
OBSERVATIONS AND RECOMMENDATIONS
PRESENTED AT THE MEETING OF
NATIONAL AUTHORITIES ON HUMAN TRAFFICKING

ORGANIZATION OF AMERICAN STATES

Global Rights
Coordinador Nacional de la Mujer Salvadoreña - CONAMUS

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TOPIC I

IMPLEMENTATION OF INTERNATIONAL LEGAL INSTRUMENTS

RECOMMENDATIONS TO MEMBER STATES:

1. Laws and policies must clearly distinguish between human trafficking and human smuggling.
2. Portions of the definition of human trafficking in the UN Trafficking Protocol are unclear or ambiguous and so states must create a clearer and unambiguous definition for their national criminal law.

TRAFFICKING AND SMUGGLING

Trafficking in human beings and smuggling of human beings require coordinated and effective state responses, both to punish the traffickers and smugglers and to protect the human rights of the trafficked persons and smuggled persons.

However, the state responses to trafficking and smuggling are not the same, though they have some areas of overlap, because the two crimes differ in significant ways. The purpose of this paper is to clarify the concepts, based upon our years of experience working with trafficked persons.

Smuggling:

Smuggling is sometimes called 'facilitated migration', which more accurately reflects the process, at least from the perspective of the person being smuggled. The aim of the smuggler is to take someone across a border without valid documents for a fee. It is a consequence of the desire of a person, who is unable to obtain a visa, to travel to another country to work or live. The person pays someone else (called a snakehead, coyote or smuggler) to transport her or him across one or more borders to the desired destination.

Upon arrival, the person is either simply deposited at the border or delivered to a destination, such as a worksite. The person being transported may arrive without any problem or may suffer severe injuries or even death if the means of transport are dangerous, such as in the cargo hold of a ship or in a truck container where there is little air and no fresh water or food.

Thus, smuggling is a violation of state sovereignty.

Trafficking:

Trafficking always involves the use of deception, coercion or debt bondage, either at the beginning of the trip to entice or force a person to migrate or at the middle or end of the trip when the person no longer has control over her or his circumstances.

The aim of the trafficker is to extract work or services from someone through the use of deception, violence or threat of violence, or debt bondage. To achieve this aim, it is not always necessary to cross a border or to cross a border without proper documents. Trafficking occurs within countries and many persons who become victims enter destination countries legally. A person who hires a 'smuggler' or travels for a job promised by a 'recruiter' does not know that the 'smuggler' or 'recruiter' is really a trafficker who intends to hold or place her/him in forced labour, servitude or slavery-like conditions.

Thus, trafficking is a crime against the individual and also constitutes a human rights violation when the state fails to take effective measures to prevent and punish the crime.

Human trafficking may also constitute a crime against humanity when it meets the requirements of the International Criminal Court treaty.

UN TRAFFICKING PROTOCOL

Background

In December 2000, the UN adopted international instruments to fight transnational organized crime and protocols to combat human trafficking, human smuggling and firearm smuggling. The complete set of commitments made by governments regarding trafficking are contained in 3 documents: the Convention Against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the Interpretative Notes (*Travaux Préparatoires*) to the Trafficking Protocol. Taken together, these three documents comprise the complete set of international obligations specifically addressing the trafficking of human beings.

These three instruments are combined and discussed in the *Annotated Guide to the Complete UN Trafficking Protocol*, which is being distributed separately at this meeting.

Protocol definition or description of trafficking

The UN definition (or more accurately, description) of trafficking in persons describes in some detail the nature of the crime:

“Trafficking in persons” shall mean

- 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 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,

- 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;

However, this description of trafficking is not appropriate for use in domestic criminal codes. Some of the language is ambiguous, which could also lead legal challenges by defendants. Also, it contains too many elements that would have to be proven by prosecutors, thus making prosecutions more difficult.

For this reason, we propose that governments adopt a shorter and clearer definition of the crime for their criminal laws:

“Trafficking in persons” shall mean

- the recruitment, transportation, transfer, harbouring or receipt of persons,
- by any means,
- for forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

However, if governments decide to adopt the UN description of trafficking into their domestic laws, they should consider the following:

Abuse of a position of vulnerability¹: This element of the Protocol definition covers situations in which smart traffickers use psychological coercion to hold their victims and do not resort to force. It recognizes that many trafficked people are told what to do by someone close to them, such as a parent, a spouse or a community leader. Persons in these situations may have no culturally acceptable or legal means to refuse and so they “submit” to the situation. They are still victims of trafficking.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation²: The terms “exploitation of the prostitution of others” and “sexual exploitation” are the only terms in the UN definition of trafficking that are *intentionally left undefined* and are also *not defined* anywhere else in international law.

