



ESTUDIO REGIONAL SOBRE LA NORMATIVA
EN RELACIÓN A LA TRATA DE PERSONAS
EN AMÉRICA CENTRAL Y REPÚBLICA DOMINICANA
Y SU APLICACIÓN

**ESTUDIO
REGIONAL**

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IMPRESO EN COSTA RICA

The Crime of Trafficking in Persons

Background Information

1. The historical background is similar regarding the definition of the crime of trafficking in persons in the Criminal Codes of the seven countries. At first, trafficking was classified as a sex crime closely related to procuring, and thus to prostitution. It can be clearly noted that the concept of human rights was not considered, but instead a prohibitory stance was taken that does not directly penalize prostitution (actually adopting a certain tolerance of it), but rather those activities surrounding it that are carried out by those persons who profit from others who engage in prostitution. This is the same focus contained in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). To date that vision has not been entirely abandoned.

2. In recent years, all of the criminal law frameworks in the region have been reformed. Some of the reforms have been comprehensive (with both Panama and Nicaragua debuting new Criminal Codes in 2007), others have been partial (Costa Rica in 1999 and 2007, El Salvador in 2003 and 2004, and Honduras in 2005), and others have been solely for purposes of classifying trafficking in persons as a crime (the Dominican Republic by way of Law 137-03, and Guatemala by way of the amendment of Article 194 of the Criminal Code).

3. These reforms have been in response to, among other factors, the ratification of a series of international human rights instruments, some of which establish concrete commitments assumed by the States to reform their penal legislation. The United Nations Convention against Transnational Organized Crime (2000) and the complementary Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the “Anti-Trafficking Protocol”) have been of fundamental importance, since they are a product of the fight against organized crime and they establish, for the first time, a broad definition of trafficking in persons.

Analysis of the Criminal Definition

4. According to the Anti-Trafficking Protocol, “trafficking in persons” is understood to mean the recruitment, transportation, transfer, harbouring or receipt of persons (the criminal act), by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person (the means), for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (the end result).

5. The objective of this definition is to serve as a basis to define, for purposes of domestic law, those crimes that are sufficiently analogous to reinforce international cooperation for case investigation and follow-up. It is not, however, an appropriate definition for use in classifying criminal acts for purposes of Criminal Codes, due to the quantity of elements and broad or ambiguous concepts it contains, which can make the legal operator’s proof and decision tasks quite complex.

Rights Protected by Law

6. Trafficking in persons is found in the chapter on sex crimes in Costa Rica, Guatemala, Honduras, Panama, and Nicaragua. In El Salvador it is mentioned in the chapter on crimes against humanity, while the Dominican Republic has a law that specifically focuses on trafficking and migrant smuggling. Although the location of the criminal definition is not a decisive factor in determining the right protected by law, it is still a factor to be taken into account. In this sense, the tendency has been to consider that freedom and sexual integrity are the protected rights. It should be emphasized, however, that trafficking is a multi-offensive crime that violates the right to freedom and the right to

sexual integrity, among other rights protected by law.

Criminal Acts

7. The criminal acts included in the criminal definitions established by the seven countries are broad and cover the different phases of trafficking. In some countries the verbs from the Anti-Trafficking Protocol (recruit, transport, harbor, or receive) are used, while in others the verbs promote, facilitate, and favor are used. In the interpretation of the criminal definitions of trafficking (those established in the various Criminal Codes), no consensus exists regarding the moment of consummation. The doctrine that supports the Anti-Trafficking Protocol argues that trafficking is a crime of anticipated outcome that is committed by achieving any of its phases, without the need to cover all of the governing verbs, since it is sufficient for the active subject to have had the intention to exploit the victim.

Geographical Area

8. Trafficking can take place within a single country (internal trafficking) or across borders (external trafficking). In this region, the countries that distinguish between internal and external trafficking are El Salvador, Honduras, Panama, and Nicaragua. The criminal law definitions of Guatemala and the Dominican Republic make no such distinction. In Guatemala it has been interpreted that internal trafficking is tacitly regulated, while in the Dominican Republic it is considered not to be regulated. Costa Rican law only defines external trafficking, that is to say, the entry into or exit from the country of persons in order to subject them to prostitution, sexual bondage, or labor servitude.

