

Arguments to Reform Mexico's Anti-trafficking Legislation

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ABSTRACT

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In the past few years, Mexico has taken a number of steps to prevent and prosecute trafficking in persons, and to protect its victims. The country's government has signed international anti-trafficking conventions and taken some aspects of widely-accepted international definitions of this crime into account when drafting its anti-trafficking legislation. However, Mexico's current legislation is based on a broad definition of trafficking in persons that is inconsistent with international norms which, in turn, has led to misidentification of traffickers and victims, as well as their re-victimization. Mexico's weak rule of law and corrupt institutions compound the issue. The present analysis demonstrates the imperative to modify the current anti-trafficking legislation in Mexico and provides some suggestions for this much-needed reform.

INTRODUCTION

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Mexico's current anti-trafficking legislation enables Mexican states to arrest and jail individuals who are not actually traffickers. The legislation defines trafficking in broader and vaguer terms than those used in similar definitions adopted elsewhere, for example, in the United Nations and the United States. This broader understanding of what constitutes trafficking allows Mexican law enforcement to characterize and prosecute a wide array of crimes as human trafficking that would generally not fall under this category, including certain forms of prostitution, illegal adoption, and possession of child pornography.

Such flexibility and subjectivity in framing what constitutes trafficking in persons, combined with weak rule of law and high levels of corruption in Mexico, often spread, rather than prevent, injustice. Frequently, the individuals most affected by the legislation's broad definition are society's most marginalized and vulnerable members, including trafficking victims themselves. The leaders of human trafficking rings and the main beneficiaries of related activities are often rich and powerful entrepreneurs and politicians who frequently escape arrest and other types of sanctions. Reforming Mexico's current anti-trafficking legislation and equipping the country's courts and law enforcement agencies with a definition that is in tune with

international conventions is the first step towards enabling the country to prosecute criminals effectively and protect victims efficiently while ensuring accountability.

This study will present an overview of the process that led Mexico to its current anti-trafficking legislation. It seeks to identify the drawbacks of the current legislation and to propose changes that would allow government authorities to:

- 1) more accurately identify trafficking victims;
- 2) improve interdiction of traffickers; and
- 3) effectively support international and intra-national efforts to combat human trafficking in Mexico.

Overall, the authors believe that an improved legislative framework will further the prevention and prosecution of trafficking in persons, and protect victims of trafficking in the country.

The analysis uses the widely accepted legal interpretation of the Palermo Protocol as a basis for understanding the international (although imperfect) definition of trafficking in persons. Furthermore, it explains the changes in Mexico's anti-human trafficking legislation and contrasts it with U.S. legislation and the Palermo Protocol.

A FIELD TRIP TO TAPACHULA, CHIAPAS, A MAJOR HUMAN TRAFFICKING HUB IN MEXICO

On Sunday, October 5, 2015, a team of researchers and human rights advocates visited the women's prison in Tapachula, Chiapas, a city known as one of the main sex trafficking hubs in Mexico.¹ This visit was part of a field trip to study the role of transnational organized crime in human trafficking in Central America and along Mexico's eastern migration routes.² The main goal of this visit was to interview women convicted of human trafficking crimes in order to understand their modus operandi, as well as their connection with other actors, including transnational criminal groups. The team chose Tapachula in part because it is located in Chiapas, a state that in recent years has received a number of domestic and international accolades for its apparent progress in preventing and prosecuting trafficking in persons and protecting trafficking victims. For instance, the Commission United Against Human Trafficking (Comisión Unidos Vs. Trata), a non-governmental organization headed by former Congresswoman Rosa María Orozco, has repeatedly recognized the current governor of Chiapas, Manuel Velasco Coello, for his presumed positive contributions to preventing and prosecuting trafficking.

Most governmental and civic institutions that laud Chiapas's anti-human trafficking efforts measure

the state's success based on the increasing numbers of victims identified and rescued from trafficking networks as reported by state authorities as well as on the number of perpetrators arrested and prosecuted. Since Chiapas created its Special Prosecutor's Office against Human Trafficking Crimes (Fiscalía Especializada en Atención a los Delitos en Materia de Trata de Personas), state authorities "have facilitated the rescue of 666 victims and brought 327 suspects to trial, achieving 85 convictions for human trafficking and 62 other sentences" (FGE 2017, par. 7).³ One of the purposes of our field trip to Chiapas was to assess to what extent reality matched the promising statistics reported by the government.

What we witnessed on the ground differed starkly from the positive figures presented in official speeches and reports. For one, we were particularly concerned about the situation faced by the inmates at the women's prison we visited in Tapachula. In the course of our interviews with eleven female prisoners charged with and convicted of trafficking in persons, we became increasingly skeptical about the validity and consistency of the charges pressed against them. All the inmates we interviewed showed very high levels of vulnerability. Eight of them were Central American migrants



“What we witnessed on the ground differed starkly from the positive figures presented in official speeches and reports.”

