafrica.com/bd/lifestyle/personal-finance/why-you-should-sign-contracts-with-your-domestic-employees -2298008.

helps them meet their needs.¹³⁶ No wonder in *Khobesh*, the recruitment agencies, in trying to show the importance of their services to the court, argued that their ‘main objectives are to contribute to the alleviation of poverty and unemployment in Kenya by securing for Kenyans local or foreign employment’.¹³⁷

Despite recording a steady growth in its economy, Kenya’s unemployment rate continues to soar.¹³⁸ According to the Kenya National Bureau of Statistics Economic Survey 2021, total employment outside small-scale agriculture and pastoral activities stood at 17.4 million in 2020, down from the 18.1 million recorded in 2019.¹³⁹ Over the same period of time, the survey established that wage employment in the private sector declined by 10 percent from 2.1 million jobs in 2019 to 1.9 million jobs in 2020, and “informal sector employment is estimated to have contracted to 14.5 million jobs”.¹⁴⁰ During such job losses, it is women who are most likely to get laid off as employers find it easier to let them go for reasons attributed to patriarchy.¹⁴¹ Of the unemployed, women account for more than two thirds of the number.¹⁴² Further, although lack of education contributes to unemployment for all people, uneducated

¹³⁶ ‘In the Gulf 99% of Kenyan migrant workers are abused, a poll finds’, *The Economist*, 15 September 2022 < www.economist.com/middle-east-and-africa/2022/09/15/in-the-gulf-99-of-kenyan-migrant-workers-are-abused-a-poll-finds> (accessed 19 July 2023).

¹³⁷ *Khobesh v Minister of Foreign Affairs supra* note 83.

¹³⁸ O. Guguyu ‘How Kenya’s Unemployment Rate Rose Highest in East Africa’, *The East African*, 8 September 2022 < www.theeastafrican.co.ke/tea/business/how-kenya-unemployment-rate-rose-highest-in-east-africa-3941056> accessed 29 June, 2023.

¹³⁹ Kenya National Bureau of Statistics ‘Kenya national bureau of statistics economic survey 2022 *Government Press*. www.knbs.or.ke/wp-content/uploads/2022/05/2022-Economic-Survey1.pdf

¹⁴⁰ *Ibid.*

¹⁴¹ O. Guguyu, ‘Job losses hit women harder than men staff’, *Business Daily*, 28 December 2021 < www.businessdailyafrica.com/bd/economy/job-losses-hit-women-harder-than-men-staff-3665062> accessed 19 May 2024.

¹⁴² K. Muiruri, ‘Unemployment among women two times higher than men’, *Business Daily*, 5 July 2023) < <https://www.businessdailyafrica.com/bd/economy/unemployment-among-women-two-times-higher-than-men--4294416>> accessed 19 May 2024.

women are three times more likely to be unemployed compared to uneducated men.¹⁴³ This, among other factors, is leading to women looking for jobs abroad.¹⁴⁴

With lack of education and unemployment, entrepreneurship would be the next best option. However, there are very few financial products tailored to meet women's needs.¹⁴⁵ For example, to address illiteracy, in addition to credit, financial institutions also need to train women on basic book-keeping.¹⁴⁶ Also, many women lack access to capital to start or grow businesses.¹⁴⁷ One reason for this is that women are often landless, which means that they often have no real assets to put up as collateral.¹⁴⁸ This is mostly due to cultural practices that disallow women ownership of their matrimonial homes and provide that women cannot inherit land.¹⁴⁹ They also often fall prey to land grabbers and are left with no recourse.¹⁵⁰

In addition to the social factors highlighted, climate change is also contributing to women's disempowerment in Kenya. There is an inextricable link between climate change and modern slavery.¹⁵¹ As global temperatures rise, it is those who are already most vulnerable that are most affected.¹⁵² As people become climate migrants, women become more at risk of

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ Aljazeera, 'Kenya's women entrepreneurs lack access to capital, study finds' (30 September 2022) < www.aljazeera.com/economy/2020/9/30/kenyas-women-entrepreneurs-industry-struggle-to-access-credit > accessed 19 May 2024.

¹⁴⁶ United Nations Environment Programme, 'Access to finance for women proves life-changing for Kenya's 'mama karanga' < www.unep.org/news-and-stories/story/access-finance-women-proves-life-changing-kenyas-mama-karanga > accessed 19 May 2024.