The Interpretative Note contained in footnote 5 below explains the compromise language and recognizes the existence of both coerced participation and non-coerced participation in adult sex work. It explains that the Trafficking Protocol takes no position on the treatment of non-coerced adult sex work and explicitly leaves its legal treatment to the discretion of individual governments.

The delegates at the Trafficking Protocol negotiations *intentionally* left these terms “exploitation of the prostitution of others” and “sexual exploitation” undefined in order to ensure that all governments could sign the Protocol. Thus, all governments signing the Protocol are free to develop national laws on the treatment of *voluntary* adult participation in sex work *without* reference to the Protocol.

Furthermore, it is not necessary for governments to include a specific provision in domestic laws on forced participation in the sex sector. All forms of child participation in sex work and all unfree participation of adults in sex work are already covered in the Protocol by slavery, practices similar to slavery, forced labor and servitude, which are defined in international law.

Nonetheless, if any government decides to adopt the Protocol description of trafficking in its domestic law, it will have to develop definitions for ‘sexual exploitation’ and the ‘exploitation of the prostitution of others’. The preferred definitions would focus in the use of force or coercion (including psychological coercion) to hold people against their will.

The following definitions could be considered:

“sexual exploitation” means “the participation by a person in prostitution, sexual servitude, or the production of pornographic materials as a result of being subjected to a threat, coercion, abduction, force, abuse of authority, debt bondage or fraud.”

¹ UN Interpretative Note: The *travaux préparatoires* should indicate that the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.

² UN Interpretative Note: The *travaux préparatoires* should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms “exploitation of the prostitution of others” or “other forms of sexual exploitation” are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.

“exploitation of the prostitution of others” could be defined as “the obtaining by a person of any financial or other benefit from the sexual exploitation of another person.”

Forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs:

The term **“forced labour”** is defined in article 2.1 of the International Labor Organization Convention Concerning Forced Labour No. 29³ as follows: “For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

The term **“slavery”** is defined in article 1.1 of the UN Slavery Convention⁴ as follows: “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Numerous **“practices similar to slavery”**⁵ are contained in the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, article 1, and include debt bondage, serfdom, forced marriage, wife transfer for value, inheriting a widow, and transfer of a child for exploitation of her/his labor.

The term **“servitude”** is not defined in international law but it is understood that the above practices are forms of servitude. The Supplementary Convention lists specific instances of servitude or practices similar to slavery. Other forms of servitude can be drawn from the principles evident in the Supplementary Convention, such as the use of customary practices to strip a person of any ability to refuse to submit to practices that otherwise would be considered slavery or forced labor.

Trafficking for body organs⁶ only occurs if a person is transported for the purpose of removing organs. The Trafficking Protocol does not cover the transportation of the organs alone.

As demonstrated by the above discussion the UN Trafficking Protocol definition is quit complex and often unclear, so we encourage consideration of a simple and clear criminal law definition of trafficking, as proposed at the beginning of this section.

³ ILO conventions are found at <http://www.ilo.org/ilolex/english/convdisp2.htm>.

⁴ All UN conventions are found at <http://www.unhchr.ch/html/intlinst.htm>.

⁵ UN Interpretative Note: “The *travaux préparatoires* should indicate that where illegal adoption amounts to a practice similar to slavery as defined in article 1, paragraph (d), of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, it will also fall within the scope of the Protocol.”

⁶ UN Interpretative Note: “The *travaux préparatoires* should indicate that the removal of organs from children with the consent of a parent or guardian for legitimate medical or therapeutic reasons should not be considered exploitation.”

TOPIC II

PREVENTING THE CRIME OF TRAFFICKING IN PERSONS

RECOMMENDATIONS TO MEMBER STATES:

1. Bring migrant labor policies in line with unmet demand for labor
2. Ensure that laws respect the principle of non-discrimination, particularly with regard to marginalized groups, minorities and women
3. Guarantee the right to education and livelihood
4. Distribute information about safe migration options and dangers of irregular migration

Obligation to address the link between restrictive migrant labor policies and the unmet demand for labor (Protocol 9.5, Guidelines 7.1, 7.7, 11.4)

Globalization has accelerated the free movement of goods and capital worldwide, but has not similarly resulted in the free movement of labor; thus, restricting and now even walling off the 3rd prong of capitalism. As a result, countries experiencing decreasing fertility rates (in Europe, Japan and the United States, for example) face severe labor shortages and countries with excess labor capacity are unable to 'export' labor freely or legally. The *demand* for workers in many countries of destination is enormous, growing and unfilled.

U.S. law sets the number of agricultural (and other) workers who can obtain work visas far below the actual number of workers needed to do the dirty, dangerous and difficult (or demeaning) work that Americans or legal residents are unwilling to do.

For example, vegetable growers estimate a shortage of 32,000 workers for the 2006 harvest season; many farmers left acres of lettuce to rot in 2005 due to labor shortages. The owner of an 8,000 acre farm who has only 290 workers complains that "I should have 400, and for the harvest I need 1,100....There's a disaster coming."