Photo Credit: Guadalupe Correa-Cabrera



who were unfamiliar with Mexican territory and were living in the country for the first time. It is hard to envision any circumstances under which these women would have been able to misdirect, mislead, or transport victims, and thus engage in human trafficking. Their testimonies also cast doubt on the notion that they were leading any human trafficking rings at Mexico's southern border. Certainly, they were not the main beneficiaries of the very significant revenues that this industry generates in Tapachula. Some of the inmates might have even been victims of this crime or might simply have been in the wrong place at the wrong time.

Our observations are consistent with academic, governmental, civil society, and media sources, who have reported on the recurring abuses undocumented migrants endure in Mexico. Abusive employers, exploitative criminals, and corrupt agents of the Mexican government have threatened undocumented migrants with deportation if

they report abuses. Due to a lack of familiarity with the local language and perceived legal vulnerability, foreign women—particularly indigenous girls and young women from Central America—are especially susceptible to abuse by corrupt officials. The inmates we interviewed in Tapachula were young, female, impoverished, foreign, and indigenous, and had low levels of formal education (some were illiterate). All these traits denote vulnerability and increase a woman's chance of falling victim to trafficking at the hands of criminal networks or of becoming a victim of abuse by corrupt authorities.⁴ And in Mexico, where the federal government has been pressuring state governments to improve their anti-trafficking records, this demographic is particularly susceptible to falling victim of state authorities looking to illegitimately inflate their crime-fighting statistics. The story of these women is linked more broadly to the history of anti-trafficking legislation in Mexico.

THE LEGAL UNDERPINNINGS OF TRAFFICKING IN PERSONS

Signed in November 2000, the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (also known as the Trafficking Protocol, the Palermo Protocol, or U.N. TIP Protocol)⁶ is a landmark international anti-human trafficking accord.⁶ It arose from the necessity to craft a comprehensive document that would define human trafficking and prescribe the actions its signatories should adopt. As a signatory of the protocol, Mexico adopted its first anti-trafficking law in November 2007.

The recruitment, transportation, transfer, harboring 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.

- U.N. definition of trafficking in persons

According to Article 3 subparagraph (a) of the Palermo Protocol, for a crime to be defined as human trafficking it should include three basic elements: acts, means, and purpose. Hence, an observer trying to determine if a crime constitutes human trafficking has to identify three main components:

- 1) The *acts*, or in other words, *what* happened. Subparagraph (a) lists the following acts: “recruitment, transportation, transfer, harboring or receipt of persons.” However, those acts alone are insufficient to classify the crime as trafficking in persons.
- 2) The *means*, or *how* the acts listed above were carried out, are just as important. The Protocol

specifies the following set of means: “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.”

- 3) Finally, human trafficking crimes must *not only* consist of the acts listed above *and* be performed using the described means, but exploitation must also be the *purpose* of those acts. In other words, *why* the crime happened is just as important as what happened and how it happened.

Hence, if an individual or group of individuals commits one or more of the listed acts for the purpose of exploiting someone, but does not do so by using at least one of the means described, he or she is certainly infringing on the rights of the victim and committing a crime. However, that crime, as heinous as it may be, is not human trafficking. “If one of these elements is absent, we are not facing trafficking in persons, we are facing a different crime, or just an administrative fault, or the violation of labor rights” (HIP 2017, 10).⁷

The Trafficking Protocol provides only one exception when one of the elements, namely the means, does not need to be present for a crime to be classified as human trafficking. Subparagraphs (c) and (d) note that when the victim is under eighteen years of age, the acts described, when performed for the purpose of exploitation, constitute human trafficking, “even if this does not involve any of the means set forth in subparagraph (a).”

In 2000, the United States enacted the Victims of Trafficking and Violence Protection Act (TVPA). There are differences between the TVPA and the

Palermo Protocol, but both recognize the three key elements of human trafficking: acts, means, and purpose.

(a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- Forms of Trafficking under the TVPA

It is worth noting that even these widely accepted definitions of human trafficking have been contested at multiple levels and by multiple actors. According to Sienna Baskin, Director of the Anti-Trafficking Fund, the “U.N. TIP protocol is the result of much struggle and compromise, producing vague concepts like ‘the exploitation or prostitution of a person’” (email message to author and others, March 21, 2017). In her view, the U.S. definition has also been contested: it currently omits references to organ trafficking and only recently was amended to classify a person who offers to pay a minor for sex as a trafficker. As a result of these discrepancies, definitions of trafficking vary from jurisdiction to jurisdiction, and may or may not include acts that some see as equally abusive. Notwithstanding the different interpretations of what constitutes human trafficking, the United Nations Office on Drugs and Crime (UNODC) provides a model law as a template for countries to draft their own legislations.⁸

