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REFORMING THE LEGAL PROCESS: AN END TO HUMAN TRAFFICKING IN LATIN AMERICA

by *Miranda Carnes**

Although slavery was legally abolished in Central America during the nineteenth century, modern-day slavery still exists today as human trafficking. Human trafficking is defined as

the recruitment, transportation, transfer, harboring or reception of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or abuse of a position of vulnerability, or the giving or receipt of payments or benefits to obtain the consent of a person having authority over another for the purpose of exploitation.¹

Article 6 of the American Convention on Human Rights explicitly outlaws this practice, stating that slavery, involuntary servitude, and the trafficking of women are prohibited in all forms, including during states of emergency.² In 2019, the Inter-American Court of Human Rights expanded the prohibition of trafficking with Resolution 4, holding states accountable for the prevention and elimination of

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¹ Inter-Am. Comm'n H.R., *Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking*, at 4, Dec. 7, 2019 [hereinafter Resolution 04/19].

² American Convention on Human Rights "Pact of San Jose, Costa Rica", act. 6, Nov. 22, 1969, 1144 U.N.T.S. 123.

human trafficking within the region.³ However, despite these resolutions, human trafficking remains pervasive in Central America.⁴ While many Central American States have incorporated anti-slavery language into their constitutions, enforcement remains a challenge. In December 2020, the Inter-American Court of Human Rights (the Court) addressed this problem with a hearing on the human rights of victims⁵ of human trafficking.⁶ The Court heard from civil society organizations in Honduras, Guatemala, and El Salvador, and provided recommendations based on the issues presented.⁷ The Court found that, to reduce human trafficking in Central America, the region needs to improve their criminal law procedures and provide a more holistic approach to sentencing.

Due to the complex nature of trafficking cases, the standard criminal processes are not sufficient to provide a complete solution to the problem. To improve their criminal procedures, Central American countries need to provide legal representation to victims, incorporate victimology into each case, and provide support for victims who choose not to participate in criminal legal proceedings. Currently in Central America, trafficked persons are predominately represented by lawyers from women's shelters or civil society organizations; the State does not provide representation.⁸ This means that, in order for victims to obtain adequate legal representation, they must seek out an organization for assistance. Human trafficking is

³ Resolution 04/19, Principle 20.

⁴ See LEONARD TERRITO, *INTERNATIONAL SEX TRAFFICKING OF WOMEN & CHILDREN: UNDERSTANDING THE GLOBAL EPIDEMIC 69* (Looseleaf Law 2010).

⁵ This article uses "victim" to describe survivors of human trafficking in keeping with the language used by civil society organizations in the Inter-American Court's hearing on human trafficking.

⁶ *Situación de los derechos humanos de las víctimas de trata de personas en la región*, Inter-Am. Ct. H.R. (Dec. 3, 2020), <https://www.youtube.com/watch?v=Kxm9urIc34M>. [hereinafter Inter Am. Ct. H.R. (Dec. 3, 2020)]

⁷ *Id.*

⁸ *Id.*

deeply intertwined with poverty and corruption; the need to proactively get help is a huge barrier to many victims. Additionally, adolescent women are the most vulnerable to human trafficking in Central America.⁹ Adolescents are less likely to have the ability to obtain legal representation, especially with the need for heightened security. Their age often means they have access to limited resources. Therefore, to enforce existing human trafficking laws, states need to provide legal representation for all victims who choose to participate in criminal proceedings and to provide aid to those that choose not to.

In addition to providing legal representation for trafficked persons, states need to incorporate victimology into their criminal legal procedures. Victimology is the study of victims, including what causes victimization, how the criminal justice system accommodates victims, and how other areas of society deal with victims of a crime.¹⁰ By analyzing the root causes of human trafficking and the elements that lead to victimization, States can work to eliminate human trafficking. Additionally, victimology can help defense attorneys, prosecutors, and court officials relate to victims during criminal proceedings.¹¹ Because trafficked persons have suffered severe trauma, their legal path to justice needs to include a more compassionate questioning process from both lawyers and judges. Therefore, by incorporating victimology into the criminal proceedings, states will provide a humanizing experience, which will encourage more victims to pursue legal avenues.