Migrant workers without documents are extremely vulnerable to abuse and exploitation in a variety of settings: they clean houses, take care of children, pick crops, cook food, construct buildings, plant gardens and provide sexual services. Governments recognize no or very limited rights for undocumented migrant workers and thus employers have free rein to abuse their vulnerable staff and pay low or even no wages. Many of these workers end up being held in trafficking situations by employers who exploit their vulnerable status.

If the workers had the option to migrate legally to take on jobs that exist in destination countries, they would not be vulnerable to these criminal employers.

The International Labor Organization, in a report on labor migration policies and human trafficking concluded (in part, citations omitted)⁷:

The demand for labour and services in countries of destination and the availability of willing migrants in countries of origin could be the starting point for constructive elaboration of migration and migrant employment policies that are regulated, legally based, and ensure decent treatment of individuals. Such policies would go a long way towards eliminating the incentives for trafficking and thus for activity of organised criminal groups.

... Put together, constituent experience in the context of these values shows that a migration policy framework for effectively combating trafficking must be a comprehensive and integrated package and must include the following elements:

⁷ *Getting at the Roots: Stopping Exploitation of Migrant Workers by Organized Crime*, Patrick A Taran and Gloria Moreno-Fontes (2003)

<http://www.ilo.org/public/english/protection/migrant/download/pom/pom1e.pdf>

1) An **informed and transparent labour migration admissions system** designed to respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must rely on regular **labour market assessments** to identify and respond to current and emerging needs for workers, high and low skilled. ILO research underlines this as a fundamental starting point: legal labour migration channels contribute to both reducing trafficking in children and women and the smuggling of migrants.

Obligation to ensure that national laws do not discriminate against marginalized groups, minorities or women (Protocol 9.4, Guidelines 7.6, 7.9)

Discriminatory laws, policies and practices marginalize individuals and groups and often result in out-migration as a survival mechanism. In many countries in the region, indigenous populations, people of African descent and women suffer to a greater extent than the rest of the population from poverty, lack of education, access to water, healthcare, jobs, and trainings, as well as laws that deprive them of their collective and/or individual rights and policies that condone violence by members of the majority population on marginalized groups.

The result of these multiple burdens is out-migration - for women escaping from domestic violence, women who are left by the state to support their children, indigenous farmers escaping police violence or loss of communal land, and minority groups leaving to escape racial or other forms of discrimination.

Maria is an indigenous woman from a Central American country. Maria and members of her community receive none of the benefits and infrastructural support provided by the national government to the non-indigenous population. As a result, during time of severe drought and crop failure, men migrate out in droves and the women are left to eke out a living as best they can.

Maria was trafficked by a diplomat to a neighboring country. The trafficking diplomat chose Maria because she is the 'perfect' victim - uneducated, speaks very little Spanish, compliant and non-confrontational by tradition, and responsible for supporting her children since the early death of her husband.

Obligation to ensure education and livelihood options (Protocol 9.5, Guidelines 7.2-7.3)

Many trafficked persons have high levels of education but they are unable to find work paying a living wage and so they migrate. However, the majority of trafficked persons have very low levels of education and unable to find work or a job that at least pays a survival wage and so they migrate.

Governments have international obligations to provide basic education to all citizens and many fail to meet this minimum requirement or fail to ensure that all children (particularly girls) receive this basic level of education. Additionally, many governments also fail to provide the minimum conditions necessary to encourage the development of employment or to train their citizens with marketable skills. In many countries, minimum labor standards are not met and workers toil for wages that fail to meet the basic needs of a family.

These undereducated and undertrained segments of the population are more willing to accept traffickers' stories of high-paying jobs abroad and are more vulnerable when they arrive at the destination country. Their vulnerability is significantly created by and increased by their lack of basic skills and knowledge.

Obligation to distribute information about safe migration options and danger of irregular migration (Protocol 9.2, Guidelines 7.4-7.5)

Many migrants are well-informed about migration routes, strategies and risks in the region; however, many others rely upon the information given to them by smugglers. This dependency relationship prevents migrants from making informed decisions. Migrants who know nothing about the situation or laws in the country of destination, about the routes and risks of migration and/or who know no one in the country of destination are vulnerable to trafficking.

Origin country governments need to actively engage with populations of potential migrants and with the society in general about migration issues, laws, potential dangers, safe migration strategies and alternatives to migration. They need to use the media, community leaders, schools and other resources to inform the public about the risks of trafficking, and also about how to recognize some danger signs, such as stories about high-paying 'too good to be true' jobs and living conditions.

The best means for the government to meet this obligation is to work in collaboration with civil society actors in developing and delivering a 'message' that truly informs and respects the decisions of potential migrants.

