

# A CRITIQUE TO TANZANIA'S ANTI TRAFFICKING IN PERSONS ACT, NO. 6 OF 2008<sup>i</sup>: A QUEST FOR AMENDMENTS

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## ABSTRACT

This article offers an analysis of the law pertaining to Trafficking in Persons in Tanzania [hereafter 'TIP']. It offers suggestions for compliance with international standards where it has clear shortcomings, or to request reforms where it is in conflict or not in synchrony with other local statutes. The analysis is centred on the TIP Act No. 6/2008. The Act provides for the main legal regime criminalizing TIP acts in Tanzania. It basically provides for: crime prevention, perpetrator indictment, and victim protection. The article's focus is on Tanzania Mainland, as well as Zanzibar, because the TIP Act is a union law that applies to both Tanzania Mainland and Zanzibar. The main conclusions drawn from the analysis point out that the TIP law is not effective enough to deter the commission of TIP crimes, nor does it adequately protect the victims of trafficking, and therefore it is appropriate that the law should be overhauled.

This article begins with an introduction to Trafficking in Persons (TIP), then trafficking in Persons Profile in Tanzania, analysis of TIP Act no.6/2008, abridged summary of law-making process in Tanzania, recommendations on law amendment and Conclusions.

## INTRODUCTION TO TRAFFICKING IN PERSONS

Both the international instruments and domestic legislation do not provide a precise definition of human trafficking but rather, they articulate the acts that establish a crime of trafficking in Persons. The meaning of trafficking in persons, hereinafter ‘‘TIP’’, is underscored under Article 3 of the Protocol to Prevent, Suppress and Punish trafficking in persons especially women and children supplanting the United Nations Convention against transnational organized crimes of 2000 as follows;

*The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation.<sup>ii</sup>*

From the definition, one must consider the presence of three key elements before concluding that an offence of human trafficking has been committed. These elements include;

- (a) *Actus reus* (overt act- what is done): acts include; recruitment, transportation, transfer, harboring or receipt of Persons;
- (b) The means (how was the act done): use of threats or force, coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, giving payments or benefits to induce the consent of a person having control over the victim;
- (c) Purpose. (Why is it done) the purpose is always exploitation of a victim such as sexual exploitation, forced labour, domestic servitude, removal of organs among others.

However, where a TIP act involves a child, proof of means is immaterial. The law provides that;

*The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in sub paragraph (a)<sup>iii</sup>*

Further, where the means of trafficking have been proved, consent of the victim of TIP becomes irrelevant. In a normal sense, there is no person who can consciously consent to be exploited by another Person.<sup>iv</sup> Thus, consent cannot be raised successfully as a defense. And where it is trafficking of a child, the means need not to be proved by the Prosecutor.

This definition of TIP aims to give consistent construction of trafficking phenomenon all over the world.<sup>v</sup> In particular, this definition is considered to be a guideline for states parties to this Protocol to adopt the most effective legislation to criminalize TIP.<sup>vi</sup> Tanzania enacted its Anti-TIP legislation in 2008 whereby it adopted this definition under section 4(1) of the Act.

Trafficking in Persons is a form of modern-day slavery, a human rights violation that constitutes a crime against the individual person and the State.<sup>vii</sup> Therefore acts of trafficking in persons must be defined, identified and punished by legislative means. TIP is a crime against individual human beings and state security, thus the action to combat trafficking must revolve around strong legislation on preventing trafficking, prosecuting traffickers and protecting and vindicating victims of trafficking.

Any law that falls short of any of the items above would be an inadequate TIP law such that, the main components that the TIP law ought to address are missing.<sup>viii</sup> TIP is a crime which involve gross violation of human rights and freedoms. Examples of such rights are right to equality, right to life, right to liberty, right to education, right to individual integrity and dignity, right to associate with others, freedom from inhuman, degrading punishment and torture, right to privacy, freedom of Movement among others. In Tanzania, these rights are constitutionally Protected.<sup>ix</sup> Being constitutionally protected means they cannot be criminally derogated by any means by any individual. It further implies that, in the hierarchy of legal norms, the constitution is the principal or fundamental norm from which all other norms derive legality and legitimacy.<sup>x</sup> The state has the duty to intervene by arresting and punishing the criminal as well as vindicating the victims for the agony and losses suffered. Thus, it is imperative that, TIP cannot be only Prevented through Prosecution of Perpetrators, the prevention process and TIP criminalization through legislation must recognize trafficked victims and grant them sufficient protection of their human rights.

Also, anti-TIP law must embody a comprehensive framework geared at preventing persecution and revictimization of survivors and Prosecuting the criminals.<sup>xi</sup> In so doing, there are peculiar

rights that Victims of trafficking (VoTs) are entitled by virtue of their status as victims. The rights arise as a result of the infringement of the former sets of rights. These include; Right to safety<sup>xii</sup>, right to Privacy, right to information, right to legal representation<sup>xiii</sup>, right to be heard in court<sup>xiv</sup>, right to fair, commensurate and prompt compensation for damages<sup>xv</sup>, right to assistance<sup>xvi</sup>, right to seek residence<sup>xvii</sup> and right to return and reunification with their families<sup>xviii</sup>.

In order to protect victims against revictimization, the law must contain provisions providing for mandatory establishment of temporary safe shelters for housing victims of trafficking pending their reunification with their respective families.<sup>xix</sup>

Moreover, to effectively contain TIP crimes, the law must prescribe severe punishments that are proportionate to the crimes committed in such a way that, the perpetrators are efficiently deterred. Finally, the enforcement agencies and the judiciary must be capable of competently Investigating, Prosecuting and Interpreting the law, without which the crime for which the law is intended to cure goes unchecked. The law that punish TIP in Tanzania is the Anti-trafficking in Persons Act No. 6/ 2008 as discussed hereunder.