Mexico’s 2007 Anti-Human Trafficking Law

Mexico signed the Palermo Protocol in late 2000, its first step in recognizing trafficking in persons as a domestic and international issue. At the same

time, the Office of the United Nations High Commissioner for Human Rights (OHCHR) pressed Mexico to improve its treatment of foreign-born trafficking victims already in the country. As noted in the final report of Mexico’s *TIP Shelter Project*, before 2006 the government did not provide protection or social assistance to foreign victims who were in Mexico irregularly.⁹ On the contrary, the government often deported these persons without identifying potential trafficking victims and despite directives in the U.N. TIP Protocol that require signatories to protect the basic human rights of all trafficking victims. In pragmatic terms, the deportation of possible trafficking victims deprived Mexican courts of important witnesses, without whom prosecuting traffickers became a significantly harder task. Since then, Mexico’s National Migration Institute (INM) has shifted its policy and now grants foreign trafficking victims temporary resident visas and work permits for the duration of the judicial process against their alleged traffickers.

The Palermo Protocol went into effect in December 2003, and in 2004, the Mexican Congress discussed drafting national anti-trafficking laws. On December 9, 2004, senators Enrique Jackson Ramírez, Ramón Mota Sánchez, and Miguel Sadot Sánchez Carreño (all affiliated with the Institutional Revolutionary Party, PRI) proposed an anti-human trafficking law. On November 27, 2007, Mexico published its first anti-trafficking law in the Official Gazette (*Diario Oficial de la Federación, DOF*): the “Law to Prevent and Punish Trafficking in Persons” (*Ley para Prevenir y Sancionar la Trata de Personas*).

At only ten pages, the text of the first Mexican anti-trafficking law was relatively short. It provided a definition of human trafficking that followed the language of the Palermo Protocol. The first paragraph of its Article 5 presented and described all three elements discussed in the Protocol (acts, means, and purpose of trafficking) and also defined organ trafficking as human trafficking.

The paragraph defined a trafficker as follows:

*A person who promotes, procures, provides, facilitates, obtains, transfers, delivers, or receives a person, either for himself or others, by means of physical or moral violence, deceit or abuse of power, for the purpose of sexual exploitation, forced labor or services, slavery or practices analogous to slavery, servitude, or the removal of an organ, tissue, or one of its components.*¹⁰

The second and last paragraph of Article 5 mirrored subparagraphs (c) and (d) of the Protocol's Article 3, but eliminated the verification of means in certain cases. Specifically, if the victim were a minor or someone incapable of giving consent, a crime would still classify as trafficking if it had the acts and purpose, but not the means.

Notably, Article 10 of Mexico's 2007 anti-trafficking law proposed that the federal government establish a permanent interagency commission to study the phenomenon of trafficking in persons. This Commission would be responsible for formulating a national program to prevent and combat human trafficking. It would also coordinate anti-trafficking efforts and foster cooperation between the federal and state governments.

The Path towards the 2012 General Law

On February 27, 2009, the executive branch issued enabling legislation (*reglamento*) for the 2007 law, which directed and informed states on how to interpret and apply the new anti-trafficking legislation in Mexico. It also delineated how the newly created Permanent Commission of the Mexican Congress (*Comisión Permanente del Congreso de la Unión*) would function. In December 2009, a federal judge used the 2007 law to sentence human traffickers for the first time (U.S. Department of State 2010). In August 2010, the Permanent Commission proposed that state anti-trafficking laws should be updated to be consistent with in-

ternational and federal laws (Animal Político 2010). On January 6, 2011, a separate commission, the Inter-secretarial Commission to Prevent and Sanction Human Trafficking, published its national program in the Official Gazette.¹¹ The program had four core objectives: to identify the current context, causes, and consequences of human trafficking in Mexico; to prevent the crime from occurring; to assist in the improvement of law enforcement in regards to human trafficking; and to provide comprehensive and high quality care to people in situations of trafficking, as well as to relatives and witnesses.

The document operationalized the four objectives with variables such as the number of anti-trafficking campaigns, the number of federal-state anti-trafficking cooperation agreements, and the number of victims treated. It described the situation of traffickers in Mexico in 2010 and the program the government should put into place by 2012. In 2011, 28 out of 32 states (including the Federal District, now Mexico City) had defined human trafficking as a crime in their jurisdictions. Among these states, only 13 had laws on how to provide support to trafficking victims (Guillén 2011).

On March 15, 2011, the Federal Chamber of Deputies agreed, with 401 out of 499 votes in favor, to reform the 2007 federal law.¹² Chief among their concerns was making it less difficult to prove that trafficking had taken place. Until then, it was deemed particularly difficult to prove that subjugation of a person had taken place by means of coercion, abduction, fraud, deception, or any other elements stipulated in the law. The updated legislation was presented to Congress in August 2011.

