

**Regional Consultation for Latin America and the Caribbean on the Right to an
Effective Remedy for Trafficked Persons
United Nations Human Rights Office of the High Commissioner**

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Trafficking in persons (TIP) for the purpose of exploitation is a lucrative criminal activity that is of major concern to the Organization of American States' Member States and the International Community. According to the U.S. State Department, as many as 27 million people may be trafficking victims around the world at any given time. In recent years, the largest numbers of trafficking victims have been identified in Africa and Europe; however human trafficking is also a major problem in Latin America. Countries in Latin America serve as source, transit, and destination countries for trafficking victims. Men, women, and children are victimized within their own countries, as well as trafficked to other countries in the region. Latin America is a primary source region for people trafficked to North America, Western Europe, and Asia. However, in response to recent changes in the global economy, Latin America and the Caribbean are also considered transit and destination sub-regions for vulnerable populations in search of better living conditions and opportunities, who arrive from Asia, Africa and some countries of Western and Eastern Europe.

In the Americas, trafficking in persons involves victims who are typically forced, threatened or deceived into various forms of exploitation. Men, women and children are treated as inexpensive, expendable and profitable commodities used solely for the purpose of personal financial gain. Significant concern exists over the increase in the crime of trafficking in persons within the Western Hemisphere and its economic,

social and human repercussions. Poverty, inequality and social exclusion put people at greater risk of becoming victims.

In the Hemisphere, trafficking in persons has been traditionally associated with the commercial sexual exploitation of women and girls. In the Americas, trafficking in person is that and much more; -it is also, sex tourism, forced marriages, exploitation by begging, domestic servitude, and forced labor, to name a few. According to the ILO 2012 Global Estimate of Forced Labor, 20.9 million people are exploited globally. Out of these, 22% of victims are exploited in sexual activities and 68% are victims of forced labor in economic activities such as agriculture, construction, domestic work or manufacturing. Out of these exploited laborers, 44% are exploited internally or internationally, while 56% are subjected to forced labor in their place of origin or residence. The new data suggests that while women and girls are more affected particularly by commercial sexual exploitation, men and boys account for an overall 45% of all exploited victims. This information also indicates that cross border movement is closely linked with forced sexual exploitation and that victims of non-sexual forced labor are exploited in their home area. In Latin America and the Caribbean, an estimation of 1.8 million persons are victims of labor exploitation.¹

In this day and age, no one can deny that trafficking in persons occurs. Moreover, countries of the Americas, in comparison to 13 years ago, have made important changes in trying to comply with international instruments such as the Convention against Transnational Organized Crime and its supplementing protocol to Prevent, Suppress and Punish Trafficking in

¹ ILO Global Estimate of Forced Labour: Results and Methodology, Special Action Programme to Combat Foced Labor (SAP-FL), 2012

Persons, especially Women and Children. The signing and ratification of these instruments have in most cases, prompted the enactment of domestic legal provisions, preventive programs and activities, and equally important, the protection of victims.

Unfortunately, when addressing victim protection, reality shows that victims not very often receive the minimum of remedies countries have accepted throughout the years in many human rights' instruments. The same way that anti-trafficking legal frameworks should be comprehensive, the same way protection should be applied in a holistic and a comprehensive manner.

By no means, this should not be taken as an indicative that, international instruments, at the global and regional levels are not in place and calling upon governments to provide remedies. There is a large number of human rights instruments that if enacted, would provide an important base to protect victims. In the Americas, the American Convention on Human Rights, adopted in San José, Costa Rica on November 1969, is one of those regional instruments. According article 25 of the Convention, “everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights, recognized by the constitution or laws of the state concerned of by the Convention, even though such violation may have been committed by persons acting in the course of their official duties”. Similarly, the same article calls to State Parties to: “a) ensure that any persons claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State; b) develop the possibilities of

judicial remedy; and c) ensure that the competent authorities shall enforce such remedies when granted. As of 2013, 23 countries of the Americas are active members.