## **TRAFFICKING IN PERSONS PROFILE IN TANZANIA**

Tanzania has been described as a source country, country of transit and destination area for trafficking in persons victims.<sup>xx</sup> The global Slavery Index has revealed that, between 310,000-350,000 people in Tanzania are living in conditions of Modern Slavery ranking 29 out of 162 countries surveyed.<sup>xxi</sup> Where victims are trafficked from rural areas to urban areas for domestic servitude, involuntary and forced labour, as well as sexual exploitation, this is known as domestic trafficking.<sup>xxii</sup> In contrast, international trafficking occurs when victims are trafficked to overseas countries especially in India, Nepal, Yemen, Bangladesh, Europe, Middle east, South Africa,<sup>xxiii</sup> among other countries and subjected to different forms of exploitation including but not limited to sexual exploitation, removal of organs for commerce, involuntary domestic servitude, forced labour in Plantations, etc..<sup>xxiv</sup> International/cross-border trafficking is defined by the United Nations Convention against transnational organized crimes as ‘trafficking that is committed in more than one state; (b) is committed in one state but a

substantial part of its preparation, Planning, direction or control takes place in another state; (c) is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state; (d) is committed in one state but has substantial effects to another state.<sup>xxv</sup>

Human traffickers exploit domestic and foreign victims in Tanzania.<sup>xxvi</sup> The most dominant form of human trafficking taking place in Tanzania is ‘domestic trafficking’.<sup>xxvii</sup>

**Table 1. The statistics of TIP Victims from safe shelters in the period of 2016 - 2018<sup>xxviii</sup>**

No.	Name of the Shelter	Region	No. of Victims	Female	Male	Underage of 18	Age of 18 And above.
1	Faraja	Arusha	85	85	-	85	-
2	Daughters of Mary Immaculate	Kibamba-Dar es Salaam	85	85	-	28	34
3	Wote Sawa	Mwanza	97	92	01	92	01
4	Wote Sawa	Kasulu-Kigoma	37	28	09	30	07
5	KIWOHEDE	Mwanza	59	56	03	59	-
6	Salvation Army	Dar es Salaam	27	27	-	26	01

The table 1 above and table 2 below portrays a number of victims of human trafficking rescued and temporarily sheltered in the home shelters hosted by NGOs from Jan.2016- December 2019. Most of the victims are girls who are recruited for sexual exploitation.<sup>xxix</sup> Amongst them, 90% are Tanzanians who are recruited from their homes in rural areas to urban and peri-urban areas for exploitation. 10% of the victims are foreigners as shown in table 3 below.

**Table 2. Statistics for victim of TIP from January – December 2019.<sup>xxx</sup>**

No.	Name of Shelter	Region	No. of Victims		Number of Victims		Total
			Male	Female	Below 18 years	Above 18 years	

1.	Faraja	Arusha	0	2	2	0	2
2	DMI	Dar es Salaam	0	112	112	0	112
3.	Wote Sawa	Mwanza	0	6	6	0	6
4.	Wote Sawa	Kasulu -Kigoma	1	1	1	1	2
5.	KIWOHEDE	Mwanza	1	17	18	0	18
6.	KIWOHEDE	Dar es Salaam	0	3	3	0	3
7	Salvation Army	Dar es Salaam	0	18	18	0	18
Total			2	159	160	1	161

**Table 3. Victims rescued from foreign States**

Country	Number	Sex	Year
India	04	F	2017
Oman	03	F	2017
Uganda	01	F	2019
Malaysia	01	F	2018
Iraq	02	F	2019
Thailand	07	F	2018-2019
Kenya	05	F	2019

Source. Office of anti-trafficking Secretariat- Ministry of Home Affairs headquarters.

Table 3 shows actual number of Tanzanian victims rescued from foreign countries. The numbers confirm that, traffickers import and export victims worldwide. It further confirms the fact that, not only is Tanzania a source for Victims of trafficking but also a destination country for victims of trafficking. Thus, a need for a comprehensive law taking onboard all circumstances is fundamental.

**Table 4 Foreign victims Unified with their respective families.<sup>xxxi</sup>**

Country	Number	Sex	Year
Mozambique	01	F	2019
South Africa	01	F	2019



This table shows a number of foreign victims unified with their respective families. Most of the foreign victims' reunification takes a long time due to shortage of funds and resources to affect their travel.

An informer from the anti-trafficking secretariat (ATS) hinted that, the ATS has been receiving some minimal funds from the government. Most of its work depends on funds from international donors. at the time of writing this article, the anti-trafficking fund<sup>xxxii</sup> had not received any money from the governmental budget.

The sources of the funds of the Fund<sup>xxxiii</sup> include; Parliament allocation of budget, voluntary contributions from Individuals, NGO's and other private sector, grants and donations from bilateral and multilateral organizations.<sup>xxxiv</sup> Among other uses, the fund is meant to support tracing of families of victims of trafficking, and reintegration of victims of trafficking in Persons to countries of origin to their best interest.<sup>xxxv</sup> Because the Fund has received no money, there have been challenges in reunifying victims with their respective families.<sup>xxxvi</sup>

Victims are recruited from rural areas on false promises that they would be given good lucrative jobs in urban and semi-urban areas.<sup>xxxvii</sup> Singida, Iringa, Shinyanga, Dodoma, Tanga, Kagera, and Manyara<sup>xxxviii</sup> are source regions for victims of trafficking who are exploited in domestic servitudes and in hospitality sectors in cities of Dar es salaam, Zanzibar, and Mwanza.<sup>xxxix</sup>

Cities of Dar es Salaam, Zanzibar and Arusha are the most common destination cities for victims of trafficking for sexual exploitation.<sup>xl</sup> Tanga and Kigoma are both sending and transit regions for VoT's.<sup>xli</sup>

Procuration of prostitution is a crime under the laws in Tanzania.<sup>xlii</sup> Owning brothels is also a crime<sup>xliii</sup> and sexual exploitation of children has been criminalized under section 138B of the Penal Code.<sup>xliv</sup> The law states that;

*Any Person who knowingly permits any Child to remain in any premises, for the purposes of causing such Child to be sexually abused or participate in any form of sexual activity or any obscene or indecent exhibition ...commits the offence of sexual exploitation of children and is liable upon conviction to imprisonment for a term of not less than five years and not exceeding twenty years.*<sup>xlv</sup>

As noted, both forced labour<sup>xlvi</sup> and sexual exploitation of the children are crimes in Tanzania. However, justice is not typically achieved because perpetrators are rarely apprehended and Victims vindicated. There are a lot of victims of trafficking exploited in the form of forced and involuntary labour. Neither the victims nor the law enforcement agencies comprehend that such an act amounts to human rights violation.<sup>xlvii</sup> So too is consensual sex workers. There are numerous brothels operated in urban areas. For instance, in Dar es salaam areas such as ‘Sinza’, ‘Uwanja wa fisi’, ‘Manzese’, ‘Mwananyamala’, ‘Magomeni’ are very famous for sexual business in brothels.