The 2012 General Law

On June 14, 2012, the General Law to Prevent, Sanction, and Eradicate Crimes Related to Trafficking in Persons was published in the Official Gazette.¹³ Its stated goal was to better articulate and delineate how federal, state, and municipal authorities should act and cooperate in their anti-trafficking efforts. In contrast to its ten-page predecessor,

lawmakers intended that the General Law's 129 articles—which extended over 48 pages—would more clearly define human trafficking and provide assurances to its victims.¹⁴ The legislation's most visible proponents declared that the new law would allow the government to fight trafficking more efficiently (Animal Político 2012b).

The new law significantly changed Mexico's definition of human trafficking. Whereas under the first law and U.N. TIP protocol, acts, means, and purpose are the three elements of human trafficking, the 2012 law eliminates the means and only considers acts and purpose as the key elements of trafficking in persons. By removing the means, trafficking becomes one of many forms of exploitation.

For reference, the Palermo Protocol breaks human trafficking into five categories: "sexual exploitation, forced labor, slavery and its practices, servitude, and the removal of organs" (U.N. TIP Protocol 2000, Article 3). The definition of trafficking in Article 10 of the 2012 Mexican law, however, includes

11 categories: slavery, serfdom, prostitution and other forms of sexual exploitation (such as table dancing), labor exploitation, forced labor, the use of children for organized crime, forced begging, illegal adoption, forced or servile marriage, the trafficking of organs, and unlawful biomedical research on humans (Chamber of Deputies 2014, Article 10, p. 7).¹⁵ Article 14 then adds to these categories, defining the production, distribution, and possession of pornography as a form of trafficking as well (Chamber of Deputies 2014, Article 14, p. 8). The result is legislation that focuses less on trafficking and more on exploitation in general.

It is worth noting that Mexico's definition of human trafficking puts it at odds with other regions of the world. Of the 188 countries with human trafficking laws and a specific anti-trafficking institutional framework, less than a dozen have eliminated the means as a key provision for the existence of trafficking in persons.



TAPACHULA AND THE EFFECTS OF THE 2012 GENERAL LAW

The conditions we observed during our visit to Tapachula, Chiapas painted a clear picture of the unintended consequences of the 2012 General Law's broad definition of trafficking in persons. Located just eleven miles from the border with Guatemala, the city has long been a hub for Central American migrants entering Mexico. Since 2006, when President Vicente Fox inaugurated a triage center for undocumented migrants in the city, Tapachula has also become a focal point for migrants in the process of being deported from Mexico.¹⁶

Central Americans arriving in or departing from Mexico along its southern border with Guatemala are vulnerable to exploitation in Tapachula. Unaccompanied Central American children selling crafts dot the city's downtown area, while girls from Guatemala, El Salvador, and Honduras work as servers and prostitutes in shabby bars and brothels in marginalized districts. The National Commission for Human Rights (*Comisión Nacional de los Derechos Humanos*) listed Tapachula as a high-incidence zone of human trafficking in 2013 (CNDH 2013). However, the dire living conditions Central Americans face in Tapachula are not exclusive to the city, but reflect the situation of migrants throughout Chiapas, a state that recorded the second highest number of human trafficking cases in Mexico between 2010 and 2013.¹⁷

Human rights activists based in Tapachula concur that human trafficking and exploitation take place in the city and that undocumented migrants are often victims of these crimes. In 2012 Miriam González, a researcher at the Institute for Women in Migration (*Instituto para las Mujeres en la Migración*, IMUMI), reported that 58 percent of the women involved in the sex industry (or sex commerce) in Tapachula were of Guatemalan origin. Ninety-five percent of these women were between the ages of 15 and 19 years old (La Hora 2012).¹⁸ Gerardo

Espinoza, an activist working at the Fray Matías de Córdova Center for Human Rights (Centro de Derechos Humanos Fray Matías de Córdova), confirmed that trafficking for both labor and sexual exploitation is a serious problem in Tapachula. Despite the recurrence of these crimes in the city, police struggle to investigate cases of labor trafficking, since gathering substantive evidence is challenging.

Another challenge in Tapachula is distinguishing between prostitution and sex trafficking. Although both activities share certain characteristics, prostitution (involving adults) is legal in Mexico and migrant women often engage in it in order to afford their journey north. The complicated task of distinguishing between trafficking and prostitution or sex work is left to law enforcement and judicial authorities. Unfortunately, according to a number of human rights advocates interviewed for this research, these authorities are often ill-equipped to distinguish between the two activities. The current, broad definition of human trafficking further blurs the line between them. The activists interviewed reported that exploited women and sex workers alike were arrested for human trafficking in Tapachula.

Tapachula authorities frequently conduct raids in bars long believed to serve as fronts for brothels where Central American women, including minors, are exploited. While such raids may expose some traffickers, they also uncover individuals with tangential connections to human trafficking networks, including bar waiters, drivers, and even the victims themselves. Under the broad definition of human trafficking in the 2012 law, the government can prosecute and sentence these individuals as well. The police seem to arbitrarily identify the trafficking victims and traffickers without conducting proper investigations. Those that the police accuse of trafficking are detained and allegedly forced through threats and coercion to admit that they were in

charge of the raided bar. Local officials may also file bogus charges against their opponents, or try to extort money from migrant women who work in the bars and brothels.