¹⁴⁷ International Labour Organisation 'Women Entrepreneurs in Kenya: A Preliminary Report & Factors Affecting Women Entrepreneurs in Micro and Small Enterprises in Kenya: A Primary Research Report', *International Labour Organisation*, 2008.

¹⁴⁸ Kenya Land Alliance 'About The Women Land Rights Project' < www.kenyalandalliance.or.ke/index.php/welcome/women_land_property_rights#:~:text=Over%20the%20years%2C%20KLA%20has,%2C%20access%2C%20and%20control%20land.> (accessed 20 July 2023).

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ V. Nakate 'Climate Change and Human Rights: The Inextricable Link' The Global Slavery Index 2023, Minderoo Foundation.

¹⁵² *Ibid.*

sexual violence and trafficking.¹⁵³ The horn of Africa, which includes parts of Kenya, is a region prone to drought.¹⁵⁴ These harsh weather conditions force parents to marry off their young daughters for survival through the bride price they receive.¹⁵⁵ Child marriage in turn could lead to lack of education and gender-based violence.¹⁵⁶

All these vulnerabilities are manifestations of gender inequality and discrimination. According to a recent study by the World Bank, women in Kenya enjoy only 80.6% of the legal rights enjoyed by men.¹⁵⁷ Although the score is higher than that recorded for other East African countries, it still indicates gender disparity that should not exist.¹⁵⁸ There are women who fall under two or more of the categories identified above as all the vulnerabilities are linked, creating cyclic chains. The scale of this intersectionality therefore needs to be appreciated in its totality so that impactful and long-lasting solutions are developed.

4 Intersectional Feminism through the Maputo Protocol

Crenshaw, credited for coming up with the term intersectionality, defines it as ‘a lens, a prism, for seeing the way in which various forms of inequality often operate together and exacerbate each other’.¹⁵⁹ She observes that the fact that there are people who are subject to different forms of inequalities is usually overlooked.¹⁶⁰ For women trafficked from Kenya to the Middle East for forced domestic labour, their intersecting identities which make them vulnerable to

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ UNICEF, ‘Child Marriage’ < www.unicef.org/protection/child-marriage> accessed 31 July 2023.

¹⁵⁷ World Bank Group ‘Women, Business and The Law 2023’ *World Bank*, Washington DC, 2023.

¹⁵⁸ The World Bank ‘Women in Kenya Enjoy Only 81% of the Legal Rights of Men’ < www.worldbank.org/en/news/press-release/2023/03/29/women-in-afe-kenya-enjoy-only-81-of-the-legal-rights-of-men> (accessed 20 July 2023).

¹⁵⁹ K. Steinmetz ‘She Coined the Term ‘Intersectionality’ Over 30 Years Ago. Here’s What It Means to Her Today’ *Time*, 20 February 2020 < www.time.com/5786710/kimberle-crenshaw-intersectionality/> (accessed 27 July 2023).

¹⁶⁰ *Ibid.*

exploitation are poor, uneducated, foreign, jobless, landless and ignorant, among others. These are different forms of oppression which are ‘overlapping’ and ‘concurrent’.¹⁶¹

The Maputo Protocol coming to force in 2003 was a momentous occasion for all women in Africa because it was in response to the concern that despite the African Charter on Human and Peoples’ Rights and other instruments having been ratified by African states, African women still suffered human rights abuses.¹⁶² It was thus established to guarantee them comprehensive rights, addressing their specific life situations by having at the fore their socio-cultural contexts.¹⁶³ However, two decades later, the women it seeks to protect continue to be trafficked and capitalized on.

Kenya ratified the Maputo Protocol in 2010.¹⁶⁴ International treaties and conventions that are ratified by Kenya constitute Kenyan law by virtue of Article 2(6) of the Constitution.¹⁶⁵ This was upheld in *Re The Matter of Zipporah Wambui Mathara*, a bankruptcy case where the Court held that ratification of international treaties and conventions automatically makes them sources of Kenyan law.¹⁶⁶ The Maputo Protocol therefore has the force of law in Kenya. Its provisions have also been incorporated in national laws, including the Constitution which provides for equality and non-discrimination, economic rights and family rights and the Matrimonial Property Act which provides for women’s rights to matrimonial property.¹⁶⁷

¹⁶¹ UN Women ‘Intersectional feminism: what it means and why it matters right now’ 2020 < www.unwomen.org/en/news/stories/2020/6/explainer-intersectional-feminism-what-it-means-and-why-it-matters> (accessed 27 July 2023).

¹⁶² Maputo Protocol, *supra* note 11.