Traffickers use victims as sexual tools to generate money from customers. This informal business takes place either in the brothels, or in the Casinos where victims are taken to display their bodies to wilful buyers, in big hotels, in the night clubs and pubs.<sup>xlviii</sup>

Sometimes, traffickers exploit their victims for witchcraft-related beliefs. There has been a myth that, sleeping with virgin girls serve as a charm to succeed in business while others believe that, sleeping with girls ‘against the order of nature’<sup>xlix</sup> brings luck in business and gods’ favours in their business.<sup>1</sup>

On the other hand, for those victims who are subjected to involuntary domestic servitude and Forced labour, they are forced by their traffickers to work at their homes to do domestic chores until late in the night when all family members are asleep. They work for more than fifteen hours a day. After completing domestic chores, they are occasionally taken to work in their traffickers’ businesses especially in Pub, bars, apartments and in hotels.<sup>li</sup> Most of the time sexual exploitation flows from labour exploitation especially where the nature of labour expose the victim in hostile working environment such as work involving bars and hotels.<sup>lii</sup>

There is a combination of many factors that trigger trafficking offences in Tanzania. These factors can be grouped into ‘social-economic factors’ and ‘legal and policy factors’ as well as ‘enforcement myth’.

Social- economic factors involve lack of knowledge by the victims of the means traffickers use, conspiracy between a victim’s guardian/ parent and a trafficker, huge profits that flow



from the business,<sup>liii</sup> abject poverty in families from which the victim is recruited, and domestic violence that compel children to easily convinced to quit the family.<sup>liv</sup>

On legal and Policy factors, the research done by Research Triangle Institute (RTI) in collaboration with Ministry of Home affairs through its anti-trafficking secretariat<sup>lv</sup> and two local NGOs suggested that, the TIP Act is not effective enough to deter traffickers from committing the crime nor does it comprehensively protect victims of trafficking. The weakness ranges from lenient punishments to shallow scope of TIP offences.<sup>lvi</sup>

This part has been discussed in detail in Para 4.0 below. On enforcement myth, it has been observed that, few cases are prosecuted.<sup>lvii</sup> and very few get convictions.<sup>lviii</sup> While interviewing one Magistrate why there was such a small number of TIP criminals prosecuted and convicted, he stated that;

*It is not the duty of a magistrate to go in street hunt for TIP criminals. We work on cases that are reported to Court by the Prosecutors. Sometimes, they charge criminals on wrong charges in the name of trafficking in Persons. For instance, a case of smuggling in Persons which is an Immigration case is charged as trafficking and the verse versa. How will you expect to have large numbers in that case?<sup>lix</sup>*

Again, during interview with Prosecutors, we were curious to know why the numbers were small. They were of the view that, the law is contradicting itself. However, they did not say how and to what extent was it contradicting to affect the numbers of prosecuted and convicted cases.

**Table 5: A table showing number of cases reported, number of culprits, and number of convicts in the years 2016-2019**

Year	2016	2017	2018	2019
Number of cases Prosecuted	15	12	11	12
Number of Culprits	19	21	17	19

Source- Office of Inspector general of Police, Police Headquarters.

**Table 6: A table showing a number of Convictions from 2016- 2019.**

2016	2017	2018	2019	Total
13	22	19	06	60

Source: Office of Commissioner general of Prison Services, Prison Headquarters.

Tables 5& 6 above present the number of cases reported, number of culprits and number of convictions from 2016- 2019. The tables indicate that there were 60 cases Prosecuted from 2016-19, involving 76 culprits with 60 convictions. From interviews conducted with Directors of NGOs, Magistrates and Prosecutors it was noted that, most of the cases are not Prosecuted due to either insufficient evidence, untraceable culprits,<sup>lx</sup> sometimes victims collude with traffickers against disclosure of information especially where the trafficker is a relative of the victim<sup>lxi</sup> and poor investigation which lead to charging of a perpetrator on wrong charge leading to premature dismissal of the cases.

### **THE ANATOMY OF TRAFFICKING IN PERSONS ACT NO. 6/ 2008**

The Anti-TiPs Act is the main Principal legislation that deals with TIP crimes in Tanzania. It is supplemented by two regulations. *To wit*; the anti-trafficking in Persons (centres for protection and Assistance to Victims of Trafficking in Persons) regulations, GN N0. 27of 2015<sup>lxii</sup>, and anti-trafficking in Persons (Prevention, Protection, and Treatment) regulations. GN. NO. 28 of 2015.<sup>lxiii</sup> The Act and its respective regulations are further supplemented by the Standard Operating Procedures for Identification, and assistance of victims of trafficking 2016, as well as the National anti-trafficking in Persons Action Plan.<sup>lxiv</sup>

The anti-trafficking in Persons Act is divided into VIII Parts with forty-one (41) Sections. Part one of the Act is constituted of three sections (sections 1-3) encompassing Preliminary provisions including, short title and commencement, Application and Interpretation.

Part II Prohibits the offence of trafficking in Persons. It is constituted of four sections (Sections 4-8) and establishes the crime of human trafficking and related crimes. This part defines acts of trafficking in persons, acts that promote or facilitate trafficking in persons, Severe trafficking in persons, Trafficking in persons by intermediary, and an offence of use of trafficked victims.

Part III of the Act deals with Investigations and Judicial Proceedings. This part has eight sections (Sections 9-16). They include rules of confidentiality in dealing with TIP victims, procedures of offence reporting, process of interrogation by police officer, process of police arrest, commission of second and subsequent offences, confiscation and forfeiture of proceeds and instruments deriving from trafficking persons, compensation and identification of victims.

Section 14 of the Act has been amended<sup>lxv</sup> by deleting subsection (1) and substituting it. The original provision of S.14(1) dealt with ‘confiscation and forfeiture of the proceeds and instruments derived from trafficking in Persons’. It stated ‘in addition to the penalty imposed for the commission of an offence under this Act, the court may order the confiscation and forfeiture, to the Government of all proceeds and properties derived from the offence of trafficking in Persons’. The substituting provisions reads as follows;

*14 (1) In addition to the penalty imposed for the commission of an offence under this Act, the court may on its own motion or on application by the Attorney General, order confiscation and forfeiture to the Government of -*

- (a) all proceeds and properties derived from the commission of the offence of trafficking in person; or*
- (b) anything used for purposes of committing or facilitating the commission of the offence of trafficking in persons.*

Part IV deals with Procedures on Rescue, Rehabilitation, Protection & assistance to Victims. It comprises eight sections (Sections 17-24) that covers issues of TIP Victim rescue, Care, Rehabilitation and cancelling (Sic), Protection and assistance to victims, assistance and Protection to Child Victims, Centres for Protection of Victims, Repatriation of victims, repatriation of Child and Disabled Person Victim, Repatriation of foreign Citizens, and Programs that address trafficking in Persons.

Under this part, Section 20(1) has been amended by deleting the words ‘Taskforce’ and substituting for them the words ‘Anti trafficking Committee’.<sup>lxvi</sup>

Part V establishes the anti-trafficking Fund. It comprises of five sections. (Sections 25-29) these include; establishment of the fund, sources of the fund, use of the fund, management of the fund, funds, accounts and annual estimates of the Secretariat.<sup>lxvii</sup>

Part VI establishes the anti-trafficking Committee. It is comprised of four sections. (Sections 30-33) which include provisions on establishment of the anti-trafficking committee (ATC), Composition of the ATC, functions of the ATC, as well as meetings of the ATC.

