COMMITTEE ON MIGRATION ISSUES OEA/Ser.W

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CONCEPT PAPER

THEMATIC MEETING:

“ATTENDING TO THE VICTIMS
OF HUMAN TRAFFICKING AND MIGRANT SMUGGLING”

(March 2021)

(Prepared by the Chair of the CAM with support from the Technical Secretariat)

1. Introduction

Human trafficking and migrant smuggling constitute two of the main migration-related challenges. The Americas are not free of these scourges: in the region, the various manifestations of vulnerability faced by thousands of migrants—particularly those in irregular migratory situations, asylum seekers, refugees, and stateless persons—make them potential victims of human trafficking for the purposes of sexual exploitation, forced prostitution, forced labor, criminal activities, begging, forced marriages, and organ harvesting and, in addition, they can be forced to resort to migrant smugglers on account of the absence or inadequacy of regular channels for safe, orderly, and regular migration.

To respond to the challenges posed by human trafficking and migrant smuggling, in Palermo, Italy, in 2000, the United Nations member states adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea, and Air to supplement the United Nations Convention against Transnational Organized Crime. They are jointly known as the Palermo Protocols.

1. Human trafficking

Article 3 of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, states that:

1. “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;
2. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
3. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
4. “Child” shall mean any person under eighteen years of age.

Thus, it follows that the definition of human trafficking enshrined in the Palermo Protocols comprises three elements: (1) acts, (2) means of commission, and (3) ulterior purposes.

* Acts: the recruitment, transportation, transfer, harbouring, or receipt of persons.
* Means of commission: 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.
* Ulterior purposes: for the purpose of exploitation, including the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.

The Inter-American Commission on Human Rights (IACHR) has said that in order to determine the scope of human trafficking in the framework of the inter-American system, consideration must be given to the definition contained in the 2000 United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. In line with that, the IACHR has stated that the provisions of Article 6 of the American Convention on Human Rights, which enshrines the absolute and non-derogable prohibition of slavery, servitude, the slave trade, and trafficking in women in all their forms, must be interpreted in light of the definition of trafficking in persons set forth in Article 3(a) of the Palermo Protocol.[[1]](#footnote-1)

The IACHR has additionally ruled that “the prohibition of slavery and similar practices, such as human trafficking, are part of customary international law and *jus cogens*. Protection against slavery is an obligation *erga omnes* and binding on the States, emanating from international human rights standards.”[[2]](#footnote-2)

1. Migrant smuggling

As regards the definition of “migrant smuggling,” Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea, and Air provides that:

1. “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;
2. “Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State.
3. Regional context

According to the *Global Report on Trafficking in Persons* published by the United Nations Office on Drugs and Crime (UNODC) in 2020, the North American countries are characterized by increasing numbers of trafficking victims within their borders, primarily women trafficked for the purpose of sexual exploitation.

In South America, the dynamics of human trafficking are quite complex but, at the same time, limited in terms of their geographical scope.[[3]](#footnote-3) In Argentina, for example, victims of human trafficking from Paraguay and Bolivia have been detected, while in Colombia and Peru, victims from Venezuela have been found; meanwhile, Brazil and Chile are also destinations for victims from Bolivia and Peru, along with other countries of origin; and Peru is also a destination for victims of human trafficking from neighboring countries. In particular, this report notes that trafficking victims from the northern part of South America are detected in the richer countries of the neighboring subregion, while in Central America and the Caribbean, victims are detected who are nationals of those regions’ countries or certain states of South America.

The social protection of vulnerable and trafficked populations during the migration process and in their countries of destination has previously been highlighted as an issue of particular importance in discussions between states. In contexts of high rates of migration or human mobility, the number of cases of human trafficking tends to increase because the vulnerability of migrants, asylum-seekers, refugees, and stateless persons generally reaches alarming levels in crisis situations. It is therefore necessary for the Organization of American States (OAS) to generate coordinated responses that cover the actions carried out by migrants’ countries of origin, transit, destination, and return and, in that undertaking, the Committee on Migration Affairs (CAM) can play a key role.

In the New York Declaration for Refugees and Migrants (Resolution 71/1), the states expressed their commitment, first, to “vigorously combat human trafficking and migrant smuggling with a view to their elimination, including through targeted measures to identify victims of human trafficking or those at risk of trafficking”; second, to “provide support for the victims of human trafficking”; and, third, “to prevent human trafficking among those affected by displacement” (para. 35).[[4]](#footnote-4)

The need to implement the unanimous commitments of all 193 United Nations member states set out in the New York Declaration is heightened in the context of the COVID-19 pandemic, when rising levels of unemployment have led to a global recession with deteriorating economic and labor prospects in many countries, potentially creating an increase in the number of people at risk of being trafficked. Global data on trafficking victims provide examples of surges in victims from countries facing drastic economic downturns.

In recent years, and particularly over the past year, many of the region’s countries have suffered significant contractions in their GDP, and the figures suggest that large sectors of the population are now below the poverty line. Against that backdrop, issues such as irregular migration and informal or precarious employment—in addition to the dangers found along migration routes and family fragmentation—have increased the risk of migrants, asylum seekers, refugees, and stateless persons falling victim to human trafficking or having to resort to migrant smugglers.