Means

9. En Guatemala, the Dominican Republic, and Nicaragua, the law requires proof that the active subject has used coercive means against the passive subject. These means are very broad and go beyond the use of force or deceit, covering situations of vulnerability and the abuse of power, among others. Nicaragua's 1974 Criminal Code uses the broad concept of "other similar mechanisms," which has been interpreted in various ways by the courts. In the Dominican Republic and Nicaragua, such other coercive

means must be proven even when the victim is a minor, a requirement that contradicts the Anti-Trafficking Protocol. In the remaining countries, the basic criminal definition does not require the presence of coercive means, although such means are considered aggravating factors for purposes of establishing sanctions.

10. The fact that coercive means are not relevant to the definition of the crime in its basic form, as well as the fact that any consent given by an adult victim should not be taken into account, create problems in applying the law. In Panama, for example, where the trafficking of adults consists of "being subjected to unauthorized paid sexual activity" or sexual bondage, the problem is that some adults may accept performance of paid sexual activity without knowing that such activity is not allowed by the applicable administrative authorities. In other words, trafficking in persons is defined by the absence of permission granted by an administrative authority and not necessarily by the violation of a series of rights (freedom, dignity, etc.).

Objectives

11. According to the Anti-Trafficking Protocol, the objectives of trafficking consist of various forms of exploitation: the prostitution of others or other forms of sexual or labor exploitation, practices similar to slavery, servitude, and the removal of organs. In order to define these concepts it becomes necessary to refer to other international law instruments. Nevertheless, the Anti-Trafficking Protocol expressly refrained from defining the concept of the "exploitation of the prostitution of others" in order to allow each country's domestic legislation to regulate the practice of prostitution among adults. As such, the Protocol applies to (according to the terminology used in the discussion leading to its approval) "slavery, forced labor or labor servitude, coerced or forced sexual work by adults, and any participation by children in sexual work."

12. The criminal definitions of trafficking in persons in the Dominican Republic, El Salvador, and Guatemala, and in Nicaragua's new Code, cover a wide variety of trafficking objectives. This contrasts with the situation in Costa Rica, Honduras, and Panama, where the crime is limited to purposes of sexual exploitation or the practice of prostitution, as well as labor servitude in the case

of Costa Rica. With some exceptions, domestic legislation in these countries does not define the multiple concepts covered by the broad definition of trafficking, thus complicating the application of the law. Furthermore, the law in El Salvador includes as an objective of trafficking the obtainment of an economic benefit above and beyond the objective of exploitation. This makes application of the criminal definition difficult by imposing the burden of proving such objectives.

13. It is noteworthy the fact that Panama's Criminal Code (CC) sets forth that the objective of adult trafficking consists of submitting a person to unauthorized paid sexual activity or sexual bondage. The same law, however, states that the objective of child trafficking is sexual exploitation or sexual bondage. As such, the definition of adult trafficking implies, *contrario sensu*, that trafficking does not occur when the paid sexual activity is authorized, that is, when a series of administrative requisites have been fulfilled.

14. In the case of Honduras, the objective of trafficking is commercial sexual exploitation, which is defined as the use of persons for activities with a sexual purpose where there exists payment or a promise of payment to the victim or a third party who is using the victim commercially. This definition has been used to describe the commercial sexual exploitation of children and adolescents. Honduran criminal law, however, also applies this concept to adults, and thus a situation in which an adult agrees to participate in activities with a "sexual purpose" may be considered to be trafficking. This brings up the question of whether the concepts that are applicable to children are equally applicable to adults, or whether the Honduran classification of criminal activity is based upon an intent to exclude from the realm of lawful trade such activities as adult prostitution or other activities with a sexual purpose.

Active Subject; Complicity; Liability of Corporate Entities

15. The criminal law definitions stipulate that the active subject can be any person acting individually or in association with others.

16. In Guatemala, several judicial rulings have found that the active subject is the owner of the commercial locale where the criminal act is

committed, not the person who is directly exploiting the victim. Nevertheless, the broad formulas applied in criminal law include, as perpetrators or accomplices, those persons who participate in different ways in the commission of the criminal act.

17. In El Salvador, the penalty is mitigated for those who facilitate, promote, or favor any of the criminal acts defined by law.

18. In the Dominican Republic, the law contemplates liability for corporate entities. In Panama, Law 16-2004 stipulates that it is also applicable to persons who commit criminal acts for themselves or on behalf of a partnership. In El Salvador, the applicable authority is required to revoke the operating permit of a commercial locale where criminal acts are committed.

Passive Subject

19. The passive subject can be any person, with special reference to women and children in the Dominican Republic. In Panama, as previously noted, the criminal figure is different for adult passive subjects and underage passive subjects. In Nicaragua, one judicial ruling found that the passive subject was "society" without identifying the individual responsible for the crime, which implies that the victim received no remedy, compensation, nor protective measures.