More recently and according to OAS Resolution AG/RES 2551 (XL-O/10) adopted at the Fortieth General Assembly, held in Peru in June 2010), the OAS Member States adopted the Work Plan Against Trafficking in Persons in the Western Hemisphere. Even though, this is a non-binding document, it sets the ground to provide restitution, recovery, compensation, satisfaction, and guarantees of non-repetition. Under the guidelines of protection, OAS Member States are called upon:

- Taking appropriate measures....to assist and protect national and foreign victims of trafficking in persons and/or witnesses, family members, protecting their identity and privacy
- In collaboration with civil society and private enterprise, create jobs, educational and vocational support programs for victims of trafficking and vulnerable individuals
- Ensure that victims are informed about protection and other services (consular services) available to them, in a language they can understand
- Ensure that personnel with whom a victim comes into contact, among others, law enforcement, labor inspectors, social workers, health personnel, representatives of civil society, have been trained in identifying and assisting victims

- Develop policies and programs to protect victims of trafficking in persons based on respect for human rights, taking into account gender, age, health, etc.
- Adopt policies to ensure that victims of trafficking in persons with an irregular immigration status are offered access to victim protection
- Adopt special protective measures, with the participation of civil society, to provide for the safety and care of child victims

Now, in the Americas, as much as in other geographical regions of the world, these remedies need to transcend the protection that will ensure the wellbeing of the victims in the short and long run. States must also pay close attention, particularly to “push factors” that have motivated the movement of vulnerable communities. In the Americas effective remedies for trafficked victims will promote change if States, civil society, academia, the private sector, among others, work towards: addressing poverty, promoting universal registry at birth, collaborate with one another during natural disasters, engage in the reduction of internal conflict, promote education, address gender discrimination, evaluate the impact that some cultural traditions and values have over vulnerable communities, address unemployment, and engage in the reduction of domestic violence.

This point is extremely crucial if substantial remedies are to be effective. In countries with vulnerable populations, with large indigenous communities or in countries where certain cultural practices have been institutionalized, like the “restaveks”, changes are needed. Substantive remedies of restitution such as: the release of victims from detention, recognition of legal identity and citizenship, return of property, safe repatriation; or remedies of

reparation such as: loss of earnings, psychological and physical harm, moral damage, costs incurred on legal and medical treatment, will definitely be an immense step forward in the protection of victims; nonetheless, their application would not change the social, economic, political, cultural structures that prompted individuals into looking for better opportunities elsewhere. Just as if substantive remedies of restitution, reparation and compensation, and their procedures are not institutionalized, only few victims would receive and experience the benefit of remedies.

For the Americas, the challenges for the provision of effective remedies to victims of trafficking are significant :

- Member states are addressing the commercial sexual exploitation, particularly of women, but need to put additional attention to other forms of trafficking. In the Americas there are numerous cases of domestic servitude, exploitation by begging (children and the elderly), trafficking of organs, children in armed conflict, sex tourism, labor exploitation, among others. Victims of all these manifestations of exploitation should also be entitled to the appropriate remedies.
- Authorities, particularly those who have the potential of becoming in contact with victims, must understand that trafficking in persons and smuggling of migrants are two different crimes that affect victims in a different way, especially if remedies were to be provided to the former
- Oftentimes, the inadequate procedures established within a particular legal framework, keep the system from providing compensation remedies to victims. For instance, oftentimes predators move and

change their assets to other legal entities before they can be confiscated.

- Financial support to provide remedies must be a priority for States
- Member States are called upon working towards the implementation of the Hemispheric Work Plan on Trafficking in Persons
- Cultural patterns that keep some members of society from having access to protection need to be addressed. i.e. Victims with different sexual orientation also deserve to receive the benefit of remedies.
- Institutionalization of standard operating procedures, also play an important role. Government institutions in charge of the identification and protection of victims need to work together for the provision of uniformed attention. To date in many cases, law enforcement, immigration and customs officials operate on a customary basis.

To finish let me say that even when the responsibility of the security of the individual falls on the hands of the State, we all could play a direct role in the process of making sure that victims of trafficking in persons' are informed about the instruments, mechanisms, and processes that would entitle them to receive remedies. Likewise, governments, civil society, academia, the private sector, and the international community is called to work on the social, cultural, economic, and political structures that contribute to the exploitation of millions human beings. As stated by Malala Yousafzai on her address to the United Nations this month, we need to work against the depravation of basic rights.