Part VII provides for Miscellaneous Provisions. It consists of four sections (Sections 34-37) including; Legal protection of trafficked Persons, Indemnity of members, application of other laws as well as provisions relating to regulations made under the Act.

Part VIII is the last part of this statute. It deals with Consequential amendments and it is constituted of 4 sections.

*Table 7. structure of anti-trafficking in Persons Act, No.6/2008*

<b>PART</b>	<b>SUBJECT</b>	<b>SECTIONS</b>
<b>I</b>	<b>Preliminary Provisions.</b>	<b>1- 3</b>
<b>II</b>	<b>Prohibition of Trafficking in Persons</b>	<b>4-8</b>
<b>III</b>	<b>Investigations and Judicial Proceedings</b>	<b>9-16</b>
<b>IV</b>	<b>Rescue, Rehabilitation, Protection and Assistance to Victims</b>	<b>17-24</b>
<b>V</b>	<b>The anti-trafficking Fund</b>	<b>25-29</b>
<b>VI</b>	<b>Anti-trafficking Committee</b>	<b>30-33</b>
<b>VII</b>	<b>Miscellaneous Provisions</b>	<b>34-37</b>
<b>VIII</b>	<b>Consequential Amendments</b>	<b>38-41</b>

## **ANALYSIS OF TIP ACT - WHY REFORM IS NOT AN OPTION**

This part highlights some parts and provisions of the law that require reforms. The litmus test justifying need for reform is the international standards under the PALERMO protocol.

### *Leniency of Penalties*

Part II of the Act establishes acts which if committed, amounts to an offence of Trafficking in Persons. The s. 4 of the Act provides, inter alia, that;

*“A person commits an offence of trafficking in person if that person- recruits, transport, transfers, harbours, provides or receive a person by any means, including those done under the pretext of domestic or overseas employment, training or apprenticeship for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage” ...<sup>lxviii</sup>*

This section is narrow owing to the fact that, the punishment prescribed for the crime is inconsistent with penal provisions for same crime provided in other penal statutes.<sup>lxix</sup> Unlike TIP Act which provide for minimum sentence of two years and maximum sentence of ten years<sup>lxx</sup>, the Penal code provides a minimum penalty of 20 years and maximum of 30 years' incarceration.<sup>lxxi</sup> Where statutes vary in sentence, the trial court chooses to impose punishment under the statute that provide for a lesser sentence. In the case of D.P.P. V. MANGALA MAJALA ISDORY<sup>lxxii</sup> the facts were such that, the respondent was charged under two statutes which established the same offence, but provided for different punishment, one providing for a heavier sentence and another a lesser one. Upon conviction, the trial court chose to punish the respondent under the statute which provided the lesser punishment. Upon appeal, the judge upheld the decision of trial court by reiterating the principle that, where there is statutory conflict, the court must choose a sentence that is more favourable to the accused person.

Trafficking in Persons is a serious crime under international law. The legislative guides for the Implementation of the UN Convention Against Transnational Organized Crime state:

*‘Serious crime’ shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.”*

The crime of trafficking in persons is such that it is comparable to that of Rape and Kidnapping which are severely punishable under the Penal Code cap 16 [R.E. 2002].<sup>lxxiii</sup> The current Tanzanian anti-trafficking law allows for a fine in lieu of imprisonment, which in turn allows for a prescribed punishment that is not commensurate with those for other grave crimes under Tanzanian law, such as rape. Fines as a sole form of punishment with regard to human



trafficking should be removed or prescribed as an addition to imprisonment; not an alternative to imprisonment. The TIP Act penal provision should be amended to reflect that under the Penal code in order to have consistence and avoid judicial contradiction during administration of criminal justice to perpetrators and the victims.

Further, the law does not draw a demarcation between internal and external trafficking in Persons. An act of trafficking in persons may be committed internally within the borders of the United Republic of Tanzania or internationally across the borders of the United Republic of Tanzania.<sup>lxxiv</sup> Thus, legislators in the move to amend the law, should take into consideration this aspect.

Section 5 of the Act combines a number of different ancillary offenses here that could be addressed in a clearer manner separately. Further, the section does not include an offence of attempt. In the entire statute the offence of attempt to commit trafficking offence has not been enacted. This is a loophole that works in favour of traffickers for if there is no law criminalizing an act, one cannot be held liable for the same.<sup>lxxv</sup>

Essentially, a person is criminally liable when there is an *actus reus* and *mensrea*.<sup>lxxvi</sup> With attempt, both elements exist. The person who attempts to commit an offense clearly has the *mensrea* of that full offence.<sup>lxxvii</sup> It is apparent that, where the crime is attempted, there is an imminent danger or threat on person's security. Under our laws we are endowed with bodily and proprietary security.<sup>lxxviii</sup> An attempt to commit a crime represents a danger to these rights.<sup>lxxix</sup> thus, the right to security is infringed. Such an infringement constitutes a harm that criminal law seeks to punish. Gross expounds this position very well. He states that;

*when there is only attempt liability, the conduct itself may usefully be regarded as a second order harm: in itself it is the sort of conduct that normally presents a threat of harm; and that by itself, is a violation of an interest that concerns the law. The interest is one in security from harm and merely representing a threat of harm violates that security interest.*<sup>lxxx</sup>

It is the requirement of the law that, next to the provisions establishing an offence, should be a provision establishing an offence of attempt to commit an offence.



*A provision in any Act which constitutes an offense shall, unless a contrary intention appears, be deemed to provide also that an attempt to commit such offense shall be an offense under such Provision, punishable as if the offense itself had been committed.*<sup>lxxxi</sup>

*Thus, punishment for the crime of TIP have to be imposed on anyone who attempts to commit an act of trafficking.*<sup>lxxxii</sup>

Section 6(1) of the Act establishes an offense of ‘Severe Trafficking in Persons’. The difference between this offence and an offence under section 4(1) is that the former involves aggravating factors. When a trafficking in Persons act involves Children, Disabled persons, child is adopted for purpose of prostitution, Pornography, Sexual exploitation, Forced labour and slavery, Involuntary servitude or debt bondage, TIP crime is committed by a syndicate or in large scale; the offender is an ascendant, Parent, Sibling, guardian, or a person who exercises authority over the trafficked Person; the offense is committed by public officer, an employee or a religious leader; the trafficked person is recruited to engage in Prostitution with any member of the military or law enforcement agencies; the offender is a member of the military or law enforcement agencies; and by reason or on occasion of the act of trafficking in Persons, the trafficked person dies, becomes insane, suffers mutilation or is infected with HIV AIDS. This aggravated form of TIP is punishable for conviction to a fine not less than five Million shillings but not more than one hundred and fifty Million shillings or to Imprisonment for a term of not less than ten years but not more than twenty years or to both. This punishment is so lenient as it provides an option of fine that is relatively in the traffickers’ means. For the reasons supplied above, the punishment is also inconsistent with punishments prescribed for crimes of same nature. To this end, it would be proportionate for the crime to be punished for life imprisonment with mandatory payment of fine.