Penalty

20. The penalties for the crime of trafficking vary. Costa Rica is the country with the lowest prison term (3-6 years), while the Dominican Republic has the highest (15-20 years). This disparity among the penalties for a crime that tends to be committed by criminal networks with contacts in various countries can be counter-productive, as those countries with more lenient legislation could become preferred targets for organized crime. In Panama, the 2007 CC lowered to 4-6 years the penalty for adult trafficking set by Law 16-2004 (5-8 years). In Guatemala, the prison term for trafficking is less than that for other crimes like kidnapping and indecent liberties.

Aggravating and Mitigating Factors

21. Practically all the countries establish as an aggravating factor the involvement of a victim

under 18 years of age. In the case of Nicaragua, Article 203 of the 1974 Criminal Code, which will soon be repealed when the new CC takes effect, sets forth that the crime is aggravated when the victim is under 14 years of age. In the case of Panama, there are various aggravating factors related to the victim's age, especially in the 2007 CC. In Guatemala, the crime is aggravated when the victim is a "senior citizen."

22. The crime can also be aggravated in the case of a disabled victim (El Salvador, Panama, the Dominican Republic, and Guatemala). All of the countries except Guatemala, the Dominican Republic, and Nicaragua consider aggravating factors based on the means used (deceit, violence, abuse of power, etc.). It is interesting to note that with the aggravating factors related to the means used, some countries specify a promise of employment (Honduras) or the withholding of travel documents (Panama), which are tactics frequently used by traffickers, since many victims are recruited with the promise of employment and then have their travel documents taken away from them.

23. When the active subject takes advantage of a kinship relation with the victim, the crime is aggravated in practically all of the countries. Other aggravating factors consider the involvement of a public official as active subject (El Salvador, the Dominican Republic) and the consequences suffered by the passive subject (the Dominican Republic and El Salvador).

24. None of the legal frameworks studied establish special mitigating circumstances for the crime of trafficking, and thus the general factors established in each Criminal Code would have to be applied. In the Dominican Republic, however, Law 137-03 allows for exemption from criminal liability when the victim collaborates or accurately identifies the organizers of the criminal activity. This standard seems to confuse the victim with the active subject.

Related Crimes

25. Usually a series of crimes are committed during the criminal process that constitutes trafficking in persons, with many of such crimes being defined by the legislation in effect in the seven countries. It is noteworthy that slavery is defined as a crime in only three countries (Costa

Rica, El Salvador, and Panama), servitude in only two (Costa Rica and Guatemala), and extraction of organs in only three (Costa Rica, El Salvador, and Panama). Of those countries only El Salvador stipulates that the passive subject can be any person, while in the other two (Costa Rica and Panama) the victim must be underage. Forced labor or service is only defined as a crime in Honduras and Panama when the passive subject is underage.

Investigation of the Crime

26. In every country covered by the study, the Public Ministry is responsible for investigating the crime of trafficking. Public Ministries have the support of police agencies (whether judicial or administrative or both) in order to carry out the investigation. Most of the countries have created special anti-trafficking police units.

Investigative Procedures

27. Police investigations in cases involving trafficking of persons tend to be quite complex. For such purposes, the police prosecuting agencies are allowed to use any investigative techniques allowed by law.

28. Special techniques such as electronic surveillance, wiretapping, and undercover operations are only just beginning to be used in this region for trafficking investigations, since these techniques have to be handled with utmost care. Their use requires a judicial warrant that is only issued when absolutely necessary, since such techniques involve the invasion of personal privacy (e.g., communications) protected by constitutional provisions. In addition, certain techniques may put at risk the physical safety and even the lives of police investigators, as is the case with undercover operations.

29. In general, police and prosecuting agencies lack the necessary human and technological resources to use such special techniques, although they are normally used to investigate other crimes committed by organized criminal networks, such as drug smuggling and auto theft.

Penal Action

30. In all of the countries included in the study, trafficking in persons is a public action crime, and thus the Prosecutor's Office or the Public Ministry is required to prosecute the crime upon becoming aware of it.

Prescription

31. Prescription is one of the causes by which a penal action may lapse. There are different statutes of limitations established among the legal frameworks of the seven countries. The shortest term is set by Costa Rican law, where trafficking in its basic form prescribes after three years (six years for aggravated cases). Next is Nicaragua, where trafficking prescribes after five years, while aggravated cases in Honduras prescribe after 19.5 years. Costa Rica and Honduras represent the two extremes. Both Panama and Costa Rica have enacted reforms stipulating that, in the case of victims under 18 years of age, the statute of limitations commences when the victim reaches legal age, rather than from the moment the crime is committed.