It does not seem plausible that the migrant women jailed for human trafficking that we interviewed in Tapachula were, in fact, the owners, partners, or top-level administrators of major sex trafficking rings. It was not evident either that they greatly benefited from this highly profitable illegal industry.²³ Most of the testimonies we gathered at the prison depicted poor women, who started a journey to the United States with the sole aim of providing a better life for their families. Some of them shared their worry that they had left their children with other family members in their countries of origin. Being imprisoned and unable to work represents a situation of enormous financial stress for their families. Two of the inmates we interviewed did not even have enough money to make

long distance phone calls to talk to their children on a frequent basis. Their extreme levels of vulnerability, as well as their lack of social networks and knowledge of Mexico's territory, would have made it extremely difficult for them to operate a human trafficking ring, or to even participate in the regular activities of such complex organizations.

Some of the human rights violations we witnessed in Tapachula were to some extent a consequence of lawmakers' desire to protect human trafficking victims, which ultimately blurred the legal line between victims and perpetrators. The 2012 legislation was drafted as an attempt to prevent and prosecute trafficking in persons in the country, and to protect its victims; however, the new law has contributed to generate unexpected collateral problems, such as the ones we observed in Tapachula.



“It does not seem plausible that the migrant women jailed for human trafficking that we interviewed in Tapachula were, in fact, the owners, partners, or top-level administrators of major sex trafficking rings.”

Photo Credit: Guadalupe Correa-Cabrera

A NEED TO REFORM MEXICO'S ANTI-TRAFFICKING LEGISLATION

The effects of the 2012 law that we witnessed in Tapachula are not unique to the city. The broad definition of trafficking under the 2012 law has had a direct impact on how human trafficking has been prosecuted across Mexico. It has opened the door for a number of people—who would not be considered traffickers under the international definition—to be prosecuted as traffickers in Mexico.

Increasing Numbers: Investigations, Convictions, and Victims

Since 2012, the Mexican government has investigated more cases of human trafficking and convicted more traffickers (see Tables 1 and 2). It has also identified significantly more victims (see Table 3).

Whereas in 2010, Mexican authorities identified a total of 35 victims of human trafficking at both the federal and local levels, by 2015 that number had risen to 439 (SEGOB 2016). In July 2015, the online newspaper *Animal Politico* reported that the number of human trafficking complaints had increased 600% between 2008 and 2014 (Ángel 2015). Between 2014 and 2015, the number of federal investigations of human trafficking cases remained constant at 250, but state investigations more than doubled—from 196 to 415 new cases (see Table 1; U.S. Department of State 2016). In 2016, both federal and state investigations decreased because of the government's "decreased overall funding for investigations and prosecutions" (U.S. Department of State 2017).

Table 1. Federal and State Investigations, Human Trafficking Cases (2008–2016)

Year	Federal Investigations	State Investigations
2008	24 (FEVIMTRA)	N/A
2009	48	N/A
2010	76 (FEVIMTRA) + N/A SIEDO	N/A
2011	67 (FEVIMTRA)	N/A
2012	72 (FEVIMTRA) + 21 (UEITMPO)	N/A
2013	91 (FEVIMTRA) + 48 (SEIDO)	N/A
2014	253	196
2015	250	415
2016	188	288

Source: U.S. Department of State (2009–2017). The information for each year is reported in the DOSTIP report of the following year.

Notes: Prior to 2015, the DOSTIP reports did not register the number of state investigations opened per year. Starting in 2015, the DOS TIP reports stopped distinguishing between federal investigations by FEVIMTRA and those by other agencies (SEIDO; UEITMPO, and SIEDO). SEIDO stands for *Subprocuraduría Especializada en Investigación de Delincuencia Organizada* (Deputy Attorney-General's Office Specialized on Investigations on Organized Crime); UEITMPO is *Unidad Especializada en Investigación de Tráfico de Menores, Personas y Órganos* (Special Prosecution Unit on Investigations of Trafficking in Minors, Persons and Organs); and SIEDO stands for *Subprocuraduría de Investigación Especializada en Delincuencia Organizada* (Deputy Attorney-General's Office for Special Investigation on Organized Crime).

Table 2. Convictions, Human Trafficking Cases (2009–2016)

Year	Federal	State
2009	0	22
2010	1	49
2011	4	65
2012	0	68
2013	2	154
2014	8	137
2015	4	123
Total	19	618

Source: SEGOB (2016) for the years 2009–2015. “Local” convictions were decided at the High Court of Justice of the states (*Tribunal Superior de Justicia*) and “federal” convictions at the Judicial Power of the Federation (*Poder Judicial de la Federación*). This table shows the number of convictions between 2009 and 2013. The present document does not show the number of investigations conducted during those years since they were not included in the DOSTIP reports and because some inconsistencies were found in the available sources.

