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Introduction

Trafficking in persons is a global phenomenon and one of the most prevalent crimes of the modern world. It takes a heavy toll of hundreds of thousands of victims annually, and indiscriminately affects stable democracies, countries in transition, and societies immersed in war. International organizations, governments, and non-governmental groups have recognized human trafficking as a contemporary form of slavery and – in certain circumstances – a crime against humanity.

The list of possible anti-trafficking strategies that can come into play in the dynamics of rule of law promotion can be overwhelmingly long. They may consist of legislative reform, awareness raising, advocacy, capacity building, research, monitoring, impact litigation, or direct assistance to victims. They may be either holistic or narrowly tailored to accomplish specific objectives or address selected target groups, such as the general public, state authorities, victims, or perpetrators. The approach of the American Bar Association’s Rule of Law Initiative (ABA ROLI) to combating trafficking in persons involves advancing sustainable solutions through strategic mobilization of awareness and capacity building among government entities and civil society. The projects are often undertaken in partnership with local non-governmental and international organizations.

Collection of country-specific information creates a necessary foundation for identifying important elements of the reform process in the field of counter-trafficking. With this in mind, in 2005, the ABA’s Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, developed the Human Trafficking Assessment Tool (HTAT). The HTAT is designed to assess countries’ de jure and de facto compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol), which is one of the most important international tools aimed at combating trafficking in persons. The primary purpose of the HTAT is to enable ABA ROLI, other technical assistance providers, donors, and local stakeholders to design and implement more effective national and regional counter-trafficking strategies, to enhance countries’ compliance with the Trafficking Protocol, and to monitor progress in the fight against human trafficking.

The technical nature of the HTAT distinguishes this assessment tool from other independent assessments of a similar nature, such as the annual TRAFFICKING IN PERSONS REPORT published by the U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, or the GLOBAL REPORT ON TRAFFICKING IN PERSONS produced by the United Nations Office on Drugs and Crime (UNODC). This comprehensive assessment measures to what extent specific legal norms and conditions present in the country comply with specific provisions of the Trafficking Protocol at a particular point in time. In addition, the HTAT’s in-depth analytic process is not intended to be a scientific, statistical survey. Instead, it is first and foremost a legal inquiry into the country’s anti-trafficking regulatory framework and infrastructure. The analysis draws upon a diverse pool of information derived from the relevant legal provisions and secondary materials, interviews with key informants, and discussions with informal focus groups.

Methodology

The HTAT is a mechanism for analyzing domestic legislation, policies, and their implementation in light of the Trafficking Protocol. More specifically, the HTAT addresses such questions as whether the country’s legal system is sufficiently strong to combat trafficking effectively, and whether the government has committed appropriate resources and taken concrete steps to prevent and prosecute trafficking, as well as to protect the victims. The HTAT assesses a country’s compliance with each of the 13 substantive articles of the Trafficking Protocol. In addition, the HTAT incorporates essential provisions of the Convention on Transnational Organized Crime, which applies in conjunction with the Trafficking Protocol, and addresses
certain topics that are not covered by either of the two treaties, but are nevertheless necessary for a comprehensive analysis of anti-trafficking reforms worldwide. Substantively, the HTAT follows one of the main concepts surrounding global counter-trafficking efforts, i.e. the “three Ps” paradigm (prevention, protection, and prosecution) enshrined in the preamble to the Trafficking Protocol. Consequently, it explores such issues as the definition of trafficking in persons, criminalization, jurisdiction, extradition, organized crime, obstruction of justice, corruption, witness protection, identification of victims, victim assistance, status of victims in receiving states, repatriation of victims, prevention programs, international cooperation, information exchange and training, border measures, and security and legitimacy of documents.

To enhance uniformity and detail in data collection, ABA ROLI developed the Assessor’s Guide to the Human Trafficking Assessment Tool, which serves as a resource guide on the Trafficking Protocol. It provides a helpful commentary on its provisions, clarifies terminology, and highlights success stories and best practices which can be adapted and replicated around the globe. In addition, the Assessor’s Guide offers flexible guidance on the areas of inquiry by incorporating a series of illustrative *de jure* and *de facto* questions that direct the process of gathering and reporting information. The questions are organized in accordance with the structure of the Trafficking Protocol and grouped into subsections corresponding to the various topics arising from the delineated international obligations.

The HTAT implementation process draws heavily on the tested and well-respected approach of other assessment tools created by ABA ROLI, such as the Judicial Reform Index (JRI), the Legal Profession Reform Index (LPRI), and the CEDAW Assessment Tool. First, the HTAT assessment team, led by an international attorney with anti-trafficking expertise and supported by a local attorney, evaluates all relevant legal provisions and pertinent secondary materials, including statistics provided by reliable sources. This is followed by in-country interviews with approximately 40 key informants, i.e., anti-trafficking experts, government officials, representatives of international and non-governmental organizations, lawyers, journalists, and other observers who have a unique insight into the country’s counter-trafficking regime.

The results of the *de jure* and *de facto* analysis are collected in a standardized format in an HTAT country report. Each report begins with a country background chapter exploring the legal and political context and anti-trafficking institutional infrastructure, followed by an in-depth analysis section comprised of 13 chapters that survey implementation of each of the substantive articles of the Trafficking Protocol. The HTAT foregoes any attempt to provide aggregate scoring or ranking of countries’ anti-trafficking reforms, as this could be counterproductive. Prior to publication, each report undergoes both a comprehensive internal review by ABA ROLI’s Research and Assessments Office in Washington, D.C. and an in-country peer review by key stakeholders, in order to ensure its accuracy, integrity, and maximum degree of quality control.

Social scientists might argue that some of the assessment criteria would best be ascertained through public opinion polls or more extensive interviews of local stakeholders. Sensitive to the potentially prohibitive cost and time constraints involved, ABA ROLI structured the HTAT implementation process in such a way that the inquiries derived from its methodology can be effectively addressed by interviewing a limited cross-section of anti-trafficking experts and observers. Consequently, the HTAT can be rapidly implemented by a relatively small team of legal specialists who are familiar with the country and the region, and have expertise in anti-trafficking issues.

The HTAT is designed to fulfill several functions. First, it demonstrates the country’s progress in combating trafficking in persons and identifies gaps in its counter-trafficking efforts, thus enabling prioritization of reforms by governments and anti-trafficking stakeholders. Second, the HTAT findings provide vital information for ABA ROLI, other technical assistance providers, donors, and

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others charged with reforming relevant legislation and designing more effective anti-trafficking strategies and programs. Third, the HTAT reports serve as a source of hard-to-find information on the structure, nature, and status of anti-trafficking efforts in countries where the tool is implemented. Fourth, the HTAT results can help spearhead local grassroots advocacy initiatives to improve compliance with the Trafficking Protocol, as well as facilitate enhanced inter-agency collaboration and international cooperation in the fight against this global challenge. Finally, the HTAT enables monitoring of a country’s reform progress over time. Periodic implementations of the HTAT can identify a trend of improvement or remedial action on the part of the country, show areas where there has been backsliding in reforms, as well as illustrate which anti-trafficking strategies have been successful, which have stalled, and which have had little or no impact.

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The completion of the following report would not be possible without the skills, expertise, perseverance, and dedication of many individuals, including those who contributed to the development of the HTAT methodology. First and foremost, ABA ROLI wishes to express immense gratitude to Andreea Vesa, former Senior Legal Analyst, who was the chief architect of the HTAT. Her talent, mastery of the Trafficking Protocol, and dedication to combating trafficking in persons worldwide proved instrumental in designing the HTAT methodology and completing the pilot HTAT Report for Moldova. ABA ROLI would also like to recognize the efforts of Michael Maya, Deputy Director of ABA ROLI, who conceived the idea of creating an assessment tool based on the Trafficking Protocol and directed the project during its initial phase.

Furthermore, ABA ROLI would like to thank the cadre of anti-trafficking experts who offered insightful commentary and critiques of a draft HTAT methodology. In particular, ABA ROLI benefited from the counsel of Dr. Laura Lederer, former Senior Advisor on Trafficking in the Office of the Under Secretary for Global Affairs at the United States Department of State; Dr. Mohamed Mattar, Director of The Protection Project of the Foreign Policy Institute at Johns Hopkins University School of Advanced International Studies; Martina Vandenberg, former Europe Researcher with the Women’s Rights Division at Human Rights Watch; and Stephen Warnath, former Deputy Director and Chief of Staff of the Stability Pact Task Force on Trafficking in Human Beings. They all gave very generously of their time and significantly improved the caliber of this assessment tool. ABA ROLI is also indebted to Professor Hadar Harris, whose experience piloting the CEDAW Assessment Tool in Armenia greatly aided Ms. Vesa in devising an appropriate methodology for the HTAT.

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Assessment Team

The 2009 Mexico HTAT assessment team was led by Gretchen Kuhner, an attorney and international expert on issues related to trafficking in persons, women’s rights, and migration, with the assistance of Monica Salazar Salazar, a Mexican attorney specializing in human rights. Paul Vina, a security professional and former special agent at the U.S. Federal Bureau of Investigation, accompanied the assessment team to a number of interviews in Mexico and provided valuable input on law enforcement issues surrounding the human trafficking
phenomenon. A group of professors and students from the Public Interest Law Clinic in the Instituto Tecnológico Autónomo de México (ITAM), including Marta Villarreal Ruvalcaba, Miguel Alvarez Malvido, Andres Caso Alvarez, Silvia Evelyn Alanis Gutierrez, and Rodrigo Montes de Oca Arboleya, assisted with legal research and compilation of data for this project. The assessment team received strong support from the ABA ROLI’s staff in Washington, D.C., including Research and Assessments Office Director Simon Conté, Senior Criminal Law Advisor Mary Greer, Latin America and Caribbean Division Director Michael McCullough, and Program Manager for Latin America and Caribbean Thomas Hare. Legal Analysts Paulina Rudnicka and Brenner Allen provided research and analytical assistance, guided the assessment process, served as editors, and prepared the report for publication. Arjan Shahani Moreno provided logistical aid, and Helena de la Vega, Mariana de la Vega, and Mario Flores translated the report from English into Spanish.

The conclusions and analysis in the 2009 Mexico HTAT are based on core interviews with 78 stakeholders conducted in Mexico between January and June 2008, follow-on interviews conducted between June 2008 and February 2009, as well as relevant legal texts, secondary materials, and statistics that were analyzed at that time. While the assessment reviews the practices pertaining to trafficking in persons primarily on the federal level, it also covers seven states selected due to their particular trafficking situations, including Baja California Norte, Chiapas, Chihuahua, Guerrero, Oaxaca, Tlaxcala, and Quintana Roo. Records of the relevant authorities and a confidential list of individuals interviewed are on file in the Washington, D.C. office of ABA ROLI. ABA ROLI is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project and to serve as peer reviewers for the preliminary draft of the report.

Last but not least, ABA ROLI wishes to thank the U.S. Department of State, Office to Monitor and Combat Trafficking in Persons for providing generous support for the implementation of the 2009 Mexico HTAT project.
Executive Summary

Brief Overview of the Results

The 2009 Human Trafficking Assessment Tool (HTAT) Report for Mexico analyzes Mexico’s de jure and de facto compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol). While the HTAT reviews legislation, policies, and practices regarding trafficking in persons primarily on the federal level, interviews were held in the following seven states selected due to their particular trafficking situations: Baja California, Chiapas, Chihuahua, Guerrero, Oaxaca, Tlaxcala, and Quintana Roo.

The HTAT Report for Mexico identifies a high level of compliance with the Trafficking Protocol in terms of the national legal framework. In November 2007, Mexico passed the Law to Prevent and Sanction Trafficking in Persons (Federal Anti-Trafficking Law), creating federal mechanisms for prevention, protection, and prosecution of trafficking in persons in Mexico. The Federal Anti-Trafficking Law covers both transnational and internal trafficking perpetrated by individual persons as well as organized criminal groups. In addition, state criminal codes in 25 states and the Federal District (Mexico City) include the crime of trafficking in persons, although not all of these crimes comply with the definition contained in the Trafficking Protocol. Several of the remaining 6 states are working to develop relevant legislative proposals. In January 2008, the Specialized Prosecutorial Unit for Violent Crimes against Women and Human Trafficking (FEVIMTRA) was created to work in coordination with the Office on Organized Crime and the Office on International Cooperation within the Office of the Attorney General (OAG) to prosecute federal trafficking crimes and assist victims. On the state level, several attorney general offices have established separate intake units for criminal complaints related to crimes against women and trafficking in persons, to ensure that victims are assisted by specialized personnel.

Due to the recent enactment of the Federal Anti-Trafficking Law, Mexico is in the very incipient stages of implementing adequate counter-trafficking policies and programs. First, the law has not been utilized to achieve convictions to date. Second, although the time limit established within the legislation had expired in May 2008, the Regulations to the Federal Anti-Trafficking Law (Anti-Trafficking Regulations) were not issued until February 27, 2009. Third, while the Inter-Secretarial Commission mandated by the Federal Anti-Trafficking Law has been meeting informally, it has not formalized procedures nor included academic experts or representatives from non-governmental organizations (NGOs). Finally, the National Anti-Trafficking Program that will establish government agencies’ responsibilities related to prevention, protection, and prosecution has not been drafted.

Selected Mexican government agencies, the National Human Rights Commission (NHRC), the United States Agency for International Development’s Program to Assist Trafficking Victims in Mexico (USAID-PROTEJA), as well as several international organizations and NGOs have established programs to provide training to authorities and civil society on the issue; disseminate information among vulnerable populations; provide social and legal assistance to victims; and enhance inter-agency cooperation with the aim of improving protection and prosecution. However, these programs have lacked a coordinated approach or long-term goals.

The Federal Anti-Trafficking Law requires federal authorities to adopt policies and programs in order to facilitate international cooperation regarding trafficking in persons. Mexico has entered into bilateral agreements with a number of countries, including contiguous Guatemala and the United States (U.S.), which provide for the ongoing exchange of information with the objective of enhancing the investigation and prosecution of trafficking cases, and facilitating the extradition of individuals charged with trafficking offences. For example, Mexico has cooperated with the U.S. through the Plenary Group for Law Enforcement and its Subcommittee on Trafficking in Persons; the Security and Prosperity Partnership for North America; and the Operation against Smugglers
(and Traffickers) Initiative on Safety and Security (OASISS). Coordination with Central and South American countries has occurred through the High Level Groups on Border Security with Guatemala and Belize; the Regional Conference on Migration (RCM); and the Regional Committee against Trafficking in Persons in Mexico, Central America and the Caribbean. In addition, Mexico is a party to bilateral and regional agreements pertaining to border cooperation, safe and orderly repatriation, and mutual legal assistance in criminal matters.

Positive Developments Identified in the 2009 HTAT Report for Mexico

Prevention

The Federal Anti-Trafficking Law requires the Inter-Secretarial Commission to develop a National Anti-Trafficking Program that will include public policies to prevent and sanction trafficking in persons and protect trafficking victims. Actions that will be incorporated into the National Anti-Trafficking Program include: raising awareness of the population about trafficking in persons; carrying out information campaigns about the methods used by traffickers to capture or recruit victims; disseminating materials on the rights of victims; and reporting about the risks that victims of trafficking incur.

NGOs and international organizations have organized information campaigns on the local level to inform potential victims about the issue of human trafficking and how to seek assistance. In some cases, these campaigns have been endorsed by local governments. Lastly, NHRC prepared a national information campaign including radio spots announcing a toll-free hotline number.

Protection

The Federal Anti-Trafficking Law establishes measures to protect the privacy and identity of trafficking victims, and to ensure that victims receive legal counseling; migration and repatriation assistance; shelter; physical protection; medical, psychological, and material assistance; as well as employment, educational, and training opportunities.

In 2008, FEVIMTRA was allocated MXN 70 million (approximately USD 6.4 million) to build a shelter for trafficking victims. In December 2008, FEVIMTRA purchased a building which currently can accommodate 33 victims of trafficking, including men, women, and children. Additionally, FEVIMTRA provides legal information as well as social, medical, and psychological support to victims through its assistance unit.

A small group of NGOs also run shelters that have the capacity to provide safe accommodations, comprehensive social assistance, and in some cases, legal representation to a limited number of trafficking victims.

The National Migration Institute (NMI) has formed 32 state-level Inter-Institutional Committees on Trafficking and Smuggling with the participation of local and federal agencies. In some cases, these committees have prepared plans for inter-agency coordination on trafficking cases, including assigning responsibilities for detection, housing, psychological, and legal assistance. A symbolic number of NGOs has been included in the Inter-Institutional Committees. Furthermore, NHRC is organizing 10 Regional Committees that will incorporate an anti-trafficking protection and prevention mechanism within its nation-wide migration program in Chiapas, Campeche, Tabasco, Veracruz, Aguascalientes, Sonora, Tamaulipas, Chihuahua, and Baja California.

Prosecution

The Federal Anti-Trafficking Law provides for both territorial and extraterritorial jurisdiction over trafficking in persons, which is classified as a grave crime (felony). While no convictions under the charge of trafficking in persons have occurred to date, FEVIMTRA has investigated 24 cases and issued 2 formal indictments. The first formal charges under the Federal Anti-Trafficking Law
were made by FEVIMTRA in October 2008 in a case of forced labor, involving eight Chinese victims exploited in a clothing factory in the state of Sonora. In the state of Chihuahua, several cases have been investigated as trafficking in persons, but no formal indictments have occurred to date. In other states, such as Tlaxcala, what are believed to be trafficking cases have been prosecuted as pimping under the state criminal codes.

In June 2008, Mexico amended the federal definition of an organized criminal group. The new definition is similar to the one in article 2(a) of the United Nations Convention against Transnational Organized Crime and states that an organization of three or more persons whose goal is to commit crimes in a permanent or reiterated form is de facto an “organized criminal group.” Participation in such a group is regulated as a separate offense from trafficking in persons.

**Challenges Identified in the 2009 HTAT Report for Mexico**

One of the greatest challenges regarding trafficking in persons in Mexico is that the phenomenon is believed to be extensive, but has yet to be documented in a systematic manner. Trafficking in persons includes internal trafficking, trafficking of migrants into Mexico, and trafficking of Mexican migrants in other parts of the world, particularly in the U.S. In addition, trafficking has been identified in commercial sex establishments, agricultural work, maquilas (factories operating under a special customs regime), domestic work, street begging, construction, and the informal commercial sector. The diversity of potential victims and sectors indicates the need for specialized programs for prevention and protection rather than a general approach through national campaigns. Limited opportunities to migrate safely to and through Mexico, and to the U.S., renders migrants more vulnerable to trafficking situations as they resort to smugglers who frequently utilize kidnapping schemes and debt bondage.

As of September 2008, the federal budget contained one specific allocation for combating trafficking in persons, but no targeted government funding has been made available to NGOs for research or assistance to trafficking victims. The amount of MXN 70 million (approximately USD 6.4 million) was allocated to FEVIMTRA under the line item “Women and Gender Equality” for prosecution efforts and the construction of a shelter to house trafficking victims. To date, the majority of international funding and technical assistance for counter-trafficking measures in Mexico has been provided by the U.S. government through the Department of State, USAID, the Immigration and Customs Enforcement, and the Department of Justice. In some cases, lack of coordination and divergent priorities among these agencies has been confusing and has led to duplication of training and assistance efforts.

**Prevention**

Although the Mexican government has ongoing programs to alleviate poverty, underdevelopment, and lack of equal opportunities, especially between men and women, the Federal Anti-Trafficking Law does not set out specific responsibilities related to addressing the root causes of trafficking in persons.

Government resources have not been allocated to fund information campaigns to raise awareness about the issue of trafficking in persons or to provide referrals and emergency contact numbers. The impact of information campaigns that have been organized to date is unclear.

Research on trafficking in persons in Mexico has been limited to a handful of local studies. No uniform methodology with a series of measurable and replicable indicators has been established that could be used for academic research as well as the annual government reports required by the Federal Anti-Trafficking Law.

There is no comprehensive system to help government agencies and NGOs working with trafficking victims share non-confidential information about cases. Such exchange of data would
facilitate the identification of vulnerable populations and trafficking patterns, and help to better orient programs for prevention and protection.

Mexican migration documents are not sufficiently secure and continue to be falsified by smugglers and traffickers who are moving migrants through Mexico.

**Protection**

The Anti-Trafficking Regulations limit the definition of "trafficking victims" to passive subjects of the crime of trafficking in persons as defined in the Federal Anti-Trafficking Law, who participate in criminal proceedings initiated in Mexico or abroad. This narrow definition may have detrimental implications for those individuals who have been subjected to trafficking in persons but are unwilling to file an official complaint or testify against the perpetrators, or who require assistance before making a decision about cooperation with law enforcement authorities. Provisions of the Federal Anti-Trafficking Law, which guarantee victims physical protection, medical assistance, counseling, and accommodation, have not yet been implemented in practice. Thus, procedures for identifying and providing assistance to victims vary throughout the country. Judicial and administrative proceedings are often lengthy and victims may be subject to multiple interviews with different authorities. The identity of victims has not been consistently kept confidential. Witness protection programs are either inappropriate for trafficking victims or nonexistent. Trafficking victims have not received compensation for damages through the procedures defined in the Federal Criminal Code. Due to the lack of protection mechanisms, victims are often afraid to testify and abandon their cases. The federal legislation does not specifically address the issue of protecting victims from criminal charges for otherwise illegal conduct related to trafficking activities, although the elements of the crime cannot be met if the act was committed involuntarily.

It is unclear whether a shelter operated by FEVIMTRA is the most appropriate way to protect victims, as victims often feel intimidated by the presence of government officials. Although several NGOs have the capacity and training to provide shelter and social assistance to trafficking victims, many do not have access to financial resources to offer long-term support. In addition, even fewer NGOs are able to provide legal counseling and representation to trafficking victims.

Mexico has taken steps to strengthen its border control and enhance cooperation with border control agencies in Guatemala, Belize, and the U.S. Nevertheless, the government’s efforts to put procedures in place that would enable proper identification of trafficking victims have been uneven. Adequate, systematic, and uniform screening procedures have yet to be implemented by Mexican consular personnel in the U.S., by Mexican authorities that receive migrants deported from the U.S., and Mexican migration agents at entry inspection points and detention centers in Mexico. Consequently, victims may be repatriated through expedited procedures in airports and along the borders without having access to any protection mechanisms. The majority of trafficking victims in Mexico are detected by NGOs and international organizations.

Migration assistance for foreign victims of trafficking in persons is contingent on their cooperation with law enforcement authorities. While NMI has issued several directives that allow foreign trafficking victims to apply for migration status in Mexico, the directives are discretionary. In addition, they have not been published in the Official Journal of the Federation. Therefore, they are not legally binding, and can be revoked at any time.

**Prosecution**

Prosecution is impeded by defects in existing legislation. The federal definition of the crime of trafficking in persons does not contain a clause rendering the consent of the victim irrelevant if any of the means by which human trafficking can be committed (e.g., coercion, abduction, or deception) have been utilized. As such, defendants may raise the defense of consent, shifting the burden to the victim to prove that he or she did not consent. Many of the definitions in the
state criminal codes also lack the clause regarding consent. The federal and several state definitions of trafficking in persons include trafficking for sexual exploitation, but fail to define the term. In addition, many do not cover forced labor. The differences in the definitions may impede coordination among states for the purposes of prosecuting trafficking cases that occur within several jurisdictions.

Prosecution is similarly impeded by policy and institutional issues. Federal and state attorneys general have yet to clarify how jurisdictional issues in trafficking cases will be handled in practice. Law enforcement officers are frequently reluctant to investigate and prosecute trafficking cases because they fear for their personal safety based on past incidences of retaliation against criminal justice officials, including high profile executions. Judges on both federal and state levels have been reluctant to accept human trafficking charges in accordance with the new definitions and have preferred to change the criminal charges to more familiar crimes that may have lesser penalties, such as pimping. Training for judges regarding trafficking in persons and the application of the Federal Anti-Trafficking Law has been limited. Finally, pervasive corruption within the judicial system has impeded the prosecution of traffickers, particularly in cases involving commercial sexual exploitation. Authorities are often complicit with the actions of the owners of such establishments as nightclubs, hotels, and brothels, which may allow traffickers to act with impunity.
Mexico Background

The United Mexican States [hereinafter Mexico] is a large country bordering the United States of America [hereinafter U.S.] to the north and Guatemala and Belize to the south, with ocean borders including the Caribbean Sea, the Gulf of Mexico, and the North Pacific Ocean. The population in 2008 was approximately 110 million people with 62 recognized indigenous groups.

Historically, Mexico was the site of advanced Amerindian civilizations. It was colonized by Spain for 3 centuries before achieving independence in 1821. Between 1929 and 2000 Mexico was ruled by one political party, the Institutional Revolutionary Party. In 2000, the National Action Party won democratic elections, putting an end to more than 70 years of one-party rule. The National Action Party is in its second presidential term with a minority National Congress controlled by three principal parties: the Institutional Revolutionary Party, the National Action Party, and the Revolutionary Democratic Party. The current political situation is characterized by national debates regarding organized crime (particularly drug trafficking) and lack of public security; reformulation of the criminal justice system; and concerns about continued high levels of emigration to the U.S. and the situation of Mexican nationals in that country. According to the Bank of Mexico, Mexican emigrants in the U.S. sent home close to USD 24 billion in 2007, accounting for 3% of the gross domestic product (GDP), and representing the second largest source of foreign income.

Mexico is a federation with 31 states and a Federal District: the capital, Mexico City. The President is elected by popular vote for a non-renewable six-year term. The Cabinet is appointed by the President, but the appointment of the Attorney General must be confirmed by the Senate. Legislative power is vested in a bicameral National Congress which consists of the Senate and the Federal Chamber of Deputies. The judicial branch consists of the Supreme Court of Justice [hereinafter Supreme Court], district courts, appellate courts, as well as state judicial systems with significant autonomy.

Mexico has a free-market economy with inequitable wealth distribution and high levels of underemployment. According to official estimates, approximately 40% of the population is poor and 18% is considered to live in extreme poverty. Many indigenous communities lack opportunities for education, employment, health services, and political participation. While efforts are being made to advance the status of women, there are high levels of violence against women and inequitable access to the labor market.

Scope and Nature of Trafficking in Persons in Mexico

The scope of human trafficking in Mexico is difficult to ascertain. Sources of information include media reports, a limited number of academic studies and international estimates, experiences of non-governmental organizations [hereinafter NGOs] and international organizations that have identified and assisted trafficking victims, and government agencies that have investigated or prosecuted trafficking or related cases. Estimates vary from between 20,000 to 500,000 victims in Mexico at any given time, depending on how the issue of sexual exploitation of adults is perceived, but no official statistics are available.

NGOs and international organizations interviewed for this report had assisted over 300 trafficking victims, including Mexican and foreign women and children in prostitution; Chinese women and men in forced labor in a maquila factory;2 Guatemalan men, women, and children in forced labor in the agricultural sector; Mexican and foreign men in forced labor in the construction sector; and

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2 The term “maquila” refers to a factory, operating under a special customs regime, which temporarily imports materials, parts, equipment, and components on a duty-free basis for assembling or manufacturing, and subsequently exports the finished product to the originating market. Maquilas are common along the U.S.-Mexico border.
Mexican and foreign women in domestic work. The National Migration Institute [hereinafter NMI], an agency of the Ministry of the Interior [hereinafter MOI], reports having assisted 22 trafficking victims with migration documentation between January 2000 and March 2008. The Office on Organized Crime of the Office of the Attorney General [hereinafter OAG] has prosecuted three trafficking-related cases, all of which involve women in commercial sexual exploitation, and the newly created Specialized Prosecutorial Unit for Women Victims of Violence and Trafficking in Persons [hereinafter FEVIMTRA] has investigated 24 cases. In October 2008, FEVIMTRA issued its first formal indictment using the Law to Prevent and Sanction Trafficking in Persons (adopted Nov. 27, 2007, Official Journal of the Federation (D.O.) [hereinafter FEDERAL ANTITRAFFICKING LAW], in the case of forced labor in Sonora. At the state level, various cases related to trafficking in persons are in the process of being investigated. However, the assessment team received information on only one state-level case in which indictments under the specific charge of trafficking in persons were made. This case is being prosecuted in Michoacan.

Trafficking in persons in Mexico is a highly complex issue. Many long-standing situations could be classified as trafficking, as well as more recent situations that have emerged within the last 15 years. For example, family groups that force women into prostitution have been working for generations within the region of Tlaxcala. However, large-scale trafficking of foreign women and girls into Mexico for commercial sexual exploitation is a more recent phenomenon.

Trafficking in Mexico occurs internally, from other countries into Mexico, and from Mexico into other countries, and is often a part of, or hidden within, larger migratory processes. For example, the majority of victims of commercial sexual exploitation in Mexico City are Mexicans from other states or the Federal District itself. However, there is also a specific sector that receives women from countries as diverse as Argentina, Brazil, Cuba, Venezuela, Russia, and Hungary. In addition, many Mexicans have been trafficked in the U.S., Spain, and other countries for forced labor in the domestic and agricultural sectors, and for prostitution.

In addition, the same person may be trafficked into Mexico, within Mexico, and then to another country. For example, interviewees reported a case of Mexican women who were forced into prostitution in various cities within Mexico before being trafficked to New York, the U.S. Due to the fact that civil society and law enforcement have only begun to organize around the issue of trafficking as such, it is difficult to obtain information that documents situations of trafficking in persons.

Trafficking and Migration

One of the defining features of Mexican demography is the continued high levels of migration. Mexico experiences large flows of emigrants to the U.S., transit migrants, and internal migrants; and is a destination country for international migrants. Large numbers of migrants utilize smugglers to move through Mexico and cross the Mexico-U.S. border, which makes them particularly vulnerable to trafficking.

As of 2006, there were approximately 27 million immigrants of Mexican origin residing in the U.S., 11.5 million of whom were born in Mexico. Each year, this population grows by approximately 400,000-485,000 irregular migrants and an additional 90,000 Mexicans who cross the border on work or family visas. While the vast majority of migrants never become trafficking victims, a considerable number of the trafficking cases identified in the U.S. have involved Mexicans.

Mexico has become a major transit country for migrants attempting to reach the U.S. and, to a lesser extent, Canada. Each year, thousands of migrants from Central America, South America, and other regions travel through Mexico in an irregular manner. NMI estimates that in 2004, over 2 million migrants crossed the Guatemala-Mexico border, approximately 400,000 of whom were Central Americans entering without authorization. The Pew Hispanic Center estimates that approximately 400,000 non-Mexicans enter the U.S. every year in an irregular manner, mostly through Mexico.
Immigrants represent a small proportion of the Mexican population, hovering around 0.5% of the country’s total population over the past 3 decades. In addition to the resident immigrant population, Mexico’s foreign population includes a large group of seasonal and temporary workers, mostly from Guatemala. In 2006, NMI documented 40,244 Guatemalan seasonal agricultural workers; however, the combined number of documented and undocumented seasonal agricultural workers may be closer to 75,000 per year.


Many trafficking cases prosecuted by DOJ have involved Mexican victims. For example, one case concerned the Carreto-Valencia family, which had brought women and girls from Tlaxcala to New York and forced them into prostitution. Three family members were sentenced in 2004; one was extradited from Mexico to the U.S. in 2007 and sentenced in 2008. Press Release, U.S. Attorney for the Eastern District of New York, Mexican Citizen Charged with Forcing Young Mexican Women into Sexual Slavery in New York Extradited to U.S. (March 2, 2007). This high profile case was featured on the U.S. news program 48 Hours. In another case, U.S. vs. Ramos, three defendants were charged in 2002, and sentenced in 2004, for illegally transporting Mexican citizens to Florida to work in fruit harvesting fields, and then forcing the victims to work by threatening them with beatings and death if the victims tried to leave. U.S. vs. Paoletti-Lemus, et al. involved 18 defendants who were found guilty of smuggling approximately 60 deaf Mexicans to New York and forcing them to sell trinkets on the streets and subway. They recruited the victims in 1997 with the promise of good jobs. In 2006, two additional defendants were sentenced after having been extradited from Mexico where they had served sentences for related charges. See generally Attorney General’s Annual Reports to Congress on U.S. Government Activities to Combat Trafficking in Persons 2003-2007, available at http://www.usdoj.gov/ag/annualreports.html. In addition to DOJ, the U.S. Department of State [hereinafter DOS] outlines several cases involving U.S. and Mexican victims and perpetrators of trafficking in persons. One case concerned a U.S. citizen implicated in child sex tourism in Ciudad Juarez, who was convicted and sentenced in the U.S. The U.S.-led investigation of the case involved assistance of the Mexican government. Office to Monitor and Combat Trafficking in Persons, DOS, Trafficking in Persons Report 2008 at 181 (2008) [hereinafter TIP Report].

Indigenous Customs and Traditions

According to the National Commission for the Development of the Indigenous People, there are 12.7 million indigenous people in Mexico, constituting between 12 and 13% of the population in the country.
POPPULATION IN STATES VISITED BY THE ASSESSMENT TEAM

<table>
<thead>
<tr>
<th>State</th>
<th>Total population in millions</th>
<th>Indigenous population as %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baja California</td>
<td>2.8</td>
<td>3.3</td>
</tr>
<tr>
<td>Chiapas</td>
<td>4.4</td>
<td>28</td>
</tr>
<tr>
<td>Chihuahua</td>
<td>3.2</td>
<td>3.4</td>
</tr>
<tr>
<td>Guerrero</td>
<td>3.1</td>
<td>17</td>
</tr>
<tr>
<td>Oaxaca</td>
<td>3.5</td>
<td>48*</td>
</tr>
<tr>
<td>Quintana Roo</td>
<td>1.1</td>
<td>39</td>
</tr>
<tr>
<td>Tlaxcala</td>
<td>1.1</td>
<td>4</td>
</tr>
</tbody>
</table>


* There are more than 16 indigenous groups in Oaxaca.

Indigenous groups have the right to free determination under the Constitution of the United Mexican States, which grants them the right to decide the internal forms of social, economic, political, and cultural organization; apply their own normative systems of regulation as long as human rights and gender equality are respected; preserve and enrich their languages and cultures; and elect representatives before the municipal council in which their territories are located. CONSTITUTION OF THE UNITED MEXICAN STATES art. 2 (adopted Feb. 5, 1917, D.O., as amended) [hereinafter FEDERAL CONST.].

Several interviewees mentioned that certain customs within some of the indigenous communities could be misperceived as trafficking or make individuals vulnerable to trafficking. One example of the former is the custom of offering a young woman into marriage with the expectation that the future husband give money or gifts to the woman’s family when he asks for permission to marry her. Indigenous women’s groups stated that this custom is part of a long-standing tradition as long as the woman is not being forced into the marriage. An example of the latter is that traffickers take advantage of trusting families that may live in conditions of poverty and the lack education in some indigenous communities, and convince the parents and the girl that the trafficker will offer her a better life.

Women

The level of discrimination and violence against women in a society is an indicator of the level of their vulnerability to trafficking in persons. In Mexico, patriarchal and discriminatory attitudes against women are commonplace, and violence against women is pervasive. According to OAG’s Specialized Unit for Violent Crimes against Women, between 1999 and 2005 more than 6,000 women were murdered in Mexico. The state of Chihuahua has experienced systematic violence against women through the series of killings that began in 1993. A study by the National Institute on Geographic Statistics and Information found that 46.55% of women have suffered some form of violence including emotional, physical, economic, sexual, labor, or institutional abuse.

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3 While the legal age of marriage established by most state civil codes is 18, in some states girls may marry at 14 and boys at 16 years of age with parental consent. The Federal Civil Code permits 16-year old boys and 14-year old girls to marry. FEDERAL CIVIL CODE art. 148 (adopted in four parts May 26, July 3, July 14, and Aug. 31, 1928, D.O., as amended) [hereinafter FEDERAL CIVIL CODE]. In addition, in some states or indigenous communities girls as young as 12 and boys as young as 14 may be legally married with parental consent and a special waiver from local authorities. In 2003, official statistics recorded 130,000 marriages of children between 12 and 14 years of age. Marriages between Children Increase. UNIVERSAL, May 12, 2003; Representative Concerned about the High Number of Marriages between Children, NOTIMEX, February 15, 2009.
Children

Trafficking of children in Mexico occurs in all of the sectors affected by trafficking in adults. The three principal sectors that were mentioned in all of the states visited by the assessment team were agricultural work, domestic work, and commercial sexual exploitation.

The Ministry of Education estimates that there are approximately 350,000 children who serve as temporary agricultural workers each year within Mexico, less than 10% of whom are in school, and 42% of whom suffer from malnutrition. According to federal labor laws, children under 14 may not work, but neither the companies that contract the families as workers nor the federal inspectors intervene on a regular basis. Whether or not some of these children are trafficking victims is unknown.

In terms of domestic work, a recent study presented by the National Network for Defense of Children in Mexico shows that 1 in 10 girls between 12 and 17 years old is forced to work as a domestic employee in Mexico, sometimes only receiving room and board as payment, or compensation well below the minimum wage. Mexico: Indigenous Girls are the Most Vulnerable to Child Domestic Work, LA JORNADA, April 8, 2008. In some situations, these girls may be mistreated, not allowed to go to school, and forced to work long hours with no pay. Domestic workers are vulnerable to physical and sexual abuse by employees. They are often confined to the homes, and unable to seek assistance. In addition, employers often retain their pay so that they cannot leave. In some states it is common for parents to send their children from rural areas to larger cities to work as domestic workers in exchange for room and board.

Available information on children in commercial sexual exploitation shows that the phenomenon is both extensive and pervasive on the national level. The most widely cited figure from the 2000 United Nations Children’s Fund [hereinafter UNICEF] report is 16,000, but many NGOs that work with children believe the number is much higher. In its special report on the topic in Mexico City, the Mexico City Human Rights Commission describes various ways in which children are trafficked. For example, young women who arrive in bus stations are sought out by people who offer them jobs, food, and places to live. Recruiters also go to poor towns in southern Mexico and Central America to offer jobs to young women, often with the consent of their parents. Once the traffickers have the girls captive, they tell them that they have to work as prostitutes to pay off the debt. Lastly, young women who come to Mexico from Latin America to work as models are forced into prostitution upon arrival. See generally FEDERAL DISTRICT HUMAN RIGHTS COMMISSION, SPECIAL REPORT ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN MEXICO CITY (2006); ELENA AZAOLA, UNICEF-DFS, BOY AND GIRL VICTIMS OF SEXUAL EXPLOITATION IN MEXICO (2000); and ERICK GOMEZ-TAGLE, COMMERCIAL SEXUAL EXPLOITATION OF GIRLS, BOYS AND ADOLESCENTS: A SOCIOLOGICAL APPROXIMATION (National Institute for Criminal Sciences 2005).

Major Forms of Trafficking in Persons in Mexico

Cases of human trafficking have been detected within many facets of the sex sector, agricultural work, maquila factories, domestic work, street begging, construction, and the informal commercial sector.

Sexual Exploitation

One of the obstacles in discussing the scope of trafficking for the exploitation of prostitution and other forms of sexual exploitation in Mexico is that there is no definition of sexual exploitation in the Federal Anti-Trafficking Law. Since some government officials and civil society advocates believe that all people in prostitution are in a situation of sexual exploitation, they may present all of the people involved in this sector as trafficking victims. Other government representatives and civil society advocates believe that some people in prostitution choose the work of their own free will, while others are forced into prostitution. In addition, there are several organizations of individuals engaged in commercial sex acts that advocate for their own rights. In Mexico
prostitution among adults is legal, but largely unregulated. In some cities the health sector requires people in prostitution to register and receive periodic tests for sexually-transmitted diseases. Prostitution is pervasive throughout the country and largely tolerated. In many cities, special “zones of tolerance” are established where adult entertainment establishments offering an array of services are grouped together. Because pimping is a crime, in theory people in prostitution should operate independently. However, in practice, many individuals engaged in commercial sex acts are organized by pimps. In addition, many suffer extortion, harassment, and physical and sexual assault by law enforcement officials.

One of the common strategies to force women into prostitution is the establishment of fraudulent personal relationships with potential victims. The pimps act as boyfriends attempting to make the young women fall in love with them during a period of several months. They convince the women to move in with them or get married. The pimps may develop relationships with the women’s families and convince the parents that the women will be better off with a good job. Eventually, the women are forced into prostitution. Women are also recruited in their hometowns, bus stations, or airports, and promised that they would be offered jobs in *maquila* factories or domestic work. Instead, they are induced into prostitution over a period of time. Many of the women hope, or are promised, that they will be taken to the U.S.