Phases of the Criminal Process

32. Although expressed in different terminology and specific details, the procedural framework established by law in the different countries divides the criminal process into three main phases: (a) the preparatory or preliminary phase (during which an investigation is carried out in order to gather evidence, identify the perpetrators, and organize the case based on one or more specifically defined criminal acts); (b) the intermediate phase (during which the Public Ministry files formal charges and the judge determines whether sufficient elements exist to submit the defendant to a bench trial); and (c) the trial phase (during which the accusing party, the victim, and the defense present their evidence in an oral, public trial, at the end of which a sentence is issued).

33. With the crime of trafficking, the first phase is fairly complex, since normally there are several suspects and several victims, obtaining evidence is not an easy task and, in the event the suspects are held in pre-trial detention, the prosecutors are faced with a brief preemptory period in which they must file charges or petition the court to dismiss the case. In addition to these

difficulties, prosecutors are faced with limited economic, human, and organizational resources.

34. In El Salvador, an amendment to the Criminal Code requires that suspected traffickers must be held in pre-trial detention as a precautionary measure in order to protect the victims and prevent them from being pressured, intimidated, or revictimized by the alleged perpetrators.

35. One important finding in Guatemala is that several trafficking cases never made it past the first phase of the criminal process because the investigation carried out by the Public Ministry produced little evidence to identify of the persons responsible for committing the crime. Of nine Guatemalan case files, three ended in acquittal, one was temporarily closed, two produced alternative measures, and only in the remaining two cases did the Public Ministry formally file charges of trafficking in persons. This situation is due not only to the cursory investigations performed by the Public Ministry, but also to judges who do not allow charges of trafficking, thus requiring alternative accusations to be formulated. The study did not find similar situations in other countries (which does not mean they do not exist).

36. In Costa Rica, one of the most common difficulties during the trial phase is that the victims or witnesses do not appear to testify, and the absence of other evidence hampers the prosecutor's strategy. Similarly, in the Dominican Republic the evidentiary element is the most complex aspect of the process, because in most cases there is no "tangible" evidence, only the victim's testimony.

37. The criminal justice systems of El Salvador and Nicaragua offer both bench trials and jury trials as alternatives. In El Salvador, however, the aforementioned CC amendment included trafficking in persons among the crimes that can not be tried by a jury. In Nicaragua some organized crime acts are so excluded, but not trafficking in persons, as the latter is considered to be a sex crime and not within the realm of organized crime. The persons interviewed for this study shared the opinion that the crime of trafficking should not be tried by a jury.

Victim Protection

38. Law 137-03 in the Dominican Republic contains a chapter on assistance and protection for victims of trafficking and migrant smuggling. Another three countries have special laws for victim protection: El Salvador, Honduras, and Panama. Five countries have created units or agencies that focus exclusively on victim protection: Guatemala, El Salvador, Costa Rica, Panama, and the Dominican Republic. It is noteworthy, however, that said units have assisted few or no victims of trafficking.

39. With the exception of El Salvador, none of the countries have specialized shelters for victims of trafficking, especially adult victims, who are often deported as a sort of “protective measure.” There have been experiences with specialized programs developed by NGOs for assisting underage victims.

40. In the case of Costa Rica and Honduras, measures to prevent revictimization have been focused on minors. In the Dominican Republic, despite the presence of a law that clearly guarantees the right to have the judicial process kept confidential, in practice that right is not respected.

41. In Guatemala, victims are penalized with deportation simply because they are undocumented and engaged in illegal prostitution, when in reality they are being victimized by traffickers for purposes of commercial sexual exploitation. Such victims tend to be seen only as evidentiary means. When they are deported even before their statements can be taken, however, evidence that is vital for the prosecution is lost, meaning that in many cases the crimes go unpunished.

42. Evidentiary standards that allow testimony to be received from victims and witnesses without putting their security at risk are scarce in the region. The most common practice is identity reservation, which is applied in Panama, Nicaragua, Costa Rica, and the Dominican Republic. In Panama, this practice has been used in some trafficking cases. In Costa Rica, it has been recently applied in cases involving underage victims. In the remaining countries such practices are rarely applied.