Section 7(1) establishes an offence of ‘trafficking in Persons by intermediary’. This means that, a person who acts as an intermediary for the purposes of trafficking in persons commits an offence. An intermediary in this case is any person who knowingly participates in or is concerned with any aspect of trafficking in Persons under the Act.<sup>lxxxiii</sup> The offence of trafficking through an intermediary is penalized under section 7(3) which provides that;

*a person who commits an offence under this section shall, on conviction, be liable to a fine of not less than four million shillings but not more than one hundred and fifty million shillings or*

to imprisonment for a term of not less than seven years but not more than fifteen years or to both<sup>lxxxiv</sup>

For reasons previously stated above the recommended reforms to take away the monetary penalty apply and allow the remainder to stay unaltered. This rule also applies across section 8 of the Act. A person who buys and uses trafficked victims, in his punishment should receive both Imprisonment and a fine instead of a perpetrator opting for either of the two.

Further, in 2019 the rules on plea bargaining were introduced in Tanzania by amending the CPA to add on section 94 sections 194A, 194B, 194C, 194D, 194E, 194F, 194G, 194H<sup>lxxxv</sup> such that, an accused can enter into a plea bargaining agreement with the Director of Public Prosecutions (DPP) to plead guilty in exchange for a lesser/lenient punishment in form of payment of fines. Some few ferocious offences are identified as not bargainable. These offences include; sexual offences whose punishments exceeds five years or involving victims under eighteen years; treason and treasonable offences; possession or trafficking in narcotic drugs whose market value is above twenty million shillings; terrorism; possession of Government trophy whose value is above twenty million shillings without the consent, in writing, of the Director of Public Prosecutions; and; any other offence as the Minister may, upon consultation with other relevant authority and by order published in the Gazette, prescribe.<sup>lxxxvi</sup>

TIP is such a crime comparable to a serious crime of rape (sexual offence). Thus, for it to be severely punished, it should be added in the list of offences to which Plea bargaining shall not apply.

### ***Jurisdictional clause***

It is a requirement under international law that states parties establish jurisdiction to investigate, prosecute and punish offences.<sup>lxxxvii</sup> Jurisdiction must be established over all offences committed within the territorial boundaries including its Marine vessels and aircraft.<sup>lxxxviii</sup>

The TIP law lacks a clause granting jurisdiction to our courts for TIP cases committed both within and without our borders. The law only provides for extradition proceedings for a trafficker who is not a citizen of Tanzania.<sup>lxxxix</sup> but under the extradition Act<sup>xc</sup>, TIP is not one

of the extraditable offences. Thus, it is important to add a jurisdictional clause here, which shall grant extra-territorial jurisdiction to Tanzania's courts to try trafficking offences. Establishment of jurisdiction over a national is compulsory in the framework of the principle *aut dedere aut judicare*<sup>xcii</sup>. A new section may be added in the statute to read as;

A (1) This Law shall apply to any offence established under chapters II of this Law when:

- (a) The offence is committed within the territory of United Republic of Tanzania;
- (b) The offence is committed on board a vessel or aircraft that is registered under the laws of United Republic of Tanzania at the time the offence was committed;
- (c) The offence is committed by a national of the United Republic of Tanzania whose extradition is refused on the grounds of nationality.<sup>xcii</sup>

B. Extra-territorial application of this law.

1. This Law shall apply to any offence established under chapter II of this Law committed outside the territory of the United Republic of Tanzania when:

- (a) The offence is committed by a national of the United Republic of Tanzania;
  - (b) The offence is committed by a stateless person who has his or her habitual residence in the United Republic of Tanzania at the time of the commission of the offence;
- or
- (c) The offence is committed against a victim who is a national of the United Republic of Tanzania;<sup>xciii</sup>

(2) This Law shall also apply to acts with a view to the commission of an offence under this Law within the United Republic of Tanzania.<sup>xciv</sup>

Paragraph 2 is a further extension of jurisdiction in line with the previous one. It extends jurisdiction to cases in which the acts have not led to a completed crime, but where an attempt has been made in the territory of another State to commit a crime in the territory of the jurisdictional State.

(3) Without prejudice to section A and B above, this law shall also apply against an artificial person or partnership registered under the companies Act, 2002 or any other law applicable in Tanzania if it commits an offence under this Act.

(4) A person may not be convicted of an offence under subsection (1) if such a person has been acquitted or convicted in the country where that offence was committed.<sup>xcv</sup>

- (5) Only the High Court or the Court of Resident Magistrates with extended jurisdiction has jurisdiction in respect of a person referred to in subsection (1), (2), and (3)<sup>xcvi</sup>
- (6) A person who commits an offense referred to in subsection (1) shall be liable on conviction to penalty prescribed for that offense.

### ***Protection of Privacy in judicial Proceedings***

The protection of Privacy in judicial proceedings is vital to ensure safety of a victim of trafficking against the threats of retaliation from their traffickers. Article 6(1) of Palermo Protocol calls for state parties to ensure protection of privacy and identity of victims of trafficking in their domestic legislations.<sup>xcvii</sup>

Section 9(5) of the Act establishes fundamental protections to the victim of trafficking against being exposed. Firstly, the proceedings are conducted in Camera. And secondly the law prohibits any form of media to cause publicity of the prosecution.<sup>xcviii</sup> However, it does not prescribe any penalty for any person who violates the provisions. In the spirit of this law and considering the advancements in technology since 2008 when this law was passed, the penal provision should be added as section 9(6).