Table 3. Number of Victims of Human Trafficking (2009–2016)

Year	Federal	State
2009	0	25
2010	8	27
2011	9	107
2012	0	127
2013	5	211
2014	8	271
2015	19	420
Total	49	1,218

Source: SEGOB (2016).

The broad definition of human trafficking in the 2012 General Law may not be the only factor that explains the increase of human trafficking investigations, victims identified, and complaints lodged in the past few years in Mexico—but it is perhaps the most significant.¹⁹ Under this law, anyone who benefits from or is aware of the exploitation of another person can be considered a trafficker. Other offenses related to trafficking are now punishable along with the crime itself, including “purchasing sex while being aware that the person is trafficked, renting a building knowing it will be utilized for trafficking, and posting advertisements with trafficking ends” (Correa-Cabrera and Clark 2017, 61). For example, the law would consider equally respon-

sible both the man who drives the vehicle that transports trafficking victims and the woman who cleans the room, house, or apartment where the victims are kept, even though these two activities characterize different forms of involvement. Under international protocol, neither would be equated with trafficking in persons.²⁰

Trafficking vs. Sexual Exploitation

Critics of Mexico’s General Law claim that the new law lacks precise language and is too complex to be consistently applied by authorities (Correa-Cabrera and Clark 2017). A number of human rights activists, practitioners, and lawyers have

also claimed that, by not focusing on force, fraud, or coercion, public officials have conflated trafficking with prostitution and targeted sex workers instead of trafficking victims (prostitution is legal in Mexico). In fact, the 2012 law focuses primarily on individuals who are exploited sexually, and less on those who are engaged in forced labor or begging, or who are compelled to commit crimes by organized criminal groups. The anti-prostitution lobby, known as abolitionists (*abolicionistas*), heavily influenced the passage of the 2012 law, and while there is a growing awareness of the wider scope of trafficking (the extent of labor trafficking, in particular), the majority of the law still focuses on sexual exploitation.²¹

Trafficking and Irregular Migration

Mexico's current anti-trafficking legislation and its definition of trafficking in persons have also had negative effects on the irregular migrant population passing through or settling in the country. According to Mónica Salazar, a leading legal expert on Mexico's anti-trafficking legislation and former director of an anti-trafficking NGO, the significant rise in the number of arrests following the passage of the 2012 law, coupled with judges and law enforcement agents' unfamiliarity with trafficking, has hampered the accurate identification of migrants who have been trafficked (Correa-Cabrera and Clark 2017, 62). This has resulted in the re-victimization of unidentified trafficking victims who are frequently deported, or released and placed back in the hands of traffickers.

Enforcement

Mexico's anti-trafficking legislation has not only raised significant concerns, but has also been problematic to enforce. In the state of Quintana Roo, for example, the government started eight judicial processes between 2010 and 2013 to investigate human trafficking. Although the state identified 32 people as trafficking victims, it was unable to convict any perpetrators. Given that Quintana Roo's

largest city, Cancún, is known internationally as a hub for sex trafficking, these numbers seem unusually low (Correa-Cabrera and Clark 2017, 62-63).

State authorities have also enforced anti-human trafficking laws unevenly. Congress drafted and adopted the 2012 General Law to ensure that states would investigate and prosecute human trafficking according to federal norms and definitions. The law explicitly requires Mexican states to adjust their anti-trafficking laws to comply with the federal law, although they are allowed to legislate and prosecute trafficking as they see fit. Nonetheless, laws in individual states may diverge significantly. According to a recent assessment of Mexican anti-trafficking laws by three professors from the Universidad Autónoma de Nuevo León, most states have specific anti-trafficking laws based on the federal law, but not all of these laws prohibit all forms of trafficking. Disagreements among states' laws "complicate interstate investigations, prosecutions, and convictions" (Acharya, Suarez, and Ontiveros 2016, 15). In the case of Quintana Roo, the state legislature passed its own TIP law, but the Attorney General's Office (PGR) and the National Human Rights Commission (CNDH) are currently contesting 11 of its articles. They claim the contested articles are inconsistent with existing federal legislation and overlap with the federal government's jurisdiction.²²

RECOMMENDATIONS FOR REFORM

Some in the Mexican government have acknowledged the need for further reforms to the 2012 legislation. In October 2016, Mexico's Senate approved amendments that aligned it more closely with international law; yet such reforms remain under consideration in the Chamber of Deputies (U.S. Department of State 2017). In December of the same year, the Mexican Congress approved a Crime Victim's Law, "which includes but is not limited to trafficking victims; and mandates the creation of a federal fund for crime victim assistance and mandates the states also create such funds" (U.S. Department of State 2017, 279). On February 8, 2017, the lower house of the Mexican Congress hosted a "Preventing Human Trafficking" forum, where members of the Congress's Special Commission on Trafficking in Persons, National Commission on Human Rights (CNDH), and Inter-Secretarial Commission on Trafficking in Persons discussed ways to improve the country's anti-trafficking legislation (Veracruzanos.info 2017).

