

# MEXICO COUNTRY REPORT – LONG VERSION

## HUMAN TRAFFICKING

*HUMAN TRAFFICKING is a crime that involves the violation of the rights to liberty, life, dignity, security and integrity of individuals.*

In the last two decades, human migration has become a global problem that has created a social phenomenon called "HUMAN TRAFFICKING." It is one of the activities of organized crime with the highest rate of growth worldwide, surpassed only by trafficking in drugs and weapons.

Human Trafficking has been practiced since the dawn of civilization, but has recently grown so much that it is viewed as "The Slavery of the XXI Century", with 'slavery' being understood to mean: the act by which one person loses their freedom absolutely, through being subjugated to the domination of another, who considers them as an object of their ownership, as a result of having given something [payment] in exchange for the same.

There is confusion about what "Human Trafficking" means and it is common to employ the concepts of **White Slavery, Human Smuggling, And Human Trafficking** as synonymous, yet all three concepts are different as shown in the following definitions:

- **White Slavery** is a term originating in the late nineteenth century during the period when the "Black Slave Trade" was an enterprise condoned by both the people and the State, and wherein African and indigenous women [and men] were sold as slaves for various purposes, whether as free labor, as breeders of other slaves and/or to serve as sexual objects. This practice was later expanded to include the sexual exploitation of white women, hence the coining of the term "WHITE SLAVERY."
- **Human Smuggling** is defined as the illicit smuggling of migrants. In this instance, migrants give their consent to be transported or moved to another country; the transaction ends at the place of destination; and the transport of the migrants is transnational.

- **Human Trafficking** is a criminal enterprise with one of the most destructive impacts on the lives of individuals and societies. The U.S. State Department estimates that each year, in the transnational arena alone, between six and eight hundred thousand people, primarily women and children, are trafficked. The seriousness of this crime has put it on the agendas of both individual nation states and multilateral fora. Human Trafficking is a crime against the individual and a threat to human security. Human Trafficking occurs through deception and without the victim's consent to the conditions of work to which they will be subjected.

The similarities between SMUGGLING and TRAFFICKING are:

- There may be an irregular border crossing
- It is a commercial enterprise in human beings
- There are organized networks
- There is an abuse of human rights

The differences are:

| <b>HUMAN SMUGGLING</b>                                     | <b>HUMAN TRAFFICKING</b>  |
|--|---|
| Voluntary  | Involves Deception and Coercion   |
| The relationship with the Smuggler ends at the destination | The relationship with the Trafficker continues at the destination                         |
| Payment in advance   | Payment occurs when the exploitation begins   |
| No restriction of movement at the place of destination     | Absolute restriction of movement at the destination. (Usually the victim is sequestered.) |
| Recruitment not premeditated                               | Recruitment responsive to the type of exploitation to which victim will be subjected      |
| No seizure of personal documents                           | The Trafficker seizes the victim's  |

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|  | documents  |
| The aim is to get a person to a country different from that of their origin for the purpose of gaining employment. | The aim is the forced sexual exploitation and/or forced labor exploitation etc. of a person. |
| The commodity is the service of transport.   | The commodity is the human being.  |
| <b>Crime against the State</b>   | <b>Crime against the Person</b>  |

The Palermo Protocol in its Article 3, subsection a), defines ILLICIT SMUGGLING OF MIGRANTS (HUMAN SMUGGLING) as: "The facilitation of illegal entry by a person into a State of which the person is not a national or a permanent resident with the aim of obtaining, directly or indirectly, one benefit or another of a material nature."

The same Protocol in its Articles 2 and 3 defines HUMAN TRAFFICKING as:

“Trafficking in persons means the capture, transportation, transfer, harboring or receipt of persons, by threat or use of force or other forms of coercion, of abduction, of fraud, deception, 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 purposes of exploitation. This exploitation will include, at a minimum, forced prostitution or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, and servitude or the extraction of organs.”

[For children (defined as persons under 18 years of age) exploitation may also include illicit international adoption, trafficking for early marriage, or recruitment as child soldiers, beggars, for sports (such as child camel jockeys or football players), or within certain religious groups.]

HUMAN TRAFFICKING has exploitation as its ultimate goal. This may occur via different modalities, such as: forced prostitution, pornography, commercial sexual exploitation of children, sexual tourism, and forced marriages. The specifics will depend on the socioeconomic conditions of the country and the cultural factors that

make certain segments of that society vulnerable, most especially women, girls and boys.