TOPIC III

PROSECUTION OF THE CRIME OF TRAFFICKING IN PERSONS

RECOMMENDATIONS TO MEMBER STATES:

1. Laws must recognize that traffickers come from all segments of society
2. Conduct trainings for relevant public officials on how to identify traffickers and trafficked persons
3. Ensure that all investigators and prosecutors have sufficient training to gather adequate evidence to ensure convictions

Individuals, families, dis-organized gangs, transnational organized networks and corrupt officials are involved in human trafficking (Protocol 3, 4, 5, Convention 2, 3.2, 8, 9, 10, 34.2, Guideline 4.1-4.3)

Modern traffickers have many faces. They are diplomats who import domestic workers and hold them in isolation and forced labor in their homes. They are members of organized criminal networks that move people into forced prostitution. Some of them are men who import foreign-born women, ostensibly for marriage, but in reality for the purpose of holding them in servitude and subjecting them to sexual abuse. Others are families that import men, women and children to work in forced labor in their offices, factories and homes, and subject them to sexual and physical assault and deprive them of their wages. Unfortunately, they are also some officials who facilitate the movement and imprisonment of trafficked persons. Traffickers, then, can be our next door neighbors.

For almost 15 years, one of the richest men in a large American city 'imported' poor young men and women from his native village and forced them to work in his businesses. The young girls who worked in his home were subjected to sexual violence and abuse. None of his victims were paid any wages before being sent home and replaced with a new group of victims.

When he was found guilty, professionals and businesspeople from his community pleaded for leniency claiming that he was an old man, an 'upstanding' member of the community, a good man who helped the needy. The judge sent this trafficker to prison for seven years and awarded the trafficker to pay hundreds of thousands of dollars in damages to the victims.

The Trafficking Protocol and Convention recognize the criminal liability of individuals, groups, legal persons (e.g., corporations) and corrupt officials, thus state parties to these instruments must adopt conforming legislation.

Relevant state authorities should be trained to identify traffickers and trafficking victims (Protocol 10.2, Guideline 2.1-2.3, 5.2-5.4, 5.7)

The task of identifying traffickers in this age of mass migration is difficult. Most victims do not know that they are being trafficked until they arrive at the destination. Consequently, when officials encounter a situation of undocumented border crossing, it is not easy to determine whether the smuggler is actually a trafficker who will transfer the migrant to the trafficker-employer or is simply a smuggler who will drop the person across the border.

However, when undocumented migrants or even domestic migrants are discovered, it is easier to determine whether the level of exploitation (and abuse) rises to the level of human trafficking - involving unfree and unpaid labor. Thus, states should train authorities at all levels who are likely to come in contact with trafficking victims - labor inspectors, housing inspectors, police, immigration inspectors, fire fighters, hospital workers, etc.

A neighbor called the police to complain about domestic violence in the house next door. When the police arrived, the domestic worker ran out of the house screaming in a foreign language. The husband and wife employers explained to the police that the woman was

relative who was not emotionally stable. The police left and the domestic worker remained in the house.

The next time the police came, the officer was suspicious about the circumstances and was able to find a translator for the domestic worker. The officer had some familiarity with the crime of trafficking and forced labor and concluded that the husband and wife were traffickers, whom he quickly arrested.

Investigators, police and prosecutors require training on effective evidence-gathering and case presentation (Protocol 10.2, Guideline 5.2-5.3, 5.9)

Prosecutions of trafficking cases can collapse due to lack of evidence. Trafficking cases are often difficult because investigators are not trained adequately to collect the type of evidence that is essential to proving the existence of the crime. Also, trafficking cases are heavily dependent upon the cooperation of the victims and so investigators, police and prosecutors must be trained to understand the psychology and needs of the victims.

Migrants often refuse to cooperate because they are afraid of the authorities and see no personal benefit in remaining in a foreign country (without any work) to testify against their traffickers. Many of them simply return home or find jobs and disappear. Officials have more success in prosecutions when they work cooperatively with the NGOs that are providing services and support to the victim-witness in the case.

TOPIC IV

PROTECTION OF AND ASSISTANCE TO VICTIMS OF TRAFFICKING IN PERSONS

RECOMMENDATIONS TO STATE MEMBERS:

Ensure that human rights are at the center of all laws and policies, with special focus on recognizing and promoting:

1. Right of non-discrimination
2. Right to enter and leave one's own country
3. Right to protection from harm, threats and intimidation
4. Right of access to justice, regardless of immigration status
5. Right to have one's privacy protected
6. Right to compensation, restitution and reparations
- 7 The obligation to provide temporary residence status
8. Right to assistance and services
9. Right to a safe and voluntary return, including reintegration assistance

Human rights must be at the center of all anti-trafficking laws, policies and practices (Protocol 2 and 14.1, Guideline 1)

The problems of trafficked persons do not cease after release from the conditions of forced or bonded labor, servitude or slavery. Many of trafficked persons are denied their basic human rights by authorities due to their undocumented status as a migrant and/or worker.