### ***The duty to report offences of human trafficking***

Section 10 of the Act imposes the duty to report exclusively to the victims of human trafficking. In order to meet the international standards, and Tanzania's crime reporting rules, section 10 needs to be amended to include other persons. The Criminal Procedure Act<sup>xcix</sup> imposes this duty to any person with information. The law states that;

*Every person who is or becomes aware (a) of the commission of or the intention of any other person to commit any offence punishable under the Penal Code; or information on crimes and sudden deaths (b) of any sudden or unnatural death or death by violence or of any death under suspicious circumstances or of the body of any person being found dead without it being known how that person died, shall forthwith give information to a police officer or to a person in authority in the locality who shall convey the information to the officer in charge of the nearest police station.<sup>c</sup>*

Accordingly, the Criminal Procedure Act which is the principal law on procedure governing all criminal trials in Tanzania imposes the duty to report to every person as noted under section 7. This rule has to repeal and replace section 10 of the TIP Act. The change to this section is necessary to ensure that the criminal procedural section (III) of the Act is harmonized with the Criminal Procedure Act and to make TIP offense arrest-able (inclusive of reasonable suspicion to avoid undue technicalities), and to prevent dismissal of a case when police officers have arrested a suspected trafficker without a warrant based on reasonable suspicion or contextual evidence.<sup>ci</sup>

### ***Sanctions to non-citizen TIP-Perpetrators***

The law does not provide for the fate of the perpetrator who is a non-national. It does not stipulate how the perpetrator will be dealt with after serving his sentence. To this end, it is crucial that a provision is added in the Act stating that where a person who is not a citizen has been convicted of an offence under the Act, the person shall be deported immediately after serving the sentence and shall stand barred permanently from re-entering Tanzania.

## **PROCEDURES FOR LAW AMENDMENT IN TANZANIA**

### ***An abridged summary of law-making process in Tanzania***

The law-making process in Tanzania is an exclusive duty of the Legislature (Parliament).<sup>cii</sup> The law-making process commences with ‘a bill’. A bill is a proposal for enactment of a new law<sup>ciii</sup> tabled before the parliament for deliberation.<sup>civ</sup> The bill may be initiated by either the sectoral Minister or the Attorney General for government bills or a member of Parliament (MP) or chairperson of constitutional and legal affairs committee for a private members bill.<sup>cv</sup> The most common bills are government bills, few attempts of private members’ bill always end in vein.<sup>cvi</sup> government member’s bill is initiated by sectoral ministry engaging all stakeholders for discussion and opinion giving. Thereafter, the minister consults the Chief Parliamentary Draftsman (CPD) the process of which results to Cabinet paper.<sup>cvi</sup> The draft cabinet paper and the bill are then disseminated to the ministers for comments. Thereafter, the minister and CPD prepares the memorandum to be submitted to the cabinet secretariat.<sup>cvi</sup> From there, the draft



bill is tabled before the Parliament's constitution and legal affairs committee who if satisfied with the document, it returns it to the CPD to forward to the government printer for publication in government gazette.<sup>cix</sup>

Then the CPD must cause the bill to be published in the government gazette twice.<sup>cx</sup> The first publication of the bill ought to be sent to the Clerk of national assembly in 21 days before it is read to the parliament for the first time. At the first reading stage, the Clerk of the National Assembly would only read the long title of the Bill. Discussions do not take place at this stage.<sup>cxii</sup> Then speaker of national assembly forwards the bill to the relevant committee for analysis. When the analysis is complete, Chairperson of the committee informs the speaker who subsequently directs that the bill be placed in the order paper for second reading.<sup>cxiii</sup> During the second reading, the chairperson of the committee that analysed the bill will provide the committee's comments to the house. Thereafter, the shadow minister of the sector from the opposition, will give the views of the opposition in relation to the bill. After opposition views follows a debate by the members on either amendments of some provisions or addressing some controversies that arose during the discussions. Once the debate is complete, the Assembly resolves itself into a Committee of the whole House and the Speaker de-robes and joins the Committee under a Chairperson.<sup>cxiii</sup> At this stage the Speaker participates in discussion as a member of parliament. When all sections of the law have been thoroughly discussed and deliberated upon, the bill is scheduled for third reading. The Minister who sponsored the Bill would then move a motion to concur with the deliberations of the Committee of the whole House and approve the Bill by simple majority.<sup>cxiv</sup> Once the bill is approved at the third stage, then it is deemed to have been passed by the parliament.<sup>cxv</sup>

After this stage follows assent by the President. It is constitutional requirement that, once the law has been passed by the parliament, the Clerk of national assembly should send a copy to the president for assent.<sup>cxvi</sup> It becomes the law immediately after the President assents by endorsing the law.

The National Assembly comprises of members of Parliament from both Tanzania mainland and Zanzibar. But where the law enacted is meant to apply in both Mainland and Zanzibar, the same does not apply automatically in Zanzibar. The law requires that, such a law upon passed by the Union house, must be tabled in the house of representatives of Zanzibar for deliberation



and endorsement.<sup>cxvii</sup> At the time of writing this article the ATiPA has not been endorsed by the house of representatives, thus it does not apply in Zanzibar. TIP offences are punished under the Penal Decree Act of Zanzibar.<sup>cxviii</sup>

### ***Overarching Tips on Law amendment process in Tanzania Mainland***

The processes involved in reforming/amending principal legislations are not substantially different from the processes involved during the enactment. Where the reforms involve rewriting the law in its entirety, the processes discussed above are involved, but where it involves few specific provisions of the law, then the amendments are made in the Act supplement as a Miscellaneous Amendments. The processes for amendment and repeal of written law are provided under the Interpretation of Laws Act.<sup>cxix</sup> Thus, the TIP statute can be holistically amended in line with law requirements as stipulated under Part V Cap 1 of Tanzanian laws, Parliamentary Standing Orders and the Constitution of the United Republic of Tanzania.

## **RECOMMENDATIONS ON LAW AMENDMENT**

The law pertaining to trafficking in Persons in Tanzania is an important law which is geared at preventing the crimes of human trafficking, Punishing and Prosecuting the perpetrators, and Protecting VoTs. This being the case, the law should be holistically rewritten to reflect the international standards in spirit and contentment. More attention should be directed to 'Provisions on Punishment'. Punishments for acts of trafficking should be raised to reflect other domestic penal statutes like Penal code and International standards under the Palermo Protocol. Also, other crimes should be added in the Act. Such as, a crime of attempt to commit a TIP offence. This crime has been underestimated. It is important that it should be part of our TIP law if we want a stringent law criminalising TIP. Also, the jurisdictional clause should be added and expounded as recommended in the preceding pages. Also, an effort should be done to ensure that the ATiPA is tabled for endorsement in the house of representatives. Zanzibar is a gateway for VoTs thus, it needs a comprehensive law. Lastly but not least, the government should establish its home safe shelters for temporary hosting of victims of trafficking pending their reunification. This should be supplemented by licencing and overseeing private-run home shelters operated by NGO's.

## CONCLUSION

The article has shown that TIP Act is a flawed statute that calls for amendment and harmonization with the Penal code, SOSPA, and the Criminal Procedure Act. The amendment is vital for effective administration of TIP Criminal justice in Tanzania. Moreover, the agenda of victim Protection has been put to the fore by the International TIP Law (Palermo Protocol) of which Tanzania is a member state since 2006.<sup>cxx</sup> This cannot be achieved if the domestic law is not holistically reformed to reflect international rules of TIP victim protection. The analysis made leaves no shadow of doubt that the Act is heavily flawed thereby prompting an urge for a revised law.