**Temporary Agricultural Work**

Approximately 5 million temporary agricultural workers in Mexico migrate internally each year. These workers often suffer deficient living conditions and receive salaries below the minimum wage, leading entire families to work in order to survive. Contracts are often verbal and many agricultural workers, who may be illiterate, are unaware of their rights, which makes them more vulnerable to abuse. Many agricultural workers are indigenous women and children. See, *e.g.* TLACHINOLLAN HUMAN RIGHTS CENTER, MIGRATE OR DIE: THE DILEMMA OF AGRICULTURAL WORKERS FROM THE MOUNTAINS OF GUERRERO (2005).

**Domestic Work**

According to the National Women’s Institute [hereinafter INMUJERES], approximately 1.5 million people are domestic workers in Mexico, 95% of whom are women. *Domestic Work: Close to Slavery, MUJERES HOY, September 12, 2005, at http://www.mujereshoy.com/secciones/3323.shtml.* The majority of these workers are from rural areas and have low levels of education. Their work schedule may exceed 12 to 16 hours a day and 6 days a week. Due to the lack of regulation and information about their labor rights, domestic workers are granted little or no vacation, sick leave, or other benefits. In some cases, employers prefer to hire young women who are undocumented as they will work for less and are more vulnerable to exploitation. Some domestic workers, who have no contracts, may experience workplace violations including sexual harassment, physical and verbal abuse, retention of salaries, and unjustified termination. In addition, employers may illegitimately accuse them of robbery and then threaten to report them to authorities or have them deported if they do not obey their rules.

**Organs**

In Mexico, the donation of organs is regulated by the General Health Law and requires living donors to provide explicit, written consent. The sale of organs is prohibited. GENERAL HEALTH LAW art. 327 (*adopted* Feb. 7, 1984, D.O., *as amended*) [hereinafter GENERAL HEALTH LAW]. Transplants are overseen by the National Transplant Advisory Board and the National Center for Transplants, which maintains a National Transplant Registry coordinating the 250 hospitals authorized to conduct the surgeries.

Review of materials on the issue reveals an unclear picture of the extent of trafficking in organs in Mexico. On the one hand, many authorities claim that this type of trafficking is highly unlikely due to the technological demands and the fact that successful transplanting of an organ requires that
it be done promptly after removal. In addition, transplants usually require the participation of a large number of specialized medical personnel. OAG’s Office on Organized Crime has not prosecuted any cases of trafficking in organs to date. See Access to Information File No. 0001700137708 (September 10, 2008). On the other hand, some interviewees believe that trafficking in organs exists in Mexico, and stories regarding trafficking for the purpose of organ extraction regularly appear in the press. Interviewees reported that smugglers may make an arrangement with migrants who agree to have their organs removed and sold as part of their smuggling payment. It is believed that migrants from other countries are brought to Mexico to have their organs removed after which time they are transported to their final destination in the U.S. The media report that requests and prices for organs are placed on the internet, and reveal the common belief that children and migrants are killed to have their organs removed. More investigation is needed to uncover these types of cases. See Gardenia Mendoza Aguilar, Existence of Organ Trafficking Feared: Various Central Americans Have Been Found without Eyes, Kidneys, Heart or Kidneys, LA OPINION, January 23, 2008; Maru Garcia, Organs to the Highest Bidder: Prices Reach USD 150,000, EL OCCIDENTAL, March 26, 2008.

Legal Context

The Federal Constitution was promulgated in 1917 and incorporates important principles of the 1910 Revolution, such as the multi-party system and the prohibition of presidential re-election. In June 2008, the National Congress amended the Federal Constitution. The most recent amendments included a reform of the definition of organized crime, and a framework that will gradually transform the criminal justice system from inquisitorial to accusatorial. Both of these reforms will impact the way that trafficking crimes are prosecuted.

Mexico has a civil law structure that allows for judicial review of legislative acts. International treaties signed by the President and approved by the Senate, together with the Federal Constitution and the laws of the National Congress, constitute the supreme law of the nation. FEDERAL CONST. art. 133. In November 1999, the Supreme Court clarified that international treaties are immediately below the Federal Constitution but above federal and local laws in the legal hierarchy. This interpretation was based on the reasoning that international agreements are entered into by the Mexican state as a whole, and all authorities are responsible for the obligations assumed before the international community. International treaties are therefore a part of national legislation and can be the basis for legal action. The Federal Constitution authorizes only the President, as the head of state, and the Senate, as the body of representatives of the federal entities, to enter Mexico into international obligations.


- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (adopted Sept. 7, 1956 by U.N. Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave

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4 As part of the research process, the assessment team requested information through the Federal Law on Access to Public Information (adopted June 11, 2002, D.O., as amended). The answers provided by the respective federal agencies are cited throughout the report with their file numbers and dates of the requests. The full text of each answer is available online at http://www.infomex.org.mx/gobiernofederal/moduloPublico/moduloPublico.action, and can be accessed by typing in the file number.
Trade, and Institutions and Practices Similar to Slavery) (ratified by Mexico on June 30, 1959),

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (*adopted* Dec. 18, 1990 by U.N. G.A. Res. 45/158) (ratified by Mexico on July 1, 2003),
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*adopted* Dec. 10, 1984 by U.N. G.A. Res. 39/46) (ratified by Mexico on June 26, 1987),
- Inter-American Convention to Prevent and Punish Torture (*adopted* Dec. 9, 1985 by OAS) (ratified by Mexico on Feb. 11, 1987),
- Inter-American Convention against Corruption (*adopted* June 3, 2002 by OAS) (ratified by Mexico on April 2, 2003),
- Inter-American Convention against Corruption (*adopted* March 29, 1996 by OAS) (ratified by Mexico on May 27, 1997),
- Convention Concerning Forced or Compulsory Labour (*adopted* June 28, 1930 by International Labour Organization [hereinafter ILO]) (ratified by Mexico on Dec. 5, 1934),
• Convention Concerning the Abolition of Forced Labour (adopted June 25, 1957 by ILO) (ratified by Mexico on Jan. 6, 1959),
• Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (adopted June 17, 1999 by ILO) (ratified by Mexico on June 30, 2000), and
• Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted Nov. 21, 1997 by Organization for Economic Co-operation and Development) (ratified by Mexico on May 7, 1999).

In order to bring national norms into compliance with the Trafficking Protocol, on November 27, 2007 Mexico passed the Federal Anti-Trafficking Law. The original bill had been presented by the Senate Human Rights Commission in 2004, and civil society organizations advocated for its passage for 3 years. The law establishes the crime of trafficking in persons, creates various counter-trafficking entities, such as the Inter-Secretarial Commission, and calls for a National Program to Prevent and Sanction Trafficking in Persons [hereinafter National Anti-Trafficking Program] to address the issue of trafficking through prevention, protection, and prosecution. The Federal Anti-Trafficking Law is defined as a special law which applies throughout national territory under federal jurisdiction in conjunction with the Federal Criminal Code. The Federal Anti-Trafficking Law will prevail on issues that are not defined in the Federal Criminal Code as well as on issues that are regulated in both laws. FEDERAL ANTI-TRAFFICKING LAW art. 6. To further comply with the Trafficking Protocol, Mexico reformed the Federal Criminal Code and other complementary statutes, including the Federal Law against Organized Crime and the Federal Criminal Procedure Code.

In February 2009, the President issued Regulations to the Federal Anti-Trafficking Law (adopted February 27, 2009 by Executive Order of the President of Mexico, D.O.) [hereinafter ANTI-TRAFFICKING REGULATIONS], which provide some guidance regarding the implementation of the law, but are short, general, and largely repetitive of the law. The major shortcomings include lack of details pertaining to the responsibilities and coordination of the various agencies engaged in Mexico’s counter-trafficking efforts; limitation of the term “trafficking victims” to individuals who agree to cooperate with law enforcement authorities; failure to discuss models for identification and protection of children who are foreign nationals; omission of the foreign trafficking victims’ right to request refugee status in Mexico; and exclusion of NGOs from participation in the working groups of the Inter-Secretarial Commission. See Press Release, Collective Against Trafficking in Persons, Regulations Issued for the Law to Prevent and Sanction Trafficking in Persons do not Include the Effective Participation of Specialized Non-governmental Organizations (March 11, 2009).

As of March 2009, the National Anti-Trafficking Program, mandated by the Federal Anti-Trafficking Law, had not been drafted. The recently adopted Anti-Trafficking Regulations specify that the National Anti-Trafficking Program should be published within a year of the formal creation of the Inter-Secretarial Commission described below, i.e. by May 2010. ANTI-TRAFFICKING REGULATIONS transitional provisions no. 2, 4. State governments may have internal action plans, but these were not provided to the assessment team.

**Governmental Anti-Trafficking Infrastructure**

Following the ratification of the Convention against Transnational Organized Crime and the Trafficking Protocol, the Ministry of Foreign Affairs [hereinafter MFA] took the lead on working with other agencies to ensure that trafficking legislation was drafted and programming created. Through an inter-agency committee that was divided into a criminal section and a social section, MFA helped other agencies determine their responsibilities in relation to the Trafficking Protocol. The inter-agency committee also drafted the Anti-Trafficking Regulations. Within its own mandate of protection of Mexican nationals, MFA will train consular personnel in the field,
develop a questionnaire to identify trafficking cases of Mexican nationals abroad, and create a database to help orient programs and protection needs.

Pursuant to the Federal Anti-Trafficking Law, the Inter-Secretarial Commission was created to develop anti-trafficking policies and procedures (including the National Anti-Trafficking Program), and implement anti-trafficking laws and regulations. The following entities are included in the Inter-Secretarial Commission: MFA; Ministries of Communications and Transport, Public Safety, Labor, Social Welfare, Health, Social Development, Public Education, and Tourism; OAG; the Department of Family Services [hereinafter DFS]; INMUJERES; NMI; the National Institute of Criminal Sciences; and the National Population Council. In addition, the Inter-Secretarial Commission may request the participation of three academic experts, three representatives from the civil society, and delegates from the National Human Rights Commission [hereinafter NHRC] for consultative purposes. In contrast to the members of the Inter-Secretarial Commission, the invitees will not have the right to vote, which poses concerns for the NGO community. FEDERAL ANTITRAFFICKING LAW art. 10; ANTI-TRAFFICKING REGULATIONS art. 3.

The Inter-Secretarial Commission will be presided over by the Minister of the Interior or his or her designee, and is required to meet at least two times per year. It may also hold extraordinary sessions pursuant to its internal regulations, which are to be published in the Official Journal of the Federation by the end of May 2009. ANTI-TRAFFICKING REGULATIONS art. 5, 6, transitional provision no. 2. The Inter-Secretarial Commission will include a Consultative Sub-Commission, which will meet quarterly to analyze and issue opinions on topics relevant to the work of the Commission, and prepare progress reports on anti-trafficking programs. Id. arts. 12, 13, 16. The Inter-Secretarial Commission can also establish working groups comprised of public servants to study specific issues related to trafficking in persons. Academic experts can be invited to participate, but the Anti-Trafficking Regulations are silent on the potential involvement of NGOs. Id. art. 11. The responsibility for administrative services of the Inter-Secretarial Commission will be vested in its Technical Secretariat. Id. art. 10.

One of the most important obligations of the Inter-Secretarial Commission is the submission of annual reports to the President and National Congress regarding the results of the National Anti-Trafficking Program. To this end, OAG and other government agencies are required to inform the Inter-Secretarial Commission about measures undertaken to ensure compliance with the National Anti-Trafficking Program. FEDERAL ANTITRAFFICKING LAW art. 12 (XI); ANTI-TRAFFICKING REGULATIONS arts. 8 (IV), 18. In practice, the Inter-Secretarial Commission is still in the forming stage, but has been meeting informally since January 2008.

In January 2008, FEVIMTRA was established within OAG. FEVIMTRA is responsible for investigating and prosecuting federal crimes related to violence against women and trafficking in persons. Its director will participate in the Inter-Secretarial Commission. When trafficking activity rises to the level of organized crime and reaches federal jurisdiction, it will be investigated and prosecuted by the Specialized Unit on Smuggling of Minors, Undocumented Migrants, and Organs, and Crimes Related to Trafficking in Persons, located in the Office on Organized Crime, also of OAG. Finally, OAG’s Office on International Cooperation will oversee trafficking cases involving diplomats, consular personnel, members of international organizations, and Mexican victims trafficked abroad. It will also coordinate with authorities in cases of trafficking crimes committed by Mexicans abroad. At the state level, many of the attorneys general have designated their units on sexual crimes to receive complaints and conduct initial investigations leading to indictments in trafficking cases. Others have established specialized units on trafficking in persons. See Article 5 below.

NMI must ensure that trafficking victims are not deported and have access to migration status while their judicial proceedings are pending. NMI has made some advances, for example by elaborating internal, discretionary procedures to issue non-immigrant visas to trafficking victims. See Article 7 below.
NHRC, an autonomous organization funded by the government, has established a comprehensive program for education, training, research, and promotion of legal reform within the Office on Migration, Journalists, and Human Rights Defenders. This office will receive complaints of human rights violations related to trafficking in persons when authorities are implicated. To date, NHRC has issued three recommendations regarding trafficking victims, including a group of Chinese workers in labor exploitation in the state of Guanajuato, a Guatemalan girl in a situation of sexual exploitation in Mexico State, and a group of Mexican workers exploited in Bimini, Bahamas. See NHRC Recommendations 011/2006, 051/2008, and 001/2009.

INMUJERES, which runs programs that promote women’s human rights and has already incorporated anti-trafficking programming into its operations, is now required to participate in the formulation of public policy for the prevention and prosecution of human trafficking and the protection of victims. In particular, INMUJERES is responsible for including a gender perspective in the federal anti-trafficking programs, proposing federal models for prevention and assistance, and providing specialized trainings for shelter workers. INMUJERES will also participate in the relevant trainings for public servants and government agencies, including OAG. ANTI-TRAFFICKING REGULATIONS art. 20.

Finally, the Anti-Trafficking Regulations assign specific responsibilities regarding protection of and assistance to victims to such government agencies as DFS, MFA, OAG, and the Ministry of Public Security [hereinafter MPS]. See Article 6 below.

Civil Society and International Organizations

Many Mexican civil society organizations, focusing on such issues as human and children’s rights, violence against women, and protection of migrants and refugees, have begun working on trafficking in persons by incorporating the issue into their institutional objectives and creating specific services. These organizations are located in the Federal District and various states throughout Mexico, including Nuevo Leon, Tlaxcala, Chihuahua, Quintana Roo, Baja California, Chiapas, Guerrero, Coahuila, and Sonora, among others. Some of them, for example Fray Julian Garcés Human Rights Center in Tlaxcala, have advocated for the passage of the Federal Anti-Trafficking Law and reforms to the state criminal codes, in addition to providing assistance and legal representation to trafficking victims. Others include Sin Fronteras, I.A.P. and Daywalka in Mexico City, Fray Matias Center for Human Rights and Belen Migrant Shelter in Tapachula, Belen Migrant Refuge in Saltillo, and Center for Migrant Rights in Zacatecas.

Human Mobility, an organization of the Catholic Church, has trained hundreds of parishioners in local churches throughout the country about the differences between trafficking and smuggling, how to identify victims, and where to refer them. The Center for Studies on Development and Social Assistance [hereinafter CEIDAS], which receives funding from the DOS’s Office to Monitor and Combat Trafficking in Persons, has also conducted advocacy work, information campaigns, and seminars, and is currently preparing a state-by-state report on trafficking in persons in Mexico in collaboration with NHRC. Through a series of seminars, CEIDAS has encouraged academics to address trafficking in their research.

The National Network of Refuges – a civil network of governmental and non-governmental shelters for women and children in situations of violence – has received training on the issue of trafficking and established a protocol through which it can accept, transfer or refer trafficking victims to appropriate shelters on a case-by-case basis.

Furthermore, organizations that work with women victims of violence have adapted their programs, training, outreach, and/or shelters to accommodate security and assistance needs of trafficking victims. They include Casa Amiga in Ciudad Juarez, Center for Comprehensive Assistance to Women in Cancun, Pacific Alternatives Civil Association in Monterrey, and Bilateral Safety Corridor in Tijuana-San Diego. Organizations and networks focusing on children’s rights
are also involved, including the National Network for Children’s Rights, Common Childhood, Street Brigades, Oblata Sisters, Alliance House, House of the Mercedes, House on the Rock Shelter, Above the Bridge in Acapulco, Friendly Hand in Tapachula, Office for the Defense of Children, Infantia, and other organizations that work with street children and victims of commercial sexual exploitation.

In addition to national and local entities, international organizations, NGOs, and donor agencies have supported counter-trafficking efforts in Mexico. The International Organization for Migration [hereinafter IOM], the U.N. Office of Drugs and Crime [hereinafter UNODC], and the U.N. High Commissioner for Refugees [hereinafter UNHCR] have been involved in research, training, and, in the case of IOM, a specialized program for assisting trafficking victims who are international migrants in Mexico or Mexican migrants trafficked in the U.S. The Inter-American Commission on Women of the Organization of American States conducted a series of trainings and seminars on the issue, for example for Mexican journalists, between 2004 and 2005. Similarly, the U.S. Agency for International Development [hereinafter USAID] has organized numerous seminars that included the participation of civil society. In 2006, USAID established a Program to Assist Trafficking Victims in Mexico [hereinafter USAID-PROTEJA], funded by DOS’s Office to Monitor and Combat Trafficking in Persons. USAID-PROTEJA focuses exclusively on trafficking in persons on a national level through training of government and civil society, technical assistance for legal reform, and the creation of task forces. Training and technical assistance have been also offered to civil society by NGOs based in the U.S., such as the Coalition to Abolish Slavery and Trafficking [hereinafter CAST], Global Rights, World Vision, and the Soroptimists, among others. Furthermore, the European Commission of the European Union has supported several Mexican NGOs working on trafficking projects.

Lastly, international networks, such as the Coalition Against Trafficking in Women [hereinafter CATW] have been engaged in trafficking victim identification, training, technical assistance, and legal representation. In addition, MPS and the Federal Preventative Police [hereinafter FPP] signed an agreement with the organization Save the Children to cooperate in the fight against trafficking in persons. Through this agreement, Mexico became a member of the Latin American Network of Missing Persons, a website sponsored by OAS, IOM, and Save the Children Sweden, with the collaboration of national and international media, civil society, and participating state governments. Mexico Joins Network for Missing Latin Americans, EL UNIVERSAL/MILENIO, Nov. 20, 2006, at http://www.scslat.org/web/actualidad/interna_noti.php?xopcp=4&xlang=e&id=311; see also Disappeared Mexicans, http://www.mexicanosdesaparecidos.org. Finally, the End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes [hereinafter ECPAT] office in Mexico has worked on legislative reform pertaining to trafficking of children for sexual purposes; raised awareness about commercial sexual exploitation of children through the mass media; participated in the training of Oaxaca prosecutors; and conducted capacity-building workshops for NGOs. See ECPAT Directory: Americas/Mexico, http://www.ecpat.net/El/Ecpat_directory.asp?id=100&groupID=2.

Scope of the Report

While this report reviews the legislation, policies, and practices regarding trafficking in persons on the federal level, interviews were held in the following seven states due to their particular trafficking situations: Baja California, Chiapas, Chihuahua, Guerrero, Oaxaca, Tlaxcala, and Quintana Roo.

Baja California was identified as having high levels of trafficking for the exploitation of prostitution, commercial sexual exploitation of children, and possible trafficking of migrant workers in the agricultural sector. The state is characterized by large flows of transit migrants who may be caught up in trafficking situations either in Tijuana or transported to the U.S. Large flows of transit migrants have also been detected in Chiapas, where the situation of Central American women and children is of special concern, and where trafficking in persons for the exploitation of prostitution, domestic labor, and forced labor in the agricultural and informal sectors are
predominant. Chihuahua is known to have high levels of sexual tourism, particularly commercial sexual exploitation of children, as well as large flows of migrants in transit to the U.S. and internal migrants to the maquila sector. In Guerrero trafficking situations vary from commercial sexual exploitation of children, particularly child sex tourism in Acapulco, to the possibility of trafficking of indigenous people as temporary agricultural workers and domestic laborers. Oaxaca is characterized by high levels of migration to the U.S.; concern for trafficking of persons in the indigenous communities for agricultural work, the exploitation of prostitution, and domestic work; and potential trafficking of Central American migrants in transit through Mexico. In Tlaxcala trafficking for the exploitation of prostitution is prevalent. It occurs within the state as well as from Tlaxcala to other parts of the country and to the U.S. Lastly, Quintana Roo has high levels of trafficking for the exploitation of prostitution and forced labor in the tourism sector. The situation of Central Americans working in construction is also of special concern.
Mexico HTAT 2009 Analysis

Article 1: Relation with the United Nations Convention against Transnational Organized Crime

1. **This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.**

2. **The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.**

3. **The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.**

### Conclusion:

The Federal Anti-Trafficking Law provides for both territorial and extraterritorial jurisdiction over trafficking in persons. Mexico has 26 bilateral extradition treaties as well as appropriate legislation to comply with extradition requests. The Anti-Trafficking Regulations require OAG to create a protection program for witnesses participating in criminal proceedings. Nevertheless, existing procedures regarding witness protection are still deficient, although on the federal level and in some states witnesses may receive protection on a case-by-case basis. In 2008, Mexico reformed the federal definition of an organized criminal group. Participation in such a group is regulated as a separate offense from trafficking in persons. Mexico has made strides in recent years to bring its legislation and money laundering procedures in line with international standards. However, in practice, few prosecutions have resulted. Mexican legislation establishes appropriate criminal sanctions for corruption, but few cases are prosecuted in spite of the fact that corruption is identified as one of the principal facilitating factors in human smuggling and trafficking activity. The Federal Criminal Code penalizes obstruction of justice, but according to interviewees, acts aimed at impeding the administration of justice are commonplace in Mexico.

### Implementation Analysis:

Article 1 indicates that the Trafficking Protocol is to be interpreted together with the provisions of the Convention against Transnational Organized Crime. Some pertinent provisions from the Convention against Transnational Organized Crime are those addressing jurisdiction (art. 15), extradition (art. 16), witness protection (art. 24), participation in an organized criminal group (art. 5), money laundering (art. 6), corruption (arts. 8-9), and obstruction of justice (art. 23).

### Jurisdiction

Under the Convention against Transnational Organized Crime, Mexico may assert jurisdiction over trafficking crimes committed within its territory (territorial jurisdiction) and trafficking crimes committed outside its territory (extraterritorial jurisdiction). Territorial jurisdiction can be asserted if the offense is committed in Mexican territory, or on board of a vessel that is flying a Mexican flag, or in an aircraft that is registered under Mexican laws at the time the offense is committed. Mexico can exercise extraterritorial jurisdiction if the offense is committed against a Mexican national (“passive personality” principle), or by Mexican national or a stateless person who has his or her habitual residence in Mexico (“active nationality” principle). Mexico can also assert jurisdiction in order to protect its interests if a trafficking offense involving an organized criminal group is committed outside its territory with the aim of perpetrating a serious crime within its territory. Lastly, Mexico can exercise jurisdiction for laundering proceeds of a crime committed
outside its territory, or attempting to do so, with a view to launder proceeds of a crime within its territory. Convention against Transnational Organized Crime art. 15 (1), (2) (a)-(b), (c) (i-ii).


The Federal Criminal Code creates federal jurisdiction over all federal crimes which are committed within Mexico, including those stipulated by the Federal Anti-Trafficking Law. Federal Criminal Code art. 1 (adopted August 14, 1931, D.O., as amended) [hereinafter Federal Criminal Code]. For example, if a case of internal trafficking involves a trafficker or a victim who is a public official, or if the crime takes place on federal property (such as a federal highway, hospital, or educational facility), the crime will fall under federal jurisdiction. General Law on the Judicial Power of the Federation art. 50 (I) (adopted May 26, 1995, D.O., as amended) [hereinafter General Law on Judicial Power]. Similarly, the case will be tried at the federal level, if the crime committed in a Mexican state has any connection to a federal crime. Federal Criminal Procedure Code art. 10 (adopted Aug. 30, 1934, D.O., as amended) [hereinafter Federal Criminal Procedure Code]. In addition, if the activities of the trafficking network meet the definition of organized crime, the case will be tried under federal jurisdiction by OAG’s Office on Organized Crime unless both trafficking in persons and organized crime are classified in the state laws, the state attorney general decides to assert jurisdiction, and the crime does not otherwise fall under federal jurisdiction. Federal Law on Organized Crime arts. 2, 8 (adopted Nov. 7, 1996, D.O., as amended) [hereinafter Federal Law on Organized Crime].

In addition, human trafficking crimes will be prosecuted, investigated, and sanctioned by federal authorities when they are initiated, prepared, or committed abroad as long as they produce or aim to have an effect within the Mexican territory; and when they are initiated, prepared, or committed in Mexican territory to produce or aim to have an effect abroad. Federal Anti-Trafficking Law art. 3. Similarly, federal officials may assert jurisdiction in cases involving foreigners by establishing that the crime was prepared or initiated abroad. Trafficking crimes committed abroad, which continue being committed in Mexico, will be prosecuted according to Mexican laws whether the offender is a Mexican national or a foreigner. Federal Criminal Code art. 3. Crimes perpetrated in a foreign territory by a Mexican national against either Mexicans or foreigners, or by a foreigner against Mexicans, will be punished in Mexico according to federal laws, if the accused is in Mexico, there has not been a final judgment against the defendant in the country in which the crime was committed, and the infraction is considered a crime in both the country where it was committed and in Mexico. Id. art. 4.

Crimes are considered to have been committed in Mexico under the following circumstances:

- Crimes committed by Mexicans or by foreigners in open seas, aboard national vessels;
- Crimes committed on board of a national war vessel anchored at a foreign port or in foreign territorial waters. This applies also to national commercial vessels, whenever the criminal has not been tried by the courts of the country that owns the port;
- Crimes committed aboard a foreign vessel anchored in a Mexican port or in Mexican territorial waters, whenever the public peace is altered or whenever the offender or victim is not part of the crew. Otherwise, reciprocity shall apply;
- Crimes committed aboard Mexican or foreign aircrafts that are in Mexican or foreign territory, atmosphere, air space, or waters; and
- Crimes committed in Mexican embassies or delegations.

Id. art. 5.

In addition, Mexican legislation establishes federal jurisdiction over trafficking crimes committed under the following circumstances:
• Crimes committed in Mexican consulates or against Mexican consular personnel, when such crimes have not been tried by the courts of the country where they were committed;
• Crimes committed abroad by diplomatic personnel, official personnel of the legations of Mexico, and Mexican consular personnel;
• Crimes committed in embassies and foreign legations;
• Crimes in which the Federation is a passive subject;
• Crimes committed by a public servant or federal employee, while carrying out his or her official duties or motivated by them;
• Crimes committed against a public servant or federal employee while carrying out his or her official duties or motivated by them;
• Crimes perpetrated with motive of the duties of a federal public service, although this service is decentralized or granted by concession;
• Crimes perpetrated against the functioning of the federal public service or in the devaluation of the goods affected to the satisfaction of this service, although decentralized or granted by concession;
• Crimes that attack, render difficult, or render impossible the exercise of an attribution or responsibility reserved to the Federation.

**LAW ON JUDICIAL POWER** art. 50 (I) (b)-(j).

If the crime is committed internally in one of the Mexican states that has the crime of trafficking in persons in its state criminal code and if the crime does not fall under federal jurisdiction described above, the state’s criminal courts will have jurisdiction over the case. If the crime does not fall under federal jurisdiction and is committed in a Mexican state whose criminal code does not include trafficking in persons, then the crime cannot be prosecuted as trafficking. If the crime takes place in more than one state and does not reach federal jurisdiction, then both states could have jurisdiction over the crime and will need to coordinate according to their inter-state prosecutorial agreements. However, the general rule is that the crime will be prosecuted in the place in which the exploitation occurred. For example, the cases concerning the exploitation of prostitution in Tlaxcala that are currently under investigation fall under the competence of Tlaxcala’s attorney’s general office. However, in cases in which traffickers from Tlaxcala recruit women in Oaxaca and exploit them in Puebla, all three states would have jurisdiction. For this reason, uniformity of definitions and state-level agreements between attorney general offices are important.

On the federal level, FPP and the Federal Investigative Agency have the authority to apprehend suspects. In addition, agents of NMI have the power to detain suspects for violations of the federal immigration law, the General Population Act. FPP must respect the jurisdiction of the state and municipal police, but may enter into collaborative agreements. **LAW ON THE FEDERAL PREVENTIVE POLICE** art. 3 *(adopted Jan. 4, 1999, D.O., as amended)*. FPP officers may assist with crime investigation, arrest, detention, and the confiscation of property. They can also make direct arrests or seize property when they witness the crime taking place. *Id.* art. 4 (IV)-(V). The Federal Investigative Agency is the law enforcement agency of OAG and is responsible for carrying out arrest warrants, re-apprehension, raids, and other judicial orders. **REGULATIONS TO THE LAW ON ATTORNEY GENERAL** arts. 22-23 *(adopted June 25, 2003, D.O.)*.

The authority to prosecute trafficking crimes under federal jurisdiction is vested in OAG’s specialized units, i.e. FEVIMTRA or, if the offense falls under the definition of organized crime, the Specialized Unit on Smuggling of Minors, Undocumented Migrants, and Organs, and Crimes Related to Trafficking in Persons, located in OAG’s Office on Organized Crime. **See Article 5 below; see also LAW ON ORGANIZED CRIME** arts. 2, 8. In addition, OAG’s Office on International Cooperation will oversee trafficking cases involving diplomats, consular personnel, members of international organizations, and Mexican victims trafficked abroad. It will also coordinate with authorities in cases of trafficking crimes committed by Mexicans abroad. **LAW ON THE ATTORNEY**
On the state level, many of the attorney general offices that register the initial complaints have established specialized units related to violence against women, including domestic and sexual abuse. These specialized units will most likely be assigned to process trafficking cases based on sexual exploitation. Trafficking crimes based on labor exploitation would be assigned to the general complaint units. In practice, FEVIMTRA is suggesting negotiating concurrent jurisdiction with the states because it has more financial resources than the states to effectively investigate trafficking cases.

FEVIMTRA is currently investigating 15 cases that it hopes to prosecute as trafficking in persons under the Federal Anti-Trafficking Law. FEVIMTRA stated that several of the cases may have federal jurisdiction based on the fact that the recruiting efforts for the victims occurred abroad and would thus fall under article 4 of the Federal Anti-Trafficking Law. In one case, federal jurisdiction was asserted by utilizing the charge of migrant smuggling, a federal crime as defined in art. 138 of the General Population Law, in addition to other charges. There are also trafficking cases that are being investigated on the state level. As of March 2009, no case has been sentenced for the specific crime of trafficking in persons under the federal or state jurisdiction. The first formal charges under the Federal Anti-Trafficking Law were made in October 2008 in a case of trafficking for forced labor in Sonora. See Article 5 below.

Because the crime of trafficking in persons is newly defined on both federal and state levels and cases have just begun to be initiated, it is presently difficult to determine how all the jurisdictional issues will be resolved in practice. Interviewees suggested that it would be useful to consolidate information on trafficking cases on a national level. This may be one of the issues contained in the annual report that will be submitted by the Inter-Secretarial Commission to the President and National Congress. FEDERAL ANTI-TRAFFICKING LAW art. 12 (XI).

Extradition

The Convention against Transnational Organized Crime requires that the offense for which extradition proceedings are sought be punishable under the domestic law of both the requesting State Party and the requested State Party. Extradition may be accomplished either solely on the basis of the Convention against Transnational Organized Crime, which has not yet occurred in practice in Mexico, or via a separate bilateral or multilateral extradition treaty. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME art. 16.

The extradition procedure in Mexico is regulated by the Federal Constitution, the Law on Judicial Power, the Law on Attorney General and its Regulations, and the Law on International Extradition. In addition, Mexico has bilateral extradition treaties with 26 countries including its neighbors (the U.S., Guatemala and Belize), but does not make extradition conditional upon the existence of a treaty.

If no treaty exists between Mexico and another country, the procedure for extradition is governed by the Law on International Extradition. The formal petition of extradition must contain the following: the crime for which the extradition is being solicited; evidence proving the crime and the perpetrator (or a copy of the sentence if the perpetrator has been tried in the soliciting country); copies of the law that defines the crime; statute of limitations; sentencing guidelines; declaration stating that the law is current; original text of the arrest warrant if applicable; and personal information about the individual being extradited permitting identification and current whereabouts, if known. LAW ON INTERNATIONAL EXTRADITION arts. 10, 16 (adopted Dec. 29, 1975, D.O., as amended) [hereinafter LAW ON INTERNATIONAL EXTRADITION]. The Law on International Extradition imposes some of the conditions enumerated in art. 16 of the Convention against Translational Organized Crime. For example, the crime for which the extradition is being
The person whose extradition is requested has the constitutional right to due process as well as specific rights granted by the Law on International Extradition, such as the right to name a legal representative or receive a list of defense attorneys. FEDERAL CONST. art. 119; LAW ON INTERNATIONAL EXTRADITION art. 24.

The extradition will be denied if the person being sought has been absolved or granted amnesty; when he or she has already served a sentence for the crime in question; if the extradition request does not contain a legitimate criminal charge; if the statute of limitations has expired; or if the Mexican judicial system would have jurisdiction over the case. If the person has been subject to political persecution or has been enslaved in the country in which the crime was committed, or if the crime is within military jurisdiction, the extradition will be denied as well. LAW ON INTERNATIONAL EXTRADITION arts. 8, 9.

In practice, extradition requests are filed with the Legal Department of MFA. They are processed through OAG, and a final determination is made by a judge. While no specific time limit for the execution of an extradition request from beginning to end is established in the law on International Extradition, the process takes at least 6 months, given the time prescribed for the detention of the person, obtaining legal assistance and making objections, and for appealing the decision. Id. art 16. In practice, the procedure often takes more than a year, and has taken up to 5-10 years in some cases. See Access to Information Files No. 0001700113908 (Aug. 15, 2008) and No. 0000500116108 (Sept. 1, 2008).

During 2006, 42 formal extradition petitions were made to Mexico, 34 of which were pending at the end of the year. In 2007, 37 petitions were made, 30 of which were pending at the end of the year, and 1 of which was denied. Access to Information File No. 0001700113908 (August 15, 2008). The majority of extradition cases in Mexico are requests from the U.S. For example, in 2006, 8 extradition requests were granted: 7 from the U.S. and 1 from Spain. In 2007, 7 petitions were granted: 6 from the U.S. and 1 from Spain, and 73 people were extradited: 72 to the U.S. and one to El Salvador. In the first 8 months of 2008, 45 people were extradited: 44 to the U.S. and 1 to Peru. Access to Information Files No. 0001700113908 (August 15, 2008) and No. 0000500116008 (August 27, 2008). In addition, MFA affirms that the 31 people extradited between 2005 and August 2008 for crimes related to the freedom of psycho-sexual development as categorized by the Federal Criminal Code, were petitioned by the U.S. Access to Information File No. 0000500116108 (September 1, 2008). These were not necessarily trafficking cases, but comprehensive statistics distinguishing trafficking cases were not made available to the assessment team. According to the U.S. Embassy in Mexico, in 2007, 19 people were extradited from Mexico to the U.S. for violent sexual crimes including rape, child sexual abuse, and human trafficking. Antonio O. Garza, U.S. Ambassador to Mexico, Mexico among World Leaders in Criminal Extraditions to U.S. (Dec. 4, 2007), at http://www.usembassy-mexico.gov/eng/texts/et071204extradition80.html.

According to interviewees, Mexico and the U.S. routinely cooperate on extradition cases. Interviewees named several cases of Mexican nationals who had been extradited from or back to Mexico based on charges related to trafficking in persons. For example, Juan Luis Cadena-Sosa was extradited from Mexico to the U.S. in December 2007, and sentenced in September 2008 by a U.S. district court to 15 years in prison for conspiracy to hold persons in a condition of involuntary servitude; conspiracy to recruit, harbor, and transport illegal aliens for the purposes of prostitution; and conspiracy to extort collections of extended credit to the aliens. See Press Release, DOJ, Man Sentenced for Human Trafficking, Alien Smuggling Charges in Florida (Sept. 3, 2008), at http://www.usdoj.gov/opa/pr/2008/September/08-crt-771.html. Jean Succar Kuri, another Mexican, was extradited in 2006 from the U.S. to Mexico to face charges of child pornography, statutory rape, sexual assault, and smuggling of minors. He remains in prison while his criminal case is pending. In the U.S. v. Carreto case, one person was extradited from Mexico
and sentenced in July 2008 for trafficking for the purposes of the exploitation of prostitution. Two defendants in the U.S. vs. Paoletti case were extradited as well and sentenced in the U.S. in 2006.

Mexico also issues extradition petitions to other countries through MFA at the request of OAG. For example, between 2000 and 2007, Mexico received 142 people through extradition requests made to other countries. Gabriel Leon Zaragoza, The Federal Institute on Access to Information Orders the Foreign Ministry to Provide the Total Number of Cases of Extradition, LA JORNADA, August 14, 2008. Between 2007 and July 2008, Mexico received 25 people through the extradition procedure: 22 from the U.S., 2 from Spain, and 1 from Canada. See Mexico has Extradited 137 Criminals, the Majority to the United States, EFE, July 31, 2008, at http://www.univision.com/content/content.jhtml;jsessionid=ZZZRZTQR3UCG4CWIAAOSFEYKZAAB2IW?cid=1618733. In 2006, the U.S. granted the extradition of a suspected child trafficker to Mexico. TIP REPORT at 181.

Witness Protection

The Convention against Transnational Organized Crime, read in conjunction with the corresponding provisions of the Trafficking Protocol, requires Mexico to take appropriate measures to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning trafficking offenses and, as appropriate, for their relatives and other persons close to them. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME art. 24 (1).

Constitutional amendments passed on June 18, 2008 require OAG to guarantee protection for witnesses, victims, and other people participating in, or affected by, judicial proceedings. Judges are required to ensure compliance with this guarantee. FEDERAL CONST. art. 20 (V). The Law on Organized Crime also mandates that OAG offer sufficient support and protection to judges, expert witnesses, witnesses, victims, and other people when it is needed as a result of their participation in a trial for a crime defined in this particular law. LAW ON ORGANIZED CRIME art. 34. The obligations of OAG on the federal level are set out by the Guide for Comprehensive Assistance to Victims of Crime. Access to Information File No. 0001700024108 (March 12, 2008).

Bribing or forcing a witness to make false declarations in judicial proceedings through intimidation or any other means constitute federal crimes, punishable by 2-6 years in prison and a fine of 100-300 days of minimum wage, equivalent to MXN 5,259-15,777 (approximately USD 492-1,477)⁵. FEDERAL CRIMINAL CODE art. 247.

The Federal Anti-Trafficking Law mandates protection for trafficking victims and other people affected by the crime, but it does not set out specific measures for witness protection. See FEDERAL ANTI-TAFFICKING LAW Chapter IV. However, the Anti-Trafficking Regulations require OAG to produce relevant internal norms and regulations and create a program aimed at protecting those involved in criminal proceedings, including victims, witnesses, and their families, from threats, corruption, and intimidation by the accused or his or her agent. The program, devised in collaboration with MPS, will specify available security measures, and establish procedures for accessing them. It is required that candidates for inclusion in the protection program be carefully selected based on the level of danger posed to them, and the nature of the case. Preference will be given to cases that involve organized criminal groups. ANTI-TAFFICKING REGULATIONS arts. 25, 29. In addition, OAG has the power to file a motion with a judge to order appropriate measures for the protection of privacy, identity, and dignity of victims.

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⁵ In this report, Mexican pesos (MXN) are converted to United States dollars (USD) at the average rate of conversion at the time when the HTAT interviews were conducted (USD 1.00 = MXN 10.68).
and witnesses at the trial stage, such as rendering testimony through indirect means or from remote locations. *Id.* art. 31.

OAG reports providing protection to witnesses, victims, and other affected persons that participate in cases involving organized crime, including economic, housing, medical, educational, and employment assistance. The protection measures include personal security guards, police observation, legal measures, and concealment of the identity of the witness until the penal action is taken. In order to request protection, a witness must personally appear in OAG’s Office on Organized Crime to testify before a prosecutor. If the information is considered to place the witness at risk in terms of his physical integrity, the prosecutor will corroborate the authenticity of the information and determine whether or not it provides sufficient evidence to investigate a case of organized crime. If this is the case, the prosecutor will prepare a request for protection that includes the necessary measures, economic support, and time period. These measures will be provided throughout the course of criminal proceedings and may continue after the case is resolved, if necessary. See OAG, Protection for Persons, http://www.pgr.gob.mx; see also *Convention against Transnational Organized Crime* art. 24 (2)(b).