The UN Trafficking Protocol must be read in conjunction with human rights instruments binding governments to protect the rights of all persons, regardless of their immigration status. The rights discussed below are found in human rights instruments in the Inter-American System, the UN and the International Labor Organization.

The UN High Commissioner for Human Rights has synthesized these rights in the Recommended Principles and Guidelines on Human Rights and Human Trafficking. The Principles and Guidelines are annexed to the Annotated Guide to the Complete UN Trafficking Protocol, which is being distributed separately.

The reference to “Protocol,” “Convention” and/or “Guideline” following the rights listed below refer to the UN Trafficking Protocol, the UN Convention on Transnational Organized Crime and the High Commissioners’ Recommended Principles and Guidelines.

Civil society participants would like to share with delegates some cases from the field that are typical of the problems encountered by trafficked persons everywhere on a daily basis. The cases discussed below are taken from real life situations and illustrate the types of human rights abuses suffered by trafficked persons. They also demonstrate the need for governments to respect and ensure the human rights of victims found within their borders.

Right to non-discrimination and right to enter and leave one’s country freely (Protocol 14.2, Guidelines 1.4 , 1.5)

The following example demonstrate the need to ensure the non-discriminatory content and application of anti-trafficking laws.

In country C, women who have been in sex work prior to being trafficked are considered ‘less worthy’ of protection than women who had never been sex workers prior to being trafficked. The government explicitly supports this discriminatory application of the law.

In country D, citizens who are trafficked within a country are treated better than non-citizens who are trafficked into the country. For example, citizens are allowed to sue their traffickers for damages while non-citizens are deported or ‘repatriated’ and unable to sue for damages or to act as witnesses in criminal trials against their traffickers.

The following case illustrates the risk that anti-trafficking measures can be implemented in ways that prevent citizens from exercising their right of freedom to enter and leave their country freely.

As part of one country's policy to stop trafficking, border officials prevent young single women from leaving the country if they suspect the women are working in prostitution.

They will also stamp the women's passports, which prevents them from leaving the country legally for five years.

A. was trafficked into forced prostitution. Upon her return home, the officials threatened with imprisonment if she did not disclose what had happened to her. When she told them she has been trafficked into prostitution, they stamped her passport.

Right to protection from harm, threats and intimidation (Protocol 6.5, Convention 24.1, 25.1, Guidelines 4.10, 5.8, 6.6, 8.8)

Pressing charges and acting as a witness can have long term consequences, including jeopardizing a trafficked person's own safety and that of his/her family. Successful prosecution depends on encouraging trafficked persons to report crimes committed against them and to act as witnesses. All trafficked persons must therefore be able to rely on the authorities to protect them before they agree to speak with the authorities.

During the investigation of her case, S stayed at a secret women's shelter but the traffickers found her. She received anonymous postcards threatening to kill her two-year-old daughter (who was living with her mother) if she dared to pursue the case. Her mother also received threatening telephone calls. When her mother went to the police for protection, the police told her they would do nothing because it was S's own fault for leaving home.

So S. decided to withdraw her statement and not act as a witness. With the support of an NGO, she was able to convince the authorities to allow her daughter to join her in the women's shelter. She then felt safe enough to continue as a witness and as a result of her testimony three persons were convicted of trafficking.

Often trafficked persons are not informed about the disposition of their case, including the arrest or release of the traffickers. This can have serious consequences for the trafficked person's safety.

K's trafficker was sentenced to three years in prison. After the trial, K's received in nightly telephone calls and anonymous letters threatening her life. Cars followed her and someone put a dead bird in her letterbox. The police told her that it could not be the trafficker because he was in jail.

After a year of non-stop harassment, K discovered that the information given to her had been incorrect. The trafficker had been released after his initial detention. When K realized the danger to which she had been exposed she had a complete nervous breakdown and had to be hospitalized.

Right of access to justice (Protocol 5, 6.2, 6.3.b, Convention 8, 9, 25.3, Guidelines 2.5, 2.6, 4.1-4.3, 4.5, 4.8, 4.11, 5.5-5.6, 5.8, 6.3-6.5, 8.1-8.3, 9.1)

The aim of the Trafficking Protocol is to punish the perpetrators of trafficking and not punish trafficked persons. Justice for victims means that the perpetrators are prosecuted and punished for their crimes. Thus, all governments must adopt laws to criminalize all traffickers and must take all necessary measures to ensure that those laws are applied against all traffickers, whether they are government officials or street criminals.

In country X, border officials and local police protect the traffickers. They let the traffickers and their victims cross the border freely and the police return any victims who escape from their traffickers. When the local trafficking ring was arrested, the government officials were not arrested or named as co-defendants.