## ENDNOTES

<sup>i</sup> The Anti-Trafficking in Persons Act, Cap. 432 [Act no. 6 of 2008]

<sup>ii</sup> Protocol to Prevent, Suppress and Punish trafficking in persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, (2000) Art. 3 [hereinafter protocol], available at [http://treaties.un.org/pages/viewdetails.aspx?mtmsg\\_no=xviii-12-](http://treaties.un.org/pages/viewdetails.aspx?mtmsg_no=xviii-12-)

[A&chapter=18&lang=en.& section 4 of the anti-trafficking in Persons Act, No. 6 of 2008.](#)

<sup>iii</sup> See Article 3(c) of Palermo Protocol.

<sup>iv</sup> See Article 3(b).

<sup>v</sup> United Nations Office on Drugs and Crime (UNODC), 'Toolkit to Combat Trafficking in Persons' (2nd edn 2008) ISBN 978-92-1-133789-1, Sales No. E.08.V.14, At 3; UNODC, 'Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto' (2004) UN Sales No. E.05.V.2, at 269.

<sup>vi</sup> See Article 5 of the Protocol.

<sup>vii</sup> UNODC; Combating Trafficking in Persons. A Handbook for Parliamentarians No. 16- 2009.

<sup>viii</sup> The United Nations Protocol against trafficking of Persons especially Women and Children (PALERMO Protocol) Provide for minimum standards that its Member states' TIP Penal statutes should meet. Among them are the 'Prevention of trafficking, Prosecution' & Punishment of traffickers 'and 'Protection of Victims of Trafficking in Persons. (4P's).

<sup>ix</sup> See Articles 12,13, 14, 15,16,17

<sup>x</sup> See Article 64(5) of the Constitution of the United Republic of Tanzania, 1977 [Cap 2 R.E.2002].

<sup>xi</sup> See Article 9(2) of Palermo Protocol.

<sup>xii</sup> See Article 6 of the Protocol, and guideline 6 of the OHCHR Recommended Principles and Guidelines on Human Rights and Human trafficking.

<sup>xiii</sup> Guideline 6(5).

<sup>xiv</sup> Article 6(2) of the Protocol.

<sup>xv</sup> Article 6(6) *ibid.*

<sup>xvi</sup> Article 6(3) *ibid.*

<sup>xvii</sup> Article 7 *ibid.*

<sup>xviii</sup> Article 8. *Ibid.*

<sup>xix</sup> *Ibid.*

<sup>xx</sup> See US Department of State. Human trafficking Global Status Report, June 2019.

<sup>xxi</sup> See IOM, 2016.

<sup>xxii</sup> Mugambila Edwin., Barrick Kelle, *Protection of Victims of Trafficking in Tanzania*. Myth or reality? Submitted for Publication in the Law School Tanzania Journal. 2019.

<sup>xxiii</sup> See US Department of State Report, Human Trafficking Profile in Tanzania, 2018.

<sup>xxiv</sup> Author was informed of this by the Police officer, INTERPOL Department, Ministry of home affairs, Dar es salaam, Tanzania.

<sup>xxv</sup> Article 3(2) of the Convention.

<sup>xxvi</sup> See US Department of State Human trafficking Global status report June 2019.

<sup>xxvii</sup> See table 1.

<sup>xxviii</sup> Source: Anti trafficking Secretariat, Ministry of home affairs.

<sup>xxix</sup> An informant from one of the shelters informed.

<sup>xxx</sup> *Ibid.*

<sup>xxxi</sup> Source: office of anti-trafficking Secretariat, Ministry of Home affairs Headquarters.

<sup>xxxii</sup> This fund is established under Part V of the ant-trafficking in Persons Act.

<sup>xxxiii</sup> Anti-trafficking in Persons Fund is a special fund established under Part V of the ATiPA to finance anti trafficking activities coordinated by the anti-trafficking in Persons Secretariat.

<sup>xxxiv</sup> Section 26 of the Act.

<sup>xxxv</sup> Section 27.

<sup>xxxvi</sup> *Op.cit* at footnote 28.

<sup>xxxvii</sup> There is a slew of fraudulent means used by traffickers or their agents to win the potential victims' consent. The most common means used is 'Promising jobs with high pay', 'Promise of taking them to good schools', 'nice food', 'nice clothing' and many other favors which never materialize.

<sup>xxxviii</sup> International Organization for Migration (IOM). *Dynamics of Trafficking in Persons in Tanzania*. Study Report, 2016.

<sup>xxxix</sup> RTI International. Trafficking in Persons Training Modules for law enforcement officers, Magistrates and Prosecutors in Dar es salaam, Zanzibar & Mwanza. February 2018, March 2019, & August 2019.

<sup>xl</sup> *Ibid.*

<sup>xli</sup> *Ibid* at footnote 37.

<sup>xlii</sup> See Section 12 of Sexual Offences Special Provisions Act, 1998 (hereinafter SOSPA).

<sup>xliii</sup> Section 148 of the Penal Code [CAP 16 R.E. 2002].

<sup>xliv</sup> CAP 16 R.E. 2002 read together with Section 12 of the SOSPA.

<sup>xlv</sup> *Ibid* at footnote 14.

<sup>xlvi</sup> Forced labour is a crime under Section 6 and Section 102(2) of Employment and Labour Relations Act. It is punishable to fine not exceeding five Million shillings or for Imprisonment for a term of one year or both

<sup>xlvii</sup> Kamazima, S. R Human Trafficking Baseline Assessment in Tanzania: Findings from Selected Regions, National Aids Control Program. 2009

<sup>xlviii</sup> *Loc.cit* at footnote 7.

<sup>xlix</sup> See 'Unnatural offences' punishable under s. 154 of the Penal Code, Cap. 16

<sup>l</sup> An informer from one of the NGOs operating safe temporary shelters for Victims of trafficking.

<sup>li</sup> *Ibid.*

<sup>lii</sup> *Ibid.*

<sup>liii</sup> Trafficking in Persons is a second lucrative organized crime after drugs trafficking. (USDOS, Global Status Report on Human trafficking, 2019).

<sup>liv</sup> International Organization for Migration "Dynamics of Trafficking in Persons in Tanzania" Study Report, 2016.

<sup>lv</sup> ATS is established under Regulation 26 of the Anti-trafficking in Persons (Prevention, Protection and Treatment) Regulations, 2015.

<sup>lvi</sup> RTI International; Stakeholders' Interviews on the effectiveness of TIP Act in Tanzania, 2017.