Furthermore, in March 2004, OAG initiated procedures by which witnesses residing in other countries may testify through videoconferences from Mexican consulates. The announcement of the program states that it was developed as a measure to comply with the Convention against Transnational Organized Crime. *For the First Time in Mexico Witnesses Will Be Able to Testify from Abroad through a Video Conference System*, OAG BULLETIN No. 315, March 2004, available at http://www.pgr.gob.mx/cmsocial/bol04/mar/b31504.htm.

The Federal District and many of the Mexican states have enacted laws to protect victims of crimes, which often contain provisions that extend to the protection of witnesses, either explicitly or as defined as people affected by the crime. See Article 6 below. For example, Chihuahua’s legislation establishes that the other protected persons may include individuals who have an indirect or direct relationship with the victim, as well as offended persons if there is some indication that they could be affected by the perpetrator of the crime or another person involved in the crime. By law, victims, the offended, and other persons in need of protection should receive services including protected housing, board, and medical and psychological assistance. *Chihuahua State Law on Assistance and Protection of Crime Victims and Other Offended Persons* art. 7 (adopted Jan. 1, 2007, State Registry).

In the majority of cases, witnesses are not offered sufficient protection by Mexican authorities. Among interviewees, only one organization had worked with authorities to try to obtain protection for witnesses in a case of child pornography. While hesitant to offer details, the organization’s representative said that the state had provided housing for a limited period of time, but the organization had to find long-term accommodation for the witnesses. In addition, the interviewee stated that authorities were accustomed to working with witnesses to drug-trafficking cases and were not prepared to work with women or children who had information about human trafficking cases. In fact, in the opinion of the interviewee, the actions and attitudes of the officials were harmful to the victim witnesses as they made disparaging comments to them. On the positive side, interviewees invoked the cases of two directors of NGOs who have been provided with state security due to the threats they had received as a result of their work with trafficking victims. This protection has been ongoing since 2005 and includes the provision of bodyguards.

In April 2008, the Director of FEVIMTRA, Guadalupe Morfin, addressed the issue before the National Congress and urged the creation of specific legislation for the protection of witnesses in trafficking cases. She stated that in addition to social tolerance for trafficking in persons, people are afraid to testify and ensuring their protection could help them feel more secure. *Changes Requested Against Trafficking*, REFORMA, April 3, 2008. FEVIMTRA is presently in the process of defining measures to protect witnesses and in practice is providing shelter, medical, and psychological attention in the cases currently under investigation.
It is also important to note that OAS is working on the issue of victim and witness protection within the framework of the Meeting of Ministers of Justice or other Ministers or Attorneys General of the Americas. During its seventh meeting, OAS urged its member states to adopt legislation and other measures to ensure the effective protection of victims and witnesses, while at the same time promoting their relocation through expedited cooperation mechanisms. *Conclusions and Recommendations of REMJA-VII, 7th mtg. of Ministries of Justice or Other Ministries or Attorneys General of the Americas, OAS Doc. OEASer.K/XXXIV.7.1 REMJA-VII/doc.7/08 rev. 1 (April 30, 2008).*

**Participation in an Organized Criminal Group**

When criminalizing trafficking, Mexico is obliged to take into consideration the criminalization of participation in an organized criminal group, as set forth in the Convention against Transnational Organized Crime. *Convention against Transnational Organized Crime* art. 5.

The definition of organized criminal group in Mexican legislation was amended on June 18, 2008 and currently states that an organization of three or more persons whose goal is to commit crimes in permanent or reiterated form is *de facto* an “organized criminal group.” *Decree Reforming the Constitution of the United States of Mexico (Adopted June 18, 2008, D.O.)*. The definition is similar to the one in article 2(a) of the Convention against Transnational Organized Crime, but does not require that the criminal group seek a financial or material benefit. The Law on Organized Crime regulates the participation in an organized criminal group as a separate offense from human trafficking and covers the following crimes: trafficking in persons, trafficking of organs, pornography of persons under 18 years of age or of persons incapable of understanding or resisting the act, sex tourism, human smuggling, terrorism, crimes against health, falsification or alteration of currency, operations carried out with resources from illicit sources, arms trafficking, and corruption of persons under 18 years of age or of persons incapable of understanding or resisting the act. *Law on Organized Crime* art. 2. All of these crimes fall under federal jurisdiction provided that they meet one of the jurisdictional requirements set forth in the Law on Judicial Power and the Federal Anti-Trafficking Law. *See Law on Judicial Power* art. 50; *Federal Anti-Trafficking Law* art. 3.

Jurisdiction over trafficking crimes committed by organized criminal groups is determined by whether or not the state regulates such crimes either in its state criminal code or within a separate state law on organized crime. If the state law covers trafficking in persons that involves organized crime, the state may have concurrent jurisdiction. Of the seven states visited for this study, only Baja California has separate laws on organized crime and trafficking in persons (similarly to the Federal District). *See Law on Organized Crime of Baja California (Published Jan. 2, 2004, State Registry).* The criminal codes in the other states covered by this report contain a comparable crime of organized criminal conduct, but the relevant provisions do not require that the conduct be continuous or reiterated. If the state law does not address trafficking in persons involving organized crime, then federal authorities can assert jurisdiction over the case, and it will be prosecuted by OAG’s Specialized Unit on Smuggling of Minors, Undocumented Migrants, and Organs, and Crimes Related to Trafficking in Persons, located within the Office on Organized Crime. *See Article 5 below.*

The issue of whether state or federal authorities have jurisdiction over trafficking crimes committed by organized criminal groups is still being played out in practice. First, the crime of trafficking in persons was incorporated into the Law on Organized Crime at the same time when the Federal Anti-Trafficking law was passed. Thus, experience prosecuting these crimes is limited. Second, OAG’s Office on Organized Crime has traditionally focused on drug trafficking crimes and has limited resources to investigate and prosecute cases of trafficking in persons. In practice, some states that include organized crime under their state laws have begun investigations and prosecutions of trafficking cases. For example, in a recent case in the Federal District, 28 people were detained and accused of trafficking in persons. The Federal District prosecutor stated that he would seek indictments for the crimes of pimping, corruption of minors,

When cases are handled on the federal level, OAG has broad powers of investigation, including the powers to issue arrest warrants, search for and submit evidence, verify judgments, and request the application of penalties. In investigations involving organized crime, law enforcement agencies may utilize infiltration agents, wiretapping of private communications, offering rewards, providing for the protection of persons, reducing sanctions to secure effective co-operation of persons involved in the criminal activity, and broader authority to seize assets. See INTERNATIONAL MONETARY FUND, MEXICO: REPORT ON THE OBSERVANCE OF STANDARDS AND CODES – FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING RECOMMENDATIONS FOR ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM (Country Report No. 05/436) at 4 (2005) [hereinafter IMF REPORT].

If an organized criminal group commits the crime of trafficking in persons, its members will be prosecuted for organized crime as well as the trafficking offense. The penalty for leaders, administrators, and supervisors of a criminal group that committed the crime of human trafficking is 8-18 years in prison and a fine of 500-25,000 days of minimum wage, i.e., MXN 26,295-1,314,750 (approximately USD 2,462-123,104). The penalty for the rest of the members is 4-8 years in prison and 250-1,250 days of minimum wage, i.e. MXN 131,475-657,375 (approximately USD 1,231-61,552). Penalties are increased by 50% if authorities are involved or if the criminal group utilized children or people lacking mental competence in the commission of the crime. In all cases of organized crime the objects, instruments, and proceeds of the crime as well as the property of the sentenced criminals must be seized. LAW ON ORGANIZED CRIME art. 2, 4-5.

Mental intent is a requisite element of any crime. The standard defenses for crimes enumerated in the Federal Criminal Code include acting against one’s will, mental incapacity, and self-defense. FEDERAL CRIMINAL CODE arts. 8, 15.

In Mexico, trafficking in persons is committed by individuals, family groups as well as larger networks of organized crime. For example, several of the cases involving Mexicans in the U.S. were perpetrated by Mexican families or people from the same community, such as the Carreto, Cadena-Sosa, and Paoletti cases mentioned above. The trafficking cases originating in the region of Tlaxcala have been organized by extended family groups and community members.

Mexican officials estimate that there are 47 organized criminal groups involved in trafficking in persons in Mexico. These groups have leaders from Mexico, Central America, and the U.S., and operate primarily in Mexico City and 17 states, including Baja California, Chiapas, Quintana Roo, and Jalisco. See e.g., *47 Organizations in Mexico that Traffic with Children and Women from Central America*, AFP, March 28, 2007. In Guerrero alone, the Office on Organized Crime has identified 14 criminal groups involved in child pornography and trafficking.

To date, the Office on Organized Crime has prosecuted three cases related to trafficking in persons, but none under the Federal Anti-Trafficking Law. All three cases involve criminal networks implicated in sexual exploitation of women, whose leadership consisted of Mexican nationals and foreigners from Ecuador and Guatemala. The cases do not include specific charges for trafficking in persons, but do include charges for organized crime. None of these cases has been resolved yet. The Office on Organized Crime has also prosecuted several cases of child pornographers’ networks since 2005. See Access to Information File No. 000170013907 (July 9, 2007); Aurora Harrison, *14 Organizations Dedicated to Trafficking in Persons in Guerrero, EL SUR*, March 29, 2007; *Lugo Felix Had Information about a Powerful Network of Organized Crime*, LA JORNADA, May, 15, 2007.
The press also reports that Russian, Cuban, Japanese, and Argentinean mafias are involved in trafficking for the exploitation of prostitution in Mexico. According to these reports, the embassies of Russia, Hungary, and the Czech Republic have received complaints from women who were brought to Mexico with promises of high paying jobs and ended up in situations of sexual exploitation. Rodrigo Vera, *Globalized Prostitution*, PROCESO 1647, May 25, 2008.

**Money Laundering**

Because traffickers often resort to money laundering to conceal illicit profits stemming from the trafficking crime, it is imperative that Mexico prosecute laundering of proceeds of crime in conjunction with trafficking in persons, in accordance with the Convention against Transnational Organized Crime. *Convention against Transnational Organized Crime* art. 6.

Before 1996, money laundering in Mexico was regulated by the Federal Tax Code. Since 1996, the conduct has been criminalized by the Federal Criminal Code and the Federal Criminal Procedure Code, as well as the Law on Organized Crime. The crime is considered a felony which implicates many procedural issues including the fact that the persons charged with the crime can be arrested and held without bail.

The definition of money laundering under the Federal Criminal Code is broad, and encompasses financial resources, rights, and any type of property including real estate. Transactions within Mexico, and to and from Mexico, are covered. The person must know the illicit nature of the resources and must carry out the transaction for the purpose of impeding knowledge of the origin, location, destination, or proprietor of the resources, or in order to contribute to an illicit activity. The crime applies to all natural persons, including employees of financial institutions and government financial officers, but does not extend to corporations or other legal persons. When an issue of public safety is involved, a judge can order the suspension or dissolution of a legal entity if one of its members or representatives engages in criminal conduct in the name of, on behalf of, or for the benefit of the legal entity. The legal entity may be ordered to pay fines as reparation for any damages caused by criminal offenses committed by its directors or managers. *Federal Criminal Code* art. 400 (II).

The punishment for money laundering ranges from 5 to 15 years in prison and a fine of 1,000-5,000 days of the federal minimum wage, equivalent to MXN 52,590-262,950 (approximately USD 4,924-24,620). The sentence will be increased by 50% if the crime is committed by a government official who is in charge of the prevention, investigation, or prosecution of crimes. In addition, the official charged will be barred from government employment for a period equal to the length of the prison term. Whether the resources in question constitute proceeds of an illicit activity must be demonstrated through evidence that they result directly or indirectly from a crime or that their legitimate origin cannot be accredited. *Id.* art. 400 (II); *see also* IMF REPORT at 4.

Financial transactions are supervised by the Ministry of Finance and Public Credit [hereinafter MFPC] and several departments within MFPC including: the Financial Intelligence Unit, the Office of the Federal Fiscal Attorney, the General Customs Administration, and the Service for the Administration and Alienation of Assets.

In 2000, Mexico was admitted as a full member to the Financial Action Task Force on Money Laundering [hereinafter FATF], established by the G-7 Summit held in Paris in 1989. In 2004, MFPC issued various regulations applicable to credit institutions, securities firms, investment companies, licensed foreign exchange companies, savings and loan companies, insurance companies, other insurance intermediaries, bond companies, and retirement funds, establishing their responsibilities to track and report financial transactions. In the same year, the Financial Intelligence Unit was created in MFPC as part of an integral strategy to prevent and eradicate

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6 The definitions of natural and legal persons in the Mexican legal system are presented in Article 5 below.

The Financial Intelligence Unit is in charge of receiving, analyzing, and transmitting three types of reports to MFPC: unusual, of concern, and relevant, as well as any other type of financial information related to money laundering. Financial institutions are required to collect and maintain records of customer identification information, all customer transactions, and customer contracts. Transactions performed in monetary instruments exceeding a daily aggregate of USD 10,000 in value must be reported to the Financial Intelligence Unit. All suspicious or unusual transactions must also be reported. See MFPC, Financial Intelligence Unit, http://www.apartadoshacienda.gob.mx/uif/index.html.

The investigation and prosecution of money laundering offenses is the responsibility of OAG, working in conjunction with the Financial Intelligence Unit of MFPC. OAG has two specialized investigative units dedicated to financial crimes, including money laundering. One, the Specialized Unit for the Investigation of Operations Made with Illicit Resources is located within the Office on Organized Crime. The other unit specializing in the investigation of tax and financial offenses is located in the Federal Crimes Unit. Between September 2007 and August 2008, the Office on Organized Crime seized more than USD 50 million and MXN 32 million through its anti-money laundering operations. OAG, SECOND ACTIVITY REPORT (2008).

In money laundering cases involving financial institutions that are part of the formal financial sector, official complaints must first be filed by the Office of the Federal Fiscal Attorney before money laundering charges can be initiated. IMF REPORT at 4.

Credit institutions are obligated to establish mechanisms and procedures to prevent and detect acts or omissions that may be related to the crimes of terrorism or money laundering. Credit institutions must also submit reports on cases related to these crimes to the Federal Revenue Agency through the National Commission on Banking. They may also exchange information with the objective of strengthening preventative measures and to better detect cases of money laundering. LAW ON CREDIT INSTITUTIONS art. 115 (adopted July 18, 1990, D.O., as amended).

In spite of the new regulations and procedures to identify and report suspicious financial activity, the Office of the Federal Fiscal Attorney has reported that the effectiveness of the Mexican government to combat money laundering is minimal. The head of the Financial Intelligence Unit has stated that convictions for money laundering have occurred in cases detected by law enforcement in routine inspections along the border, rather than through the financial reporting mechanisms. Roberto González Amador, Mexico Very Vulnerable to Money Laundering According to Head of Financial Intelligence Unit, LA JORNADA, October 5, 2007. Financial authorities charged with money laundering investigations have identified various networks dedicated to money laundering, but the cases move too slowly to have tangible results.

OAG initiated 182 cases for money laundering in 2006, 162 in 2007, and 119 between January and July 2008. However, according to OAG, none of these cases were related to either pimping or human trafficking. Access to Information File No. 0001700130908 (Sept. 1, 2008).

Interviewees stated that the financial procedures to detect and investigate money laundering cases have yet to yield concrete results, but that it is a long process which has involved comprehensive reforms within hundreds of institutions.
Corruption

Trafficking in persons often occurs with the assistance of corrupt government officials. In fact, corruption is noted as one of the primary factors that facilitate trafficking in persons in Mexico in official as well as civil society seminars. For example, the conclusions of an international seminar on human trafficking organized by MFA state that trafficking in persons is benefited by corruption and money laundering and that in order to address the issue, the national strategy against human trafficking must include effective institutional coordination to combat corruption and restrict money laundering activities. MFA, INTERNATIONAL SEMINAR ON HUMAN TRAFFICKING (2004), at http://www.crmvs.org/Conclusiones_Seminario_trata_SRE_nov04-Mexico.doc. Thus, Mexico should ensure that anti-corruption provisions exist and that they comply with the Convention against Transnational Organized Crime, as well as other relevant international and regional treaties it ratified including the U.N. Convention Against Corruption, Inter-American Convention Against Corruption, and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted by the Organization for Economic Cooperation and Development.

In 2002, Mexico passed the Federal Law on Access to Public Information and the Civil Service Act, establishing the basis for transparency and accountability in the government. The states followed by passing state legislation on access to information, duplicating to varying degrees the federal law. In addition, civil servants in all three branches of government are required to file financial disclosure statements. FEDERAL LAW ON THE RESPONSIBILITIES OF CIVIL SERVANTS arts. 70-80 (adopted December 31, 1982, D.O., as amended).

In the Mexican legal system corruption is a crime defined as bribery. The definition of the crime includes the request, offer or promise, as well as acceptance of money or gifts by a person or through an intermediary to do or refrain from doing something related to the duties of a public official. The offense is also committed by a person who promises or offers the money or gift. FEDERAL CRIMINAL CODE art. 222. This definition is in compliance with the Convention against Transnational Organized Crime which requires that both the offering by a person or the solicitation or acceptance by a public official be covered by the offense. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME art. 8.

When the amount of the gift or promise is equal to or less than 500 times the minimum daily wage established in the Federal District, equivalent to MXN 26,295 (approximately USD 2,462), or cannot be quantified, the crime is punishable by 3 months - 2 years in prison, a fine of 30-300 days of minimum wage, and destitution from employment in public service from 3 months to 2 years. If the amount of the gift or promise is more than 500 times the minimum daily wage established in the Federal District, the sentence will be 2-14 years in prison, 300-1000 days of minimum wage, equivalent to MXN 15,777-52,590 (approximately USD 1,477-4,924), and suspension from employment in public service for 2-14 years. In addition, the money or gift becomes the property of the state. The crime extends to situations whereas the promise or offer of an undue advantage is made to a foreign public official for development, or as part of, international commercial transactions. Id. art. 222 (II).

The seven states covered by this report have the crime of bribery in their state criminal codes. All of them establish the definition of public official and all cover the basic requirements of the Convention against Transnational Organized Crime.

In addition to the crime of bribery, the Federal Criminal Code sanctions more than 15 corruption-related crimes committed by public servants, including unlawful exercise of public service, abuse of authority, intimidation, and embezzlement. Id. arts. 214-215, 219, 223.

According to Transparency International, corruption has been pervasive for many years in Mexico, but transparency in federal public administration has improved since the enactment of the 2002 Federal Law on Access to Public Information. The law required federal government
agencies to set up internal transparency offices dedicated to responding to requests for public information. Federal offices have liaison offices that can receive requests. Requests can also be made over the internet either through the agencies’ sites or directly through the federal access to information site. In addition, an autonomous Institute on Access to Public Information was established to ensure that all people have access to public information, and to teach government officials and civil society about the new law and how to utilize the electronic system for information requests contained on each of the federal ministries’ web sites. See Institute on Access to Public Information, http://www.ifi.ai.org.mx. The federal system works efficiently and the response period for requests is 20 working days.

At the same time the Ministry of Public Administration [hereinafter MPA] was created to promote transparency and accountability within the federal government and to head up efforts to prevent and sanction corruption on the federal level. MPA has an electronic complaint mechanism and a free phone line, 01800funcion, through which complaints may be made against public officials. See Center for Citizen Contact, http://200.34.175.29:8080/wb3/wb/SFP/quejas. There is also a National Program to Combat Corruption and Promote Accountability and Administrative Development that works to prevent, detect, control, and sanction practices of corruption and impunity. Information on the advances made through this program are available at http://www.programaanticorrupcion.gob.mx/presentacion.html. Finally, OAG has a toll-free telephone and e-mail service to report acts of corruption, which is open 24 hours a day and 365 days per year. See OAG, Inspector General, http://www.pgr.gob.mx/Combate%20a%20la%20Delincuencia/Combate%20a%20la%20Corrupcion/Visitaduria%20General/Visitel.asp.

In spite of these efforts, corruption in Mexico is perceived as significant and remains prevalent. Mexico ranked 72nd out of 179 countries in Transparency International's Corruption Perceptions Index [hereinafter CPI] for 2007, with a CPI score of 3.5 (on a scale from 0, highly corrupt, to 10, highly clean). TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2007, available at http://www.transparency.org/policy_research/surveys_indices/cpi/2007. According to CPI, no progress has been made in fighting corruption in recent years. Between 2003 and 2007, Mexico’s CPI score has fluctuated between 3.3 and 3.6.

Per Mexican NGO Transparency Mexico, in 2007 there were over 197 million acts of corruption in the use of public services. These acts represented MXN 27 million (approximately USD 2,559,247). The same study revealed that in 14.7% of cases individuals paid a bribe when filing a case with a court; and in 24% of cases, a bribe was paid to avoid being detained, when making a criminal complaint, or in order to ensure a follow-up on a case previously filed. TRANSPARENCY MEXICO, NATIONAL INDEX ON CORRUPTION AND GOOD GOVERNMENT 2007, available at http://www.transparenciamexicana.org.mx/ENCBG.

According to the Office on Crimes Committed by Public Servants, there were 91 incidences in 2006 and 69 in 2007 of public servants’ involvement in one of the conducts classified by the Federal Criminal Code as crimes committed by public servants, e.g., abuse of power, bribery, intimidation, and falsification of documents. OAG, Crimes Committed by Public Servants, http://www.pgr.gob.mx/Combate%20a%20la%20Delincuencia/Delitos%20Federales/Delitos%20Cometidos%20por%20Servidores%20Publicos/Acciones%20y%20resultados.asp.

Pursuant to a 2005 public opinion survey, the general perception among Mexicans is that there is no rule of law. Rather, only the trafficking of influences counts and the opinions of common citizens do not. Individuals surveyed expressed clear conviction that the origin of the problem is in the structural corruption that is part of every day life. Their reasoning is that if the political elite do not follow the rules, why should they. See SILVANA RIVERA, MEXICAN MARKET RESEARCH AND PUBLIC OPINION ASSOCIATION, TIP PROJECT RESEARCH RESULTS (2005).

The general climate of corruption in Mexico is one of the primary reasons why detecting and prosecuting trafficking cases has been and will continue to be difficult. One of the major obstacles is the fact that when a victim files a criminal complaint, bribes often have to be paid to
the prosecutor to initiate the investigation. One private attorney claimed that the dilemma is constant. If you refuse to pay, the investigation does not occur and you cannot achieve justice for your clients. If you do pay, you are buying into the system and risking the case as well. If you file a complaint regarding corruption, your case will be stalled, you will have to spend a lot of time following up, and the possibility of your client prevailing diminishes.

Another obstacle is that non-corrupt officials are afraid to investigate cases that would implicate people with money or power, or expose corrupt officials. While still pending investigation, this appears to be one of the issues in the case of Jose Nemesio Lugo of OAG who had been working on smuggling and trafficking cases before being assassinated outside of his office in 2007. In an interview before his death, he told one of the journalists with whom the assessment team met that he had information on governors, judges, businessmen, and public officials from OAG and MOI who were involved in the trafficking rings. The murder of Jose Nemesio Lugo is still under investigation.

Many authorities interviewed for this report mentioned the state's inability to protect them as one of the reasons that they would not push too hard on cases which would expose people with political power. One local prosecutor pointed out the number of officials who had been killed in his office within the last year, and told the assessment team that with the human trafficking responsibilities added to the already complicated caseload of crimes against women and children, the risk of being assassinated was too great to continue the job.

On a local level, interviewees described how corruption works to allow illegal enterprises, such as brothels, to remain in business. Many public officials know that the crime of pimping is being committed, but they do not report it due to the fact that the people involved in the immediate or extended business are friends, family members, or because they have received or want to receive some type of benefit. See RODOLFO R. CASILLAS, TRAFFICKING OF WOMEN, ADOLESCENTS, GIRLS AND BOYS IN MEXICO: AN EXPLORATORY STUDY IN TAPACHULA, CHIAPAS (2006). Interviewees confirmed these patterns of corruption in all of the seven states visited for this report, and mentioned as an example the case of child sex tourism in the center of Acapulco. Interviewees described that the police officers watch hotels where sex tourism occurs and when they see a foreigner leaving a hotel, they threaten to arrest him or her. In order to avoid the arrest, the foreigner is usually willing to pay large sums of money.

**Obstruction of Justice**

When criminalizing trafficking, Mexico should take into consideration the obstruction of justice offenses set forth in the Convention against Transnational Organized Crime. These additional charges are applicable in a situation where, for example, a trafficker intentionally threatens a victim who is scheduled to testify or an officer of the court, in an attempt to thwart the legal proceedings initiated against him or her. **CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME art. 23.**

In Mexico, any person who either bribes or forces a witness, an expert witness, or an interpreter to make false declarations in a judicial procedure through intimidation or any other means will be sentenced to 2-6 years in prison and a fine of 10-300 days of minimum wage, equivalent to MXN 5,259-15,777 (approximately USD 492-1,477). However, if the person testifying retracts the false statement before the sentencing, the penalty is reduced to a fine of 30-180 days of minimum wage, equivalent to MXN 1,577-9,466 (approximately USD 147-886). **FEDERAL CRIMINAL CODE arts. 247-248.**

In addition, a threat or use of moral or physical force to impede an authority from carrying out official duties, or forcing an authority to carry out an illegal act, are both crimes. These crimes also apply to judges. The sanctions for these crimes are 3-8 years in prison and a fine of 500-1,500 days of minimum wage, equivalent to MXN 26,295-78,885 (approximately USD 2,462.07-7,386.23). It is also illegal for a public official to act or fail to act in a way that obstructs the
administration of justice, or in a way that creates an advantage for one party. The penalty for this crime is 3-8 years in prison, 500-1,500 days of minimum wage, equivalent to MXN 26,295-78,885 (approximately USD 2,462.07-7,386.23), and removal from public service for 3-10 years. Id. arts. 180-181, 225 (VII).

State criminal codes have similar provisions pertaining to obstruction of justice. For example, the Oaxaca State Criminal Code lists 42 crimes that can be committed by public officials. See OAXACA STATE CRIMINAL CODE art. 208 (I-LXII) (adopted April 24, 2004, State Registry).

Interviewees stated that obstruction of justice is commonplace in Mexico, particularly within the criminal justice system. Accused persons frequently pay witnesses to make false statements during criminal proceedings, and authorities commonly accept bribes to destroy evidence, prolong criminal proceedings through delays in investigations, or refrain from carrying out judicial orders, such as arrest warrants. For example, in the case of a child trafficking victim from Guatemala, who was identified only after being thrown from the third story window of a hotel, NHRC stated in its recommendation against the Mexico State attorney general, that the prosecutors in the case refrained from conducting the investigation, allowed evidence to be destroyed, put the case on hold after turning over the child to NMI officials for her deportation, and released her from the hospital in spite of the fact that she was unable to sit or walk and would later require three additional surgeries. RECOMMENDATION 51/2008 REGARDING THE CASE OF THE CHILD V1 (issued Oct. 14, 2008 by NHRC). In another case, pertaining to child sexual exploitation in Oaxaca, authorities ignored arrest warrants and left the case pending for 5 months. RECOMMENDATION 04/2008 (issued February 5, 2008 by NHRC); see also Article 3 below.

Article 2: Statement of Purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Conclusion:

Mexico has begun to establish measures to prevent and combat trafficking in persons and to protect and assist trafficking victims through the Federal Anti-Trafficking Law, the Inter-Secretarial Commission, and the forthcoming National Anti-Trafficking Program. To date, however, the majority of anti-trafficking efforts have been conducted by NGOs. The Federal Anti-Trafficking Law sets out a specific definition of the trafficking crime that utilizes similar language to the Trafficking Protocol. In addition, 25 of the 31 states and the Federal District have included a specific crime of trafficking in persons in their criminal codes, although not all of the provisions comply with the definition of trafficking contained in the Trafficking Protocol. While no trafficking cases have reached the sentencing stage to date, several trafficking-related cases involving sexual exploitation have been prosecuted, particularly through OAG’s Office on Organized Crime. In addition, OAG’s newly formed FEVIMTRA has investigated 24 cases and issued 2 formal indictments. The first indictment under the Federal Anti-Trafficking Law was made in October 2008. Mexico has signed a number of bilateral agreements with Belize, Guatemala, El Salvador, and the U.S. to work collaboratively to prevent and prosecute trafficking cases. Shared information has resulted in several prosecutions, particularly in cases involving Mexican victims in the U.S.

Implementation Analysis:

Prevention

There had been few national policies or programs specifically aimed at preventing trafficking in persons before the Federal Anti-Trafficking Law was passed. The Federal Anti-Trafficking Law contains language specific to prevention, and since its adoption the Mexican government has begun establishing relevant measures through the Inter-Secretarial Commission. By law, the Inter-Secretarial Commission is required to develop prevention campaigns and elaborate the National Anti-Trafficking Program, which must include prevention policies based on safeguarding human dignity and human rights, with special reference to children, adolescents, and women. In practice, however, the National Anti-Trafficking Program was still pending at the time this assessment was completed, and the Inter-Secretarial Commission had yet to make public its specific procedures. It was also unclear how the funding for the Inter-Secretarial Commission would be allocated. Nevertheless, various government agencies have developed information and awareness-raising campaigns that relate to their specific mandates. On the national level, three agencies have been particularly active in preventing trafficking in persons: INMUJERES, MFA, and NMI. Also on the local level a number of state and municipal agencies have developed preventive programs, in some cases on issues that may be unknown to the federal agencies. However, the majority of anti-trafficking efforts to date have been conducted by NGOs. See Article 9 below.

Although no legislative reforms have occurred to implement less restrictive immigration policies with the goal of preventing trafficking in persons, some ad hoc procedures have been created to
provide protection to trafficking victims so that they may remain in the country during their legal proceedings. See Article 7 below.

**Prosecution**

Strategies to combat trafficking in persons are centered upon the prosecution of trafficking in persons as a separate crime. The Federal Anti-Trafficking Law sets out a specific definition of the trafficking crime that utilizes similar language to the Trafficking Protocol. In addition, 25 of the 31 states and the Federal District have included a specific crime of trafficking in persons in their criminal codes, although not all of the provisions comply with the definition of trafficking contained in the Trafficking Protocol. See Article 3 below.

The minimum sanctions provided by the federal law are 6-12 years in prison and a fine of 500-1,500 days of the federal minimum wage, equivalent to MXN 26,295-78,885 (approximately USD 2,462-7,386). These sanctions comply with the Convention against Transnational Organized Crime, which defines a serious crime as a conduct constituting an offense punishable by a incarceration of at least 4 years or more. The Federal Anti-Trafficking Law also includes penalties for legal entities, such as suspension, dissolution, prohibition, removal, and intervention. The Federal Criminal Code and state criminal codes criminalize many activities related to trafficking in persons, including assault, false imprisonment, kidnapping, forced labor, rape, murder, money laundering, bribery of public officials, document forgery, alien smuggling, pimping, and drug trafficking. See Article 5 below. Once the trafficker has been sentenced, the judge will rule on issues of compensation to the victims but not to other affected parties. See Article 6 below.

Between 2004 and 2007, OAG worked on the issue of trafficking and smuggling through FPP. Since January 2008, the responsibility for investigating and prosecuting all federal crimes related to trafficking in persons is vested in FEVIMTRA located within OAG, with the exception of trafficking crimes rising to the level of organized crime. These are to be investigated and prosecuted by OAG’s Specialized Unit on Smuggling of Minors, Undocumented Migrants, and Organs, and Crimes Related to Trafficking in Persons within the Office on Organized Crime. To date, no case has been sentenced for the specific crime of trafficking in persons under the federal or state jurisdiction. In October 2008, FEVIMTRA made the first formal indictment under the Federal Anti-Trafficking Law in a case of trafficking for forced labor that occurred in Sonora. In addition, several trafficking-related cases involving sexual exploitation have been investigated and prosecuted, particularly through OAG’s Office on Organized Crime. Trafficking-related cases are also being pursued on the state level, for example in Chihuahua and Tlaxcala. See Article 5 below.

Matters pertaining to jurisdiction and extradition that are essential to the prosecution of trafficking crimes are covered by Article 1 above.

**Protection and Assistance to Victims**

The rights of victims are protected by the Federal Constitution and the Federal Anti-Trafficking Law, which stipulates that federal authorities must establish the necessary means to fully identify the victims and potential victims of trafficking in persons, and protect their identity. FEDERAL ANTI-TRAFFICKING LAW arts. 17 (5), 18 (1). Furthermore, the Inter-Secretarial Commission is obliged to incorporate measures for providing victims with assistance in the forthcoming National Anti-Trafficking Program. Support measures must include legal, migration, social, educational, labor, material, medical, and psychological assistance, as well as translation services, procedures for re-locating victims, and plans for the construction of shelters. Protection offered to child victims must take into account the principle of the best interests of the child. Id. art. 13 (1). Under the Federal Anti-Trafficking Law, victims have the right to damages but no trafficking victim has received compensation through this means to date. Id. art. 9.
Within the scope of the Program Against Trafficking in Persons, NHRC and its 10 Regional Committees are entitled to receive complaints from victims whose rights have been violated and monitor authorities’ compliance with the Federal Anti-Trafficking Law and other human rights obligations.

Mexican legislation does not address protection of victims from criminal charges that would stem from an otherwise illegal act related to trafficking activities, although the elements of a crime cannot be met if the act was committed involuntarily. Similarly, nothing in the law contemplates the involvement of NGOs in the state's efforts to rehabilitate victims, and none of the provisions in the Federal Anti-Trafficking Law regarding rehabilitation mentions funding. There is no indication where the funding will likely come from. There are also no government compensation funds for trafficking.

Most trafficking victims in Mexico have been identified and assisted by NGOs. In the vast majority of cases concerning foreigners, it is believed that they are deported without ever having been designated as victims.

A detailed analysis of issues pertaining to the assistance to and protection of victims is presented in Article 6 below.

**International Cooperation**

Given the transnational nature of trafficking in persons, the Trafficking Protocol seeks to promote international cooperation on bilateral and multilateral levels aimed at preventing and combating trafficking in persons as well as protecting and assisting the victims.

Mexican legislation mandates that federal authorities establish relations with other nations and international organizations to facilitate cooperation in anti-trafficking efforts that should include protection in repatriation and other types of movement of trafficking victims. **FEDERAL ANTI-TRAFFICKING LAW art. 14 (II).** In particular, OAG is charged with advocating for the conclusion of international treaties pertaining to issues that fall within its jurisdiction, such as trafficking in persons. **LAW ON ATTORNEY GENERAL art. 5 (IV).**

In terms of international collaboration, Mexico has entered into a number of bilateral agreements that are pertinent to combating trafficking in persons. They include border cooperation agreements and action plans with the U.S., Guatemala, and Belize; repatriation agreements with the U.S., Guatemala, and El Salvador; as well as agreements on mutual legal assistance in criminal matters with several countries that have been identified either as destination countries for Mexican victims of trafficking in persons, or countries whose nationals have been trafficked into Mexico. These include El Salvador, Spain, the U.S., and Guatemala. Mexico is also a state party to the Inter-American Convention on Mutual Legal Assistance in Criminal Matters (**adopted May 23, 1992 by OAS**) and a Regional Repatriation Agreement covering El Salvador, Guatemala, Honduras, and Nicaragua. Furthermore, Mexico cooperates with the U.S. through the Plenary Group for Law Enforcement and its Subcommittee on Trafficking in Persons; the Security and Prosperity Partnership for North America; and the Alien Smuggler Prosecutions Program titled Operation against Smugglers (and Traffickers) Initiative on Safety and Security [hereinafter OASISS]. Cooperation with Central American countries has occurred through two bilateral High Level Groups on Border Security [hereinafter GANSEF]: one with Guatemala and one with Belize; the Regional Conference on Migration [hereinafter RCM]; and the Regional Committee against Trafficking in Persons in Mexico, Central America and the Caribbean. Lastly, Mexico has concluded agreements with the U.S., Guatemala, El Salvador, and Belize that specifically aim to prevent and combat trafficking in persons. These agreements contain provisions for the exchange of information, enhanced coordination of border controls, cooperation for the detection of victims, special repatriation procedures, as well as training and technical assistance, including improved data systems. In some cases this information sharing has resulted in the identification of victims or traffickers. For example, in the case of a young Mexican woman who was forced
into prostitution in the U.S., the several victims and the trafficker were located in North Carolina based on information that the victim’s relatives provided to Mexican authorities who then shared it with their counterparts in the U.S. Important information has also been obtained regarding trafficking rings originating in Tlaxcala through information sharing with authorities that have worked on these cases in the U.S. and Mexico. See Articles 8, 10, and 11 below.

In addition to agreements at the federal level, states along the U.S.-Mexico border have included the issue of trafficking in persons in their cross-border collaboration. For example, the Border Governors Conference, which is comprised of 10 U.S. and Mexican states and constitutes the largest bi-national venue to discuss and resolve vital border issues affecting the U.S. and Mexico, has a Border Security Working Table that is currently determining the feasibility of state investigation of electronic transfer of money by criminals linked to crimes involving drug and human trafficking. Its 26th Annual Meeting in August 2008 featured a “Fight Against Human Trafficking” policy forum, which focused on the impact human trafficking has had on the border region, and looked at collaborative solutions to fight it. See Border Governors Conference, http://www.bordergovernors.ca.gov/index.php. Correspondingly, the Border Legislative Conference, comprised of legislators from California, Arizona, New Mexico, and Texas in the U.S., and Baja California, Sonora, Coahuila, Nuevo Leon, and Tamaulipas in Mexico, has a committee on trafficking in persons that has shared information and received training, and encouraged states to pass local laws criminalizing trafficking and providing protection to victims. See Border Legislative Conference, http://www.borderlegislators.org. Finally, the state of Chihuahua signed a bilateral agreement with New Mexico to cooperate to combat trafficking. These two states have held joint training sessions and both have implemented state legislation that criminalizes trafficking in persons.
Article 3: Use of Terms

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean 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. Exploitation shall include, at a minimum, 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;

(b) 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;

(c) The recruitment, transportation, transfer, harboring 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;

(d) "Child" shall mean any person under eighteen years of age.

Conclusion:

The definition of trafficking in persons contained in the Federal Anti-Trafficking Law partially complies with Article 3 of the Trafficking Protocol. The lists of acts and purposes are almost identical, but the Federal Anti-Trafficking Law enumerates fewer means by which trafficking in persons can be committed and does not contain the clause rendering the consent of the victim irrelevant in cases in which the means of trafficking have been utilized. However, individuals less than 18 years old are excluded from the requirement to prove the means enumerated in the definition of trafficking in persons. In addition, state criminal codes in 25 states and the Federal District (Mexico City) include the crime of trafficking in persons. Of these, only seven states have definitions of the trafficking crime that are in complete compliance with the Trafficking Protocol. In practice, no cases have been sentenced utilizing the federal law or the state level crimes to date.

Implementation Analysis:

**Trafficking Definition**

Article 3 of the Trafficking Protocol provides a comprehensive definition of trafficking in persons and outlines minimum elements that are to be included when criminalizing such conduct within domestic legislation, i.e., the acts, the means, and the purpose, which is always exploitation.

The Federal Anti-Trafficking Law defines trafficking in persons as follows: “A person who promotes, solicits, offers, facilitates, obtains, transfers, delivers or receives for themselves or for a third person, an individual through physical or moral violence, deception or the abuse of power in order to submit them to sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of an organ, tissue, or its components commits the crime of trafficking in persons.” FEDERAL ANTI-TRAFFICKING LAW art. 5.

As the table below illustrates, the definition of trafficking in persons contained in the Federal Anti-Trafficking Law partially complies with Article 3 of the Trafficking Protocol. First, while the suspect activities and purposes are in compliance, the means do not include fraud, the abuse of a
position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. Second, the definition does not contain the clause rendering the consent of the victim irrelevant in cases in which the means of trafficking have been utilized. As such, the accused could raise the defense of consent, shifting the burden to the victim to prove that he or she did not consent. The sections of the definition concerning children comply with the Trafficking Protocol.

