



Nairobi, December 2019

**Dear Partners,**

As you may be aware, since 2018, HAART has been supporting a high number of Nepalese, Pakistani and Indian female victims of trafficking who were brought to Kenya by an influential and powerful cartel and were being exploited in mujra dance bars in Nairobi. Whereas the previous cases have also been very difficult, the latest case which involves five Nepalese and Indian women has been extremely challenging.

In August 2019, these 5 women who were victims of trafficking were rescued during a raid conducted by the Transnational Organised Crime Unit of the Directorate of Criminal Investigations. The raid, which was conducted before HAART was made aware of the case, was witnessed and documented by the media which was a violation of these victims' right to privacy. After the raid, the victims were referred to HAART for care and support pending the investigation of the traffickers. During this time, the victims were not provided with the necessary visas and their travel documents were withheld. This effectively barred them from both leaving the country and being able to move around within it. There were also several insecurity instances, orchestrated by the cartel that made the victims feel unsafe to participate in the court proceedings including implicit and explicit threats to both the victims and to HAART.

Once the investigation was complete, charges were filed against the perpetrators with the victims' full names being included in the charge sheets - another violation of their privacy. The victims were forced to testify in the criminal trial and were denied approval to leave Kenya until they did. Because of the trauma of their ordeal, the uncertainty of their immigration status and the subsequent intimidation from the cartel, some of the women refused to testify in court. In light of this, HAART requested the criminal court to issue repatriation orders in respect of the victims but the request was denied. This left the women in an increasingly vulnerable state of legal limbo.

Given these circumstances and with some of the victims being at risk for suicide, HAART felt it had no other option but to take the government to court. Thus, in November, HAART filed the first constitutional petition in the history of the High Court of Kenya on the basis of the Kenyan Government's responsibility to provide protection for victims of trafficking in accordance with the Counter-Trafficking in Persons Act. The purpose of this petition is to seek:



- a) As immediate reliefs, orders to regularise the immigration status of the victims pending their repatriation as well as orders for the repatriation of these victims;
- b) Declarations on the various rights violations that these victims have suffered as a result of their being detained, their being compelled to testify and the government's failure to protect their identities, repatriate them and provide them with immigration status, support and care pending their repatriation. These violations include violations to their right to life; dignity; security of their person; freedom of movement; the right to access to justice; and right to privacy;
- c) Orders to enact the necessary regulations to operationalise the National Assistance Trust Fund for Victims of Trafficking in Persons. This fund was created by the Counter-Trafficking in Persons Act to provide funds for the support and care of victims of trafficking; and
- d) Orders for compensation for the costs incurred in providing long-term care and support to the victims.

After the first hearing, the court ordered HAART to convene a meeting with the involved parties to discuss the immediate reliefs mentioned in (a) above with a view to reaching an amicable settlement. The outcome of this meeting was to be reported back to the court. The meeting was convened at the Kenya National Commission on Human Rights on 6th December. In the meeting, the government representatives confirmed that they were open to having a conversation and resolving the issues raised in the case because of the dire needs of the victims.

As the discussions between the parties was underway, the criminal court issued the repatriation orders sought. Following this and the good faith shown by all the parties at the court mandated meeting, the constitutional court ordered the government to pay for the cost of the repatriation. We are very happy to report that as we speak, the victims have been safely repatriated to their respective home countries and referred to local service providers for further support and reintegration.

Although we are greatly encouraged by this decision of the court it is not the end of the case. There is a need to continue to pursue the reliefs sought in (b) to (d) above in order to push the government to establish the holistic protection and support mechanisms for victims of trafficking which are provided for in the Counter Trafficking in Persons Act. We hope this will transform the treatment received by victims of trafficking in Kenya and ensure that future victims do not have to endure the indignity and re-victimization that these 5 women suffered.

As a non-governmental organisation, we would like to emphasise that we play a subsidiary role in counter trafficking work. The key duty bearer in combating this crime and ensuring the



protection and support of victims is the Government of Kenya, through its specialised institutions. These duties are not only imposed by the Counter Trafficking in Persons Act but also by International Law, specifically the Palermo Protocol, to which Kenya is a signatory. In addition to being crucial for the fulfilment of basic rights, protection of victims plays a crucial role in the successful eradication of human trafficking. Such protection includes respecting their human rights, fulfilling their needs and providing adequate security. Consequently, the best interests of victims should always be the main priority in any counter-trafficking action be it rescue, rehabilitation or prosecution. Also, it is mandatory to state that the effective Prosecution of traffickers can be achieved only together with the Protection of Victims of human trafficking.

We would like to thank our partners who have supported us through this process, especially Survivor Alliance who helped us get in touch with emergency funding from Change a Path and an anonymous donor who provided financial support for this particular case. We would also like to thank our donors Misereor, Missio Austria, Aid to Church in Need and Missio Munich who all support our work to assist victims of trafficking. At the same time, we would also like to request for further assistance since this case is far from over and we continue receiving new cases requiring assistance.

*Radoslaw Malinowski*

Chief Executive Officer  
HAART Kenya