Lawmakers from Mexico's two main political parties have also expressed their willingness to reform and amend the 2012 legislation, but their aims are sometimes at odds with what some experts believe would be a more adequate legal framework. The 2012 law downgraded the means of human trafficking, i.e. coercion, abduction, fraud, deception, and abuse of power, from an essential component of the crime in the 2007 legislation to an aggravating factor. Despite the impact of this shift, Mexican lawmakers seem uninclined to reclassify the means of trafficking as an essential component of the crime. Instead, they have focused on expanding the list of acts that fall under the human trafficking conceptual umbrella. Critics claim that merely expanding the list of crimes that can be prosecuted as trafficking is insufficient to combat trafficking and contributes to prosecuting as traffickers people who have not committed this crime. As long as Mexico's authorities lack a clear

and proper procedure to identify traffickers, they will be unable to assert that all individuals apprehended for trafficking have indeed committed the crime or been victims of it.

A more efficient approach would be to craft concise legislation that explicitly and accurately defines the fundamental components of human trafficking. According to Monica Salazar, lawmakers should focus on defining human trafficking as the crime of "exploiting a person, by any means, in order to benefit from said exploitation." As mentioned earlier, Article 10 of the 2012 legislation specifies 11 forms of exploitation that constitute trafficking. From a conceptual standpoint, however, the sort of exploitation a person is submitted to is irrelevant to determine if a crime constitutes human trafficking.²⁴

Lawmakers would do well to revise Article 40 of the current law as well. This article states that, regardless of a victim's age or how he is exploited, a victim's consent will not preclude the perpetrator from penal responsibility. However, it currently does not distinguish between underage and adult individuals. By ignoring consent given by adults, the current legislation denies individuals' judicial rights and agency.

According to Salazar, a more efficient law would be based on four main guidelines. First, rather than listing specific forms of exploitation, it should provide a concise definition of human trafficking in accordance with the one presented in the Palermo Protocol, including defining means as an essential component of trafficking. Second, Mexican authorities must have a complete understanding of what constitutes human trafficking in order to effectively define and combat it. Third, the new legislation should clearly recognize the agency of adults regarding consent. Fourth, lawmakers should draft the law pragmatically, without including clauses that sanction other crimes and activities, such as labor exploitation and prostitution.²⁵

CONCLUSION

From a conceptual standpoint, Mexico's 2012 anti-trafficking law provides an overly broad definition of trafficking in persons that does not include force, fraud, and coercion as essential elements of trafficking, but merely as aggravating factors to it. Such a definition allows Mexican authorities to investigate and condemn individuals for human trafficking even if, according to international laws, they have not committed this crime. Mexico's current anti-trafficking legislation has in fact led to the misidentification of victims and perpetrators. It has also led to the re-victimization of the former, which we were able to ascertain during our discussions with jailed migrants in Tapachula's women prison.

Moreover, the current overly broad definition of trafficking in persons can create perverse incentives in prosecutions. The broader the definition of trafficking and the higher the number of persons identified as traffickers, the greater the funding anti-trafficking agencies and organizations might receive to fight trafficking. Anomalies in Mexico's justice system could thus be made worse by these perverse incentives.

Although Mexico's anti-trafficking efforts, including crafting anti-trafficking laws and creating a special prosecutor's office to investigate and fight human trafficking across the country must be acknowledged and praised, the many existing shortcomings in Mexico's legislative framework and justice system must, likewise, be recognized and critiqued. In many instances, the Mexican government has acted against the interests and security of the trafficking victims it is required to protect. Abuse and negligence are recurring themes in the field research we conducted. Under the current legislative framework, Mexican authorities have essentially prosecuted those who are in direct contact with victims of exploitation, rather than those who are "in charge" or benefit from exploitation.

As Mónica Salazar stated:

The government should conduct proactive investigations. It should determine who is in charge of the trafficking rings; who is second in charge; who is responsible to watch over the victims; who assaults them; who threatens them; who forces them into debt, etc. Responsibilities and crimes must be differentiated. The government does not often proceed this way, because it would increase the complexity of investigations.²⁶

In fact, under the current legislative approach, we do not know who is really benefitting from trafficking. It is fair to assume that some of those benefitting the most from human trafficking networks have links to government authorities or influential members of the business community. However, most of the time these high-level connections are not correctly identified and the real beneficiaries of the big business of human trafficking are never investigated, arrested, or tried in court. Conversely, the most vulnerable are those who very frequently end up in jail, paying the consequences of a limited justice system and deficient legal framework.