DEFINITION OF TRAFFICKING IN PERSONS IN THE TRAFFICKING PROTOCOL AND THE FEDERAL ANTI-TRAFFICKING LAW

<table>
<thead>
<tr>
<th>Elements of the Crime</th>
<th>Trafficking Protocol</th>
<th>Federal Anti-Trafficking Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acts</td>
<td>Recruitment;</td>
<td>Promotion, solicitation, offering;</td>
</tr>
<tr>
<td></td>
<td>Transportation;</td>
<td>Delivery;</td>
</tr>
<tr>
<td></td>
<td>Transfer;</td>
<td>Transfer;</td>
</tr>
<tr>
<td></td>
<td>Receipt;</td>
<td>Receipt, obtaining;</td>
</tr>
<tr>
<td></td>
<td>Harboring.</td>
<td>Facilitation.</td>
</tr>
<tr>
<td>Means</td>
<td>Threat or use of force;</td>
<td>Physical violence;</td>
</tr>
<tr>
<td></td>
<td>Other forms of coercion;</td>
<td>Moral violence;</td>
</tr>
<tr>
<td></td>
<td>Abduction;</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Deception;</td>
<td>Deception;</td>
</tr>
<tr>
<td></td>
<td>Abuse of power;</td>
<td>Abuse of power.</td>
</tr>
<tr>
<td></td>
<td>Giving or receiving payments or benefits to achieve the consent of a person having control over another person.</td>
<td>-</td>
</tr>
<tr>
<td>Types of Exploitation</td>
<td>Prostitution of others;</td>
<td>Sexual exploitation;</td>
</tr>
<tr>
<td></td>
<td>Other forms of sexual exploitation;</td>
<td>Forced labor or services;</td>
</tr>
<tr>
<td></td>
<td>Forced labor or services;</td>
<td>Slavery;</td>
</tr>
<tr>
<td></td>
<td>Slavery;</td>
<td>Practices similar to slavery;</td>
</tr>
<tr>
<td></td>
<td>Servitude;</td>
<td>Servitude;</td>
</tr>
<tr>
<td></td>
<td>Removal of organs.</td>
<td>Removal of organs, tissue or its components.</td>
</tr>
</tbody>
</table>

Sources: Federal Anti-Trafficking Law art. 5; Trafficking Protocol art. 3.

In addition to the Federal Anti-Trafficking Law, the Federal District and 25 of Mexico’s 31 states have incorporated the crime of trafficking in persons into their criminal codes. These include: Aguascalientes, Baja California, Campeche, Chihuahua, Coahuila, Colima, Guanajuato, Guerrero, Hidalgo, Jalisco, Mexico State, Michoacan, Morelos, Oaxaca, Puebla, Queretaro, Quintana Roo, San Luis Potosi, Sinaloa, Sonora, Tabasco, Tlaxcala, Veracruz, Yucatan, and Zacatecas. Not all of these states embrace all conducts enumerated in the Trafficking Protocol. For example, six states (Hidalgo, Queretaro, Sinaloa, Tabasco, Veracruz, and Yucatan) criminalize trafficking exclusively in cases of sexual exploitation or prostitution. More importantly, seven states (Chihuahua, Guanajuato, Guerrero, Mexico State, Morelos, Tlaxcala, and Zacatecas) include the clause making consent irrelevant if any of the means of trafficking are established. The definitions in the criminal codes of these states are in complete compliance with the Trafficking Protocol. Regarding penalties, six states (Hidalgo, Queretaro, Sinaloa, Tabasco, Veracruz, and Yucatan) establish a sentencing range beginning below the 4 year minimum suggested by the Convention against Transnational Organized Crime. See Convention against Transnational Organized Crime art. 2 (b); Trafficking Protocol art. 1 (3).

On August 27, 2008, the Federal District passed a special Law to Prevent and Eradicate Sexual Abuse, Commercial Sexual Exploitation of Children, and Trafficking in Persons. This law complements the trafficking crime contained in the Federal District Criminal Code and also
includes public policies for the prevention and assistance to victims. Press Release, Communication and Information for Women Association (CIMAC), Federal District Legislature Approves Law against Trafficking, Abuse and Child Sexual Exploitation (Aug. 28, 2008). Of the states covered by this report, Baja California, Chihuahua, Guerrero, Oaxaca, Quintana Roo, and Tlaxcala have reformed their criminal codes to include the crime of trafficking. The state criminal code of Chiapas contains some related crimes.

### CRIME OF TRAFFICKING IN PERSONS IN STATES VISITED BY THE ASSESSMENT TEAM

<table>
<thead>
<tr>
<th>State</th>
<th>Suspect Activity</th>
<th>Means</th>
<th>Purpose</th>
<th>Sanction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baja California</td>
<td>Transport, harbor, offer, promote, procure, facilitate deliver, or receive</td>
<td>N/A</td>
<td>Sexual exploitation, forced labor or services, slavery or practices analogous to slavery, removal of an organ, tissue or its components</td>
<td>4-9 years in prison and a fine of 400-1000 days of minimum wage, equivalent to MXN 21,036-52,590 (approximately USD 1,969.66-4,924.15)</td>
</tr>
<tr>
<td>Chihuahua</td>
<td>Induce, procure, promote, facilitate, recruit, maintain, capture, offer, transfer, deliver, or receive</td>
<td>Physical or moral coercion, deprivation of freedom, deception, abuse of power or a situation of vulnerability, giving or receiving payments or benefits</td>
<td>Any form of exploitation: prostitution of others or other forms of sexual exploitation, forced labor and services, slavery or practices analogous to slavery, servitude, forced begging, or the removal of an organ, tissue or its components</td>
<td>6-12 years in prison and a fine of 500-1500 days of minimum wage, equivalent to MXN 26,295-78,885 (approximately USD 2,462.07-7,386.23)</td>
</tr>
<tr>
<td>Guerrero</td>
<td>Induce, procure, promote, facilitate, recruit, maintain, capture, offer, transfer, deliver, or receive</td>
<td>Physical or moral coercion, deprivation of freedom, deception, abuse of power or a situation of vulnerability, giving or receiving payments or benefits</td>
<td>Any form of exploitation: prostitution of others or other forms of sexual exploitation, forced labor and services, slavery or practices analogous to slavery, servitude, forced begging, or the removal of an organ, tissue or its components</td>
<td>6-12 years in prison and a fine of 500-1500 days of minimum wage, equivalent to MXN 24,750 -74,250 (approximately USD 2,317.41-6,952.24)</td>
</tr>
<tr>
<td>Oaxaca</td>
<td>Induce, procure, promote, capture, recruit, facilitate, transfer, solicit,</td>
<td>Physical or moral coercion, deprivation of freedom,</td>
<td>Any form of exploitation</td>
<td>12-18 years in prison and a fine of 600-1350 days of minimum wage, equivalent to MXN 24,750 - 74,250 (approximately USD 2,317.41-6,952.24)</td>
</tr>
<tr>
<td>State</td>
<td>Actions</td>
<td>Deception, Abuse of Power or a Situation of Vulnerability, Giving or Receiving Payments or Benefits</td>
<td>Equivalent to</td>
<td></td>
</tr>
<tr>
<td>-------</td>
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<td>-----------------------------------------------------------------</td>
<td>---------------</td>
<td></td>
</tr>
<tr>
<td>Quintana Roo</td>
<td>Promote, offer, facilitate, procure, transfer, deliver, or receive</td>
<td>Any form of exploitation: commercial sexual exploitation of children, forced labor and services, slavery or practices analogous to slavery, servitude, or the removal of an organ, tissue or its components.</td>
<td>7-18 years in prison and a fine of 50-300 days of minimum wage, equivalent to MXN 2,475-14,850 (approximately USD 231.74-1,390.44)</td>
<td></td>
</tr>
<tr>
<td>Tlaxcala</td>
<td>Promote offer, facilitate, capture, recruit, transport, transfer, deliver, or receive</td>
<td>Sexual exploitation, forced labor or services, slavery or practices analogous to slavery, servitude, or the removal of an organ, tissue or its components.</td>
<td>6-12 years in prison and a fine of 500-1,500 days of minimum wage, equivalent to MXN 24,750-74,250 (approximately USD 2,317.41-6,952.24)</td>
<td></td>
</tr>
</tbody>
</table>


Since no case has been sentenced for the specific crime of trafficking in persons in Mexico, it is impossible to evaluate how difficult it will be for prosecutors to win a case using the definition in the Federal Anti-Trafficking Law. Interviewees pointed out that the definition is very broad and has many elements. While more activities and means to choose from would seem like an advantage, prosecutors stated that this makes it more difficult to present a case to a judge who decides whether or not to allow the indictment as trafficking, or to ask the prosecutor to utilize another related crime.

In addition, interviewees stated that the fact that many of the terms of the crime do not have definitions either in the Federal Anti-Trafficking Law itself, or in other laws, will make them difficult to prove to the judge. For example, the definitions of “abuse of power,” and most of the types of exploitation (sexual exploitation, forced services, slavery, practices similar to slavery, and servitude) do not have definitions in Mexican legislation, although many are defined in the
international treaties to which Mexico is a party. To remedy this problem, in February 2008 the
Green Party presented draft legislation to reform the Federal Anti-Trafficking Law in the Senate.
The proposed amendment contained definitions of these terms based on international treaties.
However, the initiative has not been passed. See Journal of Senate Proceedings,

Another issue identified in the interviews was a trend of creating special or supplementary laws
rather than reforming the Federal Criminal Code and the Federal Criminal Procedure Code. Various interviewees felt that some prosecutors lack the capacity to harmonize and interpret the
special laws in conjunction with the procedural codes, and thus, refuse to classify the crime
utilizing the definition of the special or supplementary law. In addition, even if a prosecutor
decides to charge an individual with trafficking in persons, a judge may tell the prosecutor to
reclassify the crime as pimping, which is more common.

Consent

The Federal Anti-Trafficking Law does not include the clause rendering consent of a trafficking
victim irrelevant if any of the means defined in the crime (e.g., threat, abduction, or fraud) are
utilized. Rather, the law includes two scenarios regarding consent. First, the means by which the
crime was committed will not be an element of the crime if it was perpetrated against an individual
under the age of 18, or against anyone who does not have the capacity to understand the
significance of the event, or the capacity to resist. FEDERAL ANTI-TRAFFICKING LAW art. 5 (2).

Second, if the victim is at least 18 years old and has the capacity to understand the significance
of the event, or the capacity to resist, the issue of consent may be raised by the defendant during
criminal proceedings, and the burden of proof regarding consent will be shifted to the victim. Id.
art. 5. In this scenario, consent granted by the victim is governed by the Federal Criminal Code,
which establishes that a criminal event is not considered a crime whenever the agent acts with
the consent of the owner of the legally protected interest that is affected, if the following
conditions are met: the legally protected interest is available; the owner of the legally protected
interest is able to freely dispose of it; and the consent of the owner of the legally protected
interest is granted expressly or tacitly and free from any vice; or the conduct occurs in
circumstances allowing the presumption that the owner of the legally protected interest would
have granted his or her consent if he or she were requested to do so. FEDERAL CRIMINAL CODE
art. 15 (III).

The legally protected interest in the case of trafficking in persons is the free development of the
personality of the victims and potential victims, residents, people brought to the national territory,
and Mexican citizens abroad. FEDERAL ANTI-TRAFFICKING LAW art. 1. In practice, the prosecutor
would have to show that the trafficking victim was not free to develop his or her personality as a
result of the trafficking situation, and that the consent that the victim could have given was
coerced. Interviewees said that this may be difficult to prove because in many cases, especially
those involving prostitution, victims claim to have consented. One official stated that in many of
the cases that he has seen so far, the women felt that they had done something wrong, both
legally and morally, and that it takes a long process of psychological and social assistance to help
them view the situation otherwise. This has traditionally been an issue with the crime of pimping,
which requires the victim to state that the pimp was controlling the situation.

Children

Trafficking in children, i.e. persons under the age of 18, qualifies as an offense without the
trafficker having threatened, physically forced, or applied any of the other illicit means delineated
in the Trafficking Protocol and the Federal Anti-Trafficking Law. Accordingly, consent of a child
victim cannot be used as a defense. TRAFFICKING PROTOCOL art. 3 (a), (c)-(d); FEDERAL ANTI-
TRAFFICKING LAW art. 5. This also applies to anyone who does not have the capacity to
understand the significance of the event, or the capacity to resist.
In recent years Mexico has reformed the Federal Criminal Code and several state criminal codes to include crimes that address commercial sexual exploitation of children. In February 2007, the National Congress adopted a decree amending, supplementing, and repealing provisions of the Federal Criminal Code, the Federal Criminal Procedure Code, and the Law on Organized Crime, relating to the sexual exploitation of children. These reforms classify such offenses as sex tourism involving persons under 18 years of age, all forms of child pornography, trafficking in persons under 18, and procuring persons under 18, as serious offenses – a category of crimes which render suspects ineligible for bail. Child sexual commercial exploitation has been investigated in recent years, although not as trafficking in persons. For example, in February 2007, OAG’s Office on Organized Crime arrested a man in Acapulco, Guerrero for alleged acts of child pornography in violation of the Federal Criminal Code and the Law on Organized Crime. The case was pending as of September 2008. See A Man is Arrested on Child Pornography Charges, EHUI.com, March 28, 2008, at http://www.ehui.com/?c=1&a=91644. The penalty for this crime is imprisonment between 5 and 14 years and a fine of MXN 500-3,000 (approximately USD 2,462-14,772). Federal Criminal Code arts. 201-202 (II). Generally, however, information on prosecutions and convictions involving related crimes is scarce. See, e.g., Federal District Human Rights Commission, Special Report on the Commercial Sexual Exploitation of Children in Mexico City (2006); Elena Azaola, UNICEF-DFS, Boy and Girl Victims of Sexual Exploitation in Mexico (2000); and Erick Gomez-Tagle, Commercial Sexual Exploitation of Girls, Boys and Adolescents: A Sociological Approximation (National Institute for Criminal Sciences 2005).

Interviewees that have litigated cases of child abuse, corruption of children, and child pornography predict that trafficking cases involving children will present many of the same challenges as in these cases. The first set of obstacles is the lack of recognition of children’s rights in the society, a societal acceptance of the exploitation of children, especially girls in domestic work and prostitution, and a strong stigma related to addressing or disclosing child sexual abuse. See generally Mexico: Indigenous Girls are Most Vulnerable to Child Domestic Work, La Jornada, April 8, 2008; Federal District Human Rights Commission, Special Report on the Commercial Sexual Exploitation of Children in Mexico City (2006); and Elena Azaola, UNICEF-DFS, Boy and Girl Victims of Sexual Exploitation in Mexico (2000).

For example, in many of the states visited by the assessment team, interviewees said that it is still common for parents to send their young girls to a larger town to work as domestic workers in exchange for food, clothing, and sometimes schooling. Parents may be paid for sending their daughters. Once in the new home, the girls are expected to work 7 days a week and be available on a 24-hour basis. They may or may not receive monetary compensation for their work, and they may or may not be allowed to leave the home or to make phone calls. Since this arrangement is largely accepted by society, there is little impetus to change it.

Once the child victims overcome the societal challenges described above, the process of making complaints and going through the legal proceedings can be stressful and even traumatic for them. In some cases authorities release the names, addresses, and even pictures of the victims to the press. See Lydia Cacho, Demons of Eden: The Power that Protects Child Pornography (Grijalbo 2005). Interviewees mentioned that prosecutors often lack experience to interview children and end up re-victimizing them. In addition, the Mexican penal system requires that victims confirm their testimonies, making the children repeat the details of abuse on several occasions. Federal Const. art. 20 (b) (5). In some cases, children attend hearings in the same room as the accused and must testify in their presence.

An organization from one of the visited states described a case of child prostitution that was turned over to the offices of DFS in 2007. The organization, which works with street children, presented the names, addresses, and places of work of the recruiters and the children involved. However, when authorities said that the children would have to disclose their identities while testifying, the organization refused to cooperate stating that the children had absolutely no
If the accused has been charged with a misdemeanor, he or she may avoid being detained by paying bail. This occurred, for example, in the case of child pornography in Chihuahua in 2004. Several girls under 18 testified that Hector Armando Lastra Muñoz, who worked in the state attorney's general office in Chihuahua, recruited girls for pornography and prostitution, often with other government officials. The judge granted Lastra pre-trial release, and Lastra then fled. One of the organizations that assisted the victims reported that the girls were taken to the attorney's general office with no adult to testify in front of the same people who worked for Lastra. In addition, some authorities fail to execute arrest warrants. This occurred in the case of child sexual exploitation in Oaxaca in which at least three children were abused in school. Authorities left the case pending for 5 months although arrest warrants had been properly issued. See RECOMMENDATION 04/2008 (issued Feb. 5, 2008 by NHRC).

According to one legal advocate, the criminal process in child abuse cases is so devastating to the children, and the likelihood of the accused being sentenced is so low, that the victims often withdraw the charges or stop participating in the cases before the judgments have been rendered. This situation is acknowledged by some authorities. For example, the U.N. Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography cites the Federal District prosecutor, “We are just beginning to discover the extent of child prostitution and trafficking in children. We must fight against corruption and increase awareness of this issue, so that citizens feel that it is their duty to report these atrocious violations of children’s dignity. If there is no confidence, there are no reports, and if there are no reports, there are no investigations.” Report Submitted by the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Juan Miguel Petit: Mission to Mexico, U.N. Human Rights Council, 7th Sess., Addendum, Agenda item 3, at 9, U.N. Doc. A/HRC/7/8/Add.2 (2008).

To date, trafficking cases related to labor exploitation of children have not been prosecuted. The Federal Constitution and the Federal Labor Act set forth a legal framework which defines labor relations and the legal conditions under which children may work. They also define child workers as adolescents aged between 14 and 18 years old who render their services on a personal basis for an employer. Work carried out by any person between ages 14 and 16 shall be subject to monitoring and protection by labor inspectors. FEDERAL LABOR LAW art. 173 (adopted April 1, 1970, D.O., as amended). However, interviewees said that this rarely occurs and consequently, it is difficult to identify child workers in trafficking situations.

While the Federal Constitution prohibits employers from hiring children under 14, labor legislation does not apply to children who work independently or those who earn their living as street vendors, car washers, or to other children not covered by the labor laws derived from the Federal Constitution. FEDERAL CONST. art. 123 (A). In fact, children under 14 regularly work as street vendors and domestic workers in the cities and as temporary agricultural workers in such states as Chiapas, Nayarit, and Sinaloa. The Ministry of Education estimates that 350,000 children work as temporary agricultural workers. Only 10% of them are able to complete schooling and 42% of them suffer from malnutrition. Plans are Made to Help Children Agricultural Workers, EXCELSIOR, April 19, 2008.

It is unclear to what extent trafficking occurs within the internal migration in Mexico, but according to interviewees, on some occasions, children are recruited with their families, and transported with little food and water in unhygienic conditions. Once at their place of work, the families must pay the debt for the contracting fee, transportation, room, and board. They are held in squalid conditions and forced to work up to 12 hours per day.
Article 4: Scope of Application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Conclusion:

Mexico is in compliance with Article 4 of the Trafficking Protocol as the Federal Anti-Trafficking Law establishes measures for the protection of trafficking victims, as well as prevention, investigation, and prosecution of the offense of trafficking in persons. The law covers both transnational as well as internal trafficking and the perpetrator may be an individual person as well as an organized criminal group. Because not all trafficking cases in Mexico will fall under federal jurisdiction, many internal trafficking cases will be investigated and prosecuted by the attorney general offices in the 31 states and the Federal District.

Implementation Analysis:

The Federal Anti-Trafficking Law sets out appropriate measures for the prevention, prosecution, and protection of victims, and applies to both transnational and internal cases of trafficking in persons which fall under federal jurisdiction, including those which involve an organized criminal group. See Articles 1 and 2 above.

Transnational Trafficking / Internal Trafficking

The Federal Anti-Trafficking Law addresses the transnational nature of trafficking in persons as it applies to crimes that are initiated, prepared, or committed abroad as long as they produce or aim to have an effect in national territory; or when they are initiated, prepared, or committed in the national territory to produce or aim to have an effect abroad. FEDERAL ANTI-TRAFFICKING LAW art. 3. The Federal Anti-Trafficking Law also applies to internal cases of trafficking in persons under federal jurisdiction. For example, if the crime committed in a state has a connection to a federal crime, federal jurisdiction will be asserted whether it is an internal or transnational crime. If one or two traffickers commit the crime within one state, and the crime does not have a connection to a federal crime, it will be prosecuted under the state criminal code. If the traffickers move from one state to another state, the general rule is that the state where the crime occurred will have jurisdiction. FEDERAL CRIMINAL PROCEDURE CODE arts. 6, 10. The only scenario in which internal trafficking would not be covered by anti-trafficking laws, would be if the crime were committed in a state or states that do not have the crime in their criminal codes, and nothing about the crime establishes federal jurisdiction. See Article 1 above.

In terms of prevention and protection, the Federal Anti-Trafficking Law does not distinguish between transnational or internal trafficking cases. It contemplates assistance for Mexican victims in other countries, foreign victims in Mexico, and Mexican victims in Mexico. For example, the law charges diplomatic representatives with the responsibility of providing victims abroad with legal assistance, including assistance to testify and obtain compensation for damages as well as other benefits. Also, the National Anti-Trafficking Program will apply to all trafficking victims, regardless of how or where their cases are prosecuted, and whether they are foreigners or Mexican nationals. FEDERAL ANTI-TRAFFICKING LAW arts. 13, 16 (1)-(2).

Out of the 15 trafficking cases currently under investigation by FEVIMTRA, some are transnational in nature and some involve internal trafficking. On the state level, several trafficking cases are under investigation in Chihuahua, although no charges have been pressed yet. Internal trafficking cases are also being prosecuted as pimping in Tlaxcala. Lastly, several
people have been charged with corruption of children, organized crime, pimping, and trafficking in the state of Michoacan. The case involves young girls who were taken from Veracruz to Michoacan and forced into prostitution. See Article 5 below.

**Involvement of an Organized Criminal Group**

The definition of an organized criminal group in the Mexican Constitution was amended on June 18, 2008. It states that an organized criminal group is an organization de facto of three or more persons which commits crimes in continuous or reiterated form.

Under the Federal Anti-Trafficking Law, there are no provisions that specifically require that the perpetrator be a member of an organized criminal group. Rather, any individual who fulfills all of the elements of the trafficking crime can be prosecuted for trafficking in persons. However, if a trafficking offense is committed by an organized criminal group, it may also be classified as organized crime, either through the Law on Organized Crime or a state statute that criminalizes conduct of three or more people.

Participation of an organized criminal group in the crime of trafficking in persons is analyzed in detail in Article 1 above.
Article 5: Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
   (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
   (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
   (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

Conclusion

The Federal Anti-Trafficking Law as well as criminal codes in 25 of the 31 states and the Federal District define trafficking in persons as a separate crime, including the requisite mental element of intent. Attempt is criminalized as well as accomplice liability and conduct that entails organizing and directing other persons to commit a criminal act. Trafficking in persons is classified as a grave crime (felony). Reforms to confiscation procedures were enacted in June 2008, but no confiscations for trafficking crimes have occurred to date. The Federal Anti-Trafficking Law contemplates criminal liability when a legal person, e.g. a corporation, provides resources for the commission of the trafficking crime. In practice, judges on both the federal and state level have been reluctant to accept trafficking charges in accordance with the new definitions and have preferred to change the criminal charges to more familiar crimes that may have lesser penalties, such as pimping. To date, no case has been sentenced for the specific crime of trafficking in persons under federal or state jurisdiction. In October 2008, FEVIMTRA made the first formal indictment under the Federal Anti-Trafficking Law in a case of trafficking for forced labor that occurred in Sonora. In addition to investigations carried out by FEVIMTRA, several trafficking and trafficking-related cases are being pursued at the state level and by OAG’s Office on Organized Crime.

Implementation Analysis:

States Parties’ Obligations

As stated in Article 3 above, the crime of trafficking in persons was included in Mexican legislation for the first time in March 2007 when the Federal Criminal Code was reformed. On November 26, 2007 Mexico passed the Federal Anti-Trafficking Law which derogates related provisions of the Federal Criminal Code. The definition of the trafficking crime under the Federal Anti-Trafficking Law is very similar to the language of the Trafficking Protocol. In addition, criminal codes in 25 of the 31 states and the Federal District include a specific crime of trafficking in persons, although not all of the relevant provisions are in complete compliance with the Trafficking Protocol.

By reforming the Federal Criminal Procedure Code, the Federal Anti-Trafficking Law established trafficking in persons as a grave crime (felony). FEDERAL CRIMINAL PROCEDURE CODE art. 194 (XVI). While the Federal Anti-Trafficking Law does not contain specific definitions for a victim and a perpetrator, it does specify that any person who commits the elements contained in the crime perpetrates the trafficking offense. FEDERAL ANTI-TRAFFICKING LAW art. 5. Criminal liability is established when an individual, knowing the elements of the crime, or foreseeing the possible results of the crime, desires or accepts the consequences of the conduct described by the law.
Criminal negligence is also defined according to the foreseeable consequences standard. Finally, an act is not considered a crime without the will of the agent. FEDERAL CRIMINAL CODE arts. 8, 9.

Criminalization of Lesser Included Offenses and Other Activities Related to Trafficking

Attempted trafficking in persons will be sanctioned with imprisonment of not less than a minimum sentence and could reach two-thirds of a maximum sentence for the consummated crime. FEDERAL ANTI-TRAFFICKING LAW art. 7. Criminal attempt is established when the determination to perpetrate an offence is materialized by partially or totally executing the actions to produce the consequences, or by omitting those actions that would avoid them, whenever the crime is not completed due to causes contrary to the offender’s will. If the offender spontaneously desists from executing the crime or prevents its commission, no penalty or security measure will be imposed on him or her. FEDERAL CRIMINAL CODE art. 12.

Crimes may be committed by one person or by a group of people. The Federal Criminal Code establishes the person or persons who can be liable for the crime. It also delineates which individuals are authors, participants, and accomplices to a crime as:

- Those who agree or prepare its perpetration;
- Those who carry it out;
- Those who carry it out in a joint manner;
- Those who carry it out through a third party;
- Those who intentionally compel another individual to perpetrate it;
- Those who intentionally help or assist another individual to commit it;
- Those who, after the perpetration of the offense, assist the offender in the fulfillment of a promise made prior to the commission of the offense;
- Those who, without previous agreement, participate with others in the commission of an offense, when the results produced by each participant cannot be precisely determined.

Accomplice liability is therefore established through various forms of conduct for each crime, including trafficking in persons. Similarly, the conduct of organizing or directing other persons to commit any offense, including the crime of trafficking, is regulated. Id. art. 13. The Federal Criminal Code also criminalizes the act of omitting to prevent a crime. Id. art. 12.

Establishment of Additional Crimes Within the Trafficking Context

The Federal Anti-Trafficking Law increases the penalty when the following aggravating factors are present: the crime has been committed against a child; against anyone who does not have the capacity to understand the significance of the event, or the capacity to resist; against a person over 60 years old; against an indigenous person; by a public official or someone who claims to be a public official; or by someone that is related by blood, marriage, or who lives in the same domicile as the victim. FEDERAL ANTI-TRAFFICKING LAW art. 6 II, III (a)-(b).

The following offenses could be tacked on in addition to the offense of trafficking in persons: rape, assault, murder, kidnapping, extortion, money laundering, bribery of public officials, conspiracy, fraud, document forgery, pornography, harboring for the purposes of prostitution, sexual tourism, drug trafficking, forced labor, forced abortion, FEDERAL CRIMINAL CODE arts. 141, 193, 202-203, 206 (II), 222, 244, 259-261, 288, 302, 329, 364-366 (II), 386, 390, and 400 (II); recruiting, smuggling, and transporting aliens, GENERAL POPULATION ACT art. 138 (adopted Jan. 7, 1974, D.O., as amended) [hereinafter GENERAL POPULATION ACT]; gambling, FEDERAL LAW ON GAMES AND LOTTERIES art. 1 (adopted Dec. 31, 1947, D.O.); and torture, LAW TO PREVENT AND SANCTION TERRORISM art. 3 (adopted Dec. 27, 1991, D.O., as amended).
Sanctions

The Federal Anti-Trafficking Law provides for the following criminal penalties:

- 6-10 years in prison and 500-1500 days of minimum wage, equivalent to MXN 26,295-78,885 (approximately USD 2,462.07-7,386.23); and
- 9-18 years in prison and 750-2,250 days of minimum wage, equivalent to MXN 39,442-118,327 (approximately USD 3,693-11,079), when the crime was committed against a child or person without the requisite mental capacity.

_**FEDERAL ANTI-TRAFFICKING LAW**_ art. 6 (I)-(II). The sanctions increase by up to half when the crime is committed by a public official or when the victim is related to the perpetrator by blood, marriage, or lives in the same domicile. _ld._ art. 6 III (a)-(b).

The penalties established for human trafficking are not as high as for certain other crimes, such as kidnapping, but could reach 15-27 years of imprisonment if committed by a public official or a relative of the victim. The maximum penalty allowed is 60 years. _FEDERAL CRIMINAL CODE_ art. 25. These sanctions comply with the Convention against Transnational Organized Crime, which defines a serious crime as conduct constituting an offence punishable by a deprivation of liberty of at least 4 years or more. _CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME_ art. 2 (b).

The penalties are similar in the criminal codes of the various Mexican states that have established the trafficking crime. In addition, they are similar to the sanctions in Mexico’s neighboring countries, Guatemala and the U.S. _See VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000, 22 U.S.C. § 7109 (2000); GUATEMALAN CRIMINAL CODE_ art. 194 (adopted July 27, 1973 by Decree No. 17-73).

In addition to criminal penalties, the federal law envisions civil sanctions for convicted traffickers in the form of compensation for victims. _FEDERAL ANTI-TRAFFICKING LAW_ art. 9; _see also_ Article 6 below.

Confiscation and Seizure of Assets

The Mexican Constitution limits the confiscation of possessions. The total or partial confiscation of personal possessions can be ordered only by a judge for the payment of taxes, fines, and civil damages resulting from the commission of a crime, except in the case of possessions acquired by illicit enrichment. _FEDERAL CONST._ art. 22; _see also_ _FEDERAL CRIMINAL CODE_ art. 109.

The constitutional reforms of June 2008 establish the possibility of confiscation of property before a sentence has been issued in cases of organized crime, drug trafficking, terrorism, kidnapping, vehicular theft, and trafficking in persons, when sufficient elements exist to determine that a criminal act has occurred. _FEDERAL CONST._ art. 22. The confiscation of property may take place at any time during the pretrial process or the judicial proceedings. _LAW ON ORGANIZED CRIME_ art. 31. Property that can be confiscated includes: instruments of the crime; object or proceeds of the crime; property that has been utilized or designated to hide or mix proceeds of the crime; property that is used by a third party to commit a crime with the knowledge of the owner, when the owner failed to notify authorities or attempted to impede the criminal conduct; and property that is registered with the name of another person, but the evidence shows that it is being utilized to commit a crime against property or organized crime, and the accused acts as the owner of the property. _FEDERAL CONST._ art. 22 (II) (a-d). Goods that can be confiscated include resources, rights, or property of any nature when there exists a well-founded indicator that the goods are directly or indirectly derived from, or represent earning derived from, the commission of a crime, and their legitimate origin cannot be accredited. _FEDERAL CRIMINAL CODE_ art. 400 (II).

OAG is responsible for identifying and confiscating property. When the goods are going to be seized, OAG must coordinate with the Federal Investigation Agency to prepare an inventory and
description of the goods, label them, request an appraisal of their value, and turn them over to the Office of Control and Registration of Confiscated Property within 72 hours. FEDERAL LAW ON THE ADMINISTRATION OF SEIZED, FORFEITED, AND ABANDONED GOODS art. 6 (adopted May 14, 1999, D.O.). These procedures apply to all types of property, businesses, and establishments. Id. arts. 21-37. Once the goods are seized, OAG must notify the legal owner within 30 days. Id. art. 7. If the judge issues a decree to forfeit the goods, they may be divided between the federal judiciary and OAG, or be granted to the state attorney general offices, or philanthropic organizations. The goods may also be shared with countries that participated in the investigation leading to their location. Id. arts. 49-51.

With the recent constitutional reforms, Mexican authorities will be able to confiscate property related to cases of trafficking in persons during the criminal proceedings rather than having to wait until the sentence has been issued. Law enforcement believes that these new procedures hamper criminals’ ability to continue with the criminal conduct. Because investigation and prosecution of trafficking cases began very recently, it is difficult to determine how effectively the confiscation procedure will be utilized in practice. The assessment team has learned about one trafficking-related case which involved confiscation of property. In June 2007, OAG seized three separate properties, MXN 1,001,369 (approximately USD 922,070), a number of bank accounts, several luxury cars, firearms, computers, and communication equipment as well as counterfeit currency of various nations in the DIVAS commercial sexual exploitation case, which is discussed in more detail in Article 5 below. See OAG, Human Smuggling and Trafficking, in ANNUAL ACTIVITY REPORT Sec. 5.1.4 (2007).

Disposal of Confiscated Assets

In the case of organized crime, OAG may obtain a judicial order to seize the goods and then it is up to the legal owner to prove ownership and the legitimate origin in order to reverse the seizure. LAW ON ORGANIZED CRIME art. 29.

If the property has been seized and has not been claimed by someone with a legal right to it for a period of 90 days, it will be auctioned off. If the person who had the right to the auctioned item does not claim the earnings within 6 months after notification, the assets can be utilized to improve the justice system. FEDERAL CRIMINAL CODE art. 41. In order to claim seized property, an individual must prove its lawful origin as well as ownership or other right to the property.

The Office of Control and Registration of Confiscated Property registers and classifies the property seized as a result of criminal procedures, and the Technical Council for Seized Property is charged with determining how to utilize the confiscated property. These offices are under MFPC. OAG’s Office on International Cooperation has the responsibility to coordinate with authorities from other countries for the international return of goods. LAW ON ATTORNEY GENERAL arts. 36, 53.

In practice, while assets have been seized in the above-mentioned DIVAS case, they will not be distributed until the completion of the criminal proceedings and sentencing. They currently remain in the custody of the presiding judge. Access to Information File No. 0001700105708 (Sept. 2, 2008). In another recent case, not related to trafficking, the Technical Council for Seized Property allocated the assets to the judiciary, the Ministry of Health, and OAG in three equal parts. Access to Information File No. 0681200013208 (Aug. 22, 2008). OAG received MXN 746.6 million (approximately USD 68.7 million), which it will utilize for the modernization of its infrastructure, and to improve its technical investigative capacity, particularly within the Office on Organized Crime. Access to Information File No. 0001700160607 (Sept. 4, 2007).

Technically, confiscated assets assigned to OAG can be utilized to create funds for victims of crimes, but no such funds have been established to date with respect to victims of trafficking in persons. See Article 6 below.
**Liability of Legal Persons**

The terms “natural persons” and “legal persons” are established in the Federal Civil Code. A “natural person” acquires legal obligations and rights from birth to death. **Federal Civil Code** art. 22. However, criminal liability begins at age 12, although adolescents between 12 and 18 are tried by juvenile courts and held in a separate rehabilitation system. **Law on the Protection of the Rights of Boys, Girls and Adolescents** art. 45 (d) *(adopted May 29, 2000, D.O., as amended).* “Legal persons” are: the nation, states, and municipalities; other public entities recognized by law; civil and mercantile organizations; unions and professional associations; cooperatives; other associations with political, scientific, artistic, recreational or other legal objectives; and foreign legal persons of a private nature. **Federal Civil Code** art. 25.

Both natural and legal persons can be liable for the commission or omission of crimes. The Federal Criminal Code establishes criminal liability for members and representatives of legal entities, associations, corporations, and any other enterprises with the exception of governmental institutions. If the crime is committed in the name, or on behalf, or for the benefit of the legal entity, a judge may order its suspension or dissolution for the reasons of public safety. **Federal Criminal Code** art. 11. The Federal Anti-Trafficking Law contemplates criminal liability when a legal person provides resources for the commission of the trafficking crime. The penalties include one or more of the following, depending on the nature and extent of the illegal activities performed: suspension of the legal entity for up to 5 years; dissolution including judicial appointment of a representative for liquidation procedures; ban on carrying out specific businesses or operations for up to 5 years; removal of the administrator who participated in the crime and substitution of that person; and intervention to monitor the transactions of the legal entity for up to 3 years. **Federal Anti-Trafficking Law** art. 8 (I)-(V). These provisions may be utilized to sanction any corporations, including those in the hospitality, entertainment, or transportation industries, which are implicated in the commission of trafficking in persons. To date, however, no such cases have occurred in Mexico.

**Establishment of Specialized Units**

Between 2004 and 2007, OAG worked on the issue of trafficking and smuggling through FPP. The director of OAG’s National Center for Planning, Analysis, and Information on Fighting Crime [hereinafter CENAPI], Nemesio Lugo Felix, had begun to work on cases through detection of both traffickers and smugglers within the airports and along the borders in a program called Operation Total Security. CENAPI had also started developing a database of criminals involved in related crimes to establish whether there were patterns to trafficking cases. In addition, CENAPI identified 47 organized criminal groups that could be involved in trafficking in persons. CENAPI also worked with legal advocates to help secure the reunification of children in Tlaxcala with their mothers who had been trafficked from Tlaxcala to the U.S. On May 14, 2007, CENAPI’s director was assassinated outside of his office, leading to internal changes within the intelligence unit and leaving a vacuum in the area of trafficking in persons.

In January 2008, the President issued a decree transforming OAG’s Unit for Violent Crimes against Women into the Specialized Unit for Violent Crimes against Women and Trafficking in Persons (FEVIMTRA). **Decree Establishing the Specialized Unit for Violent Crimes against Women and Trafficking in Persons** *(adopted by the President Jan. 31, 2008, No. A/024/08, D.O.)*. FEVIMTRA has the responsibility to investigate and prosecute all federal crimes related to violence against women and trafficking in persons that do not involve diplomats, consular personnel, members of international organizations, and Mexican victims trafficked abroad. These cases will fall under the jurisdiction of OAG’s Office on International Cooperation, which will also coordinate with authorities in cases of trafficking crimes committed by Mexicans abroad. FEVIMTRA may also exercise jurisdiction over certain state-level cases. See Article 1 above.

FEVIMTRA’s director is a federal prosecutor and one of the participants in the Inter-Secretarial Commission. For the fiscal year 2008, MXN 166.3 million (approximately USD 15.5 million) was
allocated to FEVIMTRA to work on women and gender equality, and MXN 70 million (approximately USD 6.4 million) was allocated for a program entitled “Refuge for Women Victims of Violence and Trafficking.” Budget for Women and Gender Equality, Amount 236.3 Million Pesos, Appendix A9 (Dec. 13, 2007, D.O.).

The officers who work in FEVIMTRA have recently begun to receive training on trafficking in persons, although some officials who were transferred from other units are already knowledgeable on the issue of human trafficking. Information exchange is ongoing on how to detect and prosecute cases. The U.S. Immigration and Customs Enforcement [hereinafter ICE] officers provided training in 2007 in collaboration with USAID-PROTEJA. DOJ, in cooperation with ICE, the U.S. Federal Bureau of Investigation, and the U.S. Department of Homeland Security [hereinafter DHS] offered training in June 2008.

Trafficking cases involving organized crime may be tried under federal jurisdiction if state laws do not contain separate provisions for organized crime and trafficking in persons. When this occurs, the cases will be investigated and prosecuted through the Specialized Unit on Smuggling of Minors, Undocumented Migrants, and Organs, and Crimes Related to Trafficking in Persons, located in OAG’s Office on Organized Crime. If trafficking in persons is committed in conjunction with other crimes, such as money laundering, more than one unit within OAG may be involved in criminal proceedings. Consequently, OAG’s units must coordinate their investigations of trafficking cases, but presently it is unclear how this will be accomplished. One of the challenges mentioned by the interviewees is that there are only eight prosecutors on FEVIMTRA’s staff.

Lastly, FPP developed a specialized Cybernetic Unit, which has a section dedicated to prevention of crimes involving children. The Cybernetic Unit is charged with gathering intelligence for OAG. It has detected over 100,000 internet sites in Mexico related to child sexual commercial exploitation, which led to the arrest of more than 51 people between 2001 and 2007. Silvia Otero, FPP Has Detected Over 100,000 Internet Sites of Child Pornography, EL UNIVERSAL, April 5, 2007, at http://www.el-universal.com.mx/nacion/149894.html.

Also on the state level several attorney general offices have established separate intake units for criminal complaints related to crimes against women and trafficking in persons where victims are assisted by specialized personnel. At the time this report was being finalized, the state of Chihuahua was in the process of creating a specialized police unit charged with investigating cases of human trafficking. UNODC, GLOBAL REPORT ON TRAFFICKING IN PERSONS 134 (2009).

Investigation and Prosecution

An investigation for trafficking in persons can be initiated through a criminal complaint filed either by a victim or a third party. OAG and MPS are required to devise public outreach campaigns aimed at encouraging citizens to file complaints if they possess information related to human trafficking. ANTI-TRAFFICKING REGULATIONS art. 27.

