Reforming the Legal Process: An End to Human Trafficking in Latin America

Miranda Carnes
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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 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

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³ Resolution 04/19, Principle 20.
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.
⁷ Id.
⁸ Id.

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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
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.

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9 Id.


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/


13 Id.

14 See also Resolution 04/19, Principle 20.


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

17 Id. at 224-25.

For example, in 2019, Honduras’s Ministry of Development and Social Inclusion (SEDIS) provided 21 microloans to trafficked persons. 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.