<sup>lvii</sup> See table 5.

<sup>lviii</sup> *ibid*

<sup>lix</sup> A magistrate, a key informer in an interview. This magistrate has received promotion recently. He is now a High court judge.

<sup>lx</sup> Sometimes traffickers run away from law enforcement leading to failure in Prosecution of cases.

<sup>lxi</sup> In Zanzibar this phenomenon is called '*Muhali*' - a situation where a victim of a crime denies information to the law enforcement in order to save his family from facing the law.

<sup>lxii</sup> These are regulations made to the Act to provide for establishment of centres for Protection and assistance of victims of trafficking in Persons before reunification with their respective families.

<sup>lxiii</sup> These regulations provide for procedures, rules and principles that must be complied with by shelters and other stakeholders in protection and assistance of Victims of human trafficking.

- lxiv 2018-2021. The authors were part of the team that participated actively during the enactment of the action Plan.
- lxv See section 6 of the Written Laws (Miscellaneous amendment) (NO.2) Act, 2016.
- lxvi See section 7 of the Written Laws (Miscellaneous Amendment) (No. 2) Act, 2016.
- lxvii The Secretariat means anti-trafficking Secretariat established under the Act.
- lxviii See section 4(1) of the Act.
- lxix See section 139A of the Penal code CAP 16 R.E. 2002.
- lxx See section 4(5) of TIP Act, NO. 6 OF 2008.
- lxxi *Ibid* at footnote 139A.
- lxxii Cr. Appeal No. 92 of 2016 (High Court of Tanzania at Mtwara) Unreported.
- lxxiii Section 131 of Penal code read together with Section 6 of SOSPA provides for minimum Punishment of 30 years Imprisonment and maximum of Life imprisonment with fine.
- lxxiv *It's important to add this sub-section in order to make an express criminalization of and recognition of extra-territorial trafficking in Persons.*
- lxxv *Nullum crimen sine lege* is the principle in criminal law and international criminal law that a person cannot or should not face criminal punishment except for an act that was criminalized by law before he/she performed the act.
- lxxvi An exception lies on strict liability offences where punishment flow from an overt act without requirement to prove necessary mensrea.
- lxxvii C.M.V Clarkson., and H.M. Keating; Criminal La: Text and Materials.1990. London. Sweet & Maxwell. Pg. 433
- lxxviii See Article 14, and 24 of the Constitution of the United Republic of Tanzania, 1977 [CAP 2 R.E. 2002].
- lxxix C.M.V. Clarkson at footnote 63.
- lxxx Gross; A theory of Criminal Justice. 1979. At P.g. 125. Quoted in S.M.V. Clarkson at Pg. 434.
- lxxxi Section 75 of Interpretation of Laws Act, Cap 1 [R.E. 2002].
- lxxxii See Article 8 of the League of Arab States Model law on Combating human trafficking.
- lxxxiii See Section 7(1)(a) of the Anti-trafficking in Persons Act. No. 6/2008. An intermediary may be a recruiting agent, a parent, guardian or any other person who facilitates the movement of a trafficked victim from his home to the hands of the trafficker.
- lxxxiv Section 7(3) of the Act.
- lxxxv See Written laws (Miscellaneous) Amendments No. (4) Act of 2019.
- lxxxvi See sections 194F (a-f) of the CPA read together with Section 16 of the Written laws (Miscellaneous) Amendments No. (4) Act of 2019.
- lxxxvii See Article 15 of UN Convention against transnational organized crimes.
- lxxxviii See UNODC., Combating Trafficking in Persons. a Handbook for Parliamentarians. No. 16-2009. At Pg. 88.
- lxxxix Section 36(1) of the Act.
- xc CAP 368 [R.E. 2002]
- lxi "*Various reasons may prevent states on the territory of which a criminal is found from extraditing him or her to the state where the crime was committed or to any other state willing to prosecute the case. The suspect is likely to escape prosecution and enjoy impunity if the authorities of the custodial state are not required to initiate proceedings against him or her. The obligation to extradite or prosecute, now traditionally described by the Latin expression **aut dedere aut judicare**, is one of the paramount cooperation means designed by states in order to counter this phenomenon and, in particular, to deprive criminals of any safe haven. This obligation is classically understood as requiring the custodial state to prosecute the suspect in case of non-extradition". See <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0023.xml>*
- lxi Article 15(1)(a), (b) of the UN convention against trans-organized crimes & Article 6 of UNODC Model Law against trafficking in Persons. V. V.09-81990 (E)
- lxiii Articles 15(3), 16(10) of the convention read together with Article 7 of the model law.
- lxiv Article 7(2) of the Model Law.
- lxv This rule is important so as to avoid situations of double Jeopardy. See section 70 of Interpretation of laws Act, Cap 1 (Tanzania), and section 25(2) of Counter-Trafficking in Persons Act (Kenya)
- lxvi *That's according to the national rules of procedure and Practice in respect of extra-territorial cases and enforcement of foreign decisions.*
- lxvii See Article 6(1) of the Protocol.
- lxviii See section 9(5 a-d) of the Act.
- lxcix CAP 20 [R.E. 2002]
- lxc See section 7 of the Act. (*Ibid*).
- lci See section 12 of the TIP Act.

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- cii See Articles, 63(1)(d), and 64 of the Constitution of the United Republic of Tanzania.
- ciii A bill could also be a proposal for amendment of an existing law after meeting all requisite procedures.
- civ See Majamba H.I., *The Paradox of the Legislative Drafting Process in Tanzania*. Statute Law Review, OUP. 2017, Vol. 00, No. 00, 1–13
- cv See Order 8 of the Standing Orders, 2016.
- cvi Majamba at footnote 105.
- cvi *Ibid.*
- cvi This is done before the meeting of the Inter-Ministerial technical Committee (IMTC). This committee is composed of all permanent secretaries of the ministries chaired by the Chief government secretary.
- cix See Section 19 of the office of Attorney general (discharge of duties) Act, Cap 268 [R.E. 2002].
- cx See order 80(1) of the Standing Orders of the National assembly, 2016.
- cxii Order 83(1).
- cxiii Order 85(1),(2).
- cxiii Majamba at Pg. 10.
- cxiv See Oder 89.
- cxv See Order 91.
- cxvi See Article 97(1) of the Constitution of the United Republic of Tanzania, 1977 (Cap 2 R.E. 2002].
- cxvii See Article 132(1), (2) of the Constitution of Zanzibar, 1984 R.E. 2010.
- cxviii See Section 172 of the Penal Decree Act, No. 6 of 2004.
- cxix Cap. 1 [R.E. 2002].
- cxx Tanzania ratified the Palermo Protocol in December 2006 without any reservation.
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