In an interview, OAG’s Specialized Unit on Smuggling of Minors, Undocumented Migrants, and Organs, and Crimes Related to Trafficking in Persons mentioned three major trafficking-related cases that were being prosecuted during the last 2 years, but under charges other than trafficking in persons. The first case involved a criminal group that forced women into prostitution in various cities throughout Mexico through an internet site called DIVAS. The majority of the victims were foreigners recruited in Argentina. In 2007, various leaders of the DIVAS group were indicted on counts of organized crime, pimping, and money laundering. They are being held in prisons near Mexico City. Access to Information File No. 001700105708 (Sept. 2, 2008); see also Silvia Otero, Presumed Transnational Leader of Trafficking in Women is Imprisoned, EL UNIVERSAL, June 27, 2007. Rescued victims were placed in the custody of NMI. Access to Information File No. 0001700180908 (Nov. 11, 2008). In spite of these indictments, the DIVAS Escort Service continues operations throughout Mexico via website “Zonadivas.com.” It is unclear whether any of the workers are in trafficking situations. Two other cases involved criminal networks implicated
in the sexual exploitation of women, whose leadership consisted of Mexican nationals and foreigners from Ecuador and Guatemala. In one case, leaders of a prostitution ring operating in Nuevo Leon, Mexico were arrested in 2007 and charged with organized crime and pornography. The leaders of this group recruited young women in Cuba and Hungary and forced some of them into prostitution upon their arrival in Mexico. Press Release No. 268/07, OAG, Office of Public Information, The Mexican Government Acts against Human Trafficking Characterized as Organized Crime under the Palermo Protocol (June 11, 2007); see also Access to Information File No. 0001700105608 (September 1, 2008). Finally, the Specialized Unit on Smuggling of Minors, Undocumented Migrants, and Organs, and Crimes Related to Trafficking in Persons has investigated several cases of child pornographers’ networks that could have been classified as human trafficking. Access to Information File No. 0001700133907 (July 9, 2007); see also Aurora Harrison, 14 Organizations Dedicated to Trafficking in Persons in Guerrero, ELSUR, March 29, 2007. One such case involves a systems engineer from Acapulco who was arrested on charges of pornography with children between 6 and 12 years of age. Information from law enforcement in the U.S. was utilized as part of the investigation that led to this arrest. See Press Release No. 141/08, OAG, Man Imprisoned on Charges of Child Pornography (February 26, 2008).

Between February 1, 2008 and January 31, 2009, FEVIMTRA investigated a total of 24 cases concerning human trafficking, which were referred to federal authorities through various sources, including NHRC and NGOs. As a result, FEVIMTRA has issued 2 formal indictments, declared lack of jurisdiction in 4 cases, and continues to pursue 15 remaining cases. Some of these cases involve internal trafficking, and some are transnational in nature. For example, three cases concern crimes committed in Spain (Madrid), the Bahamas, and the U.S. (Texas). In one case, federal jurisdiction was asserted by utilizing the charge of migrant smuggling, a federal crime as defined in the General Population Law, in addition to other charges. Three cases pertain to conducts committed prior to the adoption of the Federal Anti-Trafficking Law, and are being investigated as crimes related to trafficking in persons.

FEVIMTRA made the first formal charges under the Federal Anti-Trafficking Law in October 2008, in a case of trafficking for forced labor which involved eight Chinese victims exploited in a clothing factory in Sonora. The accused was a U.S. citizen. Press Release, OAG, FEVIMTRA Makes First Indictment for Trafficking in Persons (Oct. 8, 2008). Although the first instance court found the evidence sufficient to initiate criminal proceedings, the second instance court dismissed the case. Ultimately, the factory reached a negotiated agreement with the workers by paying their debts incurred during the travel to Mexico and reimbursing them for airplane tickets to China. The victims declined assistance offered by authorities and, according to unofficial information obtained by the Mexican government, returned to China. Letter from Oscar Fidel González Mendivil, OAG, to ABA ROLI (Feb. 25, 2009).

There are also trafficking cases that are being pursued on the state level, for example in the state of Chihuahua. Chihuahua reported having registered a total of 15 cases between January 1, 2007, when the state’s anti-trafficking law was adopted, and May 2008: 9 in 2007 and 6 in 2008. UNODC, GLOBAL REPORT ON TRAFFICKING IN PERSONS 134 (2009). In addition, several cases are under investigation in Tlaxcala, but charges have only been made for the crime of pimping. Interviewees mentioned that there were 7 open cases involving more than 22 defendants. See Benjamín Aguayo Segura, The State Attorney General’s Office has Registered 7 Complaints for Trafficking in 45 Days, SYNTHESIS, March 30, 2008, at http://tlaxcala.sintesisdigital.net/index.php?mod=article&cat=Region&article=6170, and Hypatia Velasco Ramírez, Trafficking of Women in Tlaxcala, ZAPATEANDO 2, October 22, 2007, at http://zapateando2.wordpress.com/2007/10/22/trata-de-mujeres-en-tlaxcala. Lastly, in Michoacan several people were charged with corruption of children, organized crime, pimping, and trafficking in a case in which young girls were taken from Veracruz to Michoacan and forced into prostitution. The trafficking rings were organized by families from Tlaxcala. See Another Member of the Network of Exploiters is Detained, MIZITACUARO.COM, May 4, 2008, at http://www.mizitacuaro.com/index.php?option=com_content&ask=view&id=3342&Itemid=1&page=0. The case is being prosecuted in Michoacan, a state whose criminal code contains the definition of trafficking in persons and establishes the following
sanctions: 6-12 years of imprisonment and a fine of 500-1000 days of minimum wage, equivalent to MXN 24,750-49,500 (approximately USD 2,317-4,635). **STATE CRIMINAL CODE OF MICHOACAN** art. 168 (*adopted* July 7, 1980, State Registry, *as amended*). This case demonstrates the importance of specific criminal definitions at the state level.

One of the main obstacles to ensuring that trafficking offenders are adequately punished is that the Mexican law enforcement officers are often reluctant to investigate and prosecute trafficking cases because they fear for their personal safety based on real incidences of retaliation, including high profile executions. It is also important to note that judges on both federal and state levels have been reluctant to accept trafficking charges in accordance with the new definitions and have preferred to change the criminal charges to more familiar crimes that may have lesser penalties, such as pimping. As of March 2009, no case has been sentenced for the specific crime of trafficking in persons under the federal or state jurisdiction.
Article 6: Assistance to and Protection of Victims of Trafficking in Persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
   (a) Information on relevant court and administrative proceedings;
   (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
   (a) Appropriate housing;
   (b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
   (c) Medical, psychological and material assistance; and
   (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.
Conclusion

The Anti-Trafficking Regulations restrict the term “trafficking victims” to passive subjects of the crime of trafficking in persons defined in the Federal Anti-Trafficking Law, who participate in criminal proceedings initiated in Mexico or abroad. This narrow definition may have detrimental implications for those individuals who have been subjected to trafficking in persons but are unwilling to file a criminal complaint or testify against the perpetrators. The Federal Anti-Trafficking Law establishes measures to protect the privacy and identity of trafficking victims and to ensure that victims receive information regarding judicial and administrative proceedings. In addition, it charges the federal government with ensuring housing, legal counseling, medical, psychological, and material assistance as well as employment, educational and training opportunities for trafficking victims. Victims and their families must receive physical protection that takes into account their age, gender, and special needs, especially in the case of children. The provisions regarding compensation for damages suffered complement those established in the Federal Criminal Code, but they have not yet been implemented in practice, although a trafficking victim may receive legal and social services on an ad hoc basis through local government agencies, NGOs, and international organizations. Protection of the identity and privacy of victims in general is uneven as is the extent to which victims receive legal information and representation. The federal legislation does not specifically address protection of victims from criminal charges for otherwise illegal conduct related to trafficking activities. The government’s efforts to put procedures in place that would enable proper identification of trafficking victims have been insufficient. Thus, the majority of trafficking victims in Mexico are detected by NGOs and international organizations.

Implementation Analysis:

In Mexico, the victim’s perspective is a relatively new topic that began to receive attention with the first reform to article 20 of the Federal Constitution in 1993, establishing specific rights for victims to receive legal assistance, damages, and emergency medical care. In January 2000, another reform to article 20 broadened victims’ rights to include the right to a hearing with a prosecutor, and the right to urgent medical and psychological assistance. In addition, children do not have to be physically present in a hearing with the accused in cases of rape or kidnapping. FEDERAL CONST. art. 20.

Within the scope of its Program Against Trafficking in Persons, NHRC and its 10 Regional Committees are entitled to receive complaints from victims whose rights have been violated and monitor authorities’ compliance with the Federal Anti-Trafficking Law and other human rights obligations.

Identifying Individuals as Trafficking Victims

Although the Trafficking Protocol does not directly obligate State Parties to adopt a legal definition of a trafficking victim or devise precise victim identification procedures, properly defining and identifying trafficked individuals is essential to ensuring that they receive adequate assistance and protection.

There is no definition of a “victim” in the Federal Criminal Code. There are also no provisions in the Federal Criminal Procedure Code that would regulate a formal designation of an individual as a victim of a crime. However, many states have enacted Victim Protection Acts that contain varying definitions. For example, a “victim” is defined in the Regulations to the Federal District Law on Assistance and Support to Crime Victims as “a person who suffers harm as a result of actions or omissions committed against the person that are classified as crimes and sanctioned in the criminal codes.” REGULATIONS OF THE FEDERAL DISTRICT LAW ON ASSISTANCE AND SUPPORT TO CRIME VICTIMS art. 2, XXII (adopted Dec. 20, 2004, Federal District Registry).
The Federal Anti-Trafficking Law does not contain a specific definition for a trafficking victim. The term is delineated in the Anti-Trafficking Regulations, which restrict the notion of trafficking victims to passive subjects of the crime of trafficking in persons as defined in the Federal Anti-Trafficking Law, who participate in criminal proceedings initiated in Mexico or abroad. Consequently, in accordance with the Mexican regulatory framework, trafficking victims are participants in criminal proceedings who have been promoted, solicited, offered, obtained, transferred, delivered, or received by another person, through physical or moral violence, trickery, or abuse of power for the purposes of sexual exploitation, forced labor, forced services, slavery, practices similar to slavery, servitude or removal of organs, tissue or its components. ANTI-TRAFFICKING REGULATIONS art. 2 (XV); FEDERAL ANTI-TRAFFICKING LAW art. 5. The nature of victims' participation in criminal proceedings is not defined.

This narrow definition of a trafficking victim may have detrimental implications for those individuals who have been subjected to trafficking in persons but do not agree to file an official criminal complaint or testify against the perpetrators. Most importantly, the language of the definition indicates that the majority of victim protection, assistance, and repatriation services mandated by the Federal Anti-Trafficking Law will not be available to those who refuse to cooperate with law enforcement authorities.

Furthermore, the definition of a trafficking victim depicted in the Anti-Trafficking Regulations may jeopardize the possibility of granting migration status to those who are unable to prove participation in criminal proceedings, through the procedure established in the Directive on Regularization of Witnesses and Victims. Yet, under the stated Directive, an applicant's declaration of being a witness or victim of a crime before the Federal Coordinator for Migration Regularization or any of the 32 regional NMI delegates should be viewed as sufficient. See DIRECTIVE NO. CRM/189/2007 ON REGULARIZATION OF WITNESSES AND VICTIMS (adopted by NMI on March 20, 2007) [hereinafter DIRECTIVE ON REGULARIZATION OF WITNESSES AND VICTIMS]; see also Article 7 below.

In addition to a “trafficking victim,” the Anti-Trafficking Regulations define a “possible victim” as a person who possesses objective risk factors for becoming a subject of the crime of trafficking in persons. ANTI-TRAFFICKING REGULATIONS art. 2 (IX).

Federal authorities are mandated to establish the necessary means to fully identify the victims and potential victims of trafficking in persons. FEDERAL ANTI-TRAFFICKING LAW art. 17 (V). However, victim identification procedures are not specified in the Federal Anti-Trafficking Law. Rather, directives on how this will occur are expected to be outlined in the forthcoming National Anti-Trafficking Program.

In practice, an individual can be recognized as a victim by visiting one of the federal or state victim assistance centers and registering in the center’s database. In Mexico City, which has one of the most far-reaching laws on victim support, such an individual could receive medical and psychological counseling, but in order to obtain any type of financial support, he or she would have to file a criminal complaint. Although victim assistance centers can issue reports on the numbers of individuals assisted, there is no centralized database that would prevent duplication in case one person visits multiple centers.

There has been some effort on the part of the government to put procedures in place that would enable proper identification of trafficking victims. For example, the Ministry of Labor and corresponding state ministries have inspection responsibilities that include identification of victims of trafficking. At the same time, MFA is developing a questionnaire to be utilized by consular personnel abroad that will help identify trafficking victims, as well as informative materials to be distributed abroad. Finally, Beta Groups, which were founded by NMI and consist of unarmed officers responsible for helping and protecting Mexican and international migrants from risks during their journey through Mexico, have received some training on trafficking in persons to help them with victim identification, particularly along Mexico’s southern border. See Article 11 below.
Interviewees expressed concerns that trafficking victims at the border crossings and within the detention and deportation centers are not identified and are regularly deported from Mexico. For example, in 2006, 4,054 migrants were denied entry to Mexico, mostly within the international airports, and 179,345 migrants were returned to their countries of origin through voluntary repatriation or deportation procedures. While many of the police officers and migration agents have now received training on human trafficking, there is no systematic screening procedure to assist them with victim identification in primary or secondary inspections. See Article 10 below. One interviewee reported, though, that after receiving training, one NMI agent detected a trafficking case and was able to refer the victim through appropriate channels. In addition, the form utilized for voluntary repatriation, which applies to Central Americans from Guatemala, El Salvador, Honduras or Nicaragua, has no screening questions that would help identify a potential trafficking victim. Once the form is signed, migrants are usually returned within 2-3 days, depending on the location of their initial detention. Nationals from other countries are usually transferred to the Mexico City Detention Center for an administrative deportation procedure and consular protection. These nationals may have more time and opportunity to be identified as trafficking victims. NMI states that it has specific interviewing techniques and internal working groups that are trained to detect trafficking victims and that it works in coordination with other authorities throughout the country. Access to Information File No. 0411100049008 (Aug. 13, 2008). NMI is in the process of developing a screening questionnaire, but the document was not provided to the assessment team. Access to Information File No. 0411100050708 (July 28, 2008).

To date, the majority of trafficking victims in Mexico have been detected by NGOs and international organizations, both with respect to internal trafficking as well as trafficking of foreigners in Mexico. For example, foreign victims have been identified in the detention centers in Mexico City and Tapachula, Chiapas by NGOs and IOM, whose officers make regular visits to the Mexico City Detention Center. Also, NHRC has identified victims through their regular monitoring processes in the Mexico City Detention Center and monitoring activities in other detention centers located in the following cities: Tijuana (Baja California), Ciudad Juarez (Chihuahua), Reynosa (Tamaulipas), Nogales (Sonora), Aguascalientes (Aguascalientes), Coatzacoalcos (Veracruz), Villahermosa (Tabasco), Campeche (Campeche), and San Cristobal de las Casas and Tapachula (Chiapas).

Other victims have been detected in migrant shelters, shelters for victims of domestic or other types of violence, and shelters for homeless children. In some cases, victims had inquired where to receive migration assistance or help with locating family members, and subsequently arrived directly at the office of an NGO. While there is no formal referral system on a national level, several of the informal networks working on trafficking in persons have developed referral lists. However, there are no organizations in Mexico working exclusively on the trafficking issue that would have the capacity to conduct regular screenings for victims in shelters and detention centers.

When trafficking victims have support from an NGO or IOM, NMI is more likely to utilize its discretion to grant migration status to them so that they can receive social and legal assistance and work authorization. See Article 7 below. It is believed, however, that the majority of foreign trafficking victims are deported without ever having been identified.

The general public opinion in Mexico is that foreigners who are in situations of exploitation, particularly sexual exploitation, should be assisted to return home. For example, in a recent congressional request for a report from NMI, senators exhorted “the Migration Commissioner to conduct raids in night clubs, bars, discotheques, private clubs, massage parlors, among others, to detect foreign children, adolescents and women who are objects of commercial sexual exploitation in order to preserve their human rights, and in the case of any irregularity in their migration status that would merit their deportation, return them to their countries of origin.” Mexican Senate, Permanent Commission, Proposal on Agreement Related to the Commercial Sexual Exploitation of Mexican and Foreign Women (June 11, 2008). NMI conducts raids of adult
entertainment establishments on a regular basis through its Permanent Program against “Giros Negros,” many times in conjunction with FPP and the Federal Investigative Police. The raids are carried out by the regional NMI delegations in many cities throughout Mexico in coordination with state and municipal authorities. Between January and November 2006, for example, 771 raids took place resulting in the detention of 622 foreigners. NMI, THIRD REPORT WITHIN THE ACCOUNTABILITY PROGRAM, JANUARY-NOVEMBER 2006 (2006). When NMI agents identify foreigners working in these establishments, they are frequently detained and placed in administrative proceedings for various violations of the General Population Act, including irregular status and unauthorized employment. This often leads to their deportation. According to interviewees, NMI does not regularly consider these foreigners as possible trafficking victims.

Non-Criminalization

While the Trafficking Protocol does not specifically address the non-criminalization of victims for otherwise illegal conduct committed within the context of trafficking in persons, the state responsibility to protect victims includes taking measures to ensure that trafficked individuals are not wrongfully treated like criminals.

Neither the Federal Anti-Trafficking Law nor any other Mexican federal law specifically addresses protection of trafficking victims from criminal charges that would otherwise stem from such illegal conducts as, e.g., irregular residence and employment status, or carrying falsified identity documents. However, the elements of the crime cannot be met if the act was committed involuntarily. FEDERAL CRIMINAL CODE art. 15 (I). As a result, the state could charge a trafficking victim with infringements that were related to trafficking activities, such as unauthorized employment, and the victim would have to prove that the action was not voluntary. It is worth emphasizing that prostitution is not illegal in Mexico. Thus, a prostitution charge could not be formally raised against a trafficking victim.

On a separate note, the General Population Act grants discretion to NMI to regularize the situation of certain irregular migrants without regard to prior irregular residence or employment status. GENERAL POPULATION ACT art. 163. NMI has granted status to 22 trafficking victims between 2000 and March 2008 through various discretionary procedures. See Article 7 below.

Confidentiality

The privacy and identity of trafficking victims and their families are protected by law. FEDERAL ANTI-TRAFFICKING LAW art. 18. OAG and other government agencies are required to take the necessary steps to ensure that these rights are respected in practice. ANTI-TRAFFICKING REGULATIONS art. 23. In particular, authorities are prohibited from divulging the names and personal data of victims and their families, although the accused has the right to know the name of the accuser and the nature of the accusation. FEDERAL ANTI-TRAFFICKING LAW art. 18; FEDERAL CONST. arts. 18 (I), 20. In addition, OAG is obliged to classify information obtained through the investigation of trafficking cases as confidential, in accordance with the applicable laws. ANTI-TRAFFICKING REGULATIONS art. 28 (VII). Finally, OAG has a mandate to file a motion with a judge to order appropriate measures for the protection of the privacy, identity, and dignity of victims and witnesses at the trial stage, such as rendering testimony through indirect means or from remote locations. Id. art. 31.

By law, the National Anti-Trafficking Program should contain procedures for relocating victims. FEDERAL ANTI-TRAFFICKING LAW art. 13 I (d-g). Videoconferencing may be utilized during hearings as well as recording devices or any other apparatus that reproduces images or sound. FEDERAL CRIMINAL PROCEDURE CODE art. 16.

The doctor-patient privilege states that doctors, surgeons, medical specialists, and clinical psychologists will not be required to testify regarding information that they have received concerning a patient’s health, unless the professional wishes to testify and has the explicit
consent of the patient. *Id.* art. 243 (II). In fact, professionals who reveal, without consent, reserved, secret information that they have obtained through their work and that will cause harm to someone, will be sanctioned. The sanctions increase when the person who reveals the information is a public servant. **FEDERAL CRIMINAL CODE** arts. 210-211.

The procedures to protect the privacy and identity of the trafficked persons and their family members should be applied at all times. In practice, however, respect for the privacy of victims has been uneven. On the one hand, in its recommendations related to human trafficking, NHRC has cited the Trafficking Protocol and expressly protected the confidentiality of the victims and their families. On the other hand, in the case of Jean Sucar Kuri, mentioned in Article 1 above, local authorities leaked the names and pictures of some of the victims of child pornography and these were published in the media. The information provided by OAG mentions the names of some of the victims identified by its units, and in the DIVAS case, illustrated in Article 5 above, the name of the victim that testified against the leader of the trafficking group has been published repeatedly in the press. See *e.g.*, OAG, **INSTITUTIONAL REPORT 2006-2007**.

One interviewee emphasized that it is very difficult for victims to obtain any type of reliable protection from OAG. Consequently, victims usually rely on shelters operated by NGOs. If needed, police vehicles are sent to make routine observations of the places. Technology is not regularly used for the purposes of victim protection, and its availability often depends on the quality of representation a victim receives. For example, some children’s rights organizations have reportedly been successful in requesting videoconferencing to ensure the safety of their clients.

**Assistance in Court**

Federal authorities are required to adopt necessary measures to guarantee the protection of victims and other persons affected by the trafficking crime through the elaboration of immediate assistance programs before, during, and after judicial proceedings. These programs will encompass legal assistance, including help with related administrative and civil issues, such as obtaining compensatory damages. **FEDERAL ANTI-TAFFICKING LAW** art. 17 (III). The law does not specify for how long the assistance should be made available.

OAG is mandated to produce internal norms and regulations to put protection programs into place for those involved in criminal proceedings. **ANTI-TAFFICKING REGULATIONS** art. 29. In addition, OAG has the obligation to provide legal representation to victims upon request as well as to inform them and other affected parties about their constitutional rights. **LAW ON ATTORNEY GENERAL** art. 4 (c) (a). Victims must receive information regarding their rights and the judicial proceedings in a language or dialect that they can understand. **FEDERAL ANTI-TAFFICKING LAW** art. 18 (II). Furthermore, the Federal Constitution guarantees free legal representation through its public defenders system to accused persons, including victims of trafficking in persons facing criminal charges. **FEDERAL CONST.** art. 20. While not specified in the law, NGOs are not prohibited from accompanying victims to court. Victims can also receive legal information from, and be accompanied to hearings by, representatives of the federal and state victim assistance centers.

Pursuant to the law, the National Anti-Trafficking Program must incorporate free translation services, including special services for indigenous people. **FEDERAL ANTI-TAFFICKING LAW** art. 13 I (a)-(b). In addition, OAG is obliged to enter into agreements with public and private organizations to guarantee the availability of interpreters and translators to the accused, victims, complainants, and witnesses. **LAW ON ATTORNEY GENERAL** art. 5 (IX). In practice, the provision of these services is uneven. In some state attorney general offices translation services for indigenous languages are routinely offered. However, in cases in which the language is uncommon, the victims or NGOs that are assisting victims are often called upon to provide translators.
In addition to the protection provided by the government within Mexican territory, Mexican diplomatic representatives must offer legal orientation to Mexican trafficking victims abroad, and help them make a criminal complaint in order to obtain compensation as well as other benefits contemplated by the laws of the country in which the victims are requesting assistance. FEDERAL ANTI-TRAFFICKING LAW art. 16 (II).

One of the obstacles to ensuring that trafficking victims have access to justice results from the requirement that foreigners must prove legal presence in Mexico in order to bring any legal action before a federal, local, or municipal authority. GENERAL POPULATION ACT art. 67. In practice, irregular migrants who attempt to initiate judicial proceedings are frequently turned over to NMI and deported. Consequently, if proper screening mechanisms are not in place, a trafficking victim with irregular migration status may be deported. This almost occurred in the case of a child trafficking victim from Guatemala, mentioned in Article 1 above. In spite of the fact that the case was under investigation, the child was turned over to NMI and detained for several weeks before being identified as a trafficking victim by NHRC and Sin Fronteras, I.A.P.

Furthermore, issues of sexual exploitation have not been recognized as such in Mexican society so public officials are unlikely to investigate cases. Many interviewees pointed to the crime of pimping, which has gone largely without prosecution in spite of the fact that it is established in all of the state criminal codes. One interviewee stated that prosecutors are often unable to pursue cases because individuals engaged in commercial sex acts will not admit that they are working under a pimp, and without the declaration from the victims, there is no case.

Several interviewees emphasized that on many occasions victims have to confront the attitudes of persons charged with preparing the complaints. For example, public officials often ask women what they did to provoke violence, or tell them to think twice about making the complaints, because their husbands or partners could end up in jail, causing social and economic hardships for their families.

Physical Safety, Rehabilitation, and Reintegration in Society

The Inter-Secretarial Commission is required to develop campaigns on protection and assistance for trafficking victims; promote collaborative agreements with state and municipal governments related to security, entry, transit, and destination of trafficking victims in order to protect them; and, if needed, assist them with repatriation. FEDERAL ANTI-TRAFFICKING LAW art. 13 (III). The law does not specify whether these provisions apply to family members and persons close to the victims. Similarly, nothing in the law contemplates the involvement of NGOs in the state’s efforts to rehabilitate victims. The only mention of NGOs in the Federal Anti-Trafficking Law refers to the participation of three representatives from civil society in the Inter-Secretarial Commission, and the Commission’s obligation to promote research and exchange of expertise with civil society organizations that focus on the protection of human rights of children, adolescents, and women. Id. arts. 10 (II), 12 (V). It will be necessary to wait for the publication of the National Anti-Trafficking Program to determine whether or not the legislation will include collaboration between the government and civil society and whether or not the law will provide for public financial support for NGOs.

By law, the National Anti-Trafficking Program must include measures for providing victims with the following forms of assistance: legal, migration, social, labor, material, medical, and psychological, as well as education and vocational training if necessary to obtain employment. If the victim speaks another language or indigenous dialect, a translator must be assigned to her or him at all times. Id. arts.13 (I) (a)-(c), 18 (II). In addition, the law requires the National Anti-Trafficking Program to specify plans for the construction of shelters with the capacity to accommodate trafficking victims for an unspecified, necessary amount of time. The conditions in these shelters must be respectful of victims’ human rights. Shelters will offer medical and psychological assistance, food, and care, with particular attention to the individual needs of children, adolescents, and women. They will also be legally obliged to guarantee victims and
their families physical safety from threats, aggression, intimidation, or retaliation by those responsible for the crime or those related to it. Residence in the shelter is intended to be voluntary. *Id.* art. 13 (i) (d), (g) and (e). The Federal Anti-Trafficking Law does not explicitly address safety for shelter personnel, nor impose particular qualifications for shelter staff or any other staff who assist trafficking victims throughout the rehabilitation process.

The Anti-Trafficking Regulations assign specific responsibilities regarding protection of and assistance to victims to a number of government agencies, including INMUJERES, DFS, MFA, OAG, and MPS. See Mexico Background chapter above. INMUJERES, which is required to participate in the elaboration of public policy for protection of victims, assumed responsibility for proposing federal prevention and assistance models, and providing specialized training for shelter workers. ANTI-TRAFFICKING REGULATIONS art. 20. DFS will promote models for identification, assistance, and protection of victims under 18 years old, while MFA will develop mechanisms aimed at protecting and assisting victims residing abroad. *Id.* arts. 21, 22. OAG and MPS will elaborate models and programs for immediate protection services, which are supposed to comply with the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. *Id.* art. 24; see also Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. GAOR, 96th plenary mtg. at 213-214, U.N. Doc. A/Res/40/34 (1985). The immediate assistance programs will include the establishment of shelters where victims will reside voluntarily and receive specialized treatment, and ensure that victims are assisted by multicultural personnel in a language they can easily comprehend. ANTI-TRAFFICKING REGULATIONS art. 24. As mentioned in Article 1 above, OAG and MPS are also obligated to devise a program aimed at protecting victims, witnesses, and their families from threats, corruption, and intimidation by the accused or his or her agent. *Id.* art. 25. Lastly, OAG is mandated to inform the victims about the public or private institutions, such as NGO shelters, which offer assistance. *Id.* art. 28 (III).

It is important to note that the provisions in the Federal Anti-Trafficking Law regarding rehabilitation do not mention funding. Pursuant to the Anti-Trafficking Regulations, all actions taken by the government agencies to comply with the regulations are subject to budget allocations. *Id.* transitional provision no. 3. In 2008, the only funding appropriated specifically for counter-trafficking activities was allocated to FEVIMTRA. Other government agencies that work on the issue of trafficking in persons seem to be absorbing the relevant financial responsibilities into their regular budgets. They also receive technical assistance through USAID-PROTEJA.

In practice, state rehabilitation services for trafficking victims have been provided on an ad hoc basis. Even safe housing is not systematically afforded. On some occasions, trafficking victims have stayed in DFS shelters or in the Refuge Network shelters for victims of domestic violence. This has occurred on a case-by-case basis and usually at the request of an NGO. The majority of the trafficking victims assisted in Mexico to date have received housing support from NGOs that either have their own shelters or have paid the rent for private rooms or apartments. In 2006, USAID-PROTEJA conducted an exhaustive review of existing shelters throughout Mexico and identified four NGO shelters with adequate conditions of safety and services for trafficking victims. The shelters provide medical and psychological assistance as well as legal representation. In three of the shelters, women may stay with their children, while the other is for children. These four shelters, located in various states, receive funding from the U.S. government through USAID-PROTEJA to support their work with trafficking victims. In addition, IOM has provided funding to a shelter in Tapachula, Chiapas to add on to its existing infrastructure in order to be able to accommodate trafficking victims, but this space was not completed at the time of the interviews. In sum, the type of accommodation that trafficking victims receive is inconsistent and depends on where they are located and which organization is providing assistance. If a trafficking victim is identified and referred to USAID-PROTEJA, IOM, or one of the principal NGOs that work on the issue, he or she may have access to an appropriate shelter.

In 2008, FEVIMTRA was allocated MXN 70 million (approximately USD 6.4 million) to build a shelter for trafficking victims. In December 2008, FEVIMTRA purchased a building which can
currently accommodate 33 individuals. The shelter will be ultimately expanded to house 70 victims of trafficking in persons, including men, women, and children. In the meantime, FEVIMTRA was able to offer temporary assistance to victims on a case-by-case basis, including housing in rented rooms, if needed. Between March 2008 and February 2009, FEVIMTRA’s separate assistance center provided support to 52 victims of trafficking.

Trafficking victims must agree to testify or otherwise cooperate with authorities in order to receive state protection. ANTI-TRAFFICKING REGULATIONS art. 2. Prior to the adoption of the Anti-Trafficking Regulations, some trafficking victims received immigration and repatriation assistance without having initiated criminal complaints. However, in other cases, no state protection was provided even though the victims testified and cooperated with authorities.

Children

The Federal Anti-Trafficking Law mandates that the provisions created for victims’ assistance should take into account the special needs of children. First, federal officials must be trained to properly apply the “best interests of the child” standard when dealing with child victims of trafficking in persons. Second, opportunities for education should be promoted for all victims of trafficking, including children. Third, the National Anti-Trafficking Program must contemplate the development of shelters that address the particular needs of child victims. FEDERAL ANTI-TRAFFICKING LAW arts. 12 (II), (IV), 13 (I) (d), (II) (c). Children may be exempted from testifying in the physical presence of the accused. FEDERAL CONST. art. 20 (B) (V). In some courts, mechanisms exist that allow people to testify using alternative means, such as video cameras.

According to interviewees, the treatment that children receive during criminal proceedings varies from court to court and state to state. One case offers insights into the types of difficulties children face in the Mexican criminal justice system. In this case, when the victims presented official complaints before authorities, their names, addresses, and photographs were released to the press. Then, in an attempt to gain more evidence, the prosecution persuaded one of the victims to meet with the perpetrator on more than one occasion so that the officials could film the conversations. Finally, the victims were interrogated about the same incident by multiple authorities. See LYDIA CACHO, DEMONS OF EDEN: THE POWER THAT PROTECTS CHILD PORNOGRAPHY (Grijalbo 2005); see also Article 3 above.

Compensation

The prosecutor is obligated to request damages from the judge in appropriate cases. FEDERAL CONST. art. 20 (A) (IV). The law allows for monetary fines as well as damages. Damages must be requested by the prosecutor, and the judge will impose an amount according to the evidence obtained in the judicial proceedings. The compensation will be granted to the victim once the defendant has been sentenced. FEDERAL CRIMINAL CODE arts. 31, 37. Victims are also entitled to file separate civil actions for compensatory and moral damages against individuals and legal entities implicated in the commission of criminal acts. The amount of moral damages is determined by taking into account the rights that have been violated, the degree of responsibility, the economic situation of both the victim and the responsible person, and the circumstances of the case. FEDERAL CIVIL CODE arts. 1915-1916, 1918.

Trafficking victims have the right to damages for the following: cost of medical treatment, therapy, as well as physical and occupational rehabilitation; cost of transportation, including return to the place of origin; food, provisional housing, and special care for people under 18 or over 60, the indigenous, and mentally disabled; lost income; and compensation for harm caused, moral damages, and any other loss suffered by the victims as a result of the crime. FEDERAL ANTI-TRAFFICKING LAW arts. 1-7, 9. Prosecutors are instructed to collect sufficient evidence to prove and quantify the warranted compensation. ANTI-TRAFFICKING REGULATIONS art. 32. If damages are granted, trafficking victims living abroad will receive assistance through consular services to recover them. Id. art. 35.
To date, no trafficking victim has received compensation through these means. The only trafficking victims that interviewees identified as having obtained any type of compensation were two Chinese victims who recovered small sums through a labor conciliation process. The victims had been held in forced labor in an apparel factory in Guanajuato; their documents were retained, they worked 14-16 hours per day Monday through Saturday, and they received USD 50 per month for expenses. Sin Fronteras, I.A.P. helped them initiate a claim against their employer for various labor violations before the Labor Tribunal, a criminal complaint, and a petition to NHRC that resulted in that institution’s first recommendation concerning human trafficking based on Mexico’s obligations under the Trafficking Protocol. The recommendation stated that the Ministry of Labor and NMI had violated the Chinese workers’ human rights by failing to carry out inspections of their contracts and working conditions, and by allowing the employers to withhold the workers’ migration documents. NHRC recommended further investigation of the case as well an administrative procedure to determine whether the implicated officials should be sanctioned. RECOMMENDATION 11/2006 TO MINISTRY OF LABOR AND NMI REGARDING THE CASE OF MS. LF AND MS. CS, CHINESE NATIONALS (issued April 26, 2006 by NHRC). The labor dispute was settled with each victim receiving a partial settlement. However, the criminal complaints were dismissed. Power Point Presentation, Sin Fronteras, I.A.P., Human Trafficking and Labor Exploitation (Dec. 4, 2007).

There are currently no government compensation funds for trafficking in persons. Interviewees suggested that a fund be set up similar to OAG’s fund, which was created by the Congressional Commission on Homicides to assist families of victims in Chihuahua. See AGREEMENT NO. A/131/05 CREATING THE ADVISING COUNCIL FOR THE ECONOMIC FUND FOR FAMILY MEMBERS OF VICTIMS OF HOMICIDE IN JUAREZ, CHIHUAHUA (adopted May 31, 2005 by OAG, D.O.).
Article 7: Status of Victims of Trafficking in Persons in Receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Conclusion

Pursuant to the Federal Anti-Trafficking Law and Anti-Trafficking Regulations, federal authorities must provide trafficking victims who cooperate with law enforcement authorities with migration assistance. They must also facilitate trafficking victims’ stays during the judicial proceedings, after which time continued stay or repatriation is governed by existing legislation. While the General Population Act does not contemplate migration status for trafficking victims, NMI has issued several internal directives that provide for a one-year (renewable for additional 4 years) migration status to witnesses and victims of crimes as well as persons who merit such status based on humanitarian grounds and public interest. While these directives are in compliance with Article 7 of the Trafficking Protocol, they are discretionary in nature and have not been officially published. As such, they are not legally binding and may be revoked through an administrative decision at any time. International organizations, NGOs, and government officials interviewed by the assessment team reported that NMI has applied the directives and has generally been responsive to the status requests. They expressed the need to legally formalize the procedures.

Implementation Analysis:

Immigration Status

A trafficking victim cannot be obligated to remain in Mexico. FEDERAL ANTI-TRAFFICKING LAW art. 19; ANTI-TRAFFICKING REGULATIONS art. 39. However, federal authorities must provide victims with migration assistance, and offer them facilities so that they may remain in the country while their legal proceedings are pending. Once the legal proceedings have been concluded, permanence in the country or repatriation are governed by the existing laws. Federal authorities are obliged to facilitate repatriation of trafficking victims by formulating and implementing actions and strategies to ensure protected return. FEDERAL ANTI-TRAFFICKING LAW arts. 17 (II), 18 (III), 19, 20; see also Article 8 below.

The Anti-Trafficking Regulations require NMI and OAG to coordinate their activities in order to facilitate the victim’s stay in Mexico during the course of criminal proceedings. ANTI-TRAFFICKING REGULATIONS art. 30. In particular, OAG is obliged to notify NMI immediately after identifying foreign victims of trafficking in persons in order to request the legalization of their residence. The formal requirements for migration status include the consent of the victim to remain in the country; submission of necessary documentation by OAG; and NMI’s opinion stating that the legalization of residence is justified. Once the requirements are met, NMI will grant the individual migration status as a victim of trafficking in persons. Id. art. 40. As of March 2009, no one has ever obtained a migration status through this procedure. It is expected that NMI will issue an internal directive detailing the procedural aspects of this provision. It needs to be emphasized that the migration status as a victim of trafficking in persons is contingent on the individual’s willingness to cooperate with law enforcement authorities.

To date, status of trafficking victims in Mexico has been governed by the series of directives issued by NMI in accordance with the General Population Act. In essence, the General
Population Act delegates authority to MOI to establish requirements which foreigners must meet to receive migration documents that allow them to enter and remain in Mexico. When special circumstances merit, MOI may change the conditions regulating a foreigner's stay in Mexico. In addition, MOI has discretion to establish additional categories of migration documents for non-immigrant visitors. GENERAL POPULATION ACT arts. 95, 112, 163.

While the General Population Act does not establish legal status for victims of trafficking in persons who are present within Mexican territory, in 2007 NMI issued an internal directive that allows witnesses and victims of crimes to regularize their migration status. While the directive does not exclude other types of victims or witnesses, the legal foundation contained in the directive is based on compliance with article 7 of the Trafficking Protocol.

In order to receive migration status through the procedure established in the Directive on Regularization of Witnesses and Victims, the applicant must either declare before the Federal Coordinator for Migration Regularization or any of the 32 regional NMI delegates that he or she is a witness or victim of a crime, or must submit evidence that he or she has made a criminal complaint or testified in a criminal procedure. In addition, the applicant must present a certified copy of a passport, identity, or travel document. If the person cannot prove his or her nationality, two witnesses may testify as to the person's nationality. If the applicant does not have financial resources, he or she may request a fee waiver. The migration status granted through this procedure is a Non-Immigrant Visitor status with authorization to work in any honest and legal activity. The status is issued for one year with the option of renewal each year for additional 4 years. The Directive on Regularization of Witnesses and Victims does not mention family members or relatives of the victim or witness, nor does it establish an age limit. The procedure is strictly confidential. DIRECTIVE ON REGULARIZATION OF WITNESSES AND VICTIMS arts. 1 (c)-(d), 2 (a)-(b), 3 (b), (d). Between April 2007 and July 2008, eight individuals received migration status based on this directive. Access to Information File No. 041110048708 (Aug. 6, 2008).

If a trafficking victim is not eligible to receive a Non-Immigrant Visitor status through the above-mentioned procedure, additional mechanisms are available. Trafficking victims who meet the grounds established in the Refugee Convention and the General Population Act may be recognized as refugees through a non-adversarial eligibility determination process handled by the Mexican Commission for Refugee Assistance [hereinafter COMAR]. See REFUGEE CONVENTION art. 1, GENERAL POPULATION ACT art. 42. COMAR is in charge of the eligibility proceedings together with an internal working group that includes protection officers from UNHCR. Under this procedure, a victim's family members would be included, and social and material assistance may be made available. The procedures for requesting refugee status in Mexico are established in the General Population Act and its Regulations. GENERAL POPULATION ACT art. 42. In practice, 438 people have been recognized as refugees in Mexico between 2002 and 2007. While UNHCR's regional office in Mexico City has conducted training on the relationship between trafficking in persons and refugee status, according to interviewees no trafficking victims have applied for refugee status to date.

In 2007, NMI issued a directive that establishes a procedure for obtaining migration status based on the need for complementary protection. DIRECTIVE NO. CRM/016/2007 ON COMPLEMENTARY PROTECTION (adopted by NMI on July 03, 2007) [hereinafter DIRECTIVE ON COMPLEMENTARY PROTECTION]. In essence, the directive seeks to provide protection to people who were not recognized as refugees or asylees, but who nevertheless should not be returned to their country of nationality or habitual residence due to the principle of non-refoulement. The reasons include, among others, danger of being subjected to torture or other cruel, inhuman, or degrading

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7 Mexican legislation provides for the granting of refugee status in accordance with the Refugee Convention and the General Population Act, as well as for the conditions of diplomatic and territorial asylum in accordance with the OAS conventions on territorial and diplomatic asylum and the General Population Act.
treatment or punishment, and danger of having the right to life or personal freedom violated. See Article 8 below. The migration status obtained through this procedure is a Non-Immigrant Visitor status with authorization to work in any legal and honest activity. This document may be renewed for an additional 4 years. Subsequently, the foreigner may request another type of migration status. Directive on Complementary Protection arts. 1 (II), 3 (b)-(c). Between July 2007 and July 2008, seven people received migration status through the Directive on Complementary Protection. Access to Information File No. 0411100048808 (Aug. 7, 2008).