¹⁶³ Maputo Protocol, *supra* note 11 articles 2 and 17.

¹⁶⁴ N. Waweru, ‘What you need to know about the Maputo Protocol’ *The Star*, 27 April 2015 < www.the-star.co.ke/sasa/2015-04-27-what-you-need-to-know-about-the-maputo-protocol/> accessed 31 July 2023.

¹⁶⁵ The Constitution of Kenya, 2010.

¹⁶⁶ *In Re The Matter of Zipporah Wambui Mathara [2010] eKLR* < www.kenyalaw.org/caselaw/cases/view/71032/> (accessed 18 July 2023).

¹⁶⁷ Constitution of Kenya, 2010 Articles 27, 43 & 45; Matrimonial Property Act, 2013 Sections 4, 6, 8 & 11.

The Maputo Protocol provides for standard human rights including the right to be protected from discrimination, the rights to inherent dignity and right to life, integrity and security of the person.¹⁶⁸ Particularly, it calls for the enactment and effective implementation of laws and policies to prohibit harmful practices against women.¹⁶⁹ Therefore, the wide gap that exists in the realization of the rights of men and women should not exist. All women should have and enjoy all human rights. The government is also to ensure that women are protected against violence and exploitation.¹⁷⁰ This includes sexual violence and labour exploitation.¹⁷¹ The effect is that women should not be exploited, treated cruelly or in any manner that may be considered inhuman or degrading. It also provides for the right of women in marriage in all stages including during the contracting of marriage, its duration and its end.¹⁷² In the case of separation, divorce or annulment of marriage, women have the same rights and responsibilities as men.¹⁷³ Property is thus to be shared equitably and the rights and responsibilities over the issues are to be reciprocal in nature.¹⁷⁴ Upon widowhood, women are still to be treated with dignity and have the right to inherit from their husbands.¹⁷⁵

The Protocol, in recognition of the fact that women's issues have for a long time been relegated to the private sphere, goes an extra mile to clarify that the rights it provides are not to be guaranteed only in private spaces, but public ones as well.¹⁷⁶ It therefore paints a picture of the African woman, not as an invisible citizen, but one fully immersed in both private and public spheres, with the choice to work and earn from that work and to participate in decision-making

¹⁶⁸ Maputo Protocol, *supra* note 11 articles 2, 3 & 4.

¹⁶⁹ *Ibid.*, article 2.

¹⁷⁰ *Ibid.*, article 3.

¹⁷¹ *Ibid.*, article 3.

¹⁷² *Ibid.*, articles 6, 7, 20 & 21.

¹⁷³ *Ibid.*, article 7.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*, articles 20 & 21.

¹⁷⁶ *Ibid.*, articles 1, 4 & 13.

over her destiny. Unfortunately, this is in contrast with Kenya’s primary law against human trafficking, the Counter-Trafficking in Persons Act. The law has two main shortcomings. Firstly, it uses gender-neutral language, referring to ‘trafficking in persons’ as opposed to specifically shining the spotlight on women trafficking.¹⁷⁷ This ignores the fact women are disproportionately affected by the vice and that in most cases, they become victims simply because of their gender. Secondly, the Act does not consider the social, economic and environmental factors that make women all the more vulnerable to trafficking. Therefore, efforts to curb human trafficking cannot be effective.

Read together, the highlighted sections of the Maputo protocol provide for mitigation against vulnerabilities that push women to human trafficking and forced labour. Thus, the gap lies not in the absence of laws, but in their monist interpretation which closes an eye to the many shackles on the feet of African women. The Maputo Protocol’s provisions should not be read as isolated sections, but complementary ones, each significant, yet dependent on the fulfilment of all the others. They all seek to emancipate the African women. Failure in one should thus be interpreted as a failure of all and grappled with as such. The intersectional feminism approach hence reinforces the indivisibility, interrelatedness and interdependence of human rights. This also brings in a new way of viewing reservations to the Maputo Protocol – that as long as not all rights are guaranteed, all stand a risk of crumbling. Kenya entered a reservation on Article 10(3) of the Maputo Protocol which provides a commitment by governments to reduce their budgetary allocations for military activities and direct the amount to solving social problems, including those faced by women specifically.¹⁷⁸ This points to a reluctance by the government in solving women’s issues as a financial priority.

In addition to viewing vulnerabilities as abetting human trafficking and forced labour, a feminist approach also acknowledges that the consent of women to be trafficked is merely

¹⁷⁷ Counter-Trafficking in Persons Act, *supra* note 95 section 3.