In prostitution and other forms of sexual exploitation, there exists: Commercial Sexual Exploitation and Non-Commercial Sexual Exploitation.

**COMMERCIAL SEXUAL EXPLOITATION** is the participation of a person in prostitution, sexual servitude or the production of pornographic materials as a result of being subject to a threat, coercion, abduction, abuse of authority, force, debt bondage or fraud.

This exploitation comprises the following:

- **Forced Prostitution** - In which the victim is manipulated or coerced to perform acts that involve using his/her body to satisfy the sexual desires of other people, with or without remuneration from it.
- **Child Pornography** – Wherein the rights of children are infringed upon through the marketing of images with sexual content, in which they have been forced to participate. Internet use has enabled the growth of the network of child pornography materials.
- **Forced Reproductive Practices** – By which a woman, without the right of refusal, is obligated or persuaded into forced pregnancies; to rent her womb; or to sell her ova (eggs), in exchange for financial compensation
- **Sex Tourism** - By which boy or girl children or teenagers are transported, from one place to another; within a country or across national borders either legally or illegally (the latter being the most common); without their consent; in order to be used sexually by individual clients/tourists or as part of tour packages developed by third parties.

**NONCOMMERCIAL SEXUAL EXPLOITATION** - This occurs in underage marriages, forced marriages, arranged marriages, mail-order marriages, and marriages for the purposes of procreation.

It includes:

- **Servile Marriage** – This takes advantage of the bonds of matrimony for sexual, reproductive and/or domestic exploitation, and results in countless abuses and humiliations.

**LABOR EXPLOITATION** - Here the victims are forced to engage in all sorts of areas of work under inhumane conditions. The sectors with the greatest number of abuses are: assembly plants, factories, brick kilns, mines, agricultural concerns, plantations, fisheries, the entertainment industry, and domestic work.

It comprises:

- **Forced Labor** – In which is any work or service is performed under the menace of any penalty.
- **Slavery and Similar Practices** – Which is the status or condition of a person over whom are exercised the attributes of property rights.
- **Indentured Servitude** – Which occurs when a person is handed over and/or placed at the disposition of another due to the incurrance of a debt.
- **Organ Extraction** - Involves the sale of organs, tissues, fluids or blood previously taken from a victim. Such exploitation violates the right to life and physical integrity of the person.

The group at greatest risk of being trafficked for sexual exploitation are women and girls with low educational levels; belonging to large families lacking basic necessities; and whose primary activities produce extremely low income. Latin America is among the most vulnerable.

As mentioned earlier in this document, "Human Trafficking" is an offense that ranks third in the world, after drug trafficking and arms smuggling, in terms of lucrative illegal activities. It is a phenomenon that affects all countries and the trafficking is almost transacted from a poor country to richer one. It is estimated that each year between 45 and 50 thousand women and girls are trafficked to the United States of America.

During the “Information Day on the Fight Against Human Trafficking,” held in Mexico City on 23 October 2008, the Organization of American States (OAS) presented the approximate statistics on victims of trafficking in Latin America (while noting that these may be higher):

- There are 250,000 victims in Latin America
- 98% of victims of sexual exploitation are women and girls
- The exploitation of trafficked persons annually generates U.S. \$ 18,2 million.
- Trafficking generates U.S. \$ 1.348 billion dollars per year in Latin America..

- 40% to 50% of victims in Latin America are children.

It is estimated that, worldwide, trafficking generates profits of US \$ 9 billion per year. According to the U. S. State Department, approximately two million people are trafficked each year globally.

It is common for Human Trafficking to increase during and after protracted social conflicts or wars. An example of this is the former Yugoslavia, which has become a major destination for human trafficking as well as an important center of operations and transfer site for trafficked women from Central and Eastern Europe.

HUMAN TRAFFICKING is easy to conceal as a crime, because it is common for both the victim and their family members to fail to report it for fear of reprisals; or because they might consider a particular form of exploitation (sexual or labor) “normal” or “natural” depending on their customs.

Despite the work undertaken by different international organizations, the fight against human trafficking represents an ongoing global concern.