As a result, the victims refused to testify and the traffickers were free to continue the buying and selling of human beings for forced labor.

Prosecution of trafficked persons further victimizes them. Many trafficked persons will not come forward to report crimes committed against them if they are at risk of prosecution for undocumented entry and/or work.

In country B, 27 young women were rescued when police raided a sewing factory. The women had been trafficked into the country and forced to work 12 hours a day, 6 days a week, with no freedom to leave and no wages. Following their rescue, the police detained the women and charged them for working without a permit and staying without a visa in the country. The employer was only charged for non-payment of wages.

Even though the women reported the existence of a network of traffickers and an NGO advocated on their behalf, the women's reports were not investigated by the authorities. The women were detained in jail while awaiting the court hearing on the immigration charges and found guilty of undocumented entry and working without a permit and fined.

Since the women did not have the money to pay their fines, they were jailed for an additional three months and then deported. The court trial against the employer started after their deportation so the women were not able to testify and the traffickers remained unpunished.

Trafficked persons who are arrested while working in the sex industry are more likely to be detained in jail by the authorities. They not only risk arrest and detention under immigration laws, but also prosecution under anti-prostitution laws. They frequently suffer greater mistreatment during detention than persons trafficked into other sectors.

The treatment of women who have been trafficked is often similar to the treatment of women who have been raped. As in rape cases, the victim is often forced to stand trial instead of the offender, thus undermining the victim's belief in the legal system and justice. Many women are deterred from reporting due to discriminatory treatment of migrant women, especially in the sex industry. Therefore, measures are needed to ensure fair treatment by the criminal justice system in order to encourage and assist trafficked persons to report to the authorities and to act as a witness.

Following a year-long investigation, police arrested 68 people, including more than 50 women who had been trafficked and sold for between \$16-25,000 to brothels. The women were forced to work off a debt of more than \$40,000 each. All 68 persons, including the women, were criminally charged with being inmates of a brothel and 25 of the women were charged with the additional offence of violating the immigration law.

The government did not inform the women of their rights, provide them with legal representation or translators, or legal assistance and social services. While the women were in detention, they were approached by brokers and loan sharks who offered to post

their bail in exchange for accepting a new contract, which would of course add to their already existing debt.

N. was trafficked to Europe in 1981. In 1988, after years of struggling to bring her traffickers to trial both in her country and in the destination country, the person who had kept her in slavery-like conditions was sentenced to 2-1/2 years imprisonment by a court in the destination country. The man who had recruited N. in her home country was a chief prosecutor in the Court of Justice in N's village. He was acquitted by the court by alleging that N had an immoral character.

The court said: "(c)onsidering her glaring immoral conduct manifested by her unusual inclination for illicit sex, she will have no qualms in fabricating situations to pursue her ends in bringing the accused to public ridicule.... What amazed the Court is why the authorities...relied on the sole uncorroborated testimony of N. whose penchant for lying is so manifest and whose moral background is more than questionable...despite the declaration of the accused whose character is beyond reproach and whose public life remains unblemished."

In cases where trafficked persons commit a crime against the traffickers, often as the only way to free themselves, self-defense is often not recognized as a defense or mitigating factor. In addition, trafficked persons who have been apprehended working in the sex industry are likely not to be believed, due to discrimination against persons who have worked in the sex industry.

Three women were trafficked into the sex sector and forced to work off a debt of US\$ 30,000 each. They were physically and mentally abused and their earnings were kept by the business owner. In a letter to an NGO, the women described their conditions saying "we were her slaves, why they have to treat us like animals. Even cattle have time to rest after hard work but we don't. We are human beings and feel pain and misery like other beings".

After six months, the women had paid back only a small part of the debt. One night, they killed their boss because they felt it was the only way to end their slavery. The prosecutor argued that the women should be sentenced to life imprisonment for pre-meditated murder and robbery to prevent the escalation of crimes caused by foreigners.

The court did not permit the women to defend themselves by explaining that the conditions of slavery left them only one option to liberate themselves and to protect their lives. The prosecutor stated that the women had known that they were to work as prostitutes, that they had worked in the sex industry before and therefore could not have been trafficked.

Consequently, the women were sentenced to life imprisonment. Due to the efforts of NGOs, the sentence was later mitigated to 10 years of imprisonment.

Right to have one's right to privacy protected (Protocol 6.1, Convention 24.2, Guideline 5.8, 8.9)

Trafficked persons are confronted with many difficulties when attempting to reintegrate into their communities. They do not want their families and communities to learn about their

predicament. This is especially true for persons who are trafficked into the sex industry due to the stigma associated with this work and the risk of prosecution under anti-prostitution laws.

