

Transcription of intervention by Elizabeth Kabari from HAART Kenya during the 4<sup>th</sup> Regional Conference on Forced Migration on the Kenyan Context in combating Trafficking in Persons

**Elizabeth Kabari 00:00**

Good morning, everyone.

**Elizabeth Kabari 00:02**

I hope you're well. My name is Elizabeth Kabari. I am the head of legal at awareness against human trafficking HAART. We are a Kenyan NGO that has existed for about 10 years. And we work towards a ratification of human trafficking in Kenya, in East Africa. And we are hoping the world it's a big dream, but we think we can start it or we can actually, we can contribute to it because there are a lot of other people who are doing this good work. At heart, we use the Four P's approach to counter trafficking work, which is prevention, protection, prosecution, and policy & partnerships. So policy and partnership is one. We have departments that tackle each of these four P's. So the prevention team runs workshops and seminars to create awareness on the scourge of human trafficking. And also provide community members with recourse if they think a friend or family has been trafficked, or they know of story of someone who has been trafficked, we give them access to our helpline, which is widely shared. And they can call into the helpline and report the case and share whatever information they know. And we try and see how we can support and how we can help. The second team is the protection team, and the protection team offers protection services and support services to victims of trafficking. So that includes psychosocial support, counselling and therapy, medical support, basic needs support like food, shelter, and clothing. And then the third department is the prosecution department, which is the department I'm in. And our role is to assist the victims to navigate the legal system in Kenya. So we support them where, if they want to go through and participate in the trial, or if they don't want to go through and participate in the trial that is also their right. So we tell them their options, give them legal advice and support them in whatever decision they decide to make. Finally, we have the policy and partnership department, which works on research and looking into various questions around trafficking in Kenya, and seeing how we can develop policies and advocate and carry out advocacy rather, that is responsive to the situation that we have on the ground. So with that short introduction to HAART and what we do, I'd like to just jump in really quickly. First, I'd like to really thank the Refugee Law Project for this opportunity to share our work with you and our challenges and our outlooks. So I'll jump right into human trafficking from a Kenyan context, which is what I've been tasked with speaking about today.

**Elizabeth Kabari 02:45**

So the basis of counter trafficking work in Kenya, like everything is our Constitution, which was promulgated in 2010. The specific law that actually addresses counter trafficking is a Counter Trafficking in Persons Act, which was also passed in 2010. And this act borrows heavily from the Palermo Protocol, which is a protocol to the United Nations Convention on Trans organised crime. I've summarised the name which has a very long name. So the Palermo protocol defines trafficking and defines state

obligations when it comes to trafficking. And for the most part, Kenya heavily borrowed that and we created our Counter Trafficking in Persons law that has had both good and bad consequences. Good in that we have a definition of trafficking. And we have a clear law that states, what's the country ahh what the government sorry, is supposed to do? And what are their obligations to victims? What are their obligations to other countries? What are their obligations in the large international community that we live in? The Act, however, has some limitations. For example, the definition of trafficking doesn't really take into consideration some of the local ways in which traffic trafficking manifests. For instance, in Kenya, these are practice of foreigners, persons from Europe, and the United States coming to Kenya to set up orphanages. And in these orphanages, what they do is they go around to the surrounding communities, and they tell them that they have this school for children or a home for children. And they're willing to take the children from these communities with the promise of giving them an education, giving them access to basic needs, and basically giving them opportunities. This is largely problematic because children belong in families for the most part, and not in homes or orphanages. And usually it's done to exploit the poverty and the desperation of these families, and get them to give up their children. Also, to an extent some of these families are paid to give up their children. And now what happens is that these children are put in these orphanages that have absolutely no oversight. There's no one to check and make sure that these children are going to school they're receiving medical needs, they are being kept safe. So for instance, this year, there was a conviction in the United States of a man called Doe, who came to Western Kenya set up an orphanage and used that orphanage to access children who proceeded to violate, so he was convicted for the violation of some of these children. And that's the issue that we have here. So if you think about it, that's trafficking in that these children are being transported and harboured by this man for the purpose of exploitation, because he started this orphanage to as a way to get money from his fellow Americans or Europeans, in the name of helping African children. So you know, videos are shot with these children, and their GoFundMe campaigns and whatever. And the whole thing is designed to use these children as props for donations, these people can enrich themselves, and the children have absolutely no protection. So that is trafficking because that is exploitation, and they're being harboured for the purpose of exploitation. But the law doesn't really consider that trafficking because I guess in a larger context for the more international context, this is not how trafficking commonly manifests. So we have those shortcomings in terms of the law, another shortcoming that is legal, particularly, is the lack of regulations to operationalize the act. So the Act was passed 10 years ago, and we still don't have regulations that now give guidance to the specific government bodies on how they're supposed to perform their duties under the Act. So now, there's a kind of laissez faire way that things are being done. And you know, it all depends on who, you know, we, how your case will be handled has, like there's no standard of care, there is no minimum standard. When it comes to shelter. When it comes to medical care. There's nothing because of the lack of these regulations, because the act recognises that these are rights that victims have, but the regulations to actually operationalize this do not exist.