Furthermore, states need to take a more holistic approach to sentencing. Sentencing a criminal to prison for trafficking persons does not provide real relief to the victim. In addition to inflicting prison sentences on convicted traffickers, judges should

⁹ *Id.*

¹⁰ LEAH E. DAIGLE, *VICTIMOLOGY: THE ESSENTIALS* 1 (2nd Ed. 2018).

¹¹ *What is Victimology and Why is it Important in Forensic Psychology*, WALDEN UNIVERSITY, <https://www.waldenu.edu/online-masters-programs/ms-in-forensic-psychology/resource/what-is-victimology-and-why-is-it-important-in-forensic-psychology> (last visited Mar. 4, 2021).

require psychological and financial support for victims of trauma. In Honduras, for example, judges do not order reparations in human trafficking cases unless the Public Ministry specifically requests it.¹² Additionally, in 2019, zero of the human trafficking sentences in El Salvador included aspects of reparations.¹³ In order to provide trafficked persons with complete relief, and to help victims escape from the trafficking cycle, states need to train judges to include reparations in sentencing. With improved education and greater awareness of the specific needs of victims of human trafficking, Central American courts will be able to take greater strides towards the elimination of human trafficking.

Because the American Convention on Human Rights gives states an obligation to combat human trafficking and end slavery,¹⁴ States also need to support trafficked persons who choose not to participate in criminal proceedings. Currently, Guatemala and El Salvador offer limited support to these victims.¹⁵ Honduras, on the other hand, provides a fund for victims, regardless of their participation in the legal process.¹⁶ This fund is financed by government agencies, as well as by the United States through the Trafficking Victims Protection Act.¹⁷ With a victim's fund and existing constitutional protection for trafficked persons,¹⁸ Honduras has taken meaningful steps to eradicate human trafficking in the country by supporting victims regardless of their involvement in the legal system. Other countries in the region need to follow Honduras's lead to comply with their obligations under the American Convention on Human Rights. If victims of human trafficking receive funding from the State, they have a greater chance of escaping from the poverty that often traps them in the cycle.

¹² Inter-Am. Ct. H.R. (Dec. 3, 2020).

¹³ *Id.*

¹⁴ See also Resolution 04/19, Principle 20.

¹⁵ Inter-Am. Ct. H.R. (Dec. 3, 2020).

¹⁶ U.S. Dep't of State, *Trafficking in Persons Report* 224 (2019), <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>

¹⁷ *Id.* at 224-25.

¹⁸ Inter-Am. Ct. H.R. (Dec. 3, 2020)

For example, in 2019, Honduras's Ministry of Development and Social Inclusion (SEDIS) provided 21 microloans to trafficked persons.¹⁹ The goal of the loans was to support small business development and help victims escape from poverty. If all Central American States adopt similar policies, trafficked persons have a greater opportunity to address the root causes of trafficking without utilizing legal avenues.

Once laws are in place and norms are established, the next task is enforcement, which begins with recommendations from the Inter-American Court of Human Rights. The Inter-American Commission on Human Rights first observes the general situation of human rights violations in the Americas and presents these issues to the Inter-American Court of Human Rights. The Court then enforces and interprets the American Convention on Human Rights to ensure that the Organization of American States' Member States comply with the Convention's provisions. According to the Inter-American Court of Human Rights' hearing on human trafficking, in order to enforce the American Convention on Human Rights, Central American states must improve criminal law proceedings, include reparations in sentencing, and provide financial support to victims of human trafficking who choose not to pursue legal justice. This holistic approach to human trafficking in the region will allow states to combat trafficking and reverse Latin America's trafficking statistics.

¹⁹ U.S. Dep't of State, *supra* note 15, at 225.