43. Despite the fact that almost all of the legal frameworks consider the obtaining of pre-trial evidence, it is noteworthy that this mechanism is not used in the Dominican Republic, Nicaragua, nor Guatemala, where the prosecution of some trafficking cases has been unsuccessful because no victim or witness testimony was offered during the trial, either because they had been deported or they could not be located at the time of the trial.

44. In order for a victim to be indemnified or compensated for the object related to the criminal act, the victim must pursue a civil compensatory claim (Costa Rica) or a civil action (Honduras and Guatemala) or an incidental claim (Panama). Only in Nicaragua may the judge that hears the criminal case include, at his/her discretion, victim indemnification as part of the sentence. This measure should facilitate indemnification for trafficking victims, but since determination of the amount is left to the court’s discretion, in practice the amounts awarded for indemnification tend to be symbolic.

Measures to Support the Task of the Authorities

45. The creation of anti-trafficking committees and coalitions in each country are notable measures for supporting the work of the authorities. In addition, some legal frameworks allow penalty mitigation in favor of defendants who cooperate with investigation and prosecution efforts, or even the dismissal of charges based on bargaining criteria.

Reforms Needed

46. In all seven countries there is a recognition of the need to promote reforms in criminal law, in criminal procedures, and in other areas, in order to bring the criminal definition of trafficking in line with that set forth in the Anti-Trafficking Protocol. In addition, legislation and special programs for victim and witness protection are required, with sufficient financing and trained and sensitized personnel.

CONCLUSIONS

1. The historical background regarding the definition of trafficking in persons in the laws of Central America and the Dominican Republic is linked to the concepts of “white slavery” and sex crimes that have predominated in Latin American criminal codes. Far from protecting women from aggression and violation of their rights, these codes make matters worse by perpetuating a series of stereotypes. The rights protected by law have not been freedom and integrity, but rather “honesty,” “virtue,” and “proper customs.” In other words, the law protects male interests or a dubious morality from being harmed by the conduct of women.

2. With the Anti-Trafficking Protocol and the international human rights instruments, the crime of trafficking is reconceptualized. The Protocol offers a broad definition as a basis for domestic lawmakers to leave behind the concept of “white slavery” and enact reforms that are mutually compatible. Legislative compatibility is fundamental in the face of organized criminal acts that are planned and carried out in various countries and take advantage of lenient laws to achieve impunity.

3. The criminal law definitions of trafficking differ among the seven countries, despite the fact that all of them have ratified the United Nations Convention against Transnational Organized Crime and (with the exception of Honduras) the Anti-Trafficking Protocol.

4. The experience gained working against the commercial sexual exploitation of children and adolescents has been highly valuable for the region, as it has placed the topic on the public agenda and has motivated criminal law reforms. Nevertheless, the misconception that trafficking only involves the commercial sexual exploitation of children has also spread, thus hampering a comprehensive understanding of a phenomenon that goes beyond commercial sexual exploitation and that also affects adults (mostly women, but also men).

5. The situation in Panama is especially worthy of concern. Panama’s new 2007 Criminal

Code not only fails to define trafficking in persons in accordance with the Anti-Trafficking Protocol, but in some aspects eliminates the advances achieved with Law 16-2004, which reformed criminal law, criminal procedures, and other legislation. The definition of adult trafficking apparently makes no attempt to protect sexual freedom or victim dignity, nor does it take into account whether the sexual activity is performed in a forced or voluntary manner. What matters is simply the fulfillment of formal or administrative requisites, thus detracting from and distorting the concept of trafficking in persons.

6. In Nicaragua, where a new Criminal Code was recently approved, the criminal definition of trafficking also does not abide by the Anti-Trafficking Protocol.

7. The definition of trafficking established in the Anti-Trafficking Protocol is not appropriate for use in classifying criminal acts for purposes of domestic Criminal Codes, but even so some countries copy the Protocol’s definition almost textually, including many broad and ambiguous concepts that complicate the task faced by the Public Ministry and law enforcement agencies. It is noteworthy that in Guatemala, where the criminal definition of trafficking is almost an exact copy of the definition established in the Anti-Trafficking Protocol, prosecutors and judges ignore the complex criminal definition and continue to apply the law as if it had not been amended, basing their rulings on interpretations that do not coincide with the letter of the law.

8. Trafficking in persons is a multi-offensive crime that violates the right to freedom as well as numerous other rights (the right to integrity, the right to life, etc.). Nevertheless, the fact that several legal frameworks in the region consider the only objective of trafficking to be sexual exploitation limits the rights protected by law, an attitude reinforced by the historical connection between trafficking and the concept of “white slavery” mentioned previously.