**Elizabeth Kabari 07:15**

The third issue we have is none implementation of the law. So in aside from not having regulations, even what they are these little effort has been put in to actually help victims to support them. We don't have government shelters for instance, shelters are run by CSOs like HAART and religious organisations. And the government actually has an obligation to provide shelter to vulnerable groups, including victims of trafficking, but that hasn't happened. Medical care, we don't have a system through which victims of trafficking can access medical care, and affordable medical care, rather. The problem with victims of trafficking is usually they are economically down on their luck. So you can't expect them to go to a private hospital, because chances are they haven't been paid. And also they've been brought here for exploitation, and they don't have the freedom to walk around, or they've been taken from here with the purpose of exploitation, so they don't have the freedom to you know, go looking for hospitals, or whatever it is. So that's one problem. And that's a second problem.

**Elizabeth Kabari 08:21**

Actually, a third problem is the wrong implementation of the law. So where the law is actually being implemented, it's not being implemented with the rights based approach or with actually, the biggest problem is the lack of a rights based approach. So for instance, the Counter Trafficking in Persons Act recognises the right to privacy for victims. And this is expressly stated in the act, but not unfortunately, media houses have been known to be present at rescues. And they take photos, and they yes, they covered the rescue. And there's no guideline on how they can ethically tell the stories of these victims. So they tell their stories, sometimes without hiding their faces. They tell their story sometimes embellishing here and there I guess for readership, or whatever reason they do it. So it's not ethically told. And it's not told in a way that empowers the victim or allows a victim to be an active participant in the telling of their own stories. And police don't stop them from showing up at raids. So there are problems like that.

**Elizabeth Kabari 09:24**

There's also issues of deporting victims of trafficking rather than repatriating them, which are two very different processes that look at you in two very different ways because you're deported. As someone who has broken the law or someone who you know is here voluntarily without papers or is abroad voluntarily without papers, which is not the case for many victims. They've actually been taken to these countries. They've been brought to Kenya, they've been taken to the Middle East. Their documents have been taken away from them by their traffickers. And you know, so they don't not have a passport because they don't want to be its because it's been taken from them, so they're not actually criminals, and they should not be penalised for that. They should be assisted through that but that doesn't happen. So you end up with deportation of victims. And then you have forcing victims to testify in their criminal cases, all victims have a right to choose whether or not to testify, and this right should be respected by state and non state actors. That does not happen. So victims are usually told if they want the government

to help them, they should help the government and you know, testify. And very little thought is given to how do we ensure these people are safe as they're waiting to testify? How do we ensure these people are safe after the testify, and you know, just protection of victims and looking at it from a victim centred and a trauma informed point of view, rather than, you know, we need prosecution for prosecutions sake. Not really because the purpose of prosecution is to get justice. And the person who needs justice is the victim. So if getting prosecution, in getting prosecution, you harm the victim? What have you achieved? You know, those are the questions that we need to ask ourselves.

**Elizabeth Kabari 11:03**

Now, like all things COVID has come to make an already horrible situation a lot worse. So now we have added issues of countries locking down their air spaces, and then victims are stranded in their countries of exploitation, even though you're rescued, where are you going, you can't go home, you can't go to a shelter, because shelters are being closed. You can't there's no one to house you. So now you're dependent on good samaritans, which puts you in a very vulnerable place as a victim. And there are no measures that the Kenyan government has put in place to address an issue like this. Another one is requiring victims to take COVID tests before they come in, or come back home rather, or before they leave the country. And the question is this someone was brought to this country for exploitation? Where are they going to find money to get a COVID test done? And currently the covetous count cost about 6000, 7000 Kenya Shillings, which is about 70 US dollars, where you're going to find that money as a victim of trafficking. So these are some things that haven't been thought about. And, yes, I understand the need for these measures and why they're important in this global pandemic that we're currently trying to live through. But how can we make these measures responsive to covid and responsive to victims of trafficking at the same time, because it can be done if they just sit down to think about it.

**Elizabeth Kabari 12:22**

So another thing is offering victims access to services like shelter, or quarantine, because now Okay, assuming a victim comes home, it's great that they're home, but their family won't take them in because their families worried they might have COVID and they cannot afford to have it spread within the home. So where will this victim go, then we'll state shelters to take in this victim. There's no this victim can get get safe accommodation, and that's a really big issue. So those are some of the things that we're looking at and some of the challenges that we're facing.

**Elizabeth Kabari 12:54**

I'm grateful to all of you for listening to my short presentation, and I hope you enjoy the rest of the seminar.