Further, Mexico has ratified the Convention on the Rights of Stateless Persons (adopted Sept. 23, 1954 by U.N. Conference on the Status of Stateless Persons). While there is no implementing legislation for the Convention, NMI’s Office on Migration Regularization issued an internal directive which provides for a Non-Immigrant Visitor status to stateless persons. Directive No. CRM/015/2007 on Migration Situation of Stateless Persons (adopted by NMI on July 3, 2007). The procedure is conducted by COMAR, which determines if the person is either stateless de jure or de facto. Once this determination is made, COMAR must prepare a recommendation to NMI requesting that the person be granted the Non-Immigrant Visitor status. The status allows the person to leave and enter the country, work in any legal activity, and renew the document for an additional 4 years. The procedure is non-adversarial and discretionary, and the directive can be revoked at any time. In addition, MFA may issue travel documentation to individuals with undefined nationality, including persons claiming to be Mexican nationals, so that they can return to Mexico. Passport Regulations art. 28 (1) (issued by the President, Jan. 9, 2002, D.O.) [hereinafter Passport Regulations].

The migration status offered through the above-mentioned NMI directives is in compliance with Article 7 (1) of the Trafficking Protocol. The directives establish streamlined procedures that enable trafficking victims to obtain a Non-Immigrant Visitor status with broad work authorization as well as the possibility to renew the documents for an additional 4 years. It is unclear, however, if, and to what extent, the definition of “trafficking victim” set forth in the Anti-Trafficking Regulations may jeopardize the possibility of utilizing NMI directives to grant a migration status to those who are unable to prove participation in criminal proceedings. See Anti-Trafficking Regulations art. 2 (XV); see also Article 6 above.

As the table below illustrates, NMI has considered 22 trafficking cases between 2005 and 2007.

<table>
<thead>
<tr>
<th>Country</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>Total</th>
</tr>
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<tr>
<td>China</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Guatemala</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Nicaragua</td>
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<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Honduras</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>El Salvador</td>
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<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Argentina</td>
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<td>3</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Slovakia</td>
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<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>4</td>
<td>9</td>
<td>9</td>
<td>22</td>
</tr>
</tbody>
</table>

Source: Department of Migration Inspection and Control, Access to Information File No. 0411100021908 (April 21, 2008).

See inter alia, Convention on the Rights of the Child art. 37 (a), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, American Convention on Human Rights (Pact of San Jose, Costa Rica) arts. 4, 5 and 22 (8), and International Covenant on Civil and Political Rights arts. 6, 7.
It is important to note that at least 13 people were identified as trafficking victims and contemplated in some way before the issuance of the NMI directives. This means that in practice, NMI had most likely issued immigration documents to trafficking victims through its normal regularization procedures or through one of the ongoing regularization programs which have been in effect since 2000. IOM reports that it has assisted 134 trafficking victims since its program commenced in 2005. Fourteen of them were successful in regularizing their immigration status. In addition, in 2003, Sin Fronteras, I.A.P., identified and assisted two trafficking victims from China and was able to regularize their immigration status through ad hoc procedures before NMI directives were issued. At that time they received FM-3 Non-Immigrant Visitor visas with work authorization that the organization helped them renew each year.

**Immigration Issues within the Context of Humanitarian and Compassionate Factors**

While not designed specifically for trafficking victims, in 2007 NMI issued an internal directive authorizing the Migration Commissioner, the Coordinator of Migration Regularization, and the 32 regional NMI delegates to grant Non-Immigrant Visitor Humanitarian Status to eligible foreigners who could include trafficking victims. **DIRECTIVE NO. CRM/04/07 ON ENTRY OR REGULARIZATION FOR HUMANITARIAN REASONS (adopted by NMI on April 12, 2007)** [hereinafter DIRECTIVE ON HUMANITARIAN STATUS]. With this status, a person may remain in the country for one year with authorization to work in any honest and legal activity. The person may renew the migration document each year for an additional 4 years. A person with Non-Immigrant Visitor Humanitarian Status is authorized to freely leave and re-enter the country. **DIRECTIVE ON HUMANITARIAN STATUS** art. 3 (a), (d)-(f).

As the Directive on Humanitarian Status does not specify that it is for victims of crimes, approval is not dependent on cooperation with authorities. The directive only requires that the authorized migration official prepare a document specifying the grounds for the humanitarian status.

The Directive on Humanitarian Status does not list any specific eligibility criteria nor indicate whether the applicant must apply in person or whether a legal representative, for example an NGO, could apply on his or her behalf. The directive does not exclude anyone based on age and extends the possibility of obtaining the same status to the victim’s family or other persons close to him or her. A person with Non-Immigrant Visitor Humanitarian Status may also apply for immigration status for a spouse and immediate family members. **GENERAL POPULATION ACT** art. 42. The only possible exclusion is if the person has previous immigration violations or is listed in a security database. **DIRECTIVE ON HUMANITARIAN STATUS** art. 3 (b). The granting of humanitarian status does not trigger social or material benefits. However, trafficking victims are guaranteed shelter, medical care, and counseling directly through the Federal Anti-Trafficking Law. **See Article 6 above.** Between April 2007 and July 2008, 41 people received migration status based on this directive. **Access to Information File No. 04111000048808 (Aug. 7, 2008).**

The humanitarian status is in compliance with article 7 (2) of the Trafficking Protocol as it provides for a migration status based on broad humanitarian grounds as well as the public interest that allows victims to “develop as human beings.” **DIRECTIVE ON HUMANITARIAN STATUS** art. 3 (b). USAID-PROTEJA describes the humanitarian status as a humanitarian visa in their training sessions and emphasizes the importance of protecting victims who may be undocumented.

A victim does not have to file a criminal complaint to receive humanitarian status, although he or she must explain the basis of the status request. In the case of the status granted to victims and witnesses of crimes, some type of complaint is required, although it does not have to be a criminal complaint.

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9 Family members in the first degree include spouse, parents, children, and siblings. **FEDERAL CIVIL CODE** arts. 292-300.
Importantly, NMI directives do not establish limits on the number of visas that can be issued to trafficking victims or others. It also needs to be emphasized that pursuant to the General Population Act and its Regulations persons with 5 years of FM-3 Non-Immigrant Status may request an FM-2 Immigrant Status for an additional 5 years, after which time an application for permanent resident status or naturalization may be submitted. GENERAL POPULATION ACT art. 53; REGULATIONS TO THE GENERAL POPULATION ACT art. 162 (II) (adopted April 14, 2000, D.O., as amended).

NMI directives do not address the issue of legal representation, but in practice victims can obtain legal assistance from IOM, NGOs (e.g., Sin Fronteras, I.A.P.), and FEVIMTRA.

Interviewees expressed various concerns about the directives issued by NMI. First, the directives have not been published in the Official Journal of the Federation and are therefore not legally binding. See Case Law of the Second Chamber of the Supreme Court, Weekly Judiciary Registry at 195 (Part 3, No. 237867, Directives). Rather, they are administrative instructions, the application of which is dependent on the discretion of migration officials. Second, because the directives are neither published nor publicized, they would not be accessible to trafficking victims unless they had knowledgeable legal representation. Third, the directives can be repealed at any time through an internal administrative procedure. Lastly, the lack of legal certainty and uniformity among the 32 regional NMI delegations was of concern to advocates.

NGOs that have assisted trafficking victims with applications for migration status based on one of the NMI directives have had mixed results due to the fact that a favorable resolution is discretionary and the directives do not contain substantive guidelines. This is an advantage when the migration officials have been trained on human trafficking issues. However, in other cases, the regional NMI delegates were hesitant to grant humanitarian status to victims as they had to state the grounds of such status rather than rely on traditional procedures. In one case, the NGO traveled with a trafficking victim from another state to NMI’s central offices in Mexico City to have the migration status approved.
Article 8: Repatriation of Victims of Trafficking in Persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

Conclusion:

The Federal Anti-Trafficking Law mandates that the Inter-Secretarial Commission help victims return to their place of residence within Mexico or assist them with their repatriation to their country of origin. A repatriation plan will be included in the National Anti-Trafficking Program. Specific repatriation agreements with the U.S., Guatemala, and El Salvador, and a regional repatriation agreement between Mexico and four Central American countries establish time and safety requirements that must be met during the course of a repatriation procedure. In addition, agreements between Mexico and Guatemala and Mexico and El Salvador create special protections for trafficking victims, particularly women and children. Interviewees expressed concern regarding the fact that unidentified trafficking victims may be repatriated through the expedited procedures in airports and along the southern borders due to the lack of uniform screening procedures. In some of the trafficking cases detected in Mexico, victims have been repatriated without first having full access to social assistance and legal representation due to the lack of comprehensive services. This may change with the implementation of the Federal Anti-Trafficking Law and the creation of FEVIMTRA. The Mexican government facilitates and accepts the return of its nationals and others with the right to permanent residence without unreasonable delay.

Implementation Analysis:

Mexican authorities are obligated to let trafficking victims remain in Mexico while their legal proceedings are pending. Once the legal proceedings have been concluded, whether or not the victims remain in the country is determined by existing laws. FEDERAL ANTI-TRAFFICKING LAW arts.
Right to Return and Principle of Non-Refoulement

One of the basic concepts of the Federal Constitution is the right to enter and leave Mexico. Federal Const. art. 11. The General Population Act restricts this right for foreigners and Mexicans, as both must comply with administrative procedures in order to be lawfully admitted or to return. In addition, Mexican legislation recognizes the right to be repatriated both from and back to Mexican territory. The law defines repatriated adults as those who return to Mexico after having lived abroad for at least 2 years. General Population Act art. 81.

The right to return invokes the principle of non-refoulement, the notion of prohibiting states from expelling or returning individuals to the borders of territories where their lives or freedoms would be threatened on the account of race, religion, nationality, membership in a particular social group, or political opinion. Refugee Convention art. 33 (1). The Trafficking Protocol preserves the principle of non-refoulement in its Article 14 (1), which indicates that nothing in the Trafficking Protocol is to affect the rights and obligations delineated in the Refugee Convention and the Refugee Protocol, including the principle of non-refoulement. Trafficking Protocol art. 14 (1).

The Mexican legal system recognizes the principle of non-refoulement in various ways. First, Mexico is a signatory to the relevant international instruments, including the U.N. Refugee Convention and Refugee Protocol, the OAS conventions on diplomatic, political, and territorial asylum, and the Cartagena Declaration (adopted Nov. 22, 1984 by Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama). In addition, it has ratified the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the U.N. Convention on the Rights of the Child, and the U.N. Convention on the Rights of Stateless Persons. Lastly, the General Population Act provides that no person shall be returned to his or her country of origin or any other country where his or her life, liberty, or security are threatened. General Population Act art. 42 (VI). Whether the principle of non-refoulement is respected in practice is difficult to determine and often depends on the proper identification of persons in need of protection. For example, there are no relevant screening procedures at the Mexico City airport so it is likely that individuals are being returned to countries where their lives or freedoms are threatened. If such individuals are detected by NGOs or international organizations, e.g., UNHCR or IOM, they are more likely to remain in Mexican territory.

International Repatriation Agreements

Repatriation of migrants to and from Mexico is partially regulated by bilateral and regional repatriation agreements with the U.S. and four Central American countries. These agreements establish regular repatriation procedures as well as time and safety requirements, and explicitly mention that the domestic protection of the right to return does not prejudice any other rights or obligations under international treaties. Not all of these repatriation agreements contain special provisions pertaining to victims of trafficking in persons.

Mexico is a party to bilateral repatriation agreements with the U.S., Guatemala, and El Salvador, including:

• Agreement between the Ministry of Interior of the United Mexican States and the Ministry of Interior of the Republic of Guatemala on the Safe and Orderly Return of Guatemalan, Salvadoran and Honduran Nationals on the Borders of Mexico and Guatemala (signed June 28, 2005); and

• Agreement between the Ministry of Interior of the United Mexican States and the Ministry of Interior of the Republic of El Salvador on the Orderly, Swift and Safe Repatriation of Salvadoran Migrants by Land from Mexico (signed May 17, 2005).

In addition, a regional repatriation agreement exists between Mexico and four Central American countries, i.e., the Memorandum of Understanding between the Governments of the United Mexican States, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, and the Republic of Nicaragua on the Dignified, Orderly, Agile and Safe Repatriation of Central American Migrants by Land (signed May 5, 2006) [hereinafter REGIONAL REPATRIATION AGREEMENT].

The repatriation agreements between Mexico and Central American countries establish regular procedures for voluntary repatriation of Salvadorans, Guatemalans, Hondurans, and Nicaraguans from Mexico to their respective countries of origin. These procedures apply to individuals who have committed an administrative violation of Mexican migration law, such as undocumented entry to Mexican territory. They begin with detaining a migrant and placing him or her in the custody of NMI. NMI informs the migrant of the right to be repatriated and presents him or her with a form titled “Repatriation Application, Administrative Migration Procedure or Refugee.” If the migrant waives the right to legal proceedings and does not wish to request a refugee status, he or she is sent to the detention center where the authorization for the voluntary repatriation is requested through the System for Detention Control and Transfers to the Detention Centers. Under the Regional Repatriation Agreement, Salvadorans, Guatemalans, Hondurans, and Nicaraguans are transferred to the detention center in Tapachula, Chiapas. Subsequently, a regional NMI delegate organizes the repatriation across the southern border and the migrants are transferred into the custody of the Guatemalan National Civil Police. The Guatemalan National Civil Police receives the migrants, verifies their identities, and signs and stamps the lists of names. Lastly, Guatemalan authorities are in charge of returning the migrants to corresponding authorities in their countries of origin.

Nationals from other countries are usually transferred to the Mexico City Detention Center where they are subject to administrative deportation procedures and receive consular protection.

Agreements between Mexico and Guatemala and Mexico and El Salvador create special protections for trafficking victims, particularly women and children. For example, the Work Plan of the Mexico-El Salvador Bi-National Sub-Commission requires that the states respect their obligations vis-à-vis the Trafficking Protocol at all times by providing shelter to victims and meeting their basic needs if they decide to initiate a criminal case. Officials are required to maintain contact with the victims if they are repatriated in order to obtain information related to their cases. The governments of Mexico and El Salvador have also agreed to work with international organizations and NGOs to provide temporary shelter and re-integration services to victims once they have been repatriated. Finally, the governments indicated in the agreement that they would apply for funding for specific projects from international donors. GUIDELINES FOR THE DEVELOPMENT OF ACTIVITIES CONTAINED IN THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR FOR THE PROTECTION OF PERSONS, ESPECIALLY WOMEN AND MINORS THAT ARE VICTIMS OF ILICIT TRAFFICKING AND SMUGGLING (issued July 7, 2006), obtained through Access to Information File No. 0411100041008 (June 10, 2008).

The Mexico-U.S. Repatriation Agreement provides the basis for the ongoing voluntary repatriation program for Mexicans from the U.S. along the southwest border. Pursuant to the agreement, repatriations of Mexican nationals residing in the U.S. in violation of immigration laws should be
carried out with respect for their human rights and dignity. The agreement mandates the establishment of reception points in Mexico responsible for receiving Mexican nationals repatriated from the U.S. Personnel at the reception points are in charge of ensuring the health, well-being, and safety of Mexican nationals, and can receive or transmit information regarding incidents of abuse or possible human rights violations. Mexico is obliged to do everything possible to ensure that the agreed upon points of reception are functioning with sufficient personnel on the local, state, and federal levels. The Mexico-U.S. Repatriation Agreement further states that family unity should be preserved during the repatriation processes, taking into consideration the following administrative criteria: disabled persons, unaccompanied children, and other vulnerable people should be repatriated during daylight hours in order to guarantee their safety; the participating Mexican agencies should do everything possible to ensure that these people are received by representatives of social service agencies upon their repatriation from the U.S.; DHS must give due notification and information if special preparations are needed for the reception of unaccompanied children, individuals with mental health problems, or other specific needs; the notification of the repatriation should be made taking into account logistical and operative needs; local procedures should contemplate routine notifications along the border; and, lastly, the U.S. and Mexican participating agencies should discuss issues of mutual concern, such as consular notification and access to consular assistance. MEXICO-U.S. REPATRIATION AGREEMENT art. 3.

Repatriation of Mexicans from countries other than the U.S. is handled on a case-by-case basis through coordination with the Mexican consular representation in the specific country and NMI offices in Mexico.

In addition to the specific repatriation agreements, Mexico has entered into memoranda of understanding with Guatemala and El Salvador aimed at protecting individuals who become victims of trafficking and smuggling while crossing the respective borders. See Article 10 below. Both of these agreements call for the establishment and improvement of mechanisms for the voluntary repatriation of women and children with a focus on family reunification.

In practice, regular repatriation procedures should not be utilized for the purposes of returning trafficking victims to their countries of origin, unless they include provisions addressing their special needs. Because Mexico has not formulated any specific measures for the repatriation of adult trafficking victims, return of such individuals to their countries of origin should meet the minimum safety requirements established in the above-mentioned repatriation agreements.

**Safety, Protection, and the Voluntary Nature of Return**

NMI is obliged to coordinate the repatriation of foreign witnesses and victims of trafficking in persons with OAG. Mexican authorities must notify the appropriate consulate about the status of the individual as a trafficking victim and about his or her consent to be repatriated. The consenting individual must be returned to his or her country of origin in an expedited manner. ANTI-TRAFFICKING REGULATIONS art. 38.

The Inter-Secretarial Commission must promote inter-institutional collaborative agreements with the state and municipal governments related to security, entry, transit, and destination of the trafficking victims in order to provide them protection and, if needed, help them return to their place of residence within Mexico, or assist them with their repatriation to their country of origin. FEDERAL ANTI-TRAFFICKING LAW art. 12 (III). The federal multi-agency Council on Public Security and the Inter-Secretarial Commission will be part of these agreements and must ensure that they comply with the General Population Act and the General Law Establishing the Bases for Coordination of the National System for Public Security (adopted Dec. 11, 1995, D.O.).

Authorities are required to ensure that victims are protected during the return to the country of origin or the country of permanent residence. To this end, the Inter-Secretarial Commission is obliged to design a plan for, and carry out the repatriation of, trafficking victims. FEDERAL ANTI-
TRAFFICKING LAW art. 12 (X). The repatriation plan relates only to the victims and does not mention family members or witnesses. It will be included in the National Anti-Trafficking Program.

While the Federal Anti-Trafficking Law does not explicitly mention that the right to return will not prejudice the rights of a trafficking victim in Mexico, nor the type of protection that the victim will receive, it does provide that the National Anti-Trafficking Program will mandate federal authorities to elaborate programs for immediate assistance prior to, during, and after the legal proceedings. Id. art. 17 (III).

Mexican diplomatic representatives must offer, without exception, information, orientation, protection, and assistance to Mexican trafficking victims abroad in order to safeguard their dignity as well as their physical and psychological integrity. Among other requirements, they must issue the necessary documentation to facilitate victims’ return to Mexico. Id. arts. 16 (II-III), 17 (IV).

In practice, if the trafficking victim has been identified and has received assistance, she or he has the ability to make a voluntary decision about repatriation. The challenge is that since most trafficking victims are not identified, they are likely to be deported without ever having received information about the possibility of remaining in Mexico. See Article 6 above. In addition, interviewees emphasized that victims often agree to voluntary repatriation due to frustration caused by the lack of social services as well as lengthy and strenuous legal proceedings. Finally, in some of the trafficking cases detected in Mexico, victims were repatriated without first having full access to social assistance and legal representation, due to the lack of comprehensive services. For example, interviewees reported that a 17-year boy was returned to his country of origin in Central America by NMI although he had suffered severe physical trauma, including sexual abuse, and did not wish to be reunited with his family. NGO advocates, who had attempted to provide assistance to the victim but were legally disallowed from taking official custody of a foreign unaccompanied child, felt that Mexican authorities had not taken into account the principle of the best interest of the child while issuing the decision about repatriation.

Repatriations to and from Mexico are not always carried out in a safe and orderly matter. For many years, NGOs have complained about the treatment of women and unaccompanied children who undergo unsafe repatriations from the U.S. during night hours. See e.g., NO MORE DEATHS, CROSSING THE LINE: HUMAN RIGHTS ABUSES OF MIGRANTS IN SHORT-TERM CUSTODY ON THE ARIZONA/SONORA BORDER (2008). This is not always the case, however. In Tijuana, for example, children are accompanied during the repatriation procedure. Once they cross the border, DFS takes custody of them and works closely with a migrant shelter for children, which provides accommodation, contacts their parents, guardian, or a family member, and can only release the child to an approved adult.

Children

Provisions regarding the repatriation of child victims of trafficking in persons in the Mexican regulatory framework are scarce. The only stipulation that specifically addresses this issue states that in the case of foreign victims of trafficking in persons who are under 18 years old or do not have the mental capacity to understand the situation they are in, consent to be repatriated will be established through professional evaluations that take into account the probability of revictimization upon return to their country of origin. ANTI-TRAFFICKING REGULATIONS art. 37. The Federal Anti-Trafficking Law does not mention the need for rapid identification of the child victims’ family members when appropriate, nor enumerates steps that should be undertaken to locate them. It is likely that more specialized procedures will be included in the repatriation plan for victims of trafficking in persons which, as mentioned above, is to be developed by the Inter-Secretarial Commission. Due to the lack of clear guidelines, child victims of trafficking may be returned to their countries of origin in accordance with the regular repatriation procedures, although Mexico – as a member of RCM discussed in Article 10 below – should follow the Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking. See RCM, REGIONAL GUIDELINES FOR SPECIAL PROTECTION IN CASES OF THE
The Regional Repatriation Guidelines were developed as a result of a consultation process with government officials of RCM, and should be used in a manner that is consistent with domestic laws. Id. at 7. They seek to encourage multilateral coordination in ensuring that the best interest of the child and respect for his or her human rights is taken into consideration whenever a child victim of trafficking is transported from one country to another. Id. at 3, 6. In particular, RCM member states have committed to: protect child victims of trafficking in persons from discrimination, revictimization, and all forms of exploitation enumerated in the Trafficking Protocol; guarantee their rights to life, safety, and dignity; repatriate them without undue delay; cooperate in ascertaining their identity and nationality; assess the environment to which they would return at the conclusion of the repatriation process, including their family situation; and determine what protective measures are required for their social reintegration. Id. at 6-7, 13, 15. The Regional Repatriation Guidelines call for the provision of immediate humanitarian assistance to identified child victims of trafficking; taking child victims’ views into account when possible; ensuring that child victims are interviewed by specialized personnel in a gender and age sensitive manner; preserving family unity unless it is not in the best interest of the child; protecting child victims’ identities; and educating child victims about legal proceedings involving them. Id. at 9-11, 14. In addition, relevant authorities should inform diplomatic or consular representatives of the country of nationality or residence of the child victims about their status and location, and the diplomatic or consular representatives should promptly provide child victims with the necessary documentation to facilitate their return, when appropriate. Id. at 12. The countries of destination are encouraged to provide child trafficking victims with alternative forms of protection, such as access to asylum procedures, if they conclude that repatriation carries a serious risk for the children or their families. Id. at 13. If a decision to repatriate a child victim is made, the country providing protection and the country of nationality or residence should coordinate the logistical details for the transfer. Id. at 14.

Pursuant to Mexico’s regular repatriation procedures, Guatemalan, Honduran, Salvadoran, and Nicaraguan children are placed in the custody of NMI. A regional NMI delegate must register each child. If the child does not have a medical certificate (issued before arriving to the detention center), the regional NMI delegate will request a medical exam. A file is initiated with an interview and testimony in the presence of someone who the child trusts and two witnesses. By law, the child should be informed of his or her rights and obligations during this process. Once the child’s basic information, including nationality, is established, NMI notifies the corresponding consular representatives. If the child is between 12 and 17 years old, he or she will remain in the detention center’s section for children. If the child is under 12 years old, he or she will be transferred to a migrant or state shelter for children. Once the consular representatives approve the repatriation, the child will be transported under the supervision of the appropriate NMI personnel, and turned over to the custody of the Guatemalan National Civil Police on the southern border. The Guatemalan National Civil Police must take the non-Guatemalan children to their place of origin by placing them in the custody of the corresponding officials. NMI, Safe and Orderly Repatriation Procedure for Minors from Central America, in MANUAL OF PROCEDURES FOR MIGRATION CONTROL AND VERIFICATION 112-121 (2006).

The repatriation of Mexican children from the U.S. is governed by the inter-agency Collaboration Agreement to Establish Joint Actions to Benefit both Mexican and Foreign Unaccompanied, Repatriated Migrant Girls, Boys, and Adolescents, signed on May 19, 2005 by NMI and DFS [hereinafter COLLABORATION AGREEMENT], and the William Wilberforce Trafficking Victims Protection Reauthorization Act adopted by the U.S. Congress in 2008 [hereinafter TVPRA]. By virtue of the Collaboration Agreement, DFS has agreed to take custody of certain migrant children

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10 According to the IOM, the authorities are obliged to remove child victims of trafficking in persons from detention centers to ensure their protection. Letter from Fernanda Ezeta, IOM, to ABA ROLI (March 17, 2009). It is unclear if this occurs in all cases.
and offer them assistance in the agency’s network of temporary shelters, mostly along the northern border. Pursuant to TVPRA, DHS, collaboratively with DOJ and HHS, must develop policies and procedures aimed at ensuring that unaccompanied alien children in the U.S. are safely repatriated to their country of nationality or of last habitual residence. TVPRA, H.R. 7311 § 235 (a)(1) (2008). In addition, DOS is obliged to negotiate child repatriation agreements between the U.S. and contiguous countries, including Mexico, which should establish safety requirements aimed at protecting children from severe forms of trafficking in persons. Id. § 235 (a)(2)(C). Finally, TVPRA prohibits the repatriation of unaccompanied children from Mexico and Canada who are victims of a severe form of trafficking in persons, are at risk of being trafficked upon their return to their country of nationality or of last habitual residence, or have a credible fear of persecution upon repatriation. Id. § 235 (a)(2)(A)-(B). U.S. authorities are obliged to screen unaccompanied alien children within 48 hours of their apprehension to determine if they belong to any of the aforementioned categories. Repatriation without proper screening is not allowed. Id. § 235 (a)(4).

The repatriation of Mexican children from El Salvador, Guatemala, Honduras, Nicaragua, and Costa Rica should follow the guidelines established by these countries through the protocols on the return of child and adolescent victims of trafficking in persons [hereinafter repatriation protocols].11 The repatriation protocols, developed by most of the Central American states with the assistance of IOM, are excellent examples of interagency coordination aimed at securing the rights of child victims of trafficking in persons who face repatriation to their countries of origin. The repatriation protocols, although not yet entirely operative, employ the best interest of the child standard and provide guidance to national institutions involved in the repatriation process. See, e.g., IOM, PROTOCOL ON THE RETURN OF CHILD AND ADOLESCENT VICTIMS OF TRAFFICKING IN PERSONS: COSTA RICA (2007), available at http://www.acnur.org/biblioteca/pdf/5570.pdf.

In practice, Mexico has made some advances towards ensuring safe repatriation of unaccompanied child migrants, including victims of trafficking in persons. In September 2008, NMI signed agreements with UNICEF and DFS to improve protections for migrant children. NMI has begun training selected migration agents as child protection officers responsible for identifying the special needs of migrant children that have been detained. In addition, DFS plans to set up special units for migrant children within the detention centers in Mexico. Press Release, NMI, Agreements Signed to Guarantee the Protection of Unaccompanied Migrant Children (September 17, 2008). Finally, child victims of trafficking in persons who are in the custody of NMI and have been afforded assistance by IOM are accompanied by child protection officers during the repatriation process. Letter from Fernanda Ezeta, IOM, to ABA ROLI (March 31, 2009).

In 2007, 35,546 Mexican migrant children were repatriated from the U.S.; 17,553 of them attempted to cross the border alone. Mexico repatriated 7,064 migrant children to other countries; 5,983 of them were traveling alone. Press Release, NMI, Agreements Signed to Guarantee the Protection of Unaccompanied Migrant Children (September 17, 2008).

**Verification**

Repatriation from Mexico is conditional upon the verification of the nationality or permanent residence of all persons being repatriated. The Mexican government, through NMI, must send lists of such individuals to both the consular representatives as well as the migration authorities of the receiving countries. A separate list is sent if a person is from one of the following vulnerable categories: pregnant women, children, the mentally disabled, adults over 60 years, and trafficking victims. See, e.g., REGIONAL REPATRIATION AGREEMENT, Appendix 2, at 138. Requests for verification of nationality coming to Mexico from other countries are channeled through MFA.

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11 Mexico has not developed a repatriation protocol prior to the finalization of this report.
**Documentation**

Mexican diplomatic representatives must provide Mexican victims of trafficking in persons with the necessary documentation to return to Mexico without delay. FEDERAL ANTI-TRAFFICKING LAW art. 16 (III). For example, the Mexican Consulate in Washington, D.C. often assists with this process. NMI requests travel documents from the corresponding consular representatives in order to undertake repatriation of foreign nationals. If the country has no consular representation in Mexico, NMI may work with its consular representation in another country or request assistance from IOM, which can refer the victims to NGOs that offer legal assistance with the repatriation process.

**Cost**

The cost of transportation, including the cost of trafficking victim’s return to the place of origin, is included in the amount that should be calculated for his or her damages. Id. art. 9 (III).

The Regional Repatriation Agreement establishes that the parties should identify, and agree on, the best mechanism and options of collaboration with international organizations and other sources of international cooperation, to contribute to the cost of the buses for the repatriation of migrants. REGIONAL REPATRIATION AGREEMENT art. VII.

In general, NMI is charged with carrying out the repatriations of foreigners from Mexico and covers 100% of the costs either through its own budget or through the mechanisms described above. Access to Information File No. 0411100011508 (March 10, 2008). The repatriation procedure may be expedited if the migrant covers the costs of airfare. However, this is not obligatory. The repatriation of Mexican nationals from other countries to Mexico is usually covered by the sending country, such as in the case of repatriations from the U.S.

On August 3, 2004, MOI and IOM signed a Memorandum of Understanding for Cooperation on Voluntary Assisted Return for Extra-Regional Migrants (Regional Voluntary Assistance – RVAs), which applies to migrants whose country of origin is outside of Central America. Through this agreement, NMI saves up to 50% on the expense of plane tickets through the network of IOM offices. In addition, the issuance of travel documents is expedited for migrants who do not have diplomatic representation in the country. NMI, MANUAL OF PROCEDURES IN MIGRATION CONTROL AND ENFORCEMENT (2006). This voluntary repatriation program is, however, not designed to repatriate individuals who have been officially identified and designated as trafficking victims. Letter from Fernanda Ezeta, IOM, to ABA ROLI (March 17, 2009). Instead, IOM implements a special program with funds that have been utilized to facilitate the repatriation of trafficking victims from Mexico to their countries of origin, and to help Mexican trafficking victims return to Mexico. First, IOM interviews a victim and conducts a needs and safety assessment. Next, IOM requests assistance from its office in the victim’s country of origin in order to ensure that he or she receives adequate assistance upon return. When appropriate, IOM locates and contacts the victim’s family members, facilitates family reunification, and reaches out to governmental agencies that need to be involved in the repatriation process. For example, the IOM office in Mexico coordinates the repatriation proceedings with NMI and NGOs engaged in a particular case. Subsequently, IOM helps the victim obtain the necessary documentation; purchases an airplane ticket; accompanies the victim to the airport; provides him or her financial resources for meals, incidentals, and transportation; and ensures that someone is awaiting the victim in his or her country of origin. Letter from Fernanda Ezeta, IOM, to ABA ROLI (March 31, 2009).

Since the inception of the program in 2005, the IOM office in Mexico has facilitated the repatriation of approximately 40 trafficking survivors from Mexico to their countries of origin. Between mid-2006 and January 2009, the IOM office in Washington, D.C. assisted two trafficking survivors with their return to Mexico from the U.S. Id.
Article 9: Prevention of Trafficking in Persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
   (a) To prevent and combat trafficking in persons; and
   (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavor to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article, shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Conclusion:

The Mexican government is in the incipient stages of establishing comprehensive policies and programs to prevent trafficking in persons through the Inter-Secretarial Commission and the forthcoming National Anti-Trafficking Program. NMI has facilitated the formation of 32 state-level Inter-Institutional Committees on Trafficking and Smuggling [hereinafter Inter-Institutional Committees] to receive training and to establish local prevention programs, and NHRC is in the process of organizing 10 Regional Committees that will also include programs for the prevention of trafficking in persons. It is unclear how these efforts will be coordinated to avoid duplication. Some of the state-level Women's Institutes and DFSs have incorporated the issue of human trafficking into their campaigns aimed at preventing violence against women and child sexual commercial exploitation. Various NGOs that work with migrants, human rights, labor rights, and violence against women and children have also included trafficking in their prevention campaigns. Research on trafficking in persons has been conducted in three states and Mexico City, but no public comprehensive report or mapping on trafficking on a national scale has been published. However, at least two studies are currently in preparatory stages. Although the Federal Anti-Trafficking Law mandates that the Inter-Secretarial Commission gather data and publish periodic reports on cases, victims, and patterns, comprehensive official statistics on trafficking in persons are nonexistent. The level of cooperation with non-governmental and other relevant organizations is undefined. To date, government agencies have collaborated with civil society only on a project-by-project basis. The Mexican government has ongoing programs to alleviate poverty, underdevelopment, and lack of equal opportunity, especially between men and women. Although the Federal Anti-Trafficking Law does not set out specific responsibilities related to addressing the root causes of trafficking in persons, the issue may be incorporated into these processes.
Implementation Analysis:

Preventive Policies, Programs, and Other Measures

There had been few national policies or programs specific to preventing trafficking in persons before the Federal Anti-Trafficking Law was passed. In 2007, the Senate aired a public service announcement on radio and television that explained different modalities of trafficking in persons and put a name to the phenomenon. In 2007, FPP launched a national campaign with a phone number that victims or witnesses could call to report trafficking cases. The posters depicted a photograph of a scantily-clothed young girl and the slogan read, “Porn Actress?” The campaign was criticized by representatives from civil society mainly because it was unclear who was supposed to call the number.

Since the adoption of the Federal Anti-Trafficking Law the Mexican government has been in the incipient stages of establishing policies and programs to prevent trafficking in persons through the Inter-Secretarial Commission. The Inter-Secretarial Commission is required to develop prevention campaigns and elaborate the National Anti-Trafficking Program, which must include policies to prevent trafficking in persons based on safeguarding human dignity and human rights, with special reference to children, adolescents, and women. By law, prevention should be addressed on an inter-institutional basis through campaigns, training, and collaborative agreements between government and municipal entities. The minimum actions that will be incorporated into the National Anti-Trafficking Program include: raising the population’s awareness about trafficking in persons through the dissemination of materials related to the rights of victims; developing strategies and programs aimed at eradicating demand and the commission of the crime of trafficking in persons, pointing out the repercussions of the crime; carrying out information campaigns about the methods used by traffickers to capture or recruit victims; and reporting about the risks that the victims of trafficking suffer, such as physical and psychological harm and the danger of sexually transmitted diseases. FEDERAL ANTI-TRAFFICKING LAW Arts. 10, 12 (II), 13.

In addition to informing the population about the risks and implications of trafficking in persons, including the range of methods utilized by traffickers and the danger of re-victimization, the Inter-Secretarial Commission is obliged to train government employees on the issue of trafficking with a gender and human rights perspective, giving particular attention to children. The Inter-Secretarial Commission is also compelled to take the necessary actions to strengthen social solidarity toward the prevention of the crime, for example through inter-institutional collaboration and agreements between the federal and state governments related to the security, entry, transit, and destination of victims. These agreements will be made in accordance with the information and statistics available regarding trafficking in persons in Mexico. Once the information-sharing and coordination between the federal and state governments is established, federal authorities will adopt policies and programs to facilitate cooperation with governments from other nations and international organizations, including information exchange on the patterns, types of cases, as well as adopted preventative policies. Id. arts. 12 (II), (VI), (IX), 13 (III), 14 (II).

Further, the Inter-Secretarial Commission is mandated to inform and warn personnel from airlines, hotel chains, public transportation services, restaurants, bars, and nightclubs about the potential civil and criminal liabilities stemming from facilitating or failing to impede conduct inherent in trafficking in persons, as well as to educate them how to prevent trafficking in persons. Lastly, the Inter-Secretarial Commission is charged with familiarizing personnel from transportation companies with the need to take special measures to ensure the protection of children under 18, adults over 60, women, the indigenous, and mentally disabled who are traveling through Mexico or across Mexican borders. Id. art. 12 (II), (IV), (VI)-(VIII). While the National Anti-Trafficking Program will contain more details, it is likely that the Inter-Secretarial Commission will raise public awareness about trafficking in persons through mass media campaigns.
In practice, the National Anti-Trafficking Program is pending as of March 2009 and the Inter-Secretarial Commission has yet to make public its specific procedures. It is also unclear how the funding for the Inter-Secretarial Commission will be allocated since there was no relevant line item in the 2008 budget.

Although specific information is unavailable regarding programs that will be created through the National Anti-Trafficking Program, many federal and state government agencies have developed and begun implementing anti-trafficking prevention campaigns through their existing programs in the areas of migration, women’s rights, children’s rights, and labor rights. On the national level, three agencies have been particularly active in preventing trafficking in persons: INMUJERES, MFA, and NMI.

INMUJERES, which runs programs that promote women’s human rights and generate policies for equality between women and men, has received training on trafficking in persons, sponsored research, and will likely create programming through the National Anti-Trafficking Program. To date, INMUJERES participated in a project with IOM, NMI, and the Inter-American Commission on Women. The program included an information campaign and pamphlet for prevention carried out by the public sector as well as NGOs. Access to Information File No. 0411100031106 (Aug. 8, 2006). This program ended in 2005. As mentioned in the Mexico Background chapter above, since February 2009 INMUJERES has been required by law to participate in the elaboration of public policy for prevention of trafficking in persons. In particular, INMUJERES is responsible for including gender perspective in the federal anti-trafficking programs, and proposing federal models for prevention and assistance. ANTI-TRAFFICKING REGULATIONS art. 20. To comply with these requirements, INMUJERES created an Office for Migration and Trafficking in Persons charged with the coordination of INMUJERES’s anti-trafficking programs. As of March 2009, this new office was staffed by one employee.

In November 2007, NMI took the lead in implementing anti-trafficking prevention programs by forming 32 state-level Inter-Institutional Committees through its regional delegations. The committees form a network of federal and state agencies charged with establishing and coordinating local prevention programs. They are comprised of representatives from MFA, the National Center for Investigation and National Security [hereinafter NCINS], OAG, state attorney general offices, FPP, DFS, state Women’s Institutes, and local law enforcement. All Inter-Institutional Committees have received general training on trafficking in persons from USAID-PROTEJA, and they have made plans pertaining to the delegation of responsibilities when trafficking cases are reported. However, tangible results of their counter-trafficking efforts are yet to be seen.

Similarly, NHRC is in the process of organizing 10 Regional Committees that will also implement programs for the prevention of trafficking in persons through education and monitoring responsibilities. The Regional Committees are comprised of a Coordinator, delegates from MOI; MFA; MPS; the Ministries of Communication and Transportation, Tourism, Labor, Education, Social Development, Health, National Defense, and Marines; OAG; the Indigenous Commission; NMI; the National Institute for Criminal Studies; DFS; INMUJERES; and the National Population Council. The Regional Committees also include representatives from state agencies; municipal presidents of the cities of origin, transit and destination of trafficking victims; as well as members of international organizations, civil society, indigenous groups, universities, churches, chambers of commerce, and federal and state legislators. With the participation of similar representatives in both NMI and NHRC committees, it is unclear how these efforts will be coordinated to avoid duplication in programming efforts.

DFS, at both the national and state levels, participates in the National Action Plan to Prevent, Assist and Eradicate the Commercial Sexual Exploitation of Children. The objectives of the Plan are to coordinate government and civil society programs aimed at assisting children and adolescent victims of commercial sexual exploitation; promote the design, dissemination, and implementation of tools for the prevention of commercial sexual exploitation of children; promote
the development of comprehensive strategies to assist victims; advocate for the legal protection of the rights of children and adolescents; and promote the study, research, and diagnostic of this problem. According to interviewees, the Plan has helped to raise awareness about child sexual exploitation but neither the root causes nor the enforcement aspects of the problem have been addressed thus far.