9. The criminal acts covered by the Criminal Codes are broad enough to cover the different phases of trafficking in persons. With respect to

the application of these criminal definitions, however, in some countries it can be noted that the particular aspects that distinguish trafficking from other related crimes (e.g., sexual exploitation of children or procuring) are not clearly defined.

10. Internal trafficking is not recognized in some countries' Criminal Codes, although the phenomenon occurs in all of the countries. This implies that other crimes must be charged in order to avoid impunity.

11. There is no consensus on whether the application of coercive means by the active subject against the passive subject is an element of the crime. The basic criminal definition observed by some countries does not require this element to be found, while in other countries such means must be shown, even when the victim is underage, as is the case in the Dominican Republic. In yet other countries there is no mention of coercive means when dealing with adults and the objective of the trafficking is to subject a person to "unauthorized paid sexual activity" (Panama), or else a definition of commercial sexual exploitation is accepted as being applicable to minors but not necessarily to adults (Honduras).

12. The objectives of trafficking as defined by law also vary widely among the seven countries. Some countries only consider the objective of sexual exploitation, while others copy and even expand upon the list contained in the Anti-Trafficking Protocol. Practically all of the judicial sentences compiled from the seven countries refer to trafficking for purposes of sexual exploitation. This reflects the fact that sexual exploitation is a widespread problem, but also indicates that other trafficking objectives are not being recognized (such as forced labor, for example) and are very difficult to prove, thus requiring the Public Ministry to charge other crimes instead of trafficking.

13. To the already complex task of proving the trafficker's intentions, El Salvador adds the requirement to show that the active subject intended to obtain an economic benefit. The practical effect of this has been to make application of the Criminal Code even more difficult.

14. There is no definitive jurisprudential standard in any of the countries. What is actually

observed is that each judge makes his/her own interpretation of the crime of trafficking, with varying criteria regarding the point at which the crime is consummated. Furthermore, judges and prosecutors pursue very little conceptual analysis of the crime of trafficking. This implies that there is a "gray area" regarding the scope of trafficking in persons.

15. The penalties faced by traffickers vary amongst the countries. This disparity among the penalties for a crime that tends to be committed by criminal networks with contacts in various countries can be counter-productive, as those countries with more lenient legislation could become preferred targets for organized crime. Disparity also exists within some countries, where related crimes and organized criminal acts tend to be penalized more harshly than trafficking in persons.

16. In general, trafficking is not seen as pertaining to the realm of organized crime, but rather as an individual crime. As a result, neither the specific provisions established for organized crime nor the corresponding special investigative techniques are applied to investigate trafficking. Such investigations tend to be assigned to units specializing in sex crimes or crimes against women, rather than organized crime units.

17. With respect to related crimes, it is noteworthy that only Honduras and Panama have established a separate criminal definition for forced labor, and even then only when the passive subject is a minor. In the case of adults, a different crime would have to be charged or else the crime will either go unpunished or go no further than a labor infraction that is penalized only with a fine.

18. Police and prosecutors in all of the countries suffer from limited human and economic resources, which makes it difficult for them to carry out the extensive investigations that would be required of them in order to investigate trafficking situations. In addition, the use of special techniques such as electronic surveillance, wiretapping, and undercover operations is limited by rigid legislation that does not respond to the sophisticated methods used by organized criminal networks. Such techniques do tend to be used in cases involving other forms of organized criminal activity, such as drug smuggling and money laundering, which means that they could also be

used against traffickers if the will to do so existed and if trafficking were truly seen as an organized criminal activity.

19. The investigation of trafficking cases also implies a level of police work and coordination between prosecutors and judges that is difficult to achieve. Besides the limited human and economic resources that law enforcement agencies have to combat organized criminal networks, they also have to face obstacles that hamper coordination efforts among police, prosecutors, and judges.

20. The length of time needed for criminal proceedings to run their course is also a constant source of concern, despite the principle of prompt justice. Then the different statutes of limitations for trafficking also represent a problem that favors organized crime and may allow some cases to go unpunished when they can not be processed within the established time periods.

21. Victim and witness protection in the region leaves much to be desired. Although almost all of the criminal procedure legislative frameworks contain some article listing the rights of victims, such provisions are not applied in practice. The victim is notably absent from the criminal process. The region's victims are revictimized, blamed, and used, and subject to multiple interrogations, confrontations with their exploiters, endless proceedings and, most of all, a lack of protection. In the best of scenarios the victim is treated as an evidentiary element, and in the worst of scenarios she is tried and convicted, being punished with almost immediate deportation without consideration of the fact that she could be captured again by her traffickers. This continues to be a shameful reality, although it must be acknowledged that there exist trained and sensitized personnel who are trying to change the system.