In Mexico, Trafficking presents major challenges because its geographical position makes it a “sending” country, a “transit point” as well a “destination/receiver” for migrants. The phenomenon has also become a regional problem, which is reinforced every day in Latin America where only four countries have introduced legislation that allows them to meet the obligations of the Palermo Convention. These countries are Dominican Republic, Colombia, Argentina and Mexico.

When Mexico signed the Palermo Protocol, which is considered the first international instrument that provides a comprehensive definition of trafficking in persons, it was obliged to work to create legislation to regulate and punish Human Trafficking.

Under the constitutional provisions of the United Mexican States, the Palermo Protocol is mandatory for the country and is a Supreme Law Of The Union, except that their hierarchy is below the precepts contained in the General Constitution of the Republic.

In order to comply with the agreements signed in the Palermo Protocol, Mexico has undertaken reforms in legislation that have helped put into practice clear and positive action in the fight against Human Trafficking.

In addition to the United Nations Convention against Transnational Organized Crime and its Protocol on Trafficking in Persons, Mexico has the following legal instruments:

**1. The Constitution of the United Mexican States**, which in section 5o. states: No person may be prevented from engaging in the profession, industry, trade or occupation of his choice, it is lawful. The exercise of this freedom can only be stopped by judicial determination, when attacking the rights of third parties, or by administrative order, issued in the manner provided by law, when they offend the rights of society ...

... One may be not compelled to render personal services without just compensation and without their full consent, excepting labor imposed as punishment by the judicial authority, which shall conform to the provisions of Sections I and II of Article 123...

... The State cannot permit the execution of any contract, covenant, or agreement having for its object the restriction, loss or irrevocable sacrifice of freedom of the person from any cause.

**2. The Criminal Code** - In determining the Eighth Title crimes against the free development of personality in Chapter V talks about the case of persons under 18 or people who have no capacity to understand the significance of the fact or persons who are unable to resist, in Chapter VI talks about brothels and Trafficking and Article 205bis, which establishes the penalties applicable to persons who commit these crimes;

**3. Federal Criminal Procedures Code**, which qualifies Trafficking as a serious offense;

**4. Criminal Codes of the Federal Entities** (states) that criminalize Trafficking as a crime in some regards, but this only provides penalties for prostitution;

**5. The Federal Law Against Organized Crime** - Which is to establish rules for the investigation, prosecution, trial, sentencing and enforcement of penalties for crimes committed by any member of organized crime. Its provisions are mandatory and are applicable throughout the national territory;

Referred to in article 2 of the offenses of:

II. Alien smuggling under Article 138 of the General Law of Population;

IV. Organ theft under Articles 461, 462 and 462bis of the General Health Law;

V. Corruption of persons under eighteen years of age or who are unable to understand the significance of the event or people who have no ability to resist under Article 201; Pornography of persons under eighteen years of age or persons are unable to understand the significance of the event or people who have no ability to resist, under Article 202; sex tourism against persons under eighteen years of age or who have no capacity to understand the significance of the fact or persons who are unable to resist, under Articles 203 and 203a; procuring persons under eighteen years of age or who are unable to understand the significance of the event or people who have no ability to resist provided in Article 204, trafficking of minors or people who have no capacity to understand the meaning of the act provided for in section 366 Ter, the Federal Criminal Code, or corresponding provisions of the criminal laws of the State or Federal District and

VI. Trafficking in Persons, anticipated and sanctioned in articles 5 and 6 of the Law to Prevent and Punish Trafficking in Persons.

**6. Law to Prevent and Punish Trafficking in Persons** - This Act aims to prevent and Punish Trafficking in Persons, and the protection, care and assistance to victims of these behaviors in order to ensure respect for the free development of the personality of victims and potential victims, residents or moved into the country, and Mexican people abroad. This Act applies throughout the country in terms of federal law.

**7. Regulation of the Law to Prevent and Punish Trafficking in Persons;**

**8. Population Act** - Its purpose is to regulate phenomena affecting the population in terms of volume, structure, dynamics and distribution in national territory, in order to achieve fair participation in the benefits of economic and social development. The provisions of this Act are public and generally observed in the Republic;

**9. Regulation of the General Law of Population.**

According to that established in Article 10 of the Law to Prevent and Punish Trafficking in Persons, an Inter-ministerial Commission was created, which will work to putting into practice the National Program to Prevent and Punish Trafficking in Persons. This program should include public policies on the

prevention and punishment of human trafficking and the protection and assistance to victims of crime.