¹⁷⁸ L. Asuagbor ‘Status of Implementation of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa’ African Commission on Human and Peoples’ Rights’ 2016 <www.ihrda.uwazi.io/ar/entity/t8el0moa2rn9b9af2mnkrcnmi?page=1> (accessed 27 July 2023).

adaptive, one borne out of oppression.¹⁷⁹ It is them dealing with the hand they have been dealt and not a decision made in exercise of autonomy. State action is therefore needed to increase the options available to women.¹⁸⁰ The government needs to carry out an investigation into how its systems propagate the vulnerabilities. This exercise begins by an appreciation of the power of oppression, and the world of possibilities that could be made available to women.¹⁸¹

Decision-making at all levels of government heavily relies on data.¹⁸² When this data is disaggregated, so that it covers a wide range of factors, decisions can be made that include and protect more people.¹⁸³ Intersectional feminism is therefore a solution to the vice of women trafficking as a lens applied in policy formulation, monitoring and system creation so that all women are equally protected by the Maputo Protocol. For example, policies could be formulated that promote the hiring of domestic workers locally on terms favourable to employees and educating them on their rights.

5 Conclusion and Recommendations

The trafficking and forced labour of people from Kenya to the Middle East is a gendered issue as it disproportionately affects women. Women's experiences should therefore be considered in order to paint an accurate picture of the problem that needs to be solved. The fact that this trafficking occurs chiefly through recruitment agencies points to the root cause of the problem being economic vulnerability contributed to vastly by other vulnerabilities. The case would have been different if the women were being abducted and forcefully migrated. That would have pointed to the problem of among others, insecurity. Economic vulnerability is more complex than just lack of employment opportunities. It has other drivers which disproportionately (or only) affect women.

¹⁷⁹ M. Walsh 'Feminism, Adaptive Preferences, and Social Contract Theory' 30:4 *Hypatia* (2015) pp.829-845.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² United Nations 'The Millennium Development Goals Report 2015' (New York 2015) pp.10-11.

¹⁸³ *Ibid.*

The intersectionality approach needs to be adopted to reduce the vulnerabilities of Kenyan women to human trafficking and forced labour. The protection, promotion, respect and fulfilment of women's rights in their totality by the state is the only sure way of curing the plague. The government of Kenya needs to lift its reservation on Article 10 of the Maputo Protocol and invest more in women and women-centred initiatives.¹⁸⁴ This points to a need for data on societal issues to be broken down on gender lines in order for women's issues to be accurately identified, labelled and addressed.¹⁸⁵ Currently, there is a data void on how the vulnerabilities highlighted herein relate to women trafficking patterns. There is also a need to revise the Counter-Trafficking in Persons Act in line with intersectional feminism. This would mean having provisions that recognise women's unique vulnerabilities and mitigate against them. The government also needs to work closer with civil society organisations which deal with women's issues in order for identification efforts to be concerted for enhanced effectiveness. This partnership could also work to increase public awareness on human trafficking and forced labour, targeting the spaces where the work agencies recruit women for work in the Middle East.

Rounding off the argument, this paper notes that minus feminism, human trafficking and forced labour of Kenyan women in the Middle East will continue to thrive because many of the driving vulnerabilities are unique to one gender. Minus intersectionality, these vulnerabilities would not be viewed and addressed as one, but as different and disconnected issues. Efforts would then be immethodical and ineffective. An intersectional feminist approach gives a bird's-eye view of the issue, making it possible to generate cross-cutting responses. Therefore, more than just viewing trafficking as a gender or women's issue, it also becomes a knowledge, power and resource issue and solutions can be proffered from all these dimensions.¹⁸⁶ Having this in mind

¹⁸⁴ J. Kilonzo 'The Impact of the Maputo Protocol in Kenya' in *The Impact of the Maputo Protocol in Selected African States* S Mutambasere, A Budoo-Scholtz & D Murden (eds.) Pretoria University Law Press, 2023.

¹⁸⁵ As above.

¹⁸⁶ C. Edward & M. Thompson 'Gender and climate change adaptation in agrarian settings: Current thinking, new directions, and research frontiers' 8:3 *Geography Compass* (2014) in O Hankivsky *supra* note 111.

when developing policies to curb trafficking and forced labour would be more effective than imposing labour migration bans because while underground trafficking rings would still operate with bans, policies developed with intersectionality in mind would create alternative solutions to women's problems, therefore making the migration less attractive.

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