It is therefore imperative to respect the wishes of trafficked persons to maintain their confidentiality and privacy. If the names of trafficked persons are released in the newspaper when arrests are made, traffickers immediately threaten trafficked persons and their families.

The government of country Y returned twelve trafficked women to their home by train. When they arrived, the train station was overflowing with the press and television. Before then, no one at home knew about their predicament and they hoped to be able to reintegrate into their society without anyone learning their story.

The media showed up because a government official in the country of destination had disclosed the travel information to the media. Now, their stories are now common knowledge throughout their country, thereby crushing their hopes of returning to a normal life.

A. returned home after pressing charges against her traffickers in the country of destination. She did not tell anyone at home what had happened to her out of fear of being ostracized. Meanwhile, the authorities in the destination country wanted to question A. again. With the assistance of the government of A's home country, the investigative judge, prosecutor and lawyers for the defendants traveled to A's village. The hearing was publicly announced (according to domestic law) and A. was publicly questioned.

As a result, the entire village learned about her predicament. One half year later, an NGO worker who had assisted her in the destination country visited her and found that A. had not left her house since the humiliation of the public inquisition. She had virtually locked herself up in the dark out of shame.

Right to compensation, restitution and reparations (Protocol 6.6, Convention 12, 14, 25.2, Guidelines 4.4, 4.9, 8.8, 9.1-9.2)

Human trafficking has major economic, emotional, psychological and physical consequences for the victims, which consequences are not accommodated by criminal investigation and prosecution of the offender. Adequate assistance and support as well as financial compensation serves to remove or redress the consequences and also reduces the influence of the traffickers as the position of the trafficked person is strengthened.

Persons who migrate and are trafficked typically leave home to find work and earn a living. Once they are out of the trafficking situation, they still have the same need for money. They also have a *right* to the assets of the traffickers, who have withhold their wages through forced labor practices, and caused enormous physical, psychological and emotional harm. Thus, the assets must be confiscated and distributed to all identifiable victims.

A. was trafficked to Europe. Her traffickers caught her trying to escape and severely beat her up. They hit her head against a wall and broke her front teeth. After being held in forced labor for more than a year, she was arrested during a police raid and pressed charges against the traffickers. Unfortunately the traffickers fled to another country and could not be extradited.

A. applied for compensation to a violent crime victims fund and was awarded a small amount to compensate for damages, which was just enough to pay a dentist to restore her teeth.

A group of 72 Asian citizens, most of them women, were trafficked into forced labor in a garment factory where most of them were held for many years. During a raid, the workers were arrested and taken to an immigration detention facility. With the support of an NGO, they were released on bail nine days after their arrest.

The workers were granted temporary residence permits and six month work permits to allow them to remain in the country for the duration of the trials. With the assistance of lawyers and community groups, the workers filed a civil suit for damages against the employers, retailers and contractors who had benefited from their years of forced labor. This resulted in the workers receiving US\$1 million from seizure of the company's assets. Moreover, their employers were sentenced to pay them US\$4.5 million for damages within 5 years.

Obligation to provide temporary resident status (Protocol 7, Guidelines 4.7, 5.8, 9.3)

Many trafficked persons refrain from seeking help or reporting to the authorities for fear of deportation. Providing victims with a stay of deportation, temporary residence during criminal and civil proceedings and an opportunity to apply for a permanent residence removes the fear of the trafficked persons of immediate deportation. This serves two interests: first, the trafficked person is able to recover and take back control of his or her life and, second, it enables the effective prosecution of traffickers by encouraging trafficked persons to report to the authorities and to act as witnesses.

Very few persons who are trafficked into domestic work will dare to press charges against their employers. Abuse within the home is notoriously difficult to prove, particularly when the abuser is wealthy and influential, and the person abused is isolated and poor. It is even more difficult in circumstances where the person abused has a problematic immigration status and risks deportation should they come to the attention of the authorities.

H.S. from Africa successfully brought a case against her European employers for assault after enduring years of malnourishment, physical abuse and exploitation, but was then served an order of deportation for overstaying her visa. Such cases do not encourage workers who, having escaped one nightmare, might enter another.

M. was trafficked into forced labor to work off her debt. During a police raid she was arrested as an undocumented worker and immediately deported. When she arrived at the airport back home, her traffickers were waiting for her. They forced her to go with them. Within three days, she was back in the country from which she had been deported and put back to work again, this time in a different town.

Right to assistance and services (Protocol 6.3-6.4, Guidelines 6.1-6.2, 6.8, 8.4)

In most cases, trafficked persons have no place to stay or means of earning a livelihood once they have escaped from the trafficker's control. They may not speak the local language or have any family or relatives who can take care of them in the place where they are stranded. Often,

they have been subjected to physical violence , unsafe working conditions and are in urgent need of medical care. Adequate support, employment and educational opportunities enable trafficked victims to regain control over their lives and to improve their prospects.