22. Immediate attention for the victims is practically nonexistent, and when it occurs it is offered only to underage victims by NGOs, not by consolidated state-run programs. None of the countries has established a comprehensive program for assisting and protecting trafficking victims and witnesses.

23. Although the establishment of victim protection and assistance units in almost all of the countries represents a great achievement, the

reality is that these units lack the necessary infrastructure to carry out their work. The units tend to be weak and underfinanced, with few possibilities of truly reaching out to the victims in need.

24. Based on the review of the cases compiled from the seven countries, it was found that no victims have been indemnified nor become plaintiffs in civil compensation claims. The means do not exist for victims to assume an active role in the criminal process and express their concerns during the corresponding procedural phases. They lack information and legal counsel. More importantly, the mindset needed to acknowledge the rights of the victim does not exist.

25. The specific laws and provisions for protecting victims and witnesses in the region focus more on protecting public officials (judges and experts) than protecting victims. Victims and witnesses are frequently exposed when their identities are made public, thus seriously endangering their physical integrity and mental wellbeing, as well as their chances for recovery and social reintegration. With things as they are, it is not surprising when victims prefer not to press charges or refuse to testify against their traffickers. The system practically leaves them with no choice. This situation should be cause for reflection and, more importantly, action.

26. Certain procedural mechanisms, such as pre-trial obtaining of evidence, are rarely used, and when used they depend upon the discretion of the judge to admit such evidence or not. While in some countries there exist significant precedents involving the use of such mechanisms in trafficking cases, in other countries they are simply ignored, causing cases to be lost due to a lack of testimony because the victim was deported early on in the process.

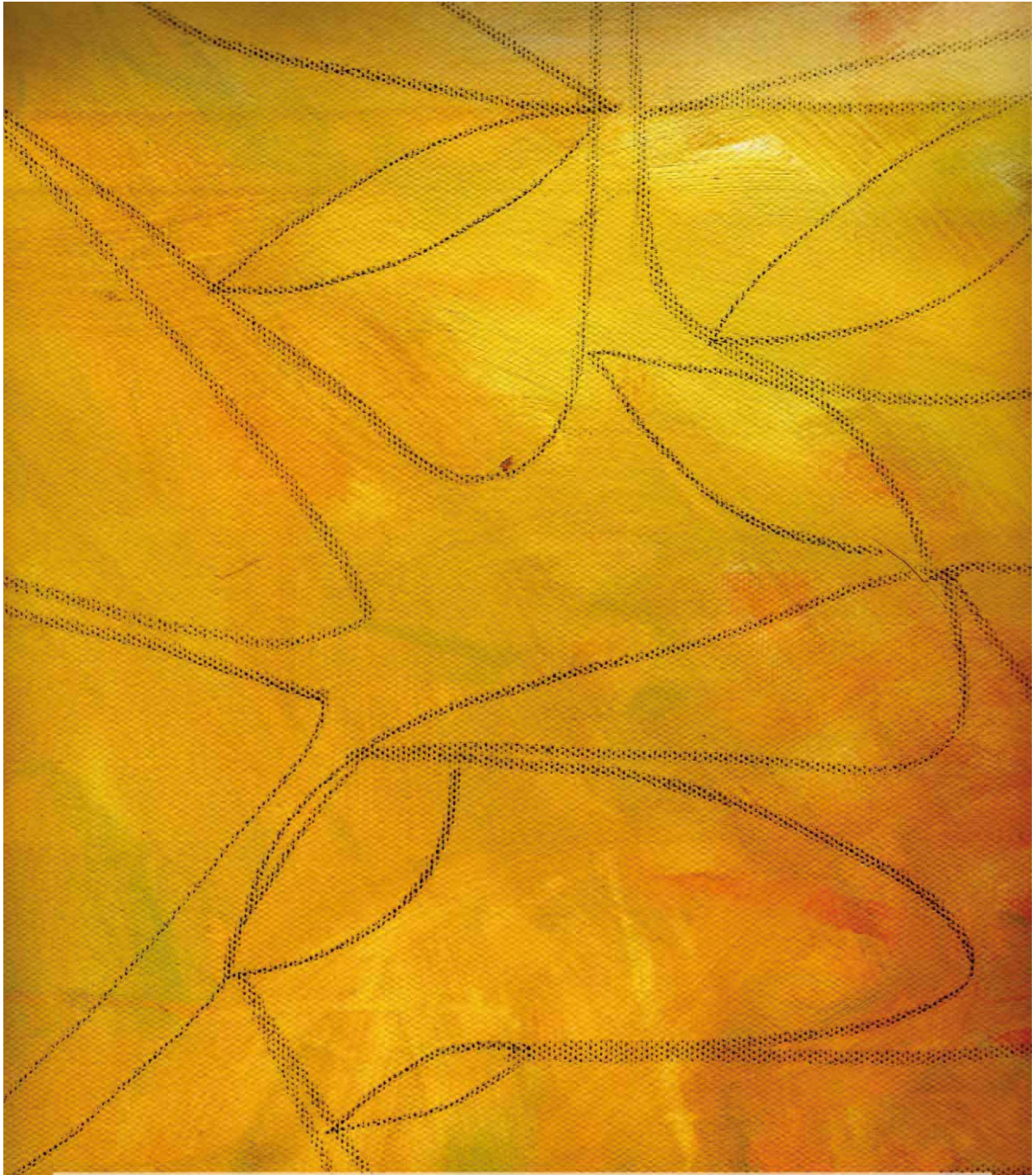
27. Most of the people interviewed agree that a series of reforms are needed in the areas of criminal legislation, criminal procedures, victim protection, and other related aspects. There is also agreement concerning the importance of compatibility amongst the reforms enacted by different countries, in order to pose a truly common front against organized criminal networks that commit the crime of trafficking in persons. There is still a long way to go in this sense, however, and, paradoxically, some recent reforms