By removing "means" from the definition of trafficking in persons, "prostitution, and other forms of sexual exploitation are synonymous with forced prostitution (trafficking)," thus making it difficult to identify the real victims and actual traffickers (Correa-Cabrera and Clark 2017, 61). It is important to make a clear distinction between prostitution and trafficking. In this way, sex workers will be allowed to work within legal parameters and will become less vulnerable. These actions might not end violence and exploitation, but will plausibly decrease them.

The implementation of the 2012 General Law, has also created stark divisions among government actors and civil society groups, thus generating further problems by hampering collaboration among the different actors interested in fighting this serious crime (HIP 2017, 9).

Endnotes

- 1 The authors thank María Fernanda Machuca, who contributed to the present analysis and travelled to Tapachula to assist in the fieldwork.
- 2 This study was made possible by the generous support of the American people through the U.S. Department of State. The contents are the responsibility of the researchers and do not necessarily reflect the views of the Department of State or the U.S. government.
- 3 All translations are the authors' own unless otherwise noted.
- 4 On the conditions of vulnerability that facilitate human trafficking, see CNDH and CEIDAS (2009).
- 5 It entered into force on December 25, 2003 (see United Nations 2004).
- 6 The Palermo Protocol was initially intended to deal only with trafficking in women and children (see United Nations 2004). However, it was subsequently expanded in scope to include all persons. Most states agree that particular attention should be given to the protection of women and children (see Gallagher 2001).
- 7 Following interviews with 70 Mexican civil society organizations, Hispanics in Philanthropy presented a report on human trafficking in Mexico to the Mexican Senate in October 2017.
- 8 See UNODC Model Law on Trafficking in Persons (UNODC 2009): https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf.
- 9 The TIP project was known as the PROTEJA Shelter Project. PROTEJA stands for *Proyecto de Apoyo a Refugios para Víctimas de Trata de Personas en México* (in English: PROTECT - Project to Support Shelters for Victims of Human Trafficking in Mexico).

PROTEJA was a program focused on improving shelters for migrants and human trafficking victims in Mexico. It received funding from USAID under the President's Initiative to Combat Trafficking in Persons. It was comprised of 127 civil society organizations and 95 government agencies. See Capable Partners Program-Mexico (2010).
- 10 See Chamber of Deputies (2011).
- 11 See SEGOB (2011).
- 12 See voting in: <http://gaceta.diputados.gob.mx/Gaceta/Votaciones/61/Tabla2or2-44.php3> (Parliamentary Gazette, LXI Legislature, Chamber of Deputies, Mexico City).
- 13 It is officially called General Law to Prevent, Sanction and Eradicate Crimes Related to Trafficking in Persons and for the Protection and Assistance of Victims of these Crimes (Ley General Para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos Delitos).
- 14 See Chamber of Deputies (2014).
- 15 It is worth noting that the concept of labor exploitation is quite broad and, with the exception of forced labor, cannot be strictly considered human trafficking.
- 16 In 2015, Mexico deported 173,000 Central American migrants (Bonello 2015).
- 17 See Observatorio Nacional Ciudadano de Seguridad, Justicia y Legalidad (2014).
- 18 It is not clear how she arrived at this figure.
- 19 Other factors include Mexico's significant efforts since 2004 to improve its laws, educate law enforcement agencies and judges on the nature of human trafficking, and raise public awareness about the problem.
- 20 Prosecutors also classify as traffickers anyone who is aware, even if indirectly, that someone is a victim of trafficking and does not take action to stop the exploitation.
- 21 For example, former Congresswoman Rosa María Orozco had considerable influence in drafting the law, which pushes to criminalize prostitution in the country. Orozco, who propelled herself into the political arena by promoting herself as an anti-trafficking activist and defender of Christian values, argues that prostitution is a form of trafficking. Other anti-trafficking activists who also oppose prostitution—including Teresa Ulloa Ziarriz, Regional Director of the Coalition Against Trafficking in Women and Girls in Latin America and the Caribbean (CATW-LAC)—helped push for this broader definition of human trafficking and assisted Orozco's anti-prostitution efforts.
- 22 The current imbroglio between federal and state authorities over TIP legislation in Quintana Roo has led some to believe that the state is uncovered by any anti-trafficking law. This is an incorrect assumption. Even in the absence of a state legislation, the federal law still applies.
- 23 Many of the women we met at the local prison were illiterate, and some of them allege that they were promised to be freed as long as they signed some paperwork; they signed, but their release never happened. One woman said, for example, that she was forced into confessing a crime she did not commit after she witnessed her husband being beaten by the police. More than half of the women in prison accused of human trafficking were migrants from Central America.
- 24 Mónica Salazar, Skype interview; March 10, 2017.
- 25 Mónica Salazar, Skype interview; March 10, 2017.
- 26 Mónica Salazar, Skype interview; March 10, 2017.

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