Lastly, the Ministry of Social Development runs the Program for Assistance to Agricultural Workers to help more than 721,000 temporary agricultural workers who migrate each year to 18 Mexican states including Sinaloa, Michoacán, Sonora, Baja California Sur, Jalisco, Chihuahua, Durango, Nayarit, Morelos, Zacatecas, and Colima. The Program aims at preventing labor exploitation and improving working conditions. As such, it helps to hinder trafficking in persons.

No legislative reforms have occurred to implement less restrictive immigration policies with the goal of preventing trafficking in persons. However, some ad hoc procedures have been created to provide protection to trafficking victims so that they may remain in the country during their legal proceedings. See Article 7 above. Furthermore, many Mexican states have State Offices for Migrant Protection that assist Mexican migrants who have returned to visit their family members, but have certain transnational issues pending related, e.g., to social security, money transfers, divorce, child custody, or child support payments. Interviewees suggested that these offices could incorporate preventative information into their existing services to teach returning migrants and their family members about the issue. Finally, MFA's Program to Assist Returning Migrants could incorporate prevention messages into the materials that help Mexican migrants as they return by land or air to Mexico.

Also on the local level, a number of state and municipal agencies, including state Women's Institutes, have developed preventive programs, in some cases on issues that may be unknown to the federal agencies.

For example, the Baja California State Human Rights Ombudsman has become a member of the Bilateral Safety Corridor Coalition, which consists of members from the U.S. and Mexico, and was formed by the Bilateral Safety Corridor – a Baja California-based NGO that has organized several information campaigns in Tijuana, Mexico as well as in San Diego, the U.S. The campaigns aimed at preventing trafficking for sexual exploitation of women and children. While the Human Rights Ombudsman does not focus on trafficking, it has a prevention program for child commercial sexual exploitation. The office works together with other state agencies and civil society organizations including DFS. They coordinate their work through an action plan that specifies each agency’s responsibilities during health and police inspections of bars and nightclubs, should inspectors find children in situations of sexual exploitation.

In Chiapas, state agencies, civil society organizations, and IOM formed a coalition to work on prevention, protection, and prosecution of trafficking cases. The coalition conducted an internal workshop to evaluate each organization’s capacities and institutional responsibilities, and designed a strategy for assisting trafficking cases. NMI, Beta Groups, IOM, USAID, and Casa del Migrante, Albergue Belen shelter for migrants developed an information campaign that includes pamphlets and a poster with the message: “Don’t believe everything that you were promised.” The information includes phone numbers to make anonymous complaints and to request assistance. As Chiapas is a transit state for migrants, INMUJERES and Beta Groups have pamphlets that explain migrants’ rights in general and the rights of women migrants, including a pamphlet that discusses sexual abuse, which is common for migrant women in transit. Beta Groups in particular come into contact with thousands of migrants each year, and through proper information may help to prevent trafficking from occurring.

In Chihuahua, the federal and state organizations have focused on the prevention of violence against women in light of the ongoing disappearances and homicides of women since 1993. State agencies that work to prevent violence against women include the Commission to Prevent
and Eradicate Violence Against Women in Juarez, and the Center for Prevention and Assistance for Women and Families in Situations of Violence.

In Guerrero, DFS has a program supported by UNICEF which offers workshops in primary schools on sexual abuse and exploitation in an effort to prevent the phenomenon that is reported to be one of the most prevalent in Mexico. Social workers from DFS have prevented the further exploitation of some children who were exploited in the City of Acapulco by convincing them to enter its shelter, La Casa Plutarca Maganda de Gomez, where they received food, clothing, social, and psychological assistance. Several civil society organizations, including Sobre el Puente, which also participate in Guerrero’s Inter-Institutional Committee, work with street children, many of whom are victims of sexual abuse and commercial sexual exploitation.

In Oaxaca, the State Human Rights Commission had drafted a pamphlet on trafficking in persons that it was planning to distribute as part of its general human rights information and outreach campaigns.

The state agencies of Quintana Roo have focused on prevention of sexual tourism and child commercial sexual exploitation through public service announcements on radio and television as well as bumper stickers and posters. These campaigns have been supported by the governor’s office, Sin Fronteras, I.A.P., Mission, DFS, the Ministry of Tourism, Breaking the Chains, ECPAT, ILO, USAID, the Revolutionary Confederation of Workers and Farm Workers, the Foundation City of Happiness, the RIU Hotel Group, the Oasis Hotel in Cancun, and UNICEF. The message is: “Welcome to the Mexican Caribbean, our children are protected by Mexican laws that prohibit any type of abuse that violates their rights. Everyone United Against Child Commercial Sexual Exploitation.” The campaign materials include toll-free numbers to make complaints or seek assistance.

Tlaxcala’s Inter-Institutional Committee produced a pamphlet on human trafficking designed for the general public that explains what trafficking is and where to call for information or assistance. DFS Tlaxcala developed a program against commercial sexual exploitation of children that includes a state-wide toll-free number and outreach materials, such as a series of pamphlets discussing the different forms of sexual exploitation of children, i.e., prostitution, pornography, sexual trafficking, and sex tourism. DFS representatives visit schools and organize workshops for children and parents to teach them about sexual exploitation and how to receive help. According to interviewees, some of the cases identified had been referred to the DFS’s shelter which houses up to 60 children. DFS also refers people that want to make a criminal complaint to the unit on violent crimes within the state attorney’s general office. In addition, the Tlaxcala Women’s Institute, which takes part in the Inter-Institutional Committee of Tlaxcala, is incorporating the topic of human trafficking into its existing agenda on promoting women’s human rights through legislative proposals to bring Tlaxcala’s state laws in compliance with the CEDAW, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the Trafficking Protocol, as well as the General Law Guaranteeing Women’s Access to Life Without Violence (adopted Feb. 1, 2007, D.O.). The Tlaxcala Women’s Institute also conducts preventative outreach through workshops, popular theater, and information booths. The Tlaxcala Women’s Institute believes that changing societal attitudes toward women and the specific culture of seducing women into prostitution is a long process that must begin with information combined with alternative social structures and economic alternatives. According to the Institute, 30 women approached them in 2007, some of whom were referred to shelters or relocated. The next step would be to promote a culture of complaint in which women would actually have the confidence in authorities’ abilities to prosecute the perpetrators and protect the victims.

Although state governments have become increasingly active in confronting trafficking in persons, the majority of anti-trafficking efforts to date have been conducted by NGOs, international organizations, and technical assistance providers, such as USAID-PROTEJA, which has focused
on training and task-force building, and IOM, which has produced pamphlets on trafficking in persons and sexual violence.

In Baja California, the above-mentioned Bilateral Safety Corridor has produced anti-trafficking materials, which range from posters, leaflets, bumper stickers, and an animated booklet, to billboards and public service announcements. Many of the materials are bilingual and all include numbers to call for assistance in San Diego and Tijuana. In one campaign, the Bilateral Safety Corridor Coalition, in cooperation with World Vision and ICE, placed a billboard close to the San Diego-Tijuana border with a picture of the eyes of a child, stating: "I'm not a tourist attraction: Stop Child Sex Tourism." In Tijuana, the organization provides information to children in schools that have been identified as vulnerable to sexual exploitation due to high incidence of abuse, and schools close to the prostitution zones.

The Coalition Mesa de Mujeres has been active in promoting the rights of women in Juarez, Chihuahua. Their focus is integral and includes issues that make women vulnerable to trafficking situations, particularly the lack of access to the judicial system. Another NGO, Casa Amiga, A.C., holds ongoing courses on the topics of women's rights, domestic violence and other types of violence, self-esteem, and legal rights. They make regular visits to schools, maquila plants, churches, community centers, and other workplaces to teach about violence against women through informal talks, information booths, puppet shows, and workshops for teachers.

The Oaxaca section of the Soroptimist Club was participating in the organization's international information campaign to prevent trafficking, particularly trafficking of women. The Soroptimist Club set up an information booth in the main plaza of Oaxaca City and placed posters in all of the local bus stations. The Club was coordinating with the state Women's Institute on the topic and had sat for several interviews with the local press.

The civil society organization located in Quintana Roo, Center for Comprehensive Assistance to Women and their Children, has integrated the issue of trafficking in persons into its existing programs, including prevention through workshops with key actors that may identify trafficking, such as hotel housekeeping staff in the city of Cancun. The Center has also created television and radio spots for distribution in Quintana Roo, and offers its confidential and safe services to victims.

Finally, the Fray Julian Garcés Human Rights Center has conducted an ongoing information campaign in the small state of Tlaxcala by coordinating with more than 59 NGOs, church groups, students, and other members of civil society as well as some state agencies to bring to the local state government a popular initiative to reform the criminal code to include the crime of trafficking. As part of the process, they held public meetings in the central plaza of the capital city and collected over 23,000 signatures to pass the initiative. Posters were placed in most businesses in the center of the city of Tlaxcala, including restaurants, stores, bars, and internet cafes. In addition, Fray Julian Garcés Human Rights Center worked through their network of youth organizations to teach young people in the affected communities about trafficking for commercial sexual exploitation occurring in their towns. Through the series of more than 250 workshops, they also trained youth leaders to duplicate the workshops in other areas. They discussed the issues through group dynamics and theatrical performances, as well as developed written and video materials.

It is important to note that no reports were made available to the assessment team regarding the impact of the above-mentioned information campaigns. In addition, there was little awareness or information sharing between organizations and states regarding the types of strategies that have been successful.
Research, Information, Mass Media Campaigns, and Other Initiatives

The majority of the information on human trafficking in Mexico comes from the national and local press. As a result, how the press covers the issue has an impact on public opinion and government policies. Since the press first began covering the issue, journalists have often confused the terms trafficking and smuggling. One of the problems is that the translation for trafficking in Spanish is “trata,” while the translation for smuggling is “tráfico.” The similarity between the English “trafficking” and Spanish “tráfico” has caused extensive misreporting in the press. In addition, the Mexican population is not familiar with the term “trata.” See Silviana Rivera, Mexican Market Research and Public Opinion Association, TIP Project Research Results (2005). Another problem is that the press often discloses the identity of trafficking victims, particularly women in prostitution, through photographs and publication of their names, or depicts them as illegal immigrants.

To address some of these issues, Sin Fronteras, I.A.P., together with several other migration and human rights organizations, organized a series of trainings for journalists on how to cover human trafficking and how to utilize the Federal Law on Access to Public Information to assist their investigations. They discussed the issue from the perspective of the rights of victims. The Communication and Information for Women Association collaborated with the workshops and as a result, it now does systematic reporting on trafficking in persons and has opened up a special section on its webpage. See Communication and Information for Women Association, http://www.cimacnoticias.com. In addition, in December 2005, OAS organized an Anti-Human Trafficking Workshop for the Media and the Entertainment Industry in Mexico. The result of this undertaking was heightened public awareness about the topic and increased prevention.

In 2006, MPS launched a mass media campaign called “United Against Trafficking in Persons.” The campaign consisted of two television spots, a one-minute movie, and five different poster designs that were broadcast and published on the national level. The media campaign was evaluated by De la Riva Strategic Research and received an advanced score in the probability that it would have a successful impact on the audience. The assessment emphasized that the campaign broke a taboo about trafficking in persons through a realistic presentation of the topic, and sent a strong message to denounce trafficking. Access to Information File No. 0002200087808 (Sept. 1, 2008). In the second half of 2008, NHRC launched a national information campaign including radio spots with a toll-free number. Information on the number of calls received through the hotline was not made available to the assessment team.

Research on trafficking in persons has been conducted in three states and Mexico City, but no public comprehensive report or mapping on trafficking on a national scale has been published. However, at least two studies are currently in preparatory stages.

INMUJERES and NMI supported research on the issue of trafficking of women and children in Tapachula, Chiapas, while the Mexico City Human Rights Office and local legislature provided support for a book on trafficking of women and children in Mexico City. See Rodolfo R. Casillas, Trafficking of Women, Adolescents, Girls and Boys in Mexico: An Exploratory Study in Tapachula, Chiapas (2006); Rodolfo R. Casillas, I Remember Well...Testimonies and Perceptions of the Trafficking of Girls and Women in Mexico City (2007). Both of these books were sponsored by IOM, and were part of a proposal to conduct research on trafficking on Mexico’s southern border, in and around Mexico City, and on Mexico’s northern border, originated by IOM, the Inter-American Commission on Women, and NMI. The report on Baja California was not published, but was obtained by journalists through an access to information request. Fabiola Vargas, Evaluation of Trafficking in Persons: Women, Girls and Boys on the Mexican Northern Border (Particularly Baja California) (2005). In 2006, through the same project, the book: Trafficking in Persons: Basic Aspects was published jointly by the Inter-American Commission on Women, IOM, NMI, and INMUJERES, and has been used to introduce the topic in IOM trainings.
The University of Tlaxcala collaborated with the Fray Julian Garcés Human Rights Center on a diagnostic of the situation of commercial sexual exploitation in Tlaxcala. FRAY JULIAN GARCÉS HUMAN RIGHTS CENTER & AUTONOMOUS UNIVERSITY OF TLAXCALA, A SILENT CRY (2004). Similarly, the National Autonomous University of Mexico worked with CEIDAS on the publication of the academic works and presentations that resulted from the Seminar on the Prevention and Eradication of Trafficking of Persons in Mexico, which was organized by CEIDAS in 2006.

Furthermore, Sin Fronteras, I.A.P. prepared a diagnostic of human trafficking in Mexico City that was incorporated into the Mexico City Human Rights Commission’s general report. Also, Sin Fronteras, I.A.P. and a U.S.-based organization Global Rights, published a report on the situation of trafficking in persons in El Salvador, Guatemala, Honduras, and Mexico that was presented before the Inter-American Human Rights Commission in October 2005. See GLOBAL RIGHTS & SIN FRONTERAS, I.A.P., TRAFFICKING IN PERSONS: A CHALLENGE FOR MEXICO AND CENTRAL AMERICA. REPORT ON TRAFFICKING IN PERSONS IN EL SALVADOR, GUATEMALA, HONDURAS AND MEXICO (2005); see also USAID, LITERATURE REVIEW OF TRAFFICKING IN PERSONS IN LATIN AMERICA AND THE CARIBBEAN (2004). Finally, Mexico’s counter-trafficking efforts are discussed in global reports on trafficking in persons published by DOS and UNODC. See TIP REPORT at 180-182; see also UNODC, GLOBAL REPORT ON TRAFFICKING IN PERSONS 134-135 (2009).

These publications represent the principal public research that has been conducted on trafficking in persons in Mexico. However, a wide range of reports on related issues (migration, labor, child commercial sexual exploitation, health-related matters, and migration and sexual exploitation) as well as broader reports on trafficking in Latin America exist and refer to the situation in Mexico. In addition, several organizations, including CEIDAS, NHRC, and a Mexican journalist Lydia Cacho, are in the process of conducting research and writing books or reports on the issue from their various mandates and perspectives.

In terms of official statistics on trafficking in persons, the Inter-Secretarial Commission is required to gather data and publish periodic reports on such issues as number of arrests, criminal proceedings, and sentences; number of victims disaggregated by gender, marital status, age, nationality, type of victimization, and migration status; routes and transportation methods used by individuals and criminal organizations that commit the crime of trafficking in persons; and transnational trafficking through Mexican borders. FEDERAL ANTI-TRAFFICKING LAW art. 12 (IX). Correspondingly, authorities responsible for the prevention of trafficking in persons and the administration of justice are required to submit semi-annual reports to the Inter-Secretarial Commission regarding individuals and organizations involved in human trafficking. Id. art. 15. In addition, data generated by the police in connection with investigations of trafficking cases will be integrated into a computerized information system created by MPS. This information must be registered and managed in a confidential manner. ANTI-TRAFFICKING REGULATIONS art. 26.

Because the Inter-Secretarial Commission has not been officially institutionalized and the Anti-Trafficking Regulations were issued only in February 2009, neither of these reporting duties has been discharged to date. Nevertheless, FPP has developed a database that links crimes related to trafficking so that perpetrators can be more easily identified. The database also includes information about victims in cases that had elements of trafficking but were not classified as such. The information is utilized for case investigation and has not been used to generate public statistics about general trends.

Furthermore, CENAPI is in the process of developing a quantitative database on gender-based violence and trafficking in persons in Mexico. Between 2007 and August 2008, CENAPI researched the issue and entered into the database information obtained from international organizations and civil society. Currently, the database is being made operational. A database with geographical crime statistics is also being constructed. It will be utilized to determine what types of crimes are being committed in various geographic locations as well as the patterns and frequency of criminal conduct. This mapping project is designed to help prevent trafficking in persons. OAG, SECOND ACTIVITY REPORT (2008).
As early as 2003, the U.S. and Mexico coordinated transnational anti-trafficking investigations through the Bi-National Link Program which included the creation of a database consisting of information gathered on both sides of the border. The database includes records regarding bi-national investigations, identified traffickers, their modus operandi, arrest warrants, and criminal proceedings. Press Release No. 473/03, OAG, The Bi-National Link Program was Presented before Authorities in Charge of Investigation, Prosecuting and Combating Trafficking of Human Beings (June 6, 2003).

Reportedly, a database on trafficking in persons has been also set up by the Center for Investigation and National Security. Finally, MPS manages a national missing persons database; however, it has been under-utilized.

Interviewees expressed the need for more research on trafficking in persons in Mexico. While the general phenomenon is understood, there is a lack of data that could be used to design appropriate public policy and training. Interviewees discussed the need to utilize consistent methodologies and to develop a group of indicators that could be evaluated on a periodic basis to help people working in the field create objectives and evaluate their work. In addition, categories in federal and state census structures need to be created to help measure factors of vulnerability that lead to trafficking in the various sectors where human trafficking has been identified.

Cooperation with NGOs, Other Organizations, and Elements of Civil Society

Pursuant to the Federal Anti-Trafficking Law, three representatives of civil society and three anti-trafficking experts may be invited to participate in the Inter-Secretarial Commission as consultants. In addition, the Inter-Secretarial Commission is required to collaborate with civil society in its mandate to promote research and information exchange between other agencies and institutions on the national level, including civil society organizations that are working on issues of children’s and women’s rights. Federal Anti-Trafficking Law arts. 10 (II), 12 (V).

In practice, Mexican governmental agencies commonly collaborate with civil society and other organizations in information campaigns, training, and generalized seminars. It is unclear, however, how the state will cooperate with NGOs within the Inter-Secretarial Commission and to what extent they will be contemplated in the National Anti-Trafficking Program.

To date, the 32 Inter-Institutional Committees coordinated by NMI have invited one local civil society organization to participate on each committee. In some states, such as Guerrero, the participating organization is one that has been working on the issue of trafficking, while in other states, such as Tlaxcala, these organizations have been excluded. The internal workings and decision-making processes of the Inter-Institutional Committees have not been made public.

NMI has entered into a collaborative agreement with USAID-PROTEJA to train the Inter-Institutional Committees in each of the states as well as the central offices in Mexico City. Much of this training has already occurred and included a general overview of the Trafficking Protocol, the legal framework in Mexico, victim assistance, and the advantages of creating task forces among law enforcement and social service agencies to address prevention, prosecution, and protection.

NHRC contemplates working closely with the civil society on research, seminars, and public information campaigns as part of its 2008-2009 Program Against Trafficking in Persons. See NHRC, Program Against Trafficking in Persons 2008-2009, http://www.cndh.org.mx/swf/2008/programa2008-Web.swf. It has signed cooperation agreements with USAID-PROTEJA and is in the process of establishing additional agreements with the civil society and national labor unions, among others.
In November 2007, INMUJERES signed a collaboration agreement with IOM. The objectives of the agreement include: promoting exchange between experts; developing research projects; implementing technical assistance programs, training, and consulting; and organizing joint projects and events at the local, state, regional, and national levels.

The federal government provides funding to NGOs through the National Institute for Social Development [hereinafter NISD]. While no targeted state funding exists for trafficking projects, some NGOs have utilized NISD funds for programs that include components addressing the issue of trafficking in persons.

Root Causes

While the Federal Anti-Trafficking Law does not set out specific responsibilities related to addressing the root causes of trafficking in persons, Mexico has a National System for Democratic Planning and a 2007-2012 National Development Plan designed to address these issues. The National Development Plan establishes national strategies that are the basis for institutional and special programs on the regional levels. All federal agencies, including OAG, have designated responsibilities to meet the Plan’s objectives.

The National Development Plan consists of two principle sections. The first section is the general framework for achieving human sustainable development that includes national objectives and priorities for each government agency. The second part consists of five chapters setting out public policies in each of the following areas: rule of law and security; economic competitiveness and employment creation; equal opportunities; environmental sustainability; and effective democracy and responsible foreign policy. See Office of the President, National Development Plan 2007-2012, http://pnd.presidencia.gob.mx [hereinafter NATIONAL DEVELOPMENT PLAN]. To implement the mandatory plan, the federal government may enter into agreements with state agencies. FEDERAL CONST. art. 26. One of the objectives of human sustainable development is to ensure the basic needs of all Mexicans, including education, health, food, housing, and protection of their human rights. Particular attention is to be afforded to vulnerable groups with special needs. In order to meet these objectives, the economy will have to expand to generate more employment. Thus, economic policies must contain strategies to overcome poverty. In addition, the government is expected to develop policies to promote equality among all Mexicans, especially between men and women. Finally, Mexico is bound to collaborate with regional and international organizations on government projects aimed at ending poverty and increasing the level of security in the country. NATIONAL DEVELOPMENT PLAN at 25-26. These actions, which are to take place within a period of 6 years, establish a general compliance with Article 9 of the Trafficking Protocol.

While the scope of this study does not allow for in-depth analysis of the root causes that lead to trafficking in persons in Mexico, a brief overview demonstrates the basic challenges in these areas. CEIDAS is preparing this type of analysis based on national and international indicators in collaboration with NHRC.

According to official estimates, approximately 40% of the population is poor and 18% is considered to live in extreme poverty. The U.S. Central Intelligence Agency’s and World Bank’s reports on Mexico, developed in accordance with the food-based poverty levels, place from 13.8 to 17.6% of the population below the poverty level. See CIA, World Fact Book, Mexico, https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html; WORLD BANK, POVERTY IN MEXICO: AN ASSESSMENT OF CONDITIONS, TRENDS AND GOVERNMENT STRATEGY (2004). Per the National Survey on Violence against Women, 1 of every 5 women is involved in a violent relationship with her current partner, 34.5% have suffered some type of partner violence, and 60.4% have been victims of violence by a partner or other family member. The different forms of domestic violence could affect 28 million people. NATIONAL INSTITUTE OF STATISTICS AND GEOGRAPHY (INEGI), NATIONAL SURVEY ON THE DYNAMIC OF DOMESTIC RELATIONS 2003 (2004),
Taking into account the relationship between violence against women and trafficking in persons, many of the interviewees emphasized the importance of including the issue of trafficking within the national legislative reform that is taking place through the implementation of the Federal Law on Access to a Life Free from Violence for all Women, passed in March 2007. Through this law, all of the states are required to implement provisions on prevention, prosecution, and protection against various types of violence against women. However, only 22 states have passed local legislation required by the law, and the process of putting the requisite programs into place is still in the incipient stages. In addition, some observers have criticized the lack of resources allocated for the creation and implementation of these programs. See Lourdes Godinez Leal, Inadequate Allocation of Resources to Harmonize Law on Access to a Life Free from Violence for all Women, CIMAC NOTICIAS, August 2008, at http://www.redfem.net/not/noticias.php?id=68. Nevertheless, state Women’s Institutes, local governments, and NGOs throughout the country have been working to improve legal representation and access to services for domestic violence victims over the last 15 years. For example, the government-run Centers for Attention for Victims of Domestic Violence provide social and legal assistance to victims of domestic violence.

Issues of family dissolution, sexual abuse, drug use, and homelessness were identified by many interviewees as the immediate factors that make people, particularly children, vulnerable to human trafficking. Shelters working with street children reported that 95% of the victims trafficked for commercial sexual exploitation who they assisted had previously been victims of sexual abuse, typically by a family member. In addition, prosecutors working on trafficking cases in Mexico City stated that many of the trafficking victims had been forced to take drugs and had become addicted.

The problem of unsafe migration relates to Mexican migrants in the U.S., immigrants in Mexico, and migrants in transit through Mexico. The limited access to legal migration mechanisms through Mexico and from Mexico to the U.S. and other countries has led to high rates of irregular migration. This is particularly true for less skilled workers that do not have access to traditional employment-based visas. Irregular migration creates a sector of migrants that are more vulnerable to exploitation by employers, smugglers, and traffickers. This situation is reflected by the increase in organized smuggling operations throughout Mexico, the rise of accidents and deaths along the borders, and by the fact that more and more trafficking cases are being detected in Mexico and the U.S. In addition, the lines between smuggling and trafficking have become increasingly faint as smugglers more and more often utilize debt bondage to make migrants “pay off” their smuggling fees. The situation is similar for immigrants in Mexico as the traditional migration system is employment-based and requires paperwork that employers are often unwilling to supply. Several regularization programs initiated by NMI in 2000 have ameliorated this situation to some extent.

Lack of education is also an important factor that makes people more vulnerable to human trafficking. In Mexico, public education is free and obligatory through the secondary school level. FEDERAL CONST art. 3. In practice, however, indigenous communities often do not have access to education at this level. For example, in 2005, indigenous children with an indigenous maternal language had an average of 4.5 years of schooling (girls 3.9 and boys 5.1), although from 2000 to 2005 the percentage of indigenous children between 6 and 14 years old with an indigenous maternal language who were in school increased from 83.5 to 88.7. NATIONAL INSTITUTE FOR GEOGRAPHICAL STATISTICS, HOUSING AND POPULATION CENSUS (2005).

Finally, as long as systemic corruption exists within the criminal justice system, the public will continue to lack the confidence to initiate criminal complaints. The 2008 constitutional reforms
changing the criminal system from inquisitorial to accusatorial\(^\text{12}\) may help with a gradual reduction in corruption as procedures become more public. These changes are scheduled to occur gradually over the next 8 years.

**Demand**

The Inter-Secretarial Commission is obliged to include prevention programs aimed at eradicating the demand for trafficked persons in the National Anti-Trafficking Program. These policies and programs will be designed to have an impact on the national level. *Federal Anti-Trafficking Law* art. 13 III (b). As the Inter-Secretarial Commission has not made any public announcements regarding its internal workings, nor has the National Anti-Trafficking Program been published, information on the types of policies and programs was unavailable to the assessment team.

There are, however, ongoing campaigns by civil society organizations to regulate or implement existing regulations in the area of domestic work, migrant agricultural work, construction work, prostitution, and other sexual services. For example, the Center for Assistance and Training for Domestic Workers has continually called for the inclusion of domestic work in the Federal Labor Law so that domestic workers would have access to benefits. Press Release, Communication and Information for Women Association (CIMAC), Federal Labor Law Needs Reforms to Protect Domestic Workers (March 26, 2007). This cause has also been taken up by the Mexico City Human Rights Commission. Press Release No. 52/2007, Mexico City Human Rights Commission, Failure to Recognize the Rights of Domestic Workers Makes Them Invisible (March 23, 2007).

Furthermore, the government and civil society have proposed ways to regulate commercial sex acts among adults. One proposal is to include prostitution within the labor law regime so that individuals engaged in commercial sex acts would pay taxes and receive health and social security benefits. For example, a bill was presented in the Mexico City legislature in June 2007 to create the Law to Protect Commercial Sexual Service in Mexico City. The bill contained sections delineating the rights of people in prostitution, such as labor and health rights, and the right to work in an environment free from extortion and arbitrary arrests. It also included a section on the obligations of people in prostitution regarding health inspections and zoning requirements. The proponents of this initiative argued that regulating prostitution would eradicate the current levels of extortion and pimping, provide health services to people in prostitution, and help to identify individuals in situations of commercial sexual exploitation. Another idea supported by some women’s groups is to criminalize the users of prostitution in order to eradicate the demand for commercial sex. The issue is complex because prostitution is not illegal in Mexico. While pimping is a crime, it often goes unprosecuted, both because of law enforcement’s tolerance and because officials claim that people engaged in commercial sex acts often refuse to testify against the accused. States and even municipalities within states address the situation differently. In some cities, for example, tolerance zones have been designated where establishments for prostitution are allowed and regulated to some extent.

Finally, civil society organizations have addressed the problem of demand in their preventative campaigns. For example, CATW in Mexico has developed a series of courses for young men to teach them about sexual exploitation with the objective of reducing the demand for prostitution. Entitled, “Masculinity, Initiating Sexual Relations and Prostitution Consumption,” these seminars have been offered to the general public as well as specific audiences such as physical education instructors, teachers, students, and street children in shelters. In addition, CATW developed a

\(^{12}\) As opposed to the inquisitorial system, in which a judge controls the proceedings by actively investigating the facts, gathering and examining the evidence, interviewing witnesses, and issuing a final judgment, the accusatorial or adversarial system requires vigorous participation of the parties in the fact-finding process. In the adversarial system the disputants present arguments and produce evidence. The role of a judge is limited to ensuring the fair resolution of the case and strict adherence to the rules of evidence.
pamphlet sponsored by the Mexican Institute for Development, INMUJERES, the Mexico City Human Rights Commission, and FPP entitled “Because You Pay...Child Prostitution Exists.” Concrete information regarding distribution and impact of the pamphlet was unavailable to the assessment team.

Also some of the pamphlets produced by the Bilateral Safety Corridor were designed to deter people away from commercial sexual exploitation of children as well as prostitution with adults. For example, one posters states: “If You Pay for Sex You Are Buying Gonorrhea, Syphilis, Chlamydia, Herpes, AIDS...Don’t Contribute to Sex Trafficking.”
Article 10: Information Exchange and Training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

   (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

   (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

   (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Conclusion:

Pursuant to the Federal Anti-Trafficking Law, federal authorities must adopt policies and programs in order to facilitate the cooperation with foreign governments and international organizations regarding trafficking in persons. In addition, the National Anti-Trafficking Program must include the design, evaluation, and actualization of training plans and programs that will be used for public officials. The Mexican government has entered into agreements with Guatemala, El Salvador, and the U.S., among others, that provide for the ongoing exchange of information with the objective of identifying the means and methods used by organized criminal groups implicated in trafficking in persons in order to improve detection of these groups. Although trainings offered to some government agencies by international organizations and technical assistance providers have been relatively thorough and ongoing for the past few years, they have neither been adequately systematized nor permanently incorporated into standard course curricula. To assist with training and coordination efforts, NMI convened Inter-Institutional Committees through its regional delegations in 31 states and the Federal District. They include the participation of both federal and state law enforcement and security agencies, MFA, Women’s Institutes, and DFS. Most of them have received at least basic instruction on the issue of trafficking in persons, including prosecution and victim protection. Cooperation with NGOs in the training and resulting processes has been uneven. In some cases it has led to enhanced collaboration for victim identification and protection, and in other cases it has deepened mistrust between law enforcement and civil society.
Implementation Analysis:

**Upholding the Rights of Individuals**

It is of paramount importance that state authorities respect the rights of individuals while they cooperate with each other and exchange information in order to identify victims of trafficking in persons and distinguish them from the perpetrators.

The only specific mention of the need to uphold individual rights in the Federal Anti-Trafficking Law is in reference to information exchange: federal authorities must compile and exchange information and statistics regarding trafficking with respect for the confidentiality of the personal information of the victims. **FEDERAL ANTI-TRAFFICKING LAW** art. 14. However, upholding individual rights in the application of the Federal Anti-Trafficking Law is implicit due to the fact that all laws must be applied in accordance with the Federal Constitution, which provides for such individual rights as prohibition of slavery, prohibition of discrimination, indigenous rights, equality between men and women, freedom of profession, freedom of expression, right to due process, freedom of association, right to privacy, and freedom of movement. **FEDERAL CONST.** arts. 1-2, 4-6, 9, 11, 14, 16.

Issues concerning the balance between protective measures and individual rights may emerge in the Inter-Secretarial Commission’s responsibility to inform and warn personnel from airlines, hotel chains, public transportation, restaurants, bars, and nightlife centers, among others, about the liability they will incur should they facilitate or fail to impede conduct inherent to trafficking in persons, as well as educate them on effective prevention strategies. **FEDERAL ANTI-TRAFFICKING LAW** art. 12 (VII). Some interviewees expressed the need to ensure that these entities do not infringe on individual rights in an effort to identify or protect potential victims. For example, foreigners found on the premises of bars and adult entertainment establishments may be subject to arbitrary arrest and due process violations during raids.

Interviewees also emphasized the necessity to ensure that law enforcement respect individual rights, particularly freedom of movement, which is commonly restricted in Mexico. When Mexicans and foreigners travel the more than 2,000 miles from the southern to the northern border, they face up to 35 official inspection checkpoints along the highways.

**Cooperation and Information Exchange**

Federal authorities are obliged to adopt policies and programs in order to facilitate the cooperation with foreign governments and international organizations regarding trafficking in persons as well as compile and exchange pertinent information and statistics. **Id.** art. 14. However, the specific measures that authorities will take to identify traffickers, victims, and organizations involved in trafficking remain unclear.

To date, the Mexican government has integrated various counter-trafficking initiatives with ongoing international cooperation. On March 23, 2004, Mexico and Guatemala entered into the Memorandum of Understanding for the Protection of Women and Children Victims of Trafficking and Smuggling on the Border Mexico-Guatemala. This agreement establishes a Technical Commission that follows an annual work plan. During 2007 and 2008, the Technical Commission exchanged information regarding Mexico’s and Guatemala’s local, state, and national anti-trafficking programs with an aim to better coordinate the countries’ ability to detect and assist victims. Access to Information File No. 0411100019608 (April 15, 2008). Similarly, on May 17, 2005, Mexico and El Salvador signed a Memorandum of Understanding for the Protection of Persons, Especially Women and Children that are Victims of Trafficking and Smuggling between Mexico and El Salvador. Through this agreement the governments agreed to prepare a bi-national study on the phenomenon as well as improve mechanisms for the repatriation of children and family reunification. Access to Information File No.0411100019608 (April 15, 2008.).
Mexico and the U.S. have several mechanisms in place to exchange information about trafficking in persons. In August 2005, the U.S. Embassy in Mexico signed an agreement with MFA to implement cooperative programs against trafficking in persons. Press Release, U.S. Embassy in Mexico, The U.S. Embassy in Mexico and MFA Sign Agreement to Fight Trafficking in Persons (August 19, 2005). The agreement was entered into as a complement to existing bilateral mechanisms, including the Plenary Group for Law Enforcement and its Subcommittee on Trafficking in Persons, and the Security and Prosperity Partnership for North America. It created programs to provide comprehensive support to victims on the U.S.-Mexico border as well as in southern Mexico; fight sexual tourism involving children; raise awareness about the risks of trafficking in persons and related crimes; and deepen the exchange of information and intelligence in order to dismantle, apprehend, and prosecute criminal organizations. It also included projects to establish investigation groups, technical assistance, and information exchange regarding the identification of offenders and current investigations. A technical sub-group was in charge of defining priorities and strategies in the areas of prevention, information, education, intelligence, and law enforcement. The Mexican agencies involved in the sub-group included: NCINS, NMI, OAG, MPS, the Ministry of Tourism, the Ministry of Health, DFS, NIW, and FPP. On the U.S. side, the participating institutions included: DOS, DHS, DOJ, and HHS. The agreement stipulated that NGOs could participate in victim assistance.

Between 2005 and 2007, FPP coordinated actions from the Mexican side, initiating the first public awareness campaign by a law enforcement agency; conducting comparative research on crimes related to trafficking to help identify patterns; adapting databases to interrelate specific crimes; and prosecuting several cases of pornography, pimping, and child sex tourism. For example, FPP worked with U.S. law enforcement to investigate the criminal trafficking networks in Tlaxcala in order to assist trafficking victims in New York obtain custody of their children who were residing with the traffickers’ family in Tlaxcala. In Baja California, an investigation of the company Brazilian Brides was initiated, and three people were arrested on smuggling charges. The investigation had utilized information provided by the U.S. law enforcement officials. At that time the crime of trafficking did not yet exist in Mexican legislation. FPP, Presentation, April 2006.

FPP also collaborated closely with OASISS. This program began in 2005 and has since been expanded from the Baja California/California and Sonora/Arizona borders to Columbus/Las Cruces, Ciudad Juarez/El Paso, Fabens/Fort Hancock, and Presidio/Ojinaga along the Mexico-U.S. border. Access to Information File No. 0001700022308 (March 12, 2008). The program is implemented at and between the ports of entry, and is designed to assist both governments in the prosecution of human smugglers and traffickers. As part of OASISS, in 2007 databases were installed in Tijuana, Mexicali, San Luis Potosi, Hermosillo, Caborca, Sonoyta, Nogales, Ciudad Juarez, and Ojinaga that help with information sharing and detection of smugglers and traffickers. OAG, ANNUAL ACTIVITY REPORT (2007).

The U.S. Customs and Border Protection [hereinafter CBP] works collaboratively with Mexico’s OAG, MFA, and MOI. Press Release, CBP, U.S.-Mexico Initiative Targets Alien Smugglers & Human Traffickers (August 17, 2005). Through this program, eight operations were conducted to rescue more than 90 potential victims from trafficking situations in Mexico in 2007.

Furthermore, DOJ signed a Letter of Agreement with the Mexican government “to facilitate the exchange of intelligence and produce collaborative efforts to combat trafficking among Central America, Mexico, and the U.S.” See ATTORNEY GENERAL’S ANNUAL REPORT TO CONGRESS ON U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 2006 (2007), available at http://www.usdoj.gov/ag/annualreports/tr2006/agreporhumantrafficking2006.pdf. DOJ has been involved in various training efforts with Mexican law enforcement and has continued to provide technical assistance regarding trafficking prosecution in 2008. Lastly, as early as 2003, the U.S. and Mexico coordinated transnational anti-trafficking investigations through the Bi-National Link Program that included the creation of a database consisting of information gathered on both sides of the border. See Article 9 above.
In addition to collaborating with its neighbors, Mexico has signed a number of cooperative agreements with other countries, which call for bilateral actions aimed at combating trafficking in persons. For example, the Memorandum of Understanding to Guarantee Legal, Orderly and Safe Migratory Flow between Mexico and Cuba, signed in October 2008, addresses the need to exchange information in order to prevent human trafficking and protect the victims. *Cuba-Mexico Sign Migratory Memorandum,* PERIODICO 26, Oct. 22, 2008. Similarly, in 2002 Mexico and Poland signed a cooperative agreement to combat organized crime, including trafficking in persons. By virtue of the agreement, both countries committed to collaborate with one another to locate the suspects as well as the objects related to those crimes. Press Release, OAG, OAG Signs Cooperation Agreement with the Republic of Poland to Combat Organized Crime (Nov. 27, 2002).

Moreover, Mexico is a member of RCM – an intergovernmental forum of 11 countries in North and Central America devoted to sharing information and promoting dialog on international migration. RCM, whose first meeting took place in 1996, has a sub-committee on trafficking in persons that has received training and established coordination mechanisms. See RCM, http://rcmvs.org.

Finally, in 2008, NHRC facilitated the creation of the Regional Committee against Trafficking in Persons in Mexico, Central America and the Caribbean [hereinafter Regional Committee], within the framework of the Network of National Institutes for the Promotion and Prevention of Human Rights in the American Continent. The Regional Committee includes participation of ombudspersons from the following countries: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Dominican Republic, and Mexico. One of the objectives of the Regional Committee will be to create a Regional Monitoring Committee to evaluate each country’s compliance with international instruments related to trafficking in persons. The Regional Committee will also work to prepare a regional report on trafficking, and establish communication channels among government agencies, international organizations, and civil society actors aimed at enhancing the coordination of prevention efforts and victim protection. Mauricio Farah Gebara, NHRC, Address at the Second Symposium on Trafficking in Persons, Trafficking for Labor Exploitation in Mexico (Sept. 4, 2008), at http://ceidas.org/documentos/Coloquio/Mauricio_Farah_Gebara_Coloquio_04-09-2008.pdf; see also *Ombudsman Today Formed a Regional Committee against Trafficking in Persons,* LA JORNADA, May 26, 2008; *The National Human Rights Commission Prepares a Report on Trafficking in Persons in Mexico,* NOTIMEX, May 26, 2008.