have actually nullified certain earlier achievements, making it more difficult to achieve the necessary goal of compatibility. The respective national studies contain specific recommendations for each country, and thus it is important to focus here on those recommendations

that can be adopted by all seven countries as a broad region, or else by multilateral bodies like the SICA or, more specifically, by the Central American Council of Ministers for Women's Affairs (COMMCA).

RECOMMENDATIONS

1. Ensure compatibility amongst the legal frameworks regarding the definition of the crime of trafficking. Such compatibility, while respecting each country's characteristics, is one way of combatting organized crime.
2. Bring the criminal definitions in line with the Anti-Trafficking Protocol. This does not imply textually copying the Protocol's definition, since it does not constitute a criminal definition. This adjustment should include the Protocol's three governing verbs: recruit, transport, and receive. The new definitions should include all forms of trafficking exploitation, not just commercial sexual exploitation.
3. With respect to criminal proceedings, the rights of the victims need to be effectively guaranteed, ensuring that they play a role in the process, that they are properly informed and advised, that comprehensive protection programs exist for both victims and witnesses, and that mechanisms for indemnification and restitution are established.
4. Review the procedures established in the Treaty for Mutual Assistance in Criminal Matters among the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama, in order to facilitate the application thereof in cases involving the crime of trafficking in persons.
5. Strengthen mechanisms for cooperation between prosecutors and police units.
6. Analyze the possibility of drafting and adopting a specific regional instrument concerning trafficking in persons that covers prevention, victim and witness protection, prosecution and punishment of criminals, and mechanisms for prompt cooperation.
7. Promote horizontal cooperation amongst the region's countries as well as countries outside the region, particularly with respect to investigation, covering at minimum the following aspects:
 - a. A conceptual analysis of the crime of trafficking from a gender perspective that helps to create a new doctrine to overcome the concept of "white slavery" and goes beyond commercial sexual exploitation.
 - b. Techniques for investigating criminal activity, with detailed coverage of those techniques that could be particularly relevant to trafficking in persons.
 - c. Obtaining of evidence, including the establishment of parameters regarding how evidence should be obtained, how it should be preserved and, especially, how to make the obtainment process compatible with the victim's right to not be revictimized.
 - d. Victim assistance and protection programs that take into account the lessons learned from successful experiences that have addressed the topic of victim protection from a comprehensive standpoint.
8. Promote regional training and awareness programs that specifically seek to dispel common misconceptions regarding the crime of trafficking and acknowledge it as an affront to human rights.
9. Strengthen domestic anti-trafficking committees and coalitions and promote exchanges amongst the different countries.
10. Draft and implement regional victim assistance protocols that cover immediate attention, physical protection, legal counseling, and repatriation (not deportation), among other aspects.
11. Promote the adoption of victim-centered criminal justice policies that establish as a priority the prosecution of the crime of trafficking in persons.



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