Thus, the Organization of American States and the United Nations Office on Drugs and Crime have predicted an increase in the crossborder trafficking of persons from the countries most affected by the economic impact of the COVID-19 pandemic. Studies conducted to measure the effects of the COVID-19 pandemic on migrants have found that they have been disproportionately affected, with a large percentage of them losing their jobs due to the pandemic,[[5]](#footnote-5) which in turn makes them more vulnerable to becoming victims of human traffickers.[[6]](#footnote-6)

1. Main forms of human trafficking and victim profiles

Persons can be trafficked for a range of purposes, with sexual exploitation frequently identified as the most common, followed by forced labor. Similarly, the victims’ profiles tend to determine the forms of exploitation they suffer. In 2018, for example, most women were trafficked for sexual exploitation, while men were trafficked primarily for forced labor.

Individuals belonging to vulnerable groups are more likely to fall victims of human trafficking. Likewise, women are affected disproportionately: in 2018, out of every ten human trafficking victims detected worldwide, around five were adult women and two were girls. Approximately one third of the total number of detected victims were children, while adult men accounted for 20%.

Note should also be taken of the forms of exploitation suffered by trafficked women. Women trafficked into domestic service may remain invisible to the authorities for years due to the conditions of this type of work, characterized by long hours and barriers to travel and socialization outside the home. Likewise, victims of trafficking for the purpose of sexual exploitation or forced prostitution often see their health, physical and mental integrity, and, in the most serious cases, even their lives threatened, as they are more exposed to contracting sexually transmitted diseases and suffering different forms of physical and psychological violence.

Economic adversity—deepened by economic downturns such as the one caused by COVID-19 pandemic—also puts potential migrants at particular risk as, in the process of looking for work abroad, they may fall prey to human trafficking networks that present themselves as “employment agencies” in order to deceive them, rob them of their money and documents, and subject them to inhumane working conditions. Similarly, LGBTIQ people are at greater risk of becoming victims of human trafficking for forced labor and sexual exploitation because they are often marginalized by family and friends to the point of being forced to abandon their home; thus, they are more likely to become victims of traffickers who take advantage of this situation of helplessness and defenseless.

Human trafficking for the purpose of exploiting the victims in criminal activities is another issue that creates particularly complex challenges in the context of migratory movements. The crimes detected range from minor offenses such as petty theft to more serious ones such as trafficking or selling drugs, contract killings, or participation in murders, along with other forms of criminal conduct and serious human rights violations. In this way, the victims of this form of human trafficking end up increasing crime rates in their destination countries, a situation that favors the deepening of xenophobia and discrimination in the communities where those criminal acts are carried out.

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In conclusion, establishing measures to ensure protection for human trafficking victims responds to the principle of protecting and respecting international and inter-American human rights rules and standards, in addition to guaranteeing the rule of law in emergency or crisis situations. In the context of the COVID-19 pandemic, the risk of falling victim to human trafficking faced by various vulnerable groups has been heightened. In addition, migrants are more severely affected by the impact of the global economic recession brought on by the health emergency and, as a result, their vulnerability has increased.

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The region’s states have accepted the need to provide support for human trafficking victims, and the aspiration is that this support be offered to all victims regardless of their immigration status. Consequently, facilitating the trafficking victims’ access to the protection systems that exists remains a pending challenge on the region’s agenda.

The physical and psychological recovery of victims, as well as their reintegration into their host societies, is still a pending task that requires the implementation of protection and assistance mechanisms. Those mechanisms must provide for health, legal, and psychosocial care and, if the victim so wishes, the possibility of repatriation.

Based on the above, this meeting will examine aspects of the policies in place in the region’s countries to prevent human trafficking and to care for the victims of this scourge, particularly when it involves migrants. The floor will be opened up for interventions on these topics by the delegations and, in particular, states are requested to share their good practices in the area in order to consolidate the information and make it available to all the member states.

1. IACHR, *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking, and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System.* Washington, 2015, p. 110. [↑](#footnote-ref-1)
2. IACHR, *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking, and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System.* Washington, 2015, p. 109-110. [↑](#footnote-ref-2)
3. UNODC, *Global Report on Trafficking in Persons 2020*. Vienna, 2021, p. 155. [↑](#footnote-ref-3)
4. UNHCR. https://www.acnur.org/trata-y-trafico-de-personas.html [↑](#footnote-ref-4)
5. ECLAC. *The impact of COVID-19: An opportunity to reaffirm the central role of migrants’ human rights in sustainable development.* November 2020. [↑](#footnote-ref-5)
6. See: BOTERO, Álvaro, “Considerations for a response to COVID-19 that is inclusive of internally displaced people, migrants, asylum seekers, and refugees in the Americas,” in: OAS, *Practical Guide to Inclusive Rights-Focused Responses to COVID-19 in the Americas.* Washington, 2020, p. 55. [↑](#footnote-ref-6)