Trafficked persons are in need of adequate assistance in order regain control over their lives, press charges and file a civil suit for compensation. The support needed can include:

- accompanying government officers during the raid to interpret and explain to the trafficked persons what was happening
- negotiating with immigration officials for reducing the bail, release from the immigration detention facility, and temporary residence and work permits
- raising bail and donations of money, food, clothing and toiletries
- finding housing
- publicizing the case and situation of trafficking
- screening companies that offer to hire the clients after they receive work permits
- providing language classes, instruction in daily living skills, such as opening bank accounts and using public transport
- assisting the clients in filing civil law suits.

N. escaped from her traffickers by jumping from the second floor of the building in which she was held. The fall injured her back seriously. Somebody took her to a hospital that refused to treat her because she was in the country without a visa. She went to another hospital and was refused service. By the time she found a third hospital that would treat her, the doctor said that the delay in treatment had caused a permanent disability.

The hospital contacted a local NGO that contacted an NGO in her home country. The two NGOs managed to arrange for her return and medical care in her home country. N. is suing the hospitals that refused to admit her.

Right to a safe and voluntary return or relocation, including reintegration assistance (Protocol 8, Convention 24.3, Guidelines 2.7, 4.6, 5.8, 6.7-6.8, 8.6-8.7)

In most cases, trafficked persons have no money to pay for a ticket home. They may also lack travel documents and be forced to use a smuggler to return. Even trafficked persons who are able to return home safely may still be vulnerable to violence or re-trafficking by the original traffickers or their accomplices. Thus, reintegration services are essential to ending the cycle of trafficking.

M. was dropped at the border of her country with the help of an NGO. The government of the country into which M. had been trafficked provided no money for her repatriation. The traffickers had never paid her for her work and the authorities did not help her recover any money from the traffickers.

The two governments did not have an agreement for voluntary and safe return. So, the only thing the NGO could do was leave M. at the border with just enough money for a train ticket to her village.

Several trafficked women held in debt bondage were arrested during a police raid. They were charged for working illegally. Their embassy offered to pay their return home but the

women had to sign a document promising to repay the cost. Thus, the women were doubly in 'debt' - to the traffickers and to the government.

The only option these women had to earn enough money to repay the debts was to go abroad again. They could not migrate legally and so had to find a smuggler, thus putting themselves into a situation where they might be re trafficked.

TOPIC V

EXCHANGE OF INFORMATION AND EXPERIENCES, POLITICAL DIALOGUE AND COOPERATION BETWEEN COUNTRIES OF ORIGIN, TRANSIT AND DESTINATION OF HUMAN TRAFFICKING, AS WELL AS ENHANCING STATISTIC RECORDS

RECOMMENDATIONS TO THE OAS:

1. Create a Working Group formed by focal persons of different units of the OAS
2. Develop a “Regional Action Plan” on human trafficking
3. Provide technical assistance to status to establish human rights standards and adequate legal frameworks
4. Promote regional agreements to combat human trafficking effectively
5. Promote a regional dialogue on agreements on migration, labor rights and human rights
6. Undertake investigations at the regional level

OAS support for state cooperation is essential to combat cross-border trafficking (Protocol 10, Guideline 11)

The OAS is an important actor in the development of regional strategies to combat human trafficking and ensure coordination among governments in the region. The traffickers are often well organized and able to exploit gaps and differences in the region. Governments are often less organized (and sometimes more poorly financed) and so unable to follow the traffickers movements from country to country.

On the other hand, human trafficking is a very complex issue that includes issues related to different disciplines including violations of social, civil, economic, political, cultural rights. As a cross cutting issue, the task to combat human trafficking should not be addressed independently and in an isolated manner from development, poverty reduction, migration and human rights.

The OAS could coordinate the following forms of mutual cooperation and support:

1. Create an OAS working group involving a focal point from each of the bodies and units handling issues (e.g., migration, labor, women, children, organized crime, poverty) related to human trafficking.
2. Develop a regional “Plan of Action” on human trafficking that includes clear objectives, activities, timelines and follow-up and that involves members of civil society.
3. Provide technical assistance on human rights standards and legal frameworks for human trafficking legislation that are consistent with international and regional human rights standards.
4. Promote regional agreements on:
 - information sharing, cooperation on rapid identification of traffickers
 - extradition of suspected traffickers
 - voluntary repatriation of trafficked persons
 - protection of trafficked persons, their families and witnesses
 - location and confiscation of traffickers’ assets
 - location of repatriated trafficked persons who could be witnesses and who may be eligible for payment of damages from the traffickers
 - facilitating cooperation between authorities and NGOs in countries of origin, transit and destination
5. Promote regional discussions on labor migration agreements, labor rights, and international human rights standards.
6. Conduct regional research on the scope of human trafficking, including on-site visits by the CIDH.