It is important to note that in Mexico, there are no NGOs that act against trafficking in persons, there are only government agencies and these are:

- **NATIONAL HUMAN RIGHTS COMMISSION** - The Commission developed a Program Against Trafficking 2008-2009, which aims to: Develop strategies and actions to prevent and punish trafficking in persons and protect and assist the victim personally.
- **NATIONAL INSTITUTE OF WOMEN** - This institution is responsible for directing the national policy to achieve equal opportunities between men and women, through the institutionalization of a gender perspective into the actions of state for women to fully exercise their Rights. The Institute works closely with various governmental and civil society entities in the implementation of actions leading to the assistance of trafficked women. The Institute does not carry out activities of government, it only promotes, monitors, advocates and proposes.
- **National Institute of Migration** - It is a decentralized technical body, under the Ministry of the Interior, which deals with: the planning, execution, control, monitoring and evaluation of migration services. In terms of trafficking in persons, the Institute provides people identified as victims of trafficking better conditions during their stay in the country as it has 31 state committees to identify and attend to the victims of trafficking; 15 of which collaborate with the State Institute for Women and the Program Against Trafficking in Persons 2008-2009 of the National Commission on Human Rights.
- **SECRETARY OF PUBLIC SAFETY** - The main purposes of this Department are: To develop public safety policies, proposing a federal anti-crime policy that includes rules, instruments and actions to prevent the commission of crime and promote citizen participation.

The Secretary created the National Network for Victims, which has as its primary objective to articulated nationally the efforts and services of public, private and social agencies for the comprehensive care of victims of crime and abuse of power, and to ensure their human rights. This network includes the victims of trafficking, providing immediate attention. The Network works in shaping specialized directories for providing care to victims, the development of treatment protocols for victims by type of crime, the design of social accountability standards on the Prevention of Crime and Violence.

• **SPECIAL PROSECUTOR FOR CRIMES AGAINST WOMEN AND TRAFFICKING IN PERSONS** – an entity of the Attorney General's Office. The office is in constant liaison with the Specialized Unit for Research on Child Trafficking and Illegal Immigrants and their functions are:

- Investigate and prosecute federal crimes of violence against women and trafficking in persons
- Provides legal services, medical care, psychiatric, psychological, protection and a safe place if necessary, to those who have faced problems of violence and trafficking.
- Coordinates efforts with civil society organizations, academic institutions and governmental organizations around the country to develop proposals for programs that strengthen the prevention and investigation of crimes within the jurisdiction of the Prosecutor, as well as models of care to the victim.

• **SECRETARY OF FOREIGN RELATIONS** - One of its functions is to broaden and deepen political, economic, cultural and cooperation with various regions of the world for the integral development of all Mexicans. Through the Secretariat, Mexico, deposited with the Secretary General of the United Nations, the instruments of ratification of the United Nations Convention Against Transnational Organized Crime, also called the Palermo Convention and its three protocols.

In order to promote coordination of international cooperation activities in the field, and to collect experiences and best practices in the international arena that can be applied in our country, the Ministry of Foreign Affairs organized the "Information Day to Combat Trafficking in Persons ". It was attended by representatives of the OAS, IOM, UNODC, PGR, and the NGO Borders, FEVIMTRA , IAP

• **PROTECT (PROTEJA)** - Is a program that has as its objective to support shelters for victims of human trafficking in Mexico. Its mission is to strengthen effective measures at the national level in the implementation of prevention, care and justice around the trafficking in persons, through the formation of networks of awareness, capacity building, technical assistance and building shelters. The program is multidisciplinary and consists of professionals who seek to contribute to the respect for human dignity.

In Mexico, trafficking in persons, is a felony which is punishable by six to twelve years' imprisonment and 500 to 1500 days of minimum wage; and with nine to eighteen years in prison and 750 and 2,250 days of minimum wage.

We also know that international agencies are working on developing a comprehensive global strategy that considers three basic concepts to develop prevention, protection and obtaining justice effectively and efficiently.

And while it is true that in Mexico, there has been progress in the domestic legislation, there is still much work to do in areas such as the safe return of trafficking victims; updating national laws to criminalize all forms of trafficking; design and implementation of prevention programs, training of public servants involved in the various stages of obtaining justice, as well as awareness in the communities where trafficking is seen as a normal practice and not as a crime.