**Training**

The Inter-Secretarial Commission is obliged to include in the National Anti-Trafficking Program the design, evaluation, and actualization of training plans and programs that will be used for public officials. At the very least, these training plans and programs will be aimed at all federal authorities working on such issues as public security, prosecution, justice, and migration. It is unclear if the trainings will be mandatory. The Inter-Secretarial Commission must also inform and train federal authorities about the fundamental concepts and implications of trafficking in persons and related international instruments, including those pertaining to human rights and refugees, as well as provide specific information on the national legislation. Trainings must be conducted with the gender and human rights perspectives, and should afford special attention to the protection of the rights of children, adolescents, women, adults over 60, indigenous people, and those who do not have the capacity to understand the significance of the event, or who have a disability. **FEDERAL ANTI-TAFFICKING LAW** arts. 12 (IV), 13 (II) (a), (c).

The Federal Anti-Trafficking Law does not specifically require collaboration with civil society in the training initiatives. However, more details should be forthcoming in the National Anti-Trafficking Program. In practice, civil society has participated to some extent in providing and receiving training on trafficking in persons.

Training on trafficking in persons has been ongoing since 2003, i.e., shortly after Mexico ratified the Trafficking Protocol. In 2004 and 2005, IOM and the Inter-American Commission on Women
organized three training programs for federal and state authorities as well as civil society organizations in collaboration with INMUJERES and NMI. The trainings were held in Monterrey, Nuevo Leon, Tuxtla Gutierrez, Chiapas, and Mexico City. Over 100 officials from state and federal agencies and 60 representatives of civil society participated. Access to Information File No. 0411100031106 (August, 8, 2006).

In 2007, NMI signed a collaborative agreement with USAID-PROTEJA, which has provided training to the Inter-Institutional Committees throughout the country during 2007 and 2008. The training offered by USAID-PROTEJA has emphasized the need to collaborate with NGOs and civil society in the identification and protection of victims. The training sessions have reached more than 5,475 prosecutors, investigative police, NGO members, and government social service providers. According to interviewees, collaboration between NGOs and the Inter-Institutional Committees has been uneven. For example, in Chiapas, the Inter-Institutional Committee has worked closely with a network of NGOs and IOM to receive training and develop a system for case referral. In other states, such as Tlaxcala, none of the civil organizations involved in the campaign against trafficking in persons were invited to participate in the Inter-Institutional Committee. In other cases, NGOs are reticent to collaborate with law enforcement.

Between October 2007 and February 2008, over 300 authorities, including 130 migration officials and 170 representatives from other agencies, received training conducted by the Inter-Institutional Committees that focused primarily on the identification of trafficking victims, and procedures to protect victims. Access to Information File No. 0411100010608 (Feb. 21, 2008). NMI's ongoing training includes the following subjects: "National and International Framework to Eradicate, Penalize, and Identify Human Trafficking," "Trafficking and Smuggling of Migrants," and "Voluntary Repatriation and Human Trafficking." Access Information File No. 0411100044306 (Dec. 18, 2006).

In addition to the training conducted through the Inter-Institutional Committees, other federal agencies have received ongoing instruction on the issue of trafficking in persons from other organizations and institutions. For example, in 2006, ICE provided training on human trafficking investigations to 360 FPP officers, 90 migration officials, and participated in a conference in Chiapas attended by over 200 government representatives. DOJ has also begun training Mexican government officials on trafficking in persons litigation techniques.

INMUJERES and state-level Women’s Institutes continued their internal trainings with the following components: “Workshop on Concepts of Trafficking in Persons” (July 2007), and “Introduction to Trafficking in Persons,” including the use of IOM guide on psycho-social and direct assistance to victims (January 2008).

NHRC has designed ongoing training programs and roundtable discussions on trafficking in persons. In 2008, two regional meetings were held in Sinaloa and Campeche to promote state-level legal reforms that are consistent with the Trafficking Protocol and uniform among the states. Three university forums were held in Mexico City and Oaxaca, and one forum was organized with the Regional Confederation of Workers in Baja California. In addition, in collaboration with USAID -PROTEJA and UNODC, NHRC organized three trainings on ways to identify trafficking victims in Tijuana (Baja California), Juchitan (Oaxaca), and Tapachula (Chiapas). Letter from Sadot Sanchez Carreño, Director, Program Against Trafficking in Persons, NHRC, to ABA ROLI (Feb. 12, 2009).

Mexican officials on the federal and state levels, employed by such agencies as NMI, FPP, OAG, MPS, the Mexico City Women's Institute, and the Mexico City Human Rights Commission, among others, have been offered a 3-day course organized by CATW, entitled: "Rule of Law and Trafficking in Persons for Commercial Sexual Exploitation." See CATW, Training Program, http://previniendonos.catwlac.org/Eventos.htm. Furthermore, Sin Fronteras, I.A.P. has conducted various training sessions on issues of migration and trafficking, particularly the differences between smuggling and trafficking; how smuggled migrants can end up in trafficking situations;
and the various forms of migration relief available to trafficking victims. UNHCR has also offered training for NMI officials that includes a section on the relationship between trafficking and refugees. Lastly, UNODC has initiated a regional law enforcement training program in which some Mexican officials are participating. The training includes instruction on how to prepare special investigations; the use of task forces, undercover agents, and electronic surveillance; and dismantling trafficking organizations. UNODC, in collaboration with the U.N. Latin American Institute for the Prevention of Crime and the Treatment of Offenders is conducting a regional assessment to identify strengths, weaknesses, opportunities, and threats (SWOT analysis) of public prosecutors’ offices and national police bodies in addressing trafficking offences. The findings will help design and tailor training courses to be delivered in 2009 and 2010 at the national and regional levels.

Only limited trainings have been offered to judges regarding trafficking in persons and the application of the Federal Anti-Trafficking Law.

Presently, it is premature to assess the general effectiveness of the above-mentioned training programs, because Mexico is in the incipient stages of investigating and prosecuting trafficking cases, and creating a framework for preventing trafficking in persons and protecting the victims. Although training offered to some government agencies has been relatively thorough and ongoing for the past few years, it has neither been adequately systematized nor permanently incorporated into standard course curricula.

One of the challenges that interviewees cited regarding training is ensuring that the material presented is appropriate for the particular audience. For example, thousands of government officials in Mexico have now studied the international legal framework on human trafficking, the general national legal structure, and the basic types of issues that arise with victim identification and assistance. Interviewees expressed the need for more detailed training, structured according to their specific needs and ambit of application. Now that FEVIMTRA is in place, specialized training on intelligence, evidence collection, and protection of victims and witnesses is more appropriate. In addition, some government officials pointed out that they had received general instruction two or three times from different organizations, and that some of the information presented was contradictory. Some interviewees suggested that a list be put together of the organizations offering training and their expertise so that both NGOs and the government can request an appropriate training. Finally, Mexican officials would benefit from improved coverage of trafficking in persons for other purposes than sexual exploitation. These goals can be accomplished if both the training providers and agencies that receive trainings exercise their responsibility to adequately evaluate training needs and mutually agree on the appropriateness of offered training materials.

**Restrictions**

Article 10(3) of the Trafficking Protocol indicates that when governments cooperate and exchange information with one another in order to pursue traffickers and identify victims, the country providing the information may limit the manner in which such information is used. These limitations are aimed at protecting the privacy and identity of trafficking victims.

Presently, Mexican legislation does not explicitly address the possibility of placing restrictions upon the exchange of data and information related to trafficking in persons. However, as mentioned in Article 6 above, the privacy and identity of trafficking victims and their families are protected by law, and OAG is obliged to classify information obtained through the investigation of trafficking cases as confidential, in accordance with the applicable laws. **FEDERAL ANTI-TRAFFICKING LAW art. 18; ANTI-TRAFFICKING REGULATIONS art. 28 (VII).** More information regarding the specific procedures that will be followed may become available upon the publication of the National Anti-Trafficking Program. Most likely, OAG’s Office on International Cooperation will act as a clearinghouse responsible for coordinating the exchange of information and deciding which information to share and restrict.
Article 11: Border Measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Conclusion:

The Mexican legal framework complies with the commitments set forth in Article 11 of the Trafficking Protocol. Mexico is taking measures to strengthen border controls on the southern border with Guatemala and Belize, and coordinates with DHS along the northern border. Commercial carriers are required to ascertain that all passengers are in possession of travel documents required for entry, and pecuniary sanctions are applied in the case of administrative violations. The General Population Act allows for the denial of entry or revocation of visas of persons implicated in crimes. Mexico has taken steps to strengthen cooperation among border control agencies with Guatemala, Belize and the U.S. In practice, interviewees expressed the necessity to improve measures for the detection of trafficking victims along the border with Guatemala and Belize as well as the need to provide information to migrants along the border with the U.S. that could help them request assistance if needed.

Implementation Analysis:

Border Controls

Mexico's southern border with Guatemala and Belize and its northern border with the U.S. are extremely different, both in terms of terrain as well as the infrastructure in place to assist with border controls. The southern border covers extensive and difficult terrain consisting of jungle and ocean, but some of the border regions have dynamic transnational communities that are economically and socially interdependent. Due to the lack of enforcement and the existence of informal crossing points, the southern border is not difficult to cross in an irregular manner. Consequently, Mexico has focused its apprehension practices in the southern states along specific migratory routes and more intensively around the Isthmus of Tehuantepec. The 2,000-mile-long northern border with 34 official checkpoints is also complex. It is the most frequently crossed international border in the world, with over one million legal crossings each day and an
unknown number of irregular crossings. The Mexican government coordinates with the U.S. to combat human smuggling and trafficking in some areas of the northern border, and to repatriate migrants from the U.S. to Mexico.

NMI is in charge of implementing Mexico’s border controls. Its current objectives include: automatic registration of the entries and departures in all of the land inspection points (2007-2009); formalization of procedures with authorities in existing and newly created entry points; better administration of migration flows through improved documentation; training on detection of false documents; integrating a system of information on border control with other institutions of national and public security and an alert system for the eradication of smuggling and trafficking in persons. See NMI, Migration Program for the Southern Border 2007, http://www.inmujeres.gob.mx/dgpe/migracion/res/Anexo_44_06.pdf. Aside from NMI agents, FPP is authorized to carry out migration inspections. GENERAL POPULATION ACT art. 16. Lastly, MOI is responsible for regulating the visits of foreigners to maritime and border populations as well as within the airports. It also regulates the daily transit of people across land borders, in accordance with the relevant national and international laws. In practice, Mexican government detains and deports approximately 150,000 migrants each year.

To date, Mexico has implemented a number of programs to improve border controls and security of migrants both in the south and in the north.

In 1990, Mexico created Beta Groups consisting of unarmed officers responsible for protecting the physical integrity of migrants who intend to cross the border. Since their creation, Beta Groups’ services, including advice, transportation, emergency medical care, water, and food, have been offered to all migrants irrespective of their nationality or status. On many occasions, these services have saved migrants’ lives. For example, in 2007, Beta Groups rescued over 6,000 and offered social assistance to over 100,000 migrants in Mexico. NMI, Statistics, http://www.inm.gob.mx/estadisticas/2007/beta.mht. In some cases, though, Beta Groups’ officers have turned irregular migrants over to NMI, particularly along the southern border. There are currently 13 Beta Groups within Mexico located in Tijuana, Tecate, and Mexicali (Baja California); Nogales, Agua Prieta, and Sásabe (Sonora); Ciudad Juárez (Chihuahua); Piedras Negras (Coahuila); Matamoros (Tamaulipas); Acayucán (Veracruz); Tenosique (Tabasco); and Tapachula and Comitán (Chiapas).

Between 2001 and 2003, Mexico carried out the Southern Plan, with the principle objectives of strengthening border controls and migrant management as well as remodeling and constructing detention centers. In 2005, Mexico began implementing a Migration Program for the Southern Border, which resulted from extensive consultations in Mexico City, Chiapas, and Tabasco. The goal of the program, carried out by NMI in coordination with other government agencies and NGOs, is to facilitate documentation of the migrants, improve protection of migrants’ human rights, and to improve border security, in conjunction with better material and technological infrastructure. NMI, Migration Program for the Southern Border, http://www.inm.gob.mx/index.php?page/FRONTERA_SUR_MAS. One example of action taken by law enforcement to combat smuggling along the southern border was an operation in December 2006, in which NMI, FPP, the Federal Investigation Agency, and the Chiapas State Investigation Agency, detained human smugglers along the border in Chiapas resulting in 416 arrests. OAG, ANNUAL ACTIVITY REPORT (2007).

Mexico has also worked to improve its northern border controls and protections. In 1996, the Assistance to Border Children program was developed with the participation of MOI, MFA, DFS, and NMI. The program is designed to protect Mexican children who have been deported from the U.S. In 1989, Programa Paisano (“Compatriot Program”) was established to inform Mexicans who are returning to the country about migration and customs proceedings, relevant permits, and rights and obligations related to their return, among others. Currently, Programa Paisano is governed by an inter-agency commission headed by MOI through NMI. In addition to various federal government agencies, the commission is comprised of the Inter-Institutional Committees
as well as program representatives in Los Angeles, California and Chicago, Illinois. See Programa Paisano at www.paisano.gob.mx.

Finally, the Mexican government has identified the most frequently utilized migrant smuggling routes and placed mobile checkpoints along these routes throughout the country.

There is currently no routine procedure in place to deal with a situation in which a trafficking operation is uncovered during a regular border control. If a border guard suspects or uncovers any type of criminal conduct, he or she must detain the suspect and turn him or her over to OAG. It is unclear what happens to victims in such situations. If they are properly identified as trafficking victims, they should be turned over to FEVIMTRA and offered assistance.

**Cooperation**

Mexico has entered into a number of border cooperation and repatriation agreements with Belize, Guatemala, and the U.S., which establish administrative coordination mechanisms regarding transportation routes, times, documentation, and special measures for vulnerable groups. See Articles 8 and 10 above. In addition, Mexico has established two GANSEF groups – one with Guatemala and one with Belize – to work against terrorism, organized crime, migration crimes, illicit trafficking of merchandise, and public security along the southern border. See Article 2 above. In 2006, during the fourth annual meeting, the three countries established a plan which, among other things, called for the establishment of expedited communication channels and exploration of mechanisms and action plans aimed at enhancing security in the sub-region under the principle of shared responsibility. See Senate Gazette, No. 237, April 28, 2008, at http://www.senado.gob.mx/gace.php?sesion=2008/04/28/1&documento=105. Interviewees commented that in practice the agreements between the three countries have been slow to become operational due to the difficult terrain, lack of adequate infrastructure and resources, as well as systemic corruption within NMI.

The Mexican and U.S. governments have also established mechanisms for border cooperation. These include: the Border Safety Initiative (June 1998), Memorandum of Understanding on Cooperation against Border Violence (February 1999), and Plan of Action for Cooperation on Border Safety (2001). Furthermore, in 2004, Mexico and the U.S. signed an Action Plan for Border Cooperation and Safety [hereinafter BORDER ACTION PLAN], which is oriented to improve border safety and security between the U.S. and Mexico by combating human smuggling, trafficking, and border violence, and such other actions as: coordinating responses to border emergencies; enhancing existing media information and prevention programs; intensifying public outreach to prevent migrant crossings in high-risk areas; ensuring secure and orderly repatriations of Mexican nationals; exploring mechanisms, on a bilateral basis to repatriate Mexican nationals to their places of origin; strengthening consultation mechanisms between Mexican consuls and DHS authorities; and strengthening the Border Liaison Mechanism. See 2004 U.S.-Mexico Action Plan for Cooperation and Border Safety, http://www.migracioninternational.com/docum/indice.html?mundo=usmexplanseg2004.html. The Border Liaison Mechanism is a joint governmental instrument to further regional bilateral dialogue, in which representatives from both sides of the U.S.-Mexico border regions discuss matters of mutual interest including public safety, protection of migrants, and law enforcement issues. See Press Release, Embassy of the U.S. in Mexico, Meeting of Border Liaison Mechanism (Aug. 24, 2005).

In terms of combating human smuggling and trafficking in persons, Mexico and the U.S. have agreed to undertake both intelligence and security actions and protection measures. Specifically, the Border Action Plan calls for the expansion of ongoing bi-national efforts to dismantle alien smuggling and trafficking networks by providing additional resources to identify and target these criminal organizations; strengthening bi-national coordination among law enforcement agencies to combat human smugglers and traffickers on both sides of the border; expediting and reinforcing the exchange of bilateral information that targets migrant smugglers and traffickers; mapping high-risk areas along the border to have an accurate portrait of new routes;
implementing preventive actions to reduce migrant risks; and reinforcing existing bilateral training programs on border safety, migrant search, and rescue operations. Furthermore, Mexico and the U.S. have agreed to work together to update intelligence on human smugglers and traffickers, particularly their profiles and modus operandi (places, routes, procedures, networks); mechanisms used to evade the action of authorities; and intelligence about the financial structures of human smuggling and trafficking organizations, in order to detect, impede, and dismantle their illicit activities. Lastly, Mexico has consented to:

- Strengthen the presence of Mexican law enforcement authorities along the routes used for human smuggling and trafficking in Mexico;
- Strengthen deterrence measures along the southern border, with an emphasis on human smuggling and trafficking organizations;
- Strengthen permanent inter-institutional mechanisms for surveillance in the border region through Beta Groups, with the support and intervention of different law enforcement agencies;
- Strengthen Beta Groups in high-risk areas, especially in Sásabe, Nogales and Agua Prieta, Sonora;
- Intensify the presence of authorities in land terminals and airports where the highest flows of migrants are detected, in order to warn migrants about the risks of crossing through dangerous border areas;
- Intensify surveillance actions on migrants’ routes in high risk areas;
- Analyze key socioeconomic factors that impact the migration problem and implement a development plan for border communities whose economy is supported by activities linked to human smuggling and trafficking (transport, housing, feeding); and
- Establish inspection points with the collaboration of different Mexican law enforcement authorities in specific areas such as Sásabe, Sonoyta, and Agua Prieta in the state of Sonora to reduce and inhibit the violent activities associated with smuggling and human trafficking.

See generally BORDER ACTION PLAN. In addition to the Border Action Plan, OASISS involving the U.S. CBP and Mexican OAG, MFA, and MOI, has been ongoing since 2005. See Article 10 above.

As a result of the above-mentioned programs, several arrests of smugglers and traffickers have been made. For example, in April 2007, Mexican authorities notified U.S. authorities of a case of commercial sexual exploitation in North Carolina, based on a complaint made in Mexico by the sister of the victim. This operation ended with the arrest of a trafficker and the rescue of several young women. OAG, ANNUAL ACTIVITY REPORT (2007).

**Commercial Carriers**

As mentioned in Article 9 above, the Inter-Secretarial Commission must inform and warn personnel from airlines and public transportation services about the liabilities stemming from facilitating or failing to impede conduct inherent to trafficking in persons, as well as to educate them how to prevent the trafficking crime. The Inter-Secretarial Commission must also familiarize personnel from transportation companies with the need to take special measures to ensure the protection of children under 18, adults over 60, women, the indigenous, and mentally disabled who are traveling through Mexico or across Mexican borders. FEDERAL ANTI-TRAFFICKING LAW art.
Because the Inter-Secretarial Commission has not been officially instituted yet, neither of these actions has been undertaken thus far.

The General Population Act establishes migration guidelines that the commercial carriers must follow. Maritime carriers must not leave a port without previous authorization from migration authorities. No visits to maritime transport carriers may be made in international waters without previous authorization from migration officials. Commercial maritime, land, and air carriers must verify travel documents of passengers who are going to enter another country. Passengers and commercial carrier crews must allow migration authorities to carry out inspections before disembarking. Upon leaving or entering a country, pilots, captains, and drivers of commercial carriers must also present migration officials with lists of passengers and crew members, which include information necessary for their identification. GENERAL POPULATION ACT arts. 21, 28, 24, 30. In practice, commercial carriers comply with these requirements on a regular basis.

When a passenger is denied entry by a migration official due to the fact that his or her migration documents are invalid, or because he or she does not have migration documents, the commercial carrier must cover the cost of the person’s return in addition to facing relevant sanctions. Id. art. 27.

Transport companies are responsible for the pecuniary fines of all of their employees who commit administrative violations of the General Population Act and its Regulations. Commercial carriers that transport foreigners without current migration documentation will be fined up to MXN 5,000 (approximately USD 460). Commercial carriers that refuse to return foreign passengers who have been denied entry will be fined up to MXN 5,000 as well. Transport companies arriving from abroad, that allow people to disembark in prohibited places or hours, will be fined up to MXN 10,000 (approximately USD 920). Maritime transportation companies that allow passengers or crew to disembark before migration authorities have granted permission, must pay MXN 3,000 (approximately USD 276). Maritime carriers that leave without prior permission from migration authorities will be fined up to MXN 5,000. Should they commit the same act, the name and license of the boat will be given to the Mexican consulates so they can prohibit its entry into the Mexican ports. Any person who makes an unauthorized visit to foreign maritime transport carrier will pay a fine of up to MXN 500 (approximately USD 47) and may be arrested for up to 3 days. Id. arts. 23, 31, 130-133, 136-137. These sanctions comply with the requirements set forth in Article 11 of the Trafficking Protocol.

The information provided to the assessment team regarding the application of fines was uneven. Mexico has 59 airports that receive commercial airlines. FPP conducts regular migration inspection activities in at least 29 of them. Thirty two regional NMI delegations reported that between 2006 and July 2008, sanctions had been applied to commercial carriers for violations of the General Population Act in ten airports: La Paz in Baja California Sur, Campeche in Campeche, Ciudad Juarez in Chihuahua, Toluca in Mexico State, Guanajuato in Guanajuato, Guadalajara and Puerto Vallarta in Jalisco, Monterrey in Nuevo Leon, Cancun in Quintana Roo, and Mexico City. Among these, Mexico City, with the largest volume of air traffic, reported only 8 fines while Cancun reported 144. The most common sanction was imposed for allowing passengers to fly with an expired passport. The fines ranged from MXN 1,200 to 52,590 (approximately USD 112-4,924). Four regional NMI delegations reported fines against maritime carriers for arriving in port with undocumented migrants on board in the following locations: Guyamas in Sonora, Paraiso in Tabasco, Tampico in Tamaulipas, and Progreso in Yucatan. However, only 9 fines were reported between 2006 and July 2008. They ranged from MXN 1,265 to 48,670.00 (approximately USD 118-4,557). Access to Information File No. 0411100052408 (July 21, 2008).

During 2007, OAG initiated 94 cases for smuggling migrants into Mexico and 616 cases for transporting or harboring undocumented migrants. Access to Information File No. 0001700024208 (March 12, 2008). It is unclear, however, in how many of these cases commercial carriers were implicated.
**Denial of Entry and Visa Revocation**

While there are no specific provisions related to the revocation of visas of persons who are implicated in the commission of trafficking in persons, MOI can deny entry to foreigners who have violated Mexican laws, if they have a criminal record abroad, or if it is in the national interest. **GENERAL POPULATION ACT** arts. 37-38.

Mexico’s Integrated System for Migration Operations has a criminal check function, which is linked with information provided by INTERPOL. Migration officials at official border inspection sites run this check against individuals requesting entry into Mexican territory. Since charges for trafficking in persons have been made only in two federal cases, it is not possible to predict whether authorities would routinely deny entry or revoke visas of traffickers.
Article 12: Security and Control of Documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Conclusion:

MFA and MOI issue travel and identity documents to, respectively, Mexican nationals and foreigners in Mexico. Passports, visas, and consular identification cards meet the standards of quality, integrity, and security required by Article 12 of the Trafficking Protocol. Documents issued by MOI, while not as numerically significant as passports, are more likely to be falsified, unlawfully altered, replicated, or fraudulently issued, particularly for use by irregular migrants in transit through Mexico. NMI has installed the Integrated System for Migration Procedures in airports, ports, and other points of entry. The registry includes electronic files with personal information and criminal backgrounds, and is also utilized to identify false, lost, and stolen documents.

Implementation Analysis:

In the Mexican context, the integrity of travel and identity documents is important due to the large flow of migrants that transit through Mexico each year to reach the U.S., and due to the large population of Mexican migrants in the U.S. Smugglers often attempt to utilize forged documents or valid documents of other persons to move migrants through Mexico. The documents most often utilized for this purpose are the Mexican Voter Registration Card and the Consular Identification Card.

While Mexican legislation establishes which documents can be utilized as identity documents and which can be utilized as travel documents, there is no definition of either. The Nationality Law lists official documents that prove Mexican nationality, including: birth certificate, certificate of Mexican nationality, naturalization letter, passport, Resident Identity Card, and Consular Identification Card. NATIONALITY LAW art. 3 (adopted January 23, 1998, D.O., as amended) [hereinafter NATIONALITY LAW]. In addition, Mexican nationals can obtain the Mexican Voter Registration Card issued by the Federal Electoral Institute. FEDERAL CODE OF ELECTORAL INSTITUTIONS AND PROCEDURES art. 179-180 (adopted Jan. 14, 2008, D.O.). The General Population Act establishes a National Registry of Residents and regulates the issuance of the Resident Identity Card. The Resident Identity Card is an official identity document produced by MOI and is recognized by Mexican officials within the country and abroad. GENERAL POPULATION ACT arts. 97, 104.

There are two types of travel documents available to Mexican nationals: the passport and the Consular Identification Card. Passports are issued to Mexican citizens by MFA and are used to prove nationality and identity, request entry into other countries, and request protection and assistance if necessary. Consular Identification Cards are issued to Mexicans residing abroad by Mexican consular offices, and are also recognized as identification documents in Mexico. The consular registry of Mexicans living abroad is maintained by MFA. PASSPORT REGULATIONS art. 2 In practice, the Mexican government issues over 2 million passports and close to 1 million Consular Identification Cards each year. In 2007, it issued 2,655,971 passports and 913,704 Consular Identification Cards. Between January and August 2008, 665,463 Consular
Identification Cards were produced. See Access to Information File No. 0000500128008 (Sept. 12, 2008).

MOI, through NMI, issues three types of documents that are official identification and travel documents for foreigners in Mexico: the FM-3 Non-Immigrant Visa, the FM-2 Immigrant Visa, and the Immigrated (or Permanent Resident) Visa. GENERAL POPULATION ACT art 42. MFA may also issue a travel and identity document to a foreigner whose nationality is undetermined or who does not have consular representation in Mexico and needs to travel. PASSPORT REGULATIONS art. 5. Selected immigrants and non-immigrants, i.e. religious workers, non-immigrant scientists, asylees, refugees, and students, must register themselves with the National Registry of Foreigners within 30 days of arriving in Mexico or receiving a visa. GENERAL POPULATION ACT art. 63. In 2007, NMI issued 2,110 FM-3 Non-Immigrant Visas through its Regularization Program that facilitates the legalization process for immigrants who have never had status or who have fallen out of status. NMI also issued 4,272 documents to immigrants arriving in Mexico in 2007. In the same year, 1,671 Immigrated Visas were produced. NMI, Migration Statistics 2008 (Graphic Synthesis).

In addition, Mexico has established a visa waiver program for nationals of 50 countries, including the U.S., but excluding Guatemala and Belize. However, Guatemalan and Belizean nationals may obtain temporary work permits if they are over 16 years old and have a job offer in Quintana Roo, Campeche, Tabasco, or Chiapas. The program, which had begun in 1999 for Guatemalan agricultural workers in Chiapas and was extended in 2008 to other sectors, states, and Belizean nationals, issues between 40,000 and 60,000 temporary worker visas each year. Guatemalans from the provinces close to the Mexican border may also receive temporary visitor visas that allow them to remain in Mexico for 3 days and travel within 100 km of the border in Chiapas, Tabasco, and Campeche. Press Release, Office of the President, MOI Announces Migration Forms for Workers and Visitors on the Southern Border (March 12, 2008).

Mexican nationals traveling to the U.S. must have valid passports and visas. While entering Guatemala, Mexicans must only present valid passports. If they are border residents, they may also obtain 3-day visas to Guatemala by presenting their Mexican Voter Registration Cards. See MFA, Passports, Visas and Entry for Mexicans into Guatemala, http://www.sre.gob.mx/delviajero/america_central/gua.htm. Similarly, Mexican tourists need only passports to enter Belize for less than 30 days. See MFA, General Information for Traveling to Belize, http://www.sre.gob.mx/delviajero/america_central/bel.htm.

Quality of Travel and Identity Documents

MFA published guidelines that set out the characteristics and specifications of electronic visas and Consular Identification Cards. Visas must be printed on high security stickers that are glued into passports, while Consular Identification Cards must be printed on Teslin13 paper. Both documents have a background made out of high security inter-woven material similar to currency paper in green and red. Visas contain the words VISA and SRE14 in different sizes slightly embossed. The top part of the visa consists of a high security woven fiber in more intense green and red tones, made with Intaglio ink with characteristics of money paper with the phrase “MEXICO VISA.” The Consular Identification Card contains the phrase “MEXICO MATRICULA CONSULAR,” and the document contains pre-printed optically codified and scrambled indicia with the phrase “SRE.” Visas also have Optical Character Reading [hereinafter OCR], and PDF 417 Code, which is a two-dimensional bar code that contains codified personal information about the holder. Visas have two photographs with the face of the holder, which include scrambled optical codification with the name of the holder, date of birth, and the letters “SRE.” Consular

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13 Teslin is a hybrid material that prints with the clarity and ease of paper while having the durability of plastic.
14 SRE stands for “Secretaría de Relaciones Exteriores,” which means “Ministry of Foreign Affairs” in Spanish.
Identification Cards have only one photograph. Both documents include the signature of the authority granting the document as well as personal data of the holder and information about the document. Agreement Establishing the Characteristics and Specifications of Electronic Visas and Consular Identification Cards (*adopted by MFA March 9, 2007, D.O.*).

Mexican passport has a digitalized photograph and signature, a two-dimensional bar code, the letters OCR, and descending cone-shaped perforations. It is produced in the form of a booklet with special security paper and special green ink. The document meets technical specifications on Machine Readable Travel Documents [hereinafter MRTD] contained in Document 9303 that Mexico signed with the International Civil Aviation Organization [hereinafter ICAO]. Agreement Establishing the Content and Format of Machine Readable Passports (*adopted by MFA, Oct. 12, 2000, D.O.*). The specifications in Document 9303 meet the standards of ICAO’s Technical Advisory Group on MRTD that has issued international norms and guidelines for passports, visas, and official travel documents. They are also supported as International Standards Organization norms through the cooperation mechanisms of both organizations. See ICAO/MRTD, http://mrtd.icao.int/content/view/33/202.

MFA uses additional systems to verify the authenticity of documents, including:

- Integral System of Consular Administration 2.0 software (SIAC 2.0) utilized to issue electronic reading visas and passports that are compatible with ICAO’s guidelines;
- Consular Statistics System used to register consular and migratory procedures carried out by diverse Mexican representatives abroad to improve monitoring and facilitate the issuance of statistical reports;
- Validation system used in conjunction with the Federal Election Institute to verify voter registration cards presented by Mexican citizens abroad;
- Integral System of Nationality and Naturalization Procedures that monitors the administration of nationality and naturalization documents; and
- System of Administration of Institutional Documents used to provide necessary information for the systematization and monitoring of activities related to institutional documents to the administrative offices of MFA, diplomatic and consular representatives, and permanent delegations in Mexico and abroad.


Non-Immigrant Visas and Immigrant Visas are booklets similar to passports, but with fewer security features. For example, the photographs in the visa booklets are not digitalized, and the information is typed in with typewriters and can be easily altered.

**Integrity and Security of Travel and Identity Documents**

Within the framework of national security and terrorism, the Mexican government has committed to: adopt necessary measures for border inspection and control according to the applicable legislation; cooperate with inspection mechanisms contained in the treaties or other international

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15 ICAO is a specialized agency of the U.N. created in 1944 to promote the safe and orderly development of international civil aviation on a global scale. It promulgates the necessary norms and regulations for operational security, protection, efficiency, and regularity of aviation as well as for the protection of the environment. Mexico is one of ICAO’s 190 Contracting States.
instruments, including the International Convention for the Suppression of the Financing of Terrorism and the Inter-American Convention against Terrorism; and establish a working group on national security. **AGREEMENT ESTABLISHING THE SPECIALIZED HIGH LEVEL COMMITTEE TO COORDINATE THE WORK OF THE EXECUTIVE BRANCH TO COMPLY WITH MEXICO’S INTERNATIONAL OBLIGATIONS AT A NATIONAL LEVEL IN THE AREA OF DISARMAMENT, TERRORISM, AND/OR NATIONAL SECURITY (adopted May 28, 2007 by the National Security Council, D.O.) [hereinafter AGREEMENT ON HIGH LEVEL COMMITTEE].**

To discharge these obligations, in 2007 Mexico established a High Level Committee on Disarmament, Terrorism, and International Security, whose main objectives are to implement the Framework for the Security and Facilitation of Global Trade formulated by the Asia-Pacific Economic Cooperation on the basis of standards developed by the World Customs Organization, and to create an environment for the secure and efficient movement of goods, services, and people across the borders. *Id.*

In addition, MFA, and MOI through NMI, created an electronic database to ensure the quality of travel and identity documents. The Integrated System for Migration Procedures was installed by NMI in airports, other points of entry, and regional NMI delegations, in order to have an electronic registry of all of the migration procedures carried out on the national level. The system has an online database of all people that officially enter or leave the country. The database includes criminal backgrounds, terrorist alerts, and information on people with previous immigration violations in Mexico. The database also includes an electronic file on each person with a photograph, signature, and fingerprints allowing officials to corroborate documents with personal information. The database assists officials in the identification of false documents as well as documents that have been lost or stolen. See NMI, **THIRD REPORT ON ACCOUNTABILITY PROGRAM (2006), available at** [http://www.inm.gob.mx/diversosprogramas/rendiciondecuentas/Tercer%20Informe.pdf](http://www.inm.gob.mx/diversosprogramas/rendiciondecuentas/Tercer%20Informe.pdf). Information contained in the database may be shared with other agencies in compliance with Mexico’s obligations abroad. **AGREEMENT ON HIGH LEVEL COMMITTEE.**

In practice, the Integrated System for Migration Procedures is not yet entirely functional. It operates only in 27 of the 166 official points of entry in Mexico, including 18 airports, 9 land points of entry, and no maritime points of entry. While these 27 points of entry cover 89% of the migration flows, only certain fields in the database are filled out on a regular basis, such as information on the detention centers, and the number of voluntary repatriations and deportations. **FEDERAL SUPERIOR AUDITOR’S OFFICE, REPORT ON THE RESULTS OF THE FEDERAL AUDIT 2007 at 186-187 (2007).**

The crimes of falsification, alteration, and misuse of documents are established in the Federal Criminal Code. The penalty for the falsification of public documents is 4-8 years in prison and a fine of 200-265 days of minimum wage, equivalent to MXN 10,518-13,936 (approximately USD 969-1,283). The penalties increase by 50% if the crime is committed by a public official. **FEDERAL CRIMINAL CODE arts. 243-246.**

According to interviewees, Non-Immigrant and Immigrant Visas issued by NMI are the documents most likely to be unlawfully created, falsified, and utilized by smugglers to move irregular migrants through Mexico and to the northern border. This occurs most often in southern border states such as Chiapas, Tabasco, Chetumal, and Quintana Roo. Many transit migrants also utilize valid Mexican Voter Registration Cards with photographs that resemble them. While there were complaints about the level of security of the Consular Identification Cards in the past, the new regulations and security measures have improved this situation since 2002.

One indicator of the extent to which false documentation is utilized to enter Mexico is the number of airline passengers that undergo secondary migration inspection. NMI reports that 661 individuals were placed in secondary inspection in 2006 and 903 in 2007, based on alerts regarding their travel documentation created through the Integrated System for Migration Procedures in the following airports: San Jose del Cabo, Guadalajara, Puerto Vallarta, Ciudad de
Mexico, Cancun, Monterrey, Cozumel, Mazatlan, Silao, Hermosillo, Merida, Acapulco, Zihuatanejo, Huatulco, Tijuana, Zacatecas, Morelia, and Toluca. Access to Information File No. 0411100050608 (July 16, 2008). However, this information does not explain whether the documentation was actually found to be false, whether the individuals were denied entry, or whether criminal proceedings were initiated.
Article 13: Legitimacy and Validity of Documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

Conclusion

Mexico complies with the obligations established in Article 13 of the Trafficking Protocol. MOI is responsible for registering and verifying the validity of travel or identity documents. In practice, MFA facilitates the process for verification requests originating abroad and the requests are generally completed within a reasonable time.

Implementation Analysis:

MOI is responsible for verifying the identity of all people residing in Mexico and Mexicans residing abroad, and entering them into the National Registry of Residents. GENERAL POPULATION ACT art. 85. Requests for verification of travel or identity documentation made abroad are channeled through the Mexican consular offices to MFA, and are subsequently submitted to MOI. Information regarding the number of verification requests was unavailable to the assessment team. However, interviewees stated that the requests are completed within a reasonable time.

Within Mexico, offices of MFA are located in the airports to assist migration officials with the inspection of documents (visas, passports, and Consular Identification Cards) that were issued by the various offices abroad to Mexicans and foreigners wishing to enter Mexico. See MFA, Functions of the Consulates, http://portal.sre.gob.mx/conreinounido/index.php?option=displaypage&Itemid=67&op=page&SubMenu.
# List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ABA ROLI</td>
<td>American Bar Association Rule of Law Initiative</td>
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<td>CAST</td>
<td>Coalition to Abolish Slavery and Trafficking</td>
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<td>CATW</td>
<td>Coalition against Trafficking in Women</td>
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<td>CBP</td>
<td>U.S. Customs and Border Protection</td>
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<td>CEIDAS</td>
<td>Center for Studies on Development and Social Assistance</td>
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<td>CENAPI</td>
<td>National Center for Planning, Analysis, and Information on Fighting Crime</td>
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<tr>
<td>COMAR</td>
<td>Mexican Commission for Refugee Assistance</td>
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<td>CPI</td>
<td>Corruption Perceptions Index</td>
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<td>CRA</td>
<td>Mexican Commission for Refugee Assistance</td>
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<td>DFS</td>
<td>Department of Family Services</td>
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<tr>
<td>DHS</td>
<td>U.S. Department of Homeland Security</td>
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<td>D.O.</td>
<td>Official Journal of the Federation</td>
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<td>DOJ</td>
<td>U.S. Department of Justice</td>
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<td>DOS</td>
<td>U.S. Department of State</td>
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<td>ECPAT</td>
<td>End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes</td>
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<td>FATF</td>
<td>Financial Action Task Force on Money Laundering</td>
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<tr>
<td>FEVIMTRA</td>
<td>Specialized Prosecutorial Unit for Violent Crimes against Women and Human Trafficking</td>
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<td>FPP</td>
<td>Federal Preventative Police</td>
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<tr>
<td>GANSEF</td>
<td>High Level Groups for Border Security</td>
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<tr>
<td>HHS</td>
<td>U.S. Department of Health and Human Services</td>
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<td>HTAT</td>
<td>Human Trafficking Assessment Tool</td>
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<td>ICAO</td>
<td>International Civil Aviation Organization</td>
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<td>ICE</td>
<td>U.S. Immigration and Customs Enforcement</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>INMUJERES</td>
<td>National Women’s Institute</td>
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<td>IOM</td>
<td>International Organization for Migration</td>
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<td>MFA</td>
<td>Ministry of Foreign Affairs</td>
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<td>MFPC</td>
<td>Ministry of Finance and Public Credit</td>
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<td>MOI</td>
<td>Ministry of the Interior</td>
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<td>MPA</td>
<td>Ministry of Public Administration</td>
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<td>MPS</td>
<td>Ministry of Public Security</td>
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<td>MRTD</td>
<td>Machine Readable Travel Documents</td>
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<td>MXN</td>
<td>Mexican Pesos</td>
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<td>NCINS</td>
<td>National Center for Investigation and National Security</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>NHRC</td>
<td>National Human Rights Commission</td>
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<td>NISD</td>
<td>National Institute for Social Development</td>
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<td>NMI</td>
<td>National Migration Institute</td>
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<td>OAG</td>
<td>Office of the Attorney General</td>
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<td>OAS</td>
<td>Organization of American States</td>
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<td>OASISS</td>
<td>Operation against Smugglers (and Traffickers) Initiative on Safety and Security</td>
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<td>OCR</td>
<td>Optical Character Reading</td>
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<tr>
<td>RCM</td>
<td>Regional Conference on Migration</td>
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<tr>
<td>U.N.</td>
<td>United Nations</td>
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<tr>
<td>UNHCR</td>
<td>U.N. High Commissioner for Refugees</td>
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<tr>
<td>UNICEF</td>
<td>U.N. Children’s Fund</td>
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<tr>
<td>UNODC</td>
<td>U.N. Office of Drugs and Crime</td>
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<tr>
<td>U.S.</td>
<td>United States of America</td>
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<tr>
<td>USAID</td>
<td>U.S. Agency for International Development</td>
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<tr>
<td>USD</td>
<td>U